

Reserved on
27.3.2014

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 6th DAY OF May 2014)

PRESENT:

**HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER -J
HON'BLE MR. U.K. BANSAL, MEMBER - A**

ORIGINAL APPLICATION NO. 1315 OF 2008

(U/s, 19 Administrative Tribunal Act.1985)

B.R.N Singh, aged about 58 years, S/o Late Shri B.K.N Singh, presently working as Chief Parcel Clerk, Northern Railway, Varanasi, R/o Village Adarsh Nagar, P.O. Sagar Pali, District Ballia (U.P.)

.....Applicant

By Advocate: Shri Rakesh Verma

Versus

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi
2. The Additional Divisional Railway Manager (II), Northern Railway, Lucknow.
3. The Senior Divisional Commercial Manager, Northern Railway, Lucknow.
4. The Divisional Commercial Manager, Northern Railway, Lucknow.

..... Respondents

By Advocate : Shri P. Mathur

ORDER

HON'BLE MR. U.K. BANSAL, MEMBER - A

Through the present O.A, the applicant Shri B.R.N Singh seeks intervention of this Tribunal for obtaining the following relief (s):-



"(1) to issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 05.09.2005 passed by the respondent No. 4 imposing punishment of reduction in pay from the time scale of pay of Rs.5500-9000 to that of Rs.3200-4900 fixing therein at the initial stage of Rs.3200/- p.m. for a period of three years with cumulative effect, the appellate order dated 24.12.2007 passed by the respondent NO.2, duly served upon the petitioner on 28.12.2007, sustaining the aforesaid punishment order, modifying the order dated 05.01.2007 passed by the respondent NO. 3 including chargesheet dated 02.06.2005, enquiry proceedings and the enquiry report dated 19.06.2006 which has merged into the above referred punishment orders (Annexure A-1 & A-2 respectively to the Compilation NO. 1 of this petition).

(ii) to issue a writ, order or direction in the nature of mandamus directing the respondent NO.2 and 4 to restore the petitioner at the basic pay of Rs.6700/- per month plus usual allowances as on 05.09.2005 in the pay scale of Rs.5500-9000 and to fix the pay of the petitioner accordingly, allowing annual increments every year with all consequential benefits thereof, such as fixation accordingly in the pay scale revised under VIth Central Pay Commission effective from 01.01.2006 and to pay the arrears thereof together with interest thereon @ 18% per annum as if no such illegal and arbitrary impugned orders would have ever been passed, within a

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period as may be fixed by this Hon'ble Tribunal.

- (iii) to issue a writ, order or direction in the nature of mandamus directing the respondent Nos. 2 and 4 to accord continuity of service as Chief Booking Clerk Northern Railway, Varanasi including the seniority, as if no such illegal and arbitrary impugned orders would have ever been passed, within a period as may be fixed by this Hon'ble Tribunal.*
- (iv) to issue a writ, order or direction in the nature of mandamus directing the respondent Nos. 2 and 4 to get the petitioner refunded Rs.55/- (private cash) which was taken by the vigilance team on the date of vigilance trap i.e. on 18.07.2004 which has not yet been refunded, despite question raised during the enquiry, by the vigilance team, together with interest thereon @ 18% per annum, within a period as may be fixed by this Hon'ble Tribunal".*

2. The brief facts of the case are that while the applicant was working as Chief Booking Clerk, Railway, Varanasi under the control of respondent No.4, his booking counter was checked by a Vigilance Team of the Railways, by laying a trap. It was alleged by the respondents that the applicant demanded and accepted Rs.795/- against the correct due fare of Rs.765/- from the decoy passenger sent to buy tickets. This amounted to indulging in corrupt practices and, therefore, a departmental enquiry was conducted against the applicant following which the disciplinary authority namely

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respondent NO.4 imposed the punishment of reduction in pay upon the applicant. The applicant submitted an appeal against this punishment order, which was rejected by respondent NO.3, who also enhanced the punishment to compulsory retirement from service, after giving a show cause notice. The applicant submitted a further appeal to the next Higher Authority i.e. respondent No.2, who restored the original penalty of reduction in pay for a period of 3 years with cumulative effect and thus modified the punishment of compulsory retirement.

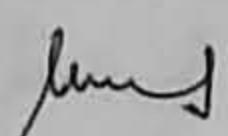
3. It has been argued by the learned counsel for the applicant that the procedure followed while laying the trap by the vigilance team was flawed in as much as the immediate Superior Officer to the applicant Shri D.N Ram, Chief Booking Supervisor (Northern Railway, Varanasi) was not associated in the trap and the statement of Shri D.N Ram was not recorded of his free-will but was dictated to him by members of the Vigilance Team. It has been averred that to this extent the vigilance team did not follow the procedure laid down in the Vigilance Manual. Further it was argued that the choice and appointment of the Inquiry Officer Shri M.K. Sharma by respondent NO. 4 was illegal as Shri Sharma was the Chief Vigilance Inspector (Head Quarters), Northern Railway, New Delhi and since the trap was also organized by a team of the vigilance department, it was not legal for the Inquiry Officer to be from the same Vigilance Department.

