

क.अ.ट. (प्रतिक्रिया) विवरावसी के दायरे में के अन्तर्गत विः जुल्क प्रति

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Jodhpur, this the 12thth day of January, 2015

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

Original Application No. 510/2013

Santosh Kumar s/o Shri Mangi Lal, aged about 41 years, r/o Sargara Colony, 9th Copasani Road, Near Mandap Restaurant, Jodhpur, Rajasthan

.....Applicant

By Advocate: Mr. Kuldeep Mathur

Versus

1. The Union of India through the General Manager, North-Western Railway, Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan.
2. The Sr. Divisional Commercial Manager, North-Western Railway, Jodhpur, Rajasthan.
3. The Additional Divisional Rail Manager, North-Western Railway, Jodhpur Division, Jodhpur, Rajasthan.

.....Respondents

By Advocate : Mr. Kamal Dave

Original Application No. 511/2013

Babu Lal s/o Shri Bhanwar Lal, aged about 51 years, r/o Near Hanuman Ji ka Mandir, Baipura, Merta Road, Nagaur, Rajasthan

.....Applicant

By Advocate: Mr. Kuldeep Mathur

Versus

1. The Union of India through the General Manager, North-Western Railway, Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan
2. The Sr. Divisional Commercial Manager, North-Western Railway, Jodhpur, Rajasthan.

3. The Additional Divisional Rail Manager, North-Western Railway, Jodhpur Division, Jodhpur, Rajasthan.

.....Respondents

By Advocate : Mr. Kamal Dave

Original Application No. 512/2013

Ummed Singh s/o Shri Bhagwat Singh, aged about 39 years, r/o Village & Post Sarana, Tehsil Aahor, District Jalore, Rajasthan.

.....Applicant

By Advocate: Mr. Kuldeep Mathur

Versus

1. The Union of India through the General Manager, North-Western Railway, Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan
2. The Sr. Divisional Commercial Manager, North-Western Railway, Jodhpur, Rajasthan.
3. The Additional Divisional Rail Manager, North-Western Railway, Jodhpur Division, Jodhpur, Rajasthan.

.....Respondents

By Advocate : Mr. Kamal Dave

Original Application No. 513/2013

Narayan Singh s/o Shri Bhim Singh Jodha, aged about 40 years, r/o Village and post Bithu, Tehsil Rohat, District Pali, Rajasthan.

.....Applicant

By Advocate: Mr. Kuldeep Mathur

Versus

1. The Union of India through the General Manager, North-Western Railway, Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan
2. The Sr. Divisional Commercial Manager, North-Western Railway, Jodhpur, Rajasthan.
3. The Additional Divisional Rail Manager, North-Western Railway, Jodhpur Division, Jodhpur, Rajasthan.

.....Respondents

By Advocate : Mr. Kamal Dave

ORDER (ORAL)

Per Hon'ble Mr. K.C.Joshi

Since the facts and the law involved in these cases are same, therefore, all the three OAs are being decided by this common order.

2. All the applicants have challenged the chargesheet dated 16.5.2012 (Ann.A/3 and A/2 in the OAs), order of the Disciplinary Authority dated 1.3.2013 (Ann.A/9 and A/8 in the OAs) and order of the Appellate Authority dated 6.11.2013 (Ann.A/1 in all the OAs) with the prayer that these may be quashed and set aside and the respondents may be directed to reinstate the applicants in service with all consequential benefits.

3. For the sake of convenience, short facts of OA No.510/2013 are being taken. The applicant was appointed in the respondent department on 14.08.1998 on the post of T.C. He was thereafter promoted as S.T.T.E. and H.T.C. So far as factual aspects are concerned, it is submitted that in the night hours of 28-29.4.2012 the applicant was discharging his official duties by supervising the affairs in Train no.12461 i.e. express train from Delhi to Jodhpur. He was deputed for examination of tickets in S-1 and S-2 Coaches of the Express Train. The applicant after checking the tickets was monitoring the affairs of the allotted coaches. However, a charge sheet was served upon the applicant containing arbitrary and frivolous charges of consuming

liquor in "C" cabin of HA/1 Coach and creating nuisance along with other four colleagues. The charges mentioned that a passenger named Jatin informed the RPF at Jaipur Junction mentioning that 4-5 official ticket checking staff in the train consumed alcohol and created nuisance. Further, the charges also held the applicant guilty of tarnishing the image of the Indian Railways at large and thereby proposed to initiate disciplinary inquiry in the matter. The applicant denied all the charges leveled against him by filing reply and also demanded relevant documents for the purpose of putting a strong defence. The Disciplinary Authority, not satisfied with the reply, appointed Inquiry Officer and ordered for a full fledged inquiry to prove into the charges leveled against the applicant. It is stated that the Inquiry Officer during the inquiry process has not considered the defence submitted by the applicant in true perspective and have only given its finding on assumptions and presumptions. During the inquiry, medical report of the applicant was also considered and it was clearly reported in the medical report that the applicant has not consumed alcohol at the relevant time and also that there was no evidence to show that the applicant ever entered in HA/1 Coach during the entire journey. Simultaneously, inquiry against other officials were also conducted on the same set of offences along with the applicant wherein it is found that one Shri Hari Om Singh tested positive in the medical report dated 18.5.2012 taken for the purpose of consuming alcohol. It is further stated that the persons who had deposed before the

