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**Central Administrative Tribunal
Jodhpur Bench, Jodhpur**

Original Application No.247/2003
Date of Decision : This the 17th day of December, 2004.

Hon'ble Mr. Kuldip Singh, Vice Chairman

Hon'ble Mr. G.R. Patwardhan, Administrative Member

R.C. Lal S/o Late Shri Gaiinda Lal Ji
Aged about 60 years, R/o Flat No. IV-E
Sector 2, Jai Narain Vyas University Staff Colony,
Jodhpur (Rajasthan) Lastly employed on the post of
TTE, Bikaner, North Western Railway, Bikaner Division,
Bikaner (Rajasthan).

...Applicant.

[By Mr. S.K.Malik, Advocate, for applicant]

versus

1. Union of India through the
General Manager, North Western Railway,
Jaipur (Raj).
2. The Chief Commercial Manager,
North Western Railway, Headquarters
Office, Jaipur (Raj.)
3. The Additional Divisional Railway Manager
North Western Railway,
Bikaner Division, Bikaner
4. The Divisional Commercial Manager,
North Western Railway, Bikaner Division,
Bikaner.

....Respondents.

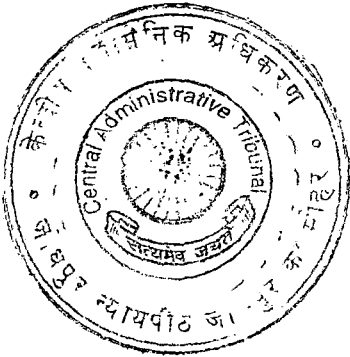
[By Mr. N.K. Khandelwal, Advocate, for respondents]

ORDER

[BY G.R.Patwardhan, Adm.Member]

This is an application by R. C. Lal, describing himself as TTE,
Bikaner, under the North Western Railway, Bikaner Division, who
has already retired on 30th June, 2003. There are four

respondents led by the Union of India through the General Manager, North Western Railway, Jaipur and followed by the Chief Commercial Manager, North Western Railway, Jaipur Additional Divisional Railway Manager, North Western Railway, Bikaner and the Divisional Commercial Manager, North Western Railway, Bikaner. In all four orders are under challenge contained in Annex. A/1 dated 23.6.1986 of Mr. B.S. Jhingon, Senior D.C.M., Bikaner (not a respondent), Annex. A/2 dated 15.5.2001 of Mr. Vivek Angra, D.C.M., Bikaner, imposing penalty of compulsory retirement, Annex. A/3 dated 12.7.2002 by Divisional Commercial Manager – Bikaner (respondent No.4) rejecting his appeal against the penalty and Annex. A/4 dated 1.9.2003 by Chief Commercial Manager, Jaipur, rejecting revision petition. The O.A. has been filed on 20.10.2003 and is thus within the period of Limitation.



2. To appreciate the facts easily, it appears necessary to reproduce the complaint of a passenger – Thakur Das Midha, which resulted in initiation of a departmental proceeding against the applicant – Annex. A/5. This is as follows :-

"The Divisional Railway Magistrate,
Bikaner Division, Northern Railway, Bikaner.

Sir,

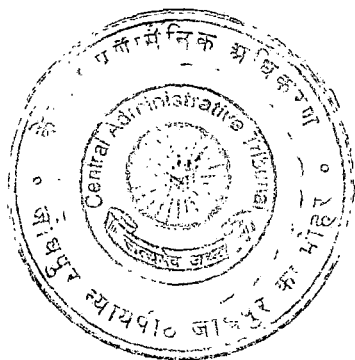
Ref : Misbehaviour and Malpractice by Shri R.C. Lal
Conductor, Sriganaganagar, Jaipur express on 28 Up in
1985.

I hereby invite your kind attention towards the above cited incident dated 28.4.1985 that I have to go to the Jaipur along with my Brothers Shri Milkhi Ram Midha and Vishan Dass Midha, due to sudden and untimely death of my

brother at Jaipur. I sent a message to Shri H.R. Gheeth ASM Northern Railway BMH JN to manage three berths. The subject informed that he has arranged the same through Sh. R.C. Lal , Conductor from Sriganganagar to Jaipur. We were to start our journey from BMH. He purchased three tickets for us with serial No. 798919, 798920, 798921 on the serial of 2 to 4 waiting list.

