

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 4/2006**

This the <sup>16</sup> day of December, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)**

**Hon'ble Dr. A.K. Mishra, Member (A)**

Dinesh Chandra Srivastava aged about adult son of late Shri Ram Chandra Srivastava, resident of Village- Garib Purwa, Post-Bhabbuni Kanoongo, District- Gona

Applicant

By Advocate: Sri Praveen Kumar

**Versus**

Union of India through

1. The General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.

Respondents

By Advocate: Sri Akhilesh Kumar for Sri Arvind Kumar

**ORDER**

**Hon'ble Ms. Sadhna Srivastava, Member (J)**

The applicant is aggrieved by order dated 30.3.2005 whereby he has been disengaged from the post of Volunteer Ticket Collector.

2. The facts, in brief, are that the applicant was engaged as Volunteer Ticket Collector (hereinafter referred as VTCs) in the year 1983. His services were terminated by oral order. He filed O.A. against the oral termination order. The said O.A. was disposed of vide order dated 27.1.92 (Annexure A-2) with a direction to the respondents to consider the case of the applicant and reinstate against the available vacancies. Those who cannot be reinstated for want of vacancies, shall be considered for employment against future vacancies. It was further directed that the respondents shall confirm temporary status on such <sup>of</sup> the applicants who complete 4 months continuous service and they would also be considered for regularization in accordance with the extant policy. Thereafter, the applicant was re-engaged vide



order dated 26.4.96. The respondents then decided to absorb the applicant on available vacancies in a Group 'D' post of Gangman at Varanasi Division but the applicant did not join there. While he was working in the Enquiry Office on 3<sup>rd</sup> September, 2003, he was caught by anti-fraud team extorting money from the passenger travelling by the Train No. 2554 Dn. The passenger informed the anti-fraud team that the applicant along with other VTCs, Sri K.K. Mishra were demanding Rs. 80/- from them. The applicant, namely, Dinesh Chandra Srivastava, Rajesh Srivastava and two others namely K.K. Mishra and A.K. Verma, VTCs were present in the inquiry office without duty. All the above named VTCs admitted in their written statement dated 3.9.2003 the fact of demanding money from the passengers. However, the applicant claimed that his signature on the statement was obtained under pressure. For the above misconduct, the applicant was served with a show cause notice. After considering his explanation, his services were terminated by order dated 6/11-11-2003. The applicant filed O.A.No. 162/2004 challenging the order dated 6/11-11-2003. The aforesaid termination order was quashed by this Tribunal with liberty to the respondents to pass fresh order after following the principle of natural justice and after providing personal hearing to the applicant. Pursuant to the said order, the competent authority has passed the impugned order dated 30.3.2005(A-1) which is under challenge in the instant O.A.

3. The other VTCs, namely Virendra Singh and K.K. Mishra whose services were also terminated after giving show cause notice have also filed O.A. No. 474/2007 and 487/2005 respectively. Both the above OAs were dismissed by this Tribunal vide order dated 16<sup>th</sup> September, 2009. While dismissing the above OAs, this Tribunal has held as under:



"6. The status of VTCs, thus, is neither that of a casual labour as defined in chapter 20 of IREM nor that of any employee under the statutory rules. Thus, they are not Civil post holder. If so, protection of Article 311 will not be available to them. Consequently, an order of disengagement on the ground of misconduct can be certainly passed after a show cause notice. The applicants have been accorded special type of status for purpose of consideration for absorption in Group 'D' post subject to availability of vacancy. The applicants have already declined offer for Group 'D' post. Therefore, the only question is whether the disengagement order has been passed fairly after consideration of the facts and explanation offered by the applicants. Before, we deal with the same, it may be mentioned that this Tribunal, in the exercise of power of judicial review cannot act as an appellate authority. In our opinion, we can exercise the same power as available to us while dealing with the punishment awarded in disciplinary proceedings. It would mean that we have to find out whether it is a case of no evidence on which the finding of misconduct has been arrived at or the findings are perverse. We cannot reassess the evidence.

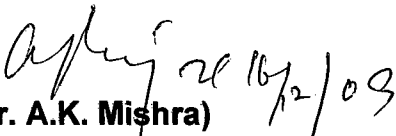
7. Judging in the light of above, we are of the opinion that the applicant did not enjoy immunity from action against them if they were guilty of misconduct which tarnished the image of the railway administration or prejudicially affected its working. If they failed to maintain absolute integrity, devotion of duty or their conduct was unbecoming, action could certainly be taken against them. Since the applicant did not enjoy the status of an



employee as discussed above and neither the disciplinary rules nor the provision of constitution were applicable to them, they can be dealt with only after following the principles of natural justice. It would mean that issuance of show cause notice inviting their explanation in respect of alleged misconduct and thereafter pass a reasoned and speaking order in a fair manner, whether the order is stigmatic or not."

4. Now, in view of the above, we have to see whether the order of disengagement dated 30.3.2005 has been passed in a fair manner after due opportunity. The applicant has been heard earlier as well as after the decision of O.A.No. 162/2004 decided on 3.2.2005. The impugned order was passed after due verification from various employees like Rajesh Srivastava, Sahaj Ram Tripathi etc. Thus the report of 'Anti fraud Team' was accepted by the competent authority on being fully satisfied about its correctness. In the circumstances, no case is made out for our interference.

5. Resultantly, the O.A. is dismissed without any order as to costs.

  
(Dr. A.K. Mishra)  
Member (A)

  
(Sadhna Srivastava)  
Member (J)

HLS/-