authorities in their capacity in support of the charges were also not allowed to be cross examined by the Inquiry Officer and as a result veracity of their statement cannot be proved. Despite above, the Inquiry Officer proceeded to complete the inquiry in haste and submitted inquiry report holding the applicant guilty of the charges on the basis of assumption and presumptions. Thereafter, the Disciplinary Authority also agreed to the findings of the inquiry report and imposed the most harsh penalty of removal from service vide order dated 1.3.2013 (Ann.A/9). Aggrieved of the penalty of removal, the applicant filed appeal dated 4.3.2013 before the Appellate Authority. The applicant has further stated that on the same set of charges criminal proceedings were also instituted against the applicant u/s 145 and 172 of the Railways Act and the judicial authority in Criminal case no. 2330/2012 after completion of due process of law acquitted the applicant honourably from all the charges leveled against him and declared him innocent. After that the applicant represented vide communication dated 10.7.2013 (Ann.A/12) the respondent authorities for his reinstatement in service. The Appellate Authority vide order dated 6.11.2013 has rejected the appeal of the applicant. The applicant has averred that the Appellate Authority has not considered the appeal of the applicant against the order dated 1.3.2013 in an objective manner and no cogent reasons have been given to reject the appeal. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA.

4. So far facts in OA Nos. 511/2013, 512/2013 and 513/2013 are concerned, inquiry was also held against these applicants on same set of charges and after conducting inquiry by the Inquiry Officer, the Disciplinary Authority has imposed punishment of removal from service upon the applicants, which has been upheld by the Appellate Authority.

5. In reply to OA No.510/2013, the respondents have submitted that admittedly the applicant was assigned duties of checking the Coach No. SL-1 and SL-2 as reflected from the charge sheet dated 16.5.2012. The charge sheet contains the charges commensurate with the reported misconduct of the applicant and the charge sheet being a process for extending the opportunity to the delinquent to defend his cause, as such, the contention referring the chargesheet as frivolous are denied. The applicant was allowed all relevant documents and to inspect the documents. He was also provided the required opportunity to defend his case during the course of inquiry and the record of the inquiry was examined with a view to arrive at a decision in respect of alleged misconduct. Further, it has been submitted that reference of the medical report although relevant to the charges but not the only foundation in respect of the misconduct creating a nuisance resulting in pulling of the chain by the passengers in view of the behaviour of the applicant along with other checking staff. This conduct clearly tarnished the image of railway where the passengers travelling with

faith of safety and support from the staff side. In view of above, mere reference of medical report will not be sufficient to support the cause of applicant. The applicant was allowed due opportunity and the order imposing punishment was reasoned and speaking. With regard to acquittal in criminal case, it is submitted that parameters in disciplinary inquiry and criminal trial have no match and both are having entirely different standard of required proof. The appeal of the applicant was decided in consonance with the statutory provisions. Therefore, the respondents pray that the OA deserves to be dismissed.

6. In reply to other three OAs, the respondents have also taken same stand as has been taken in reply to OA no.510/2013.
7. The applicants have filed rejoinder to the reply filed by the respondents reiterating the stand taken in the OAs.
8. Heard both the parties. Counsel for the applicant contended that in para No.4.16 of the OA, it has been averred that the applicant has been honourably acquitted in the criminal case and a representation has been filed by the applicant to the competent authority to reinstate him in service, as he has been held not guilty of any of the charges levelled against him in the criminal Court. It was further contended that the competent authority ought to have acted as per the Circular dated 07.06.1995 (Ann.A/13), which clearly mentions that the decision



taken in the departmental proceedings should be reviewed, in the cases where Railway servant has been acquitted by the competent criminal Court on the same charges, i.e. if the facts and charges in the departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated/ acquitted in the criminal case on merit then the department can review the case of the delinquent. Counsel for the applicant further contended that the applicant filed detailed representations dated 10.7.2013 (Ann.A/12) and 26.08.2013 (Annexure-A/14) before the respondent department, but it has not been decided by the department, and further by passing the impugned order dated 06.11.2013 (Annexure-A/1) a remark has been made by the respondent department in the order dated 6.11.2013 that as the RPF has already filed an appeal in Hon'ble High Court, it will not be prudent to comment anything regarding this at this juncture. Counsel for the applicant further contended that departmental authorities ought to have decided whether the criminal charges and the charges levelled in the departmental case were of exactly same nature and whether the applicant has been honourably acquitted by the criminal court and what will be the effect of the circular dated 07.06.1995 in the case of the applicant. Counsel for the applicant further contended that the applicant was charged for offences under sections 145 and 172 of the Railway Act. Sections 145 & 172 of the Railway Act which read as under:-