We entered the compartment and Lal assured us that the berths are likely to be confirmed Shri Bheek was also present there for our help as a sympathy in such a tragic affair to my surprise that in spite of the assurance by Shri Lal. We were not allotted any berth up to Bahadra inspite of our requests. Starting from BMH Shri Lal started taking alcohol and was dead drunk. When we again requested for allotment of seat he got enraged and started abusing we requested if he was not in a position to allot the berths he may return the tickets so that we may change the compartment. But he did not hear us. At last we were exhausted and slept on floor.

We were already much depressed and did not take it proper to exchange hot words with the gentleman we were also not in a position to change the compartment in the absence of tickets which were with him in the morning Shri Lal came to the compartment and gave us the tickets No. 89389, 89395 Sriganganagar to Jaipur and one Ticket No. 04486 from BMH to Sikar. When we asked for the original tickets, he told that the same has been misplaced in the way I was having ticket from HNH to Sikar. He arranged me to go out from side gate instead of platform. My brothers met me at bus stand where they were waiting for me. In this way we were very much harassed and he did not cared for our misfortune. We are of the opinion that he must have disposed of the tickets in some other way. Another passenger Shri H.L. Tappa was also traveling in the same compartment. He was demanding back Rs. 8/- as he paid Rs. 20/- for the reservation. He was also sleeping on the floor with us the conductor neither returned Rs. 8/- to him nor issued any RT. He is also a witness in our case. His residential address.



B - 127, Mangal Marg, Bapu Nagar Jaipur.

We earnestly request your honour to invite an enquiry in the matter and the person at fault be put to task so that he may not harass the general public in future even in such odd circumstances.

Hoping an early action in the matter we could not lodge the complaint early as the ticket with us and ticket No. were misplaced somewhere. We may further request that the

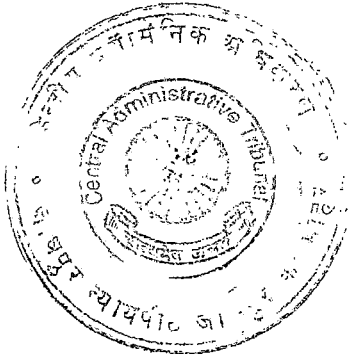
Conductor should be asked to help the public instead of harassing them.
Thanking you,

Dated: 15.6.85

Yours faithfully,
Sd/-
[Thakur Dass Midha]"

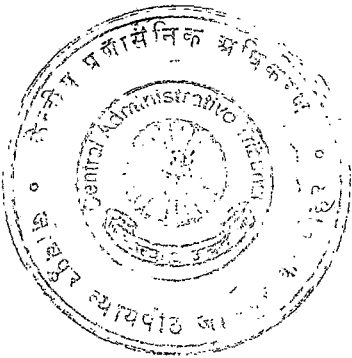
3. Learned advocates for both the parties have been heard at great length. Respondents have filed a detailed reply which is on record.

4. Applicant, admittedly was appointed on the post of Relieving Ticket Collector at Bikaner on 15.6.1972. Some time in 1986, the Senior D.C.S., Bikaner, issued standard form of Chargesheet to the applicant proposing holding of inquiry under Rule 9 of the Railway Servants (Discipline and Appeal), Rules, 1968. Articles of charges annexed to this particular chargesheet indicate that the applicant had indulged in fictitious reservations, carrying passengers without tickets, accepted illegal gratification, misbehaved with passengers and also consumed liquor while on duty. The applicant denied the allegations and requested for a detailed inquiry on which Shri S.P. Bahri, ACS, Bikaner conducted the same. Thereafter, vide letter dated 22.6.1988 (Annex.A/6), a letter was issued by the Divisional Railway Manager, Bikaner, intimating the applicant about imposition of penalty amounting to his placement to the lower post of Ticket Collector on stationery duties. However, he was given liberty to file an appeal within 45 days. An appeal seems to have been preferred to the respondent No. 2 i.e. the Chief Commercial Manager but as this was not decided, an O.A. 76/1990 was preferred before this Tribunal



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which got decided on 9.9.1991. The applicant maintains that this order of penalty was quashed by the Tribunal observing that the disciplinary authority is not precluded from revising the proceedings (this averment is contained in para 4.7 of the O.A. without there being any accompanying document indicating the order of Tribunal dated 9.9.1991. Even the Index enclosed to the O.A. does not list this particular episode). The applicant would like the Tribunal to believe that after a lapse of five years, a subordinate officer to the disciplinary authority usurped his power and supplied a copy of inquiry report vide letter dated 3.10.1996 which is marked as Annex. A/7 and the same purports with reference to the order of the Tribunal dated 9.9.1991. The applicant replied to the same on 12.11.1996 vide Annex. A/8 admitting that :



