

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

Original Application No.179/2004
This the 24th day of September, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)
Hon'ble Sri S.P. Singh Member (A)

S.N. Yadav aged about 44 years son of Sri Lalit Singh Yadav resident of C-167, Gali No. 21, Khajoori Khas, Delhi, 94, Wajirabad Road, Delhi.

...Applicant.

By Advocate: Sri R.C. Singh.

Versus

1. The Union of India through the Secretary, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Additional Divisional Rail Manager, DRM Office, Northern Railway, Lucknow.
4. The Senior Divisional Commercial Manager, Northern Railway, Lucknow.
5. The Divisional Commercial Manager, Northern Railway, Lucknow.

... Respondents.

By advocate: Sri Praveen Kumar for Sri B.B.Tripathi.

(Reserved on 11.9.2012)

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

The O.A. has been filed for the following relief;-

"That the punishment order of removal dated 09.02.2004 served on 04.04.2004 issued by the O.P.No.2 contained in Annexure No.1 may kindly be declared illegal and the same may kindly be quashed and the opp. parties may kindly be directed to allow

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the applicant all consequential benefits arising out of it ignoring the order contained in Annexure No.1."

2. Briefly stated facts of the case are that the applicant while posted at Kunda Harnamganj, was served with a charge sheet dated 27.01.2000 in respect of alleged demand of Rs.250/- from an employee of City Booking Agency and for not declaring his private cash before starting his duty. After completion of the enquiry, the applicant was given a punishment of reduction in the pay scale to the lowest stage for a period of two years without cumulative effect. This order was served upon the applicant on 05.10.2001 informing him that an appeal can be filed before Senior D.C.M. under Rule 18 of the Railway Servant (Discipline & Appeal) Rules, 1968. The applicant did not file any appeal. Then, on 11.04.2002 he received an Notice/Memorandum issued by Sr. D.C.M. asking him to submit representation within 10 days as to why the punishment may not be enhanced. He submitted a representation on 19.04.2002, saying that since he has not filed any appeal, therefore, the notice for enhancement of penalty is time barred as the case has already been decided. Even then, Sr. D.C.M. issued another letter dated 28.05.2002, asking the applicant to submit his reply within 7 days. The applicant again wrote a letter dated 30.06.2002 saying that the matter has already been concluded by the D.C.M. hence, no punishment can be enhanced. Even then the Sr. D.C.M., who is the Appellate Authority, passed the order of removal (Annexure-6). The applicant then submitted a representation to the A.D.R.M. O.P.No.3 on 01.09.2002, for quashing of the removal order. The ADRM without passing any order referred the matter to the General

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Manager, who issued a fresh show cause notice (Annexure-8). Meanwhile, the applicant was reinstated in service by an order dated 20.11.2003. He submitted his reply in respect of above show cause notice on 11.11.2003. Ultimately, the General Manager passed the impugned order of removal dated 09.02.2004, which was served upon the applicant on 04.04.2004 (Annexure-1). The contention of the applicant is that he did not file any appeal against the earlier punishment order since it was only for 2 years. According to the applicant the final punishment order of removal however is a non-speaking order. Hence this O.A.

3. The respondents have contested the O.A. by filing a detailed Counter Affidavit, saying that the consequent upon the issuance of major penalty charge sheet on the charges in question, a regular departmental enquiry was conducted and its copy was given to the applicant. But, he did not submit any representation. Thereafter, a punishment of reduction to the lowest stage of his existing grade i.e. Rs.3200-4900 for two years without cumulative effect was passed. The applicant did not prefer any appeal against this penalty within stipulated period of 45 days from the date of receipt. However, the penalty awarded by the Disciplinary Authority i.e. D.C.M. was reviewed by the next higher authority i.e. Sr. D.C.M., who issued a show cause notice for enhancement of punishment of removal from service and thereafter awarded a penalty of removal from service. The applicant preferred a representation to ADRM, who referred this case to Headquarter/Reversionary Authority for rectifying the irregularity regarding exceeding stipulated time for making review and for passing fresh order regarding

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inadequate punishment. The General Manager, Northern Railway set aside the removal order passed by Sr. D.C.M. At the same time the General Manager after considering the gravity of offence also issued a show cause notice under the powers of revision vested under Rule-25 of the relevant rules proposing to enhance the punishment to that of removal from service. The applicant submitted his reply, which was considered but it was found that no mitigating factor has been shown therefore the enhanced penalty of removal was awarded by the General Manager after exercising powers of revision for which no time limit is prescribed for the General Manager, Railway Board and President of India. It is emphasized in the counter affidavit that the applicant did not prefer any appeal against the order passed by the Disciplinary Authority, which is a proof that he has accepted the punishment and therefore, he cannot be permitted to agitate against suo-moto revision made by the General Manager. The General Manager has acted in accordance with relevant Rule 25 and passed a speaking and reasoned order.