145— मतता का न्यूसेन्स—यदि किसी रेल के सवारी डिब्बे में या रेल के किसी भाग पर कोई व्यक्ति :—

क—मतता की हालत में होगा, या

ख— कोई न्यूसेन्स या अशिष्ट कार्य करेगा अथवा गाली गलौच की या अश्लील भाषा का उपयोग करेगा, या

ग— जानबूझकर या किसी प्रतिहेतु के बिना रेल प्रशासन द्वारा उपलब्ध कराई गई किसी सुख सुविधा में बाधा डालेगा जिससे किसी यात्री की आरामदायक यात्रा पर प्रभाव पड़ता है।

तो वह किसी रेल सेवक द्वारा रेल से हटाया जा सकेगा, और उसके पास या टिकट के सम्पर्क के अतिरिक्त, कारावास से, जो छः मास तक का हो सकेगा और जुर्माने से, जो पांच सौ रुपये तक का हो सकेगा, दण्डनीय होगा।

परन्तु तत्प्रतिकुल विशेष और पर्याप्त काराणों के अभाव में, जिनका उल्लेख न्यायालय के निर्णय में किया जाएग, ऐसा दण्ड —

क— प्रथम अपराध के लिये दोषसिद्धि की दशा में, एक सौ रुपये के जुर्माने से कम का नहीं होगा, और

ख— द्वितीय या पश्चात्वर्ती अपराध के लिये दोषसिद्धि की दशा में, एक मास के कारावास से और दो सौ पचास रुपये के जुर्माने से कम का नहीं होगा।

172— मतता के लिये शास्ति—यदि कोई रेल सेवक ड्यूटी पर होते हुए मतता की हालत में होगा तो यह जुर्माने से, जो पांच सौ रुपये तक का हो सकेगा, दण्डनीय होगा और जब ऐसी हालत में किसी कर्तव्य के पालन के किये जाने से रेल पर यात्रा करने वाले या उसमें विद्यमान किसी व्यक्ति की सुरक्षा संकटापन्न होनी संभाव्य हो तब ऐसा रेल सेवक ऐसे कारावास से, जिसकी अवधि एक वर्ष तक की हो सकेगी, या जुर्माने से, या दोनों से, दण्डनीय होगा।

Counsel for the applicant further submits that the applicant has been served with a charge sheet in which the following charges have been framed (Annexure-A/3), which speaks as under:-

श्री संतोष कुमार HTC/DNA दिनांक 28/29.04.2012 को गाड़ी सं. 12461 में कोच सं. SL-1, SL-2 में कार्यरत थे। कोच HA-1 के ही एक यात्री ने शिकायत की श्री हरिओम सिंह टीएनसीआर ने चार चैकिंग स्टाफ के साथ कोच HA-1 के (सी) केबिन शराब पी कर उत्पात (Nuisance) किया। जिसके कारण फस्ट एसी के यात्री द्वारा गाड़ी की बार बार चैन पुलिंग की गई जिससे गाड़ी का अनावश्यक ठहराव हुआ।

श्री हरिओम सिंह ने आरपीएफ के समक्ष दिये गये बयान में स्वीकार किया है कि उन्होंने गाड़ी सं. 12461 दिनांक 28/29.04.2012 को कार्यरत चैकिंग स्टॉफ के साथ कोच HA-1 के (सी) केबिन में साथ बैठक पर शराब पी एवं खाना खाया।

अतः श्री संतोष कुमार HTC/DNA ने ड्यूटी के दौरान शराब का सेवन करने व उत्पात मचाने (Nuisance) से यात्रियों के लिये असुविधा हुई गाड़ी के बार बार चैन खीचने के

कारण हुए अनावश्यक ठहराव होने से रेल की छवि खराब हुई जिसके लिए वह उत्तरदायी है। इन्होने रेल सेवा आचरण नियमावली 1966 के नियम सं. 3.1 (ii) व (iii) तथा G&SR-2.09 (2) का उल्लंघन किया है।

Counsel for the applicant also submitted that the charges levelled against the applicant by the Criminal Court as well as the Disciplinary Authority are exactly of the same nature because the applicant is said to have been in intoxicating conditions and created nuisance and misbehaved in the Railway premises or created discomfort to the passenger. Counsel for the applicant further contended that the representation of the applicant has not been decided by the competent authority and it is still lying pending with the competent authority.