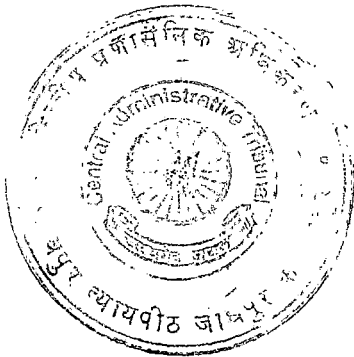
(a) in another disciplinary case, he was removed from service by the then Additional Divisional Railway Manager, Bikaner, which resulted in an appeal to the Chief Commercial Superintendent, who modified the order of removal to that of compulsory retirement;

(b) against that order, an Application (OA 79/95) was preferred and

(c) in that view of the matter, it was not proper for him to give another explanation especially, when he already stood compulsory retired.

He concluded by saying that these points be considered as also the fact that the inquiry officer was biased and had made-up his mind to prove the charges. On 20th November, 2000 the

applicant was advised to submit another representation to the Divisional Commercial Manager, Shri Vivek Angra referring to orders passed by the Tribunal in OA No. 79/1995 on 13.11.1998. This was done on 12.12.2000. Another O.A. No. 152/2001 seems to have been filed against compulsory retirement but after hearing the matter, the same was dismissed on 2.4.2002 on the ground that all the available remedies were not exhausted (Annex.A/12). This led to another appeal getting filed before the Additional Divisional Railway Manager on 16.4.2002 reiterating all the points raised in O.A. 152/2001 and also making a request to quash the order imposing penalty of compulsory retirement. However on 12.7.2002 vide Annex. A/3, this appeal also got rejected by the respondents. A Revision Petition was filed before respondent No. 2 Chief Commercial Manager, North Western Railway, Jaipur maintaining that the appeal was rejected without considering the infirmities in the impugned orders. However, this also got rejected by him who confirmed the order of the appellate authority. Hence, the present application.



5. Following grounds have been taken by the applicant in support of his claim :-

(A) Applicant has not committed any misconduct or misbehaviour and the action under Rule 9 of Railway Servants (Discipline and Appeal) Rules 1968 is misplaced.

(B) The Charge-sheet can be issued only in respect of any misconduct or misbehaviour as defined in the Railway Servants (Conduct) Rules 1966. But applicant has neither committed any

such misconduct or misbehaviour nor violated any of the provision of said conduct rules.

(c) The applicant has not committed any misconduct. He has been made victim of conspiracy engineered by Shri H.R. Gheek by fabricating and manipulating the evidence/witnesses against him.

(D) The incident is alleged to have taken place on 28.4.1985 and the complaint has been filed/submitted on 15.6.1985 i.e. after about 48 days of alleged incident. This itself speaks of fabrication.

(E) There is no evidence against the applicant and he has been held guilty on the basis of conjecture and surmises. The inquiry officer has acted mechanically and held the charges as proved without any basis. A peculiar method was adopted inasmuch as there was in fact no examination in chief.

(F) The disciplinary authority of the applicant is respondent no. 3 i.e. A.D.R.M. This Tribunal gave liberty only to the disciplinary authority to revive the proceedings. The respondent No. 4 is not competent to revive the proceedings. Thus, the impugned order of imposition of penalty is without jurisdiction, void ab initio and the same deserves to be quashed being violative of Articles 14, 16 and 311 of the Constitution of India.

(G) The respondent No.4 has neither issued charge sheet nor has any power to impose major penalty on the applicant. Even in the second case, it is the respondent No. 3, who imposed the penalty and which has been set aside by this Tribunal. The respondent No.4 has usurped the powers of disciplinary authority and imposed the penalty of compulsory retirement just to deny him due benefits allowed by this Tribunal in another case.

(H) An authority much higher in rank to the actual disciplinary authority, imposed a penalty of reduction to a lower post from TTE to TC; before considering the representation against the



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findings of inquiry officer and on the other hand a subordinate authority imposed penalty of compulsory retirement clearly holding that no clear-cut defence representation was submitted by him; meaning thereby nothing new was there. The intention of the respondent No. 4 is crystal clear for denying him due benefits on any pretext.