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4. The learned counsel for the applicant also argued that according to the procedure laid down in the Vigilance Manual, whenever a trap is to be laid by the vigilance authorities against any railway servant, it should be conducted in the presence of other officials of the same office who could then be witnesses. In this case, this was not done. He further pointed out that while deciding the appeal of the applicant, respondent NO.2 found that evidence against the applicant was insufficient and hence he disagreed with the appellate order passed by respondent No.3 awarding the punishment of compulsory retirement.

5. The learned counsel for the respondents submitted that the applicant was charge-sheeted under Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968. During the course of enquiry, all oral, documentary and circumstantial evidence was taken into account, according to prescribed procedure and due opportunity was given to the applicant to defend himself. The charges against the applicant were found to be proved. Hence, the said punishment was awarded to him.

6. It was contended that it is the prerogative of the Disciplinary Authority to appoint an appropriate Inquiry Officer and merely because the Inquiry Officer is from a particular department will not vitiate the proceedings. Further



during the proceedings, the applicant did not make any request for a change of the Inquiry Officer. It was stated that respondent NO.2, while disposing the second appeal of the applicant did so after taking a lenient view against the applicant, by modifying the order of compulsory retirement.

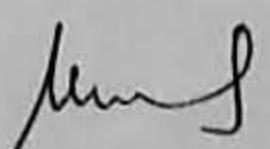
7. The appellate order issued by the respondent NO.2 was examined closely. He has noted that a check was conducted by the Vigilance Team when the applicant was alone in his office and nobody other than the Vigilance Team members was present. Further the Superior Officer Shri D.N Ram has stated that he was called to sign as witness to the proceedings after the trap, collection of cash and preparation of cash details. It has also been noted by the respondent No. 2 that Shri D.N Ram has said that the Vigilance Team had dictated his statement after the trap. Respondent NO.2 has also noted that the applicant was under mental stress since the applicant's wife and daughter had sustained serious burn injuries in a fire accident. Hence in view of the totality of circumstances, the punishment of compulsory retirement had been modified.

8. The learned counsel for the applicant has also referred to the case of **Moni Shankar Vs. Union of India and another (2008) 1 Supreme Court Cases (L&S) 819** and the case of **Union of India and others Vs. Prakash Kumar Tandon (2009) 1 Supreme Court Cases (L&S) 394**. In

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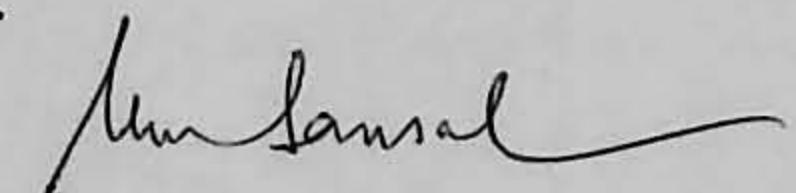
these cited case laws, it has been observed that there should be complete procedural fairness in matters of trap and that in the case of railways employees, the Railway Vigilance Manual Para 704 and 705 should be read together to decide the fairness of the entire trap activity. Para 704 of the Railway Vigilance Manual lays down the procedure, which needs to be followed in a trap. In addition para 705 states that as far as possible the Investigating Officer should arrange for two gazetted officers from the Railways to act as independent witnesses and whenever the services of two gazetted officers are not available then non-gazetted officer can also be utilized. In the present case, the modalities of the trap have been complied satisfactorily within the limits of practical feasibility. However, it is also a fact that the trap was pre-planned involving a decoy passenger and hence it could have been possible to arrange for two gazetted officers as independent witnesses.

9. The order by which the Inquiry Officer was appointed, was also examined. Shri M.K. Sharma, who was appointed as the Inquiry Officer carried the designation of Chief Enquiry Inspector (मुख्य जाँच निरीक्षक), Headquarter, Northern Railway, New Delhi and he is not an officer of the Vigilance setup. This has also been pointed out by the learned counsel for the respondents. Hence, it is incorrect to say that the Inquiry Officer was from the vigilance department.

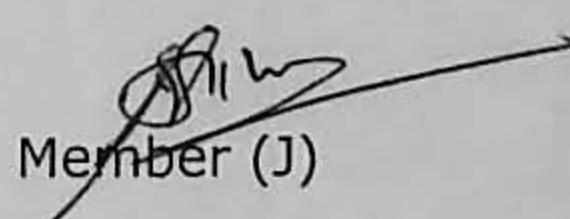


10. As regards the summoning of Shri D.N Ram, Chief Booking Supervisor after the trap was conducted the prescribed procedure requires that the Investigating Officer should arrange for the preparation of the seizure memo of the money seized and carry out the verification procedures. The immediate superior of the Trapped Officer should be called as a witness in case the accused refuses to sign the recovery memo and sealing of the notes etc. This is, however, not the case here.

11. In the light of the documents on record and aforementioned analysis of the arguments and pleadings, we do not find any infirmity in the trap procedure or the subsequent enquiry, leading to the penalty imposed on the applicant. There being no ground to interfere with the actions of the Respondents, the O.A. is dismissed with no order on costs.



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Member (J)

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