9. Per contra, counsel for the respondents vehemently argued that pendency of the representation of the applicant is not the case for availing statutory remedy because the applicant has already availed the statutory remedies. Counsel for the respondents contented that when the applicant has availed all the available statutory remedies, the pendency of this application for reviewing under the provisions of the Circular dated 07.06.1995 cannot be said to be pendency of any representation for statutory remedy. He further contended that in the present case, the circular dated 07.06.1995 is not applicable because in the circular the word 'exactly' has been used and in criminal case the charges are not exactly the same with the charges framed in the charge sheet. The applicant has been charged in the charge sheet for delaying the Train due to his consuming liquor and creating nuisance in the



train resulting in chain pulling by the aggrieved passengers again and again as well as for tarnishing the image of the railway. Therefore, it cannot be said that the charges framed in the disciplinary proceedings and by the criminal Court were exactly of the same nature. Counsel for the respondents also contended that the Trial Court/Civil Court has used the words that the prosecution failed to prove the case beyond doubt, therefore, it is presumed that the benefit of doubt has been extended to him and, therefore, the acquittal cannot be called honourable on merit or a clear exoneration. Counsel for the respondents further contended that the Circular dated 07.06.1995 speaks for review by the competent authority and review can be made by the competent authority on his own drawn conclusion and on his own motion. Counsel for the respondents further contended that the applicant has committed an immoral act which endangered the safety of so many passengers of the train and in the present days such kind of activities are being increased and require a strict control and action. Therefore, the action of the respondents is perfectly legal and the matter has been rightly dealt with by the competent authority. Counsel for the respondents further contended that the matter should be decided on merit and not on the technical issue of the pendency of the representation, as it is not a statutory remedy.

10. Considered the rival contentions of both the parties and also perused the record.

11. Counsel for the respondents contended that the Trial Court/Criminal Court has used the words in the judgment that the prosecution failed to prove the case beyond doubt, therefore, it should be presumed that the benefit of doubt has been extended to the applicant and it does not amount to honourable exoneration or acquittal on merit of the applicant. In our considered view, the arguments advanced by the counsel for the respondents cannot be accepted because in case of benefit of doubt it should be specifically mentioned by the Court that the accused is acquitted and is extended the benefit of doubt, and the use of words that the prosecution failed to prove the charges beyond doubt as mentioned in the Court order reflects that the prosecution failed to prove charges. Therefore, this argument advanced by the counsel for the applicant is not acceptable. So far as the other arguments of the counsel for the respondents is concerned that the charges levelled in the charge sheet and the charges framed by the Criminal Court were not exactly of the same nature, we are not inclined to accept this argument as this point is to be decided by the competent authority on administration side by the respondents. Section 145 of the Railway Act incorporates all the misdeeds or misconduct of a person intoxicated and committing any nuisance or other acts in the Railway premises and the charge sheet issued by the competent authority i.e. Annexure-A/3 also speaks of the same facts because it has been mentioned that the applicant committed nuisance

while being intoxicated and due to that the chain pulling was done by the passengers and caused detention of the train for unnecessary reasons. So far as the charges in the charge sheet that due to this act of the applicant the image of the Railway has tarnished, and, therefore, the charges in the charge sheet and the criminal case are different, it appears that merely mentioning of the fact of tarnishing of Railway's image does not make the charge sheet and criminal charges substantially different or of different kind.

12. After considering the entire facts and circumstances of the case, we are of the view that the charges levelled by the Disciplinary Authority and the charges framed by the Railway Criminal Court appear to not to be substantially different and therefore instead of deciding the case on merit, we intend to dispose of this OA with certain directions:



- (i) The respondent authorities shall decide the representation of the applicants dated 10.7.2013 (Ann.A/12 in OA No.510/2013, 512/2013 and 513/2013 and Ann.A/11 in OA No.511.2013) in the light of the Circular dated 07.06.1995 (Ann.A/13 in OA No.510/2013) within a month from the date of receipt of a copy of this order.
- (ii) The competent authority shall convey its decision to the applicants.
- (iii) If the applicants have any grievance after the decision, they can approach the appropriate forum.
- (iv) It is made clear that any observation made by us regarding the exactness of the chargesheet and criminal charge should not be a ban to draw independent conclusion on this point by the administrative authority as per law.

13. Accordingly, all the OAs are disposed of as stated above with no order as to costs.

sd-
[Meenakshi Hooja]
Administrative Member

sd-
[Justice K.C.Joshi]
Judicial Member



COMPARED &
CHECKED

Ross

CERTIFIED TRUE COPY

Dated ... 28/1/2015

D.K. Sharma

Engineer Advisor (CIVL.)
Section Officer (JUDI.)
Master Executive Officer
Central Administrative Tribunal
Chancery Section, Office
Delhi Cantt, India