(I) This Tribunal gave liberty to the disciplinary authority to review the case. The same was to be reviewed within a reasonable time, which was six months. After the said period the proceedings are deemed to have been abandoned.

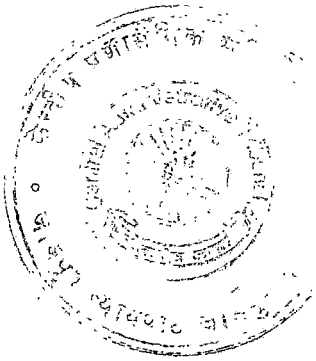
(J) After the direction of this Tribunal, applicant preferred an appeal taking several grounds including that respondent No. 4 in the instant case, could not be a disciplinary authority in the case in hand but, the appellate authority had not considered the same in arbitrary manner contrary to records and rules upholding the punishment imposed by the respondent No. 4.

(K) The revising authority also did not consider points raised in his revision petition and passed a non-speaking order.

(L) The penalty imposed on him is grossly dis-proportionate to the alleged charge of misconduct. This Tribunal has ample powers to set aside or substitute the same on this ground alone. His life and liberty is adversely affected and there has been infringement of his fundamental rights as enshrined in Article 21 of the Constitution of India.

(M) Action of the respondents is an out-come of colourable exercise of power which has been regarded as mala fide exercise of power in the eyes of law.

6. The detailed reply filed by the respondents attempts to controvert each and every claim and a preliminary objection has



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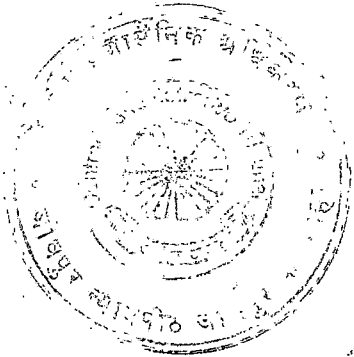
also been raised in the same - that although Annex. A/1, which is a standard form of chargesheet has sought to be quashed - its signatory Shri B.S. Jhingan, Senior Divisional Commercial Superintendent, has not been made a party and to that extent, the application suffers from serious defect. Thereafter, the reply high-lights how the applicant in this OA has tried to mix-up the facts and has thus attempted to mis-lead the Tribunal.

7. It is maintained that when a serious complaint was received against the applicant, the same was got investigated through the Commercial Inspector, Sriganganagar, who conducted the investigation in detail and recorded statements of concerned persons and submitted his report. It is submitted that the applicant failed to give satisfactory reply about his working in Train No. 3 SHL on 28.4.1985 and also failed to show his earnings of the same. The applicant could not mention the number of coaches which he checked while working on the said train on 28.4.1985 and all these go to show that he had not at all attended the job and reached Sriganganagar by bus or by other train to check the tickets. Further, the reply says that the Chief Reservation Supervisor at Sriganganagar, gave a categorical statement in his investigation that applicant Shri R.C. Lal, had appeared in reservation office on 28.4.1985 at about 14.55 hours and asked Shri Balveer Singh to reserve berths in the names of Milkiram, Thakurdass and Bishan Dass on the basis of free pass which was in his possession and the Chief Reservation Supervisor noted the names of these passengers in wait list. However, the



necessary requisition form was not given to the Chief Reservation Supervisor and Shri Lal disappeared from the scene.

The reply also mentions that another major penalty case of vigilance was pending against the applicant wherein, he was awarded penalty of removal from service and the appeal in that case was forwarded to the Chief Commercial Manager, Northern Railway, Baroda House, and both these got decided vide order No. 52E1233/E/(D&R) dated 4.10.1989 and the penalty of removal from service was modified to that of compulsory retirement. A Special Leave Petition was filed before Hon'ble the Supreme Court and further action could be taken only after 15th April 1996 when the same got dismissed on the ground of delay.



The reply also makes it clear that the original chargesheet was issued by the then Senior Divisional Commercial Superintendent, who also had the power of Divisional Commercial Manager and that the Divisional Commercial Manager, is competent to take decision against the applicant as the appointing authority of the applicant was Divisional Personnel Officer and the Divisional Commercial Manager, a much higher authority, thus, was quite competent to award the penalty in question by virtue of schedule of powers, a copy of which is enclosed as Annex. A/13 saying that the appointing authority or an authority of equivalent rank or any higher authority, is competent to award the penalty of compulsory retirement or dismissal from service. It is also maintained that the Divisional

Commercial Manager, Bikaner is not the disciplinary authority of the applicant.