4. The applicant has also filed a Rejoinder Affidavit mostly reiterating the pleadings contained in the O.A.

5. We have heard the learned counsel for the parties and perused the entire material on record.

6. The learned counsel for the applicant submitted that the charges were not duly proved and particularly the charge no.1 for demanding and accepting Rs.250/- illegally from an employee of City Booking Agency for accepting the packages and clearances of the same. From the other side, it was urged that out of the two charges, charge no.2 was in fact admitted by the delinquent

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official himself that he forget to declare the private cash before starting duty on account of rush or work. Moreover, the witness have duly proved this charge. As far as charge no.1, it was a case of vigilance trap and two witnesses of the raiding party and another witness of the incident i.e. P.W.3, an independent witness have duly proved the charges. After analyzing the entire evidence the Enquiry Officer reached to his conclusion. Moreover, the applicant did not file the statutory appeal against the findings even after issuance of show cause notice by the Disciplinary Authority and therefore, there is no strength in the challenge against either the above findings or the first punishment order of punishment of reduction in the pay scale to the lowest stage for a period of two years without cumulative effect.

7. We find substance in the foresaid arguments placed on behalf of the respondents. It is a settled law that the Tribunal cannot take-over the function of a Disciplinary Authority or Appellate Authority. The Tribunal or a Court has no jurisdiction to look into the truth of the charges or into the correctness of the findings by the Enquiry Officer or Disciplinary Authority or even Appellate Authority as has been held in the case of **Union of India Vs. Upendra Singh (1994) 3 SCC-357**. Similarly, it is also a settled law that if procedural provisions laid down under the relevant rules have been followed at all stages and adequate opportunity have been given as we find in the present case then no prejudice would be deemed to have caused. In the present case from the perusal of the record, it appears that all the procedural provisions have been duly followed at all stages. Further, the law is settled on the point that

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even if there is any violation of any procedural or every provision, it would not automatically vitiate the enquiry or order passed, if no prejudice is established to have resulted there from. In the present case there does not appear to be any violation of any procedural provision and the applicant could not prove that any prejudice was caused. Besides, everything since the applicant did not make the statutory appeal as mentioned above, we do not find any justification in raising such question now before this Forum for the first time. In fact he has admitted his guilt by not making any appeal. In a judicial review in such matters, we can only look into the decision making process and till the stage of above initial punishment, we do not find any flaw in the decision making process.

8. Now, we come to the question of enhancement of punishment. Admittedly, the initial Memorandum dated 22.4.202 issued by Sr. D.C.M., Lucknow was time barred having been issued beyond the stipulated period of six months as challenged by the applicant and therefore those proceedings culminating into the removal of the applicant passed by the Sr. D.C.M., Lucknow was set-aside by the General Manager and rightly so. But, at the same time considering the gravity of the offence the General Manager, Northern Railway invoked his powers vested under Rule 25 (1) (iii) and issued a show cause notice for enhancement of punishment. He could have lawfully done it because, as per last proviso when it is undertaken by Railway Board or the General Manager of the Zonal Railway (as in the case of the applicant) this can be done without restriction of time limit.

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9. Another limb of argument of the learned counsel for the applicant is in respect of quantum of punishment. The applicant entered in the service in July, 1984 and after putting up 20 years of service unfortunately, this happening took place. Initially, the punishment of only reduction in the pay scale to the lowest stage for a period of two years without cumulative effect was given. Therefore he did not even file an appeal. But, after that he was put to great mental agony by Sr. D.C.M. by issuing time barred show cause notice and enhancing punishment. However, this mistake was rectified by the higher authority i.e. the then General Manager, Northern Railway. Learned counsel submitted that the quantum of punishment is however not proportionate. The humanitarian aspect has also not been considered by the respondents that the applicant was only 44 years of age and still has sufficient number of years of service. As a result of this harsh punishment his entire family has come on road.

10. We have thoroughly considered the above submissions. The quantum of punishment is required to be decided on the following points:-

- (1). Gravity of misconduct.
- (2). Past conduct.
- (3). Nature of duties.
- (4). Position in Organization.
- (5). Previous penalty, if any.
- (6). Kind of discipline required to be maintained.

11. After perusal of the impugned order, we are of the view that these factors have not been duly considered while passing the order of removal, which is maximum

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punishment that could have been awarded to an employee. In view of the law laid down in the case of **B.C. Chaturvedi Vs. Union of India & Another Judgment Today 1995 (8) SCC-65**, we therefore, quash the impugned order dated 09.02.2004 and remit this matter to the respondents/authority concerned from the above stage to re-consider the quantum of penalty in view of the aforesaid points and then pass an appropriate well reasoned and speaking order expeditiously say within a period of 4 months from the date of this order.

12. The O.A. stands accordingly disposed of. No order as to costs.

S.P. Singh

(S.P. Singh)
Member (A)

Alok Kumar Singh 24.9.12
(Justice Alok Kumar Singh)
Member (J)

Amit/-

3rd Oct