8. In this background, following points need to be examined to come to a conclusion :-

- (i) Should the Tribunal try to ascertain if at all there was any misconduct or misbehavior as alleged and (the applicant strongly denies this).
- (ii) Was the departmental proceeding warranted and (the applicant says that there was no requirement).
- (iii) Has there been a conspiracy by some officers - by Shri H.R. Gheek - in which facts have been fabricated (the applicant maintains that he has been a victim of such a conspiracy).
- (iv) Is it a case of no evidence (the applicant says that the whole proceeding is based on surmises and conjectures).
- (v) Was it proper for respondent No. 4 to revive the proceedings (the applicant says that respondent No. 3 is the disciplinary authority) as a sequel to orders of CAT, Jodhpur in OA No. 76/1990.
- (vi) Is respondent No. 4 competent to impose penalty.



9. The applicant has repeatedly referred to O.A. No. 76 of 1990 which was filed by him and in which some orders were passed by this Tribunal on 9.3.1991. Although, it is mentioned in paragraph 4.7 in the present OA by him that this O.A. was

allowed with order of penalty getting quashed, thereafter, nothing was done for five years raising a presumption that the matter against him has been closed. But, to his utter surprise, after a lapse of five years, a subordinate officer to the actual disciplinary authority, usurped the powers and supplied a copy of the inquiry report on 3.10.1996. It is submitted by him that even belated action as also supplying a copy by someone subordinate to disciplinary authority, is irregular.

It, therefore, appears appropriate that the contents of this O.A. 76/1990 be looked into. This was filed on 1.2.1990 against five respondents – Union of India through the General Manager, Northern Railway, the Chief Commercial Superintendent, Northern Railway, New Delhi, the Additional Divisional Railway Manager, Northern Railway, Bikaner, Mr. H.R. Gheek, Assistant Station Master, Hanumangarh and the Divisional Commercial Manager, Bikaner. There also order dated 23.6.1986 (now Annex.A/1) and order dated 22.6.1988 (now Annex. A/6) were challenged and were prayed to be declared illegal and quashed. The respondents in that case, informed the Tribunal that the applicant - R.C. Lal, was removed from service vide their letter of 22.7.1988 and in that view of the matter, his appeal filed against the letter of 2.8.1988 (Annex.A/2 here) could not be continued. However, the Tribunal allowed the respondents to initiate the case again by supplying copy of inquiry report. It may, therefore, be seen that there was more than one proceeding which was initiated against the applicant and multiplicity of O.As. It is, therefore, a bit



disappointing to notice that the applicant should try to come-up with incomplete picture of what was happening to him and allege bias and prejudice.

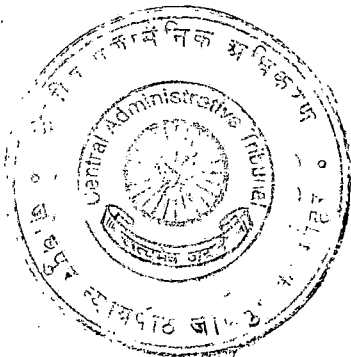
10. In this connection, their Lordships of the Hon'ble Supreme Court in the case of Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy reported in 1995 (1) SLR 239 in para 8, have categorically held that initiation of inquiry by an officer subordinate to the appointing authority is un-objectionable. The initiation can be by an officer subordinate to the appointing authority and only the dismissal / removal shall not be by an authority subordinate to the appointing authority. Accordingly, the objection raised by the applicant that the copy of inquiry report was supplied to him by somebody who is subordinate to the disciplinary authority is not well placed.



11. In Paragraph 4.6, the applicant alleges that the prosecution witnesses have been blindly believed despite enormous contradictions in their statements and the applicant's defence has been thrown-over the board without any cogent reasons. It is also alleged that the inquiry officer has mechanically proceeded with the matter without applying his mind.

However, the inquiry report Mr. S.P. Bahri, ACS, Bikaner, enclosed as Annex. A/6 by the applicant, reveals that in paragraph (III) documentary as well as oral evidence has been recorded and analyzed. The evidence of Shri Jugat Singh, CMI,

Shri H.R. Gheek, RBC, Shri Thakur Dass Mirdha, MBY, the complainant Shri Niranjn Dass Nagpal and Shri H.C.Jagga has been discussed. It is also mentioned that the charged officer – the applicant, did not produce any witness in his defence but only submitted written statement. The inquiry officer discussed the testimony of Shri H.R. Gheek and Shri Balbir Singh Yadav and has also recorded that the charged officer merely refuted the charge against him and took the plea that Shri Balbir Singh Yadav should have demanded requisition slips from him before proceeding to make reservation. It may be seen here that both the charged officer and Shri Balbir Singh Yadav belong to the same Organisation – Railways and Shri Balbir Singh Yadav seems to have proceeded on the presumption that requisition slips would be forth-coming and booked the tickets as per the request of the charged officer. While this particular transaction has not been disputed by the charged officer, it is only the failure (or perhaps reliance placed on the charged officer) to demand requisition slips that has been assailed and naturally therefore, the charged officer should be considered more blame worthy. The inquiry officer has also concluded that the charged officer misbehaved with Shri Niranjn Dass Nagpal and Shri Thakur Dass Mirdha during the journey and there was nothing else except simple denial from the applicant side (the charged officer).



It is, therefore difficult to accept the contention of the applicant that the assessment of evidence was not proper. Rather, there was nothing from the side of the applicant except simple

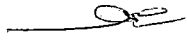
denials that could be taken into consideration by the inquiry officer.

12. It is a well settled law that assessment of evidence is best left to the discretion of the inquiry officer and in the absence of proof of breach of cardinal principles of proceedings, like not affording an opportunity to the charged officer, the Court would be wrong in proceeding to assess the same.

In the case of State Bank of India and Others Vs. Samarendra Kishore Endow and Ors., reported in 1994 (1) SLR 516, their Lordships of Hon'ble Supreme Court, while referring to the case of Union of India Vs. Perma Nanda (AIR 1989 SC 1985) and State of Orissa and Ors. Vs. Bidyabhushan Mohapatra (AIR 1963 SC 779), held that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment, cannot be equated with the appellate jurisdiction and the Tribunal cannot at all interfere with the findings of the inquiry officer or a competent authority where they are not arbitrary or utterly perverse. In particular, we would like to recollect paras 13, 14 and 15 of the judgement, which run as follows: -



"13. The same view was reiterated by this Court in Union of India vs. Perma Nanda (AIR 1989 SC 1985). It was an appeal from the judgment and order of an Administrative Tribunal, K. Jagannatha Shetty, J. speaking for the Bench observed in the first instance that the jurisdiction of the Tribunal is similar to the jurisdiction of the High court in a writ proceeding and then dealt with the power of the Tribunal to interfere with the penalty imposed by the Disciplinary Authority. The learned Judge referred to the holding in State of Orissa v. Vidya Bhusan Mohapatra (quoted by us hereinabove) and after referring to several other judgments of this Court, concluded thus:



"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide, is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

14. It is significant to mention that the learned Judge also referred to the decision of this Court in Bhagat Ram v. State of Himachal Pradesh and others (AIR 1983 SC 454): and held, on a consideration of the facts and principle thereof, that "this decision is therefore no authority for the proposition that the High Court or the Tribunal has jurisdiction to impose any punishment to meet the end of justice." And then added significantly " it may be noted that this Court exercise the equitable jurisdiction under Article 136 (in Bhagat Ram) and the High court and Tribunal has no such power or jurisdiction." The learned Judge also quoted with approval the observations of Mathew J. in Union of India v. sardar Bahadur (1972 (2) SCR 218): to the following effect:

"Now it is settled by the decision of this Court in State of Orissa v. Bidyabhusan Mohapatra (AIR 1963 SC 799) that if the order of a punishing authority can be supported on any finding as to substantial misdemeanor for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanor established."

15. It would perhaps be appropriate to mention at this stage that there are certain observations in Union of India v. Tulsiram

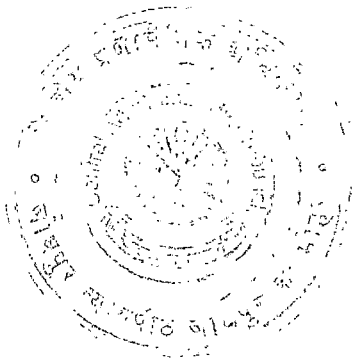


Patel (AIR 1985 SC 1416) which, at first look appear to say that the Court can interfere where the penalty imposed is "arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service." It must however be remembered that Tulsiram Patel dealt with cases arising under proviso (a) to Article 311 (2) of the Constitution. Tulsiram Patel overruled the earlier decision of this Court in Challappan (AIR 1975 SC 2216). While holding that no notice need be given before imposing the penalty in a case dealt with under the said proviso, the Court held that if a disproportionate or harsh punishment is imposed by the disciplinary authority, it can be corrected either by the Appellate Court or by High Court. These observations are not relevant to cases of penalty imposed after regular inquiry. Indeed this is how the said observations have been understood in Parma Nanda referred to above vide para 29. The same comment holds with respect to the decision in Shankar Dass v. Union of India (1985 (2) SCC 358) : (1985(2) SLR 109 (SC)) which too was a case arising the proviso (a) to Article 311(2).

13. Lastly, we would also like to recall order of their Lordships of the Hon'ble Supreme Court in the case of Delhi Transport Corporation Vs. Shyam Lal reported in (2004) 8 SCC 88, where it was held that the statement of affected person (a passenger of the DTC who gave the money to the Conductor but did not get a ticket in return) who had paid excess money is not in the nature

of hearsay evidence and to that extent, the statement made by Shri Midha, passenger in the instant case and sought to be supported by examining other Railway officials is very much acceptable for the purpose of coming to a conclusion.

14. Lastly, we come to the issue of quantum of punishment raised at the fag end of his argument by the learned counsel for the applicant that the punishment imposed is dis-proportionate to his misconduct. On a review of the charges made against him in the complaint itself, the details of proceedings as revealed by the pleadings and the impugned orders, we cannot but, recall the observations of their Lordships of the Hon'ble Supreme Court in Regional Manager, U.P. SRTC, Etawah and Ors. Vs. Hotilal and Another reported in 2003 SCC (L&S) 363 in paragraph 6, 7 and 10 as under :-



"6. In B.C. Chaurvedi v. UOI it was held as follows :

17. The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in State of Orissa vs. Bidyabhushan Mohapatra held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassailable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment 'can lawfully be imposed', it was not for the Court to consider whether that ground alone would have weighed with the

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authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in Union of India vs. Sardar Bahadur. It is true that in Bhagat Ram Vs. State of U.P. a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami vs. State of T.N. a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India case where the Court elaborately reviewed the case-law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the Appellate Authority had not adverted to the relevant facts, it was remitted to the Appellate Authority to impose appropriate punishment.

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the Appellate Authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the



disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

7. In Union of India v. G. Ganayuthan it was held as follows : (SCC PP. 478-79)

33. In Ranjit Thakur this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case, in B. Chaturvedi Vs. Union of India a three-Judge Bench said the same thing as follows : (SCC p. 762, para 18)

'18..... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority / Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.'

Similar view was taken in Indian Oil Corpn. Ltd. Vs. Ashok Kumar Arora that the Court will not intervene unless the punishment is wholly disproportionate.

10. It needs to be emphasized that the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope of interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See Alexander Machinery (Dudley) Ltd. Vs.

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Crabtree]. A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned single Judge upholding the order of dismissal."

15. The points raised in paragraph 8 above can therefore be answered as follows :-

(i)&(ii) The initiation of proceeding was warranted and the Tribunal need not assess the evidence.

(iii) The pleadings and arguments do not establish existence of any conspiracy.

(iv) It is not a case of 'no evidence'.

(v)&(vi) There was no irregularity in revival of proceedings by respondent No. 4, the Divisional Commercial Manager - who is much senior to the appointing authority. It was also entirely permissible for the Divisional Commercial Manager, respondent No. 4, an authority - senior to appointing authority to impose punishment vide schedule of powers under rule 7 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968.

16. The Original Application has no merit and is, therefore, dismissed with no order as to costs.

(G.R.Patwardhan)
Administrative Member


(Kuldip Singh)
Vice Chairman

jrm

R/C

(No)

Kh.
21/12/04

R/C
22/12/04

Sam
(Dareany)
John

Item in and all destroyed
in my presence on 31/10/2013
under the supervision of
section officer (1) as per
order dated 18/10/2013

D.K. Shrivastava

Section officer (Record)

24.10.13