

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW.**

ORIGINAL APPLICATION No. 336/2006.

This, the 3rd day of April, 2007.

**Hon'ble Mr. A. K. Singh Member (A)
Hon'ble Mr. M. Kanthaiah, Member (J)**

Sarva Dev, aged about 54 years, S/o Late Sri Shohrat Prasa, R/o Jharna Tola, Unchwa Tola, Masjid Ke Peeche, Kuda Ghat, District Gorakhpur.

Applicant.

By Advocate Shri S.P. Singh.

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Railway, New Delhi.
2. Chairman, Railway Board, New Delhi.
3. General Manager, N.E. Railways, Gorakhpur Division, Gorakhpur.
4. Chief Commercial Manager N.E. Railway, Gorakhpur Division, Gorakhpur.
5. D.R.M., N.E. Railway, Lucknow Division, Lucknow.
6. Senior Divisional Commercial Manager, N.E. Railway, Divisional Office, Lucknow.
7. Sri Shishir Somvansi, Divisional Commercial Manager N.E. Railway, Lucknow.

Respondents.

By Advocate Shri Arvind Kumar.

Arvind

Order

BY Hon'ble Mr. A. K. Singh, Member(A)

The O.A. bearing No. 336/06 has been filed by the applicant Sarva Dev (of the address given in the O.A.) against order dated 16.2.2005 passed by the respondent No. 7 i.e. disciplinary authority namely Divisional Commercial Manager N.E. Railway, Lucknow retiring the applicant compulsorily from service and order dated 21.6.2006 passed by Respondent No. 6, the appellate authority reducing the pay of the applicant from Rs. 4000-6000 to Rs. 2550-3200 with immediate effect.

2. The following points have been made by the applicant in the O.A. as well as in his submissions at the time of personal hearing on 15.3.2007.
 - i) That the applicant has been charged for giving only 308 cases between August, 2004 to July 2005 against the target of 314 cases.
 - ii) That his performance was appreciated by the Chief Ticket Collector, which is also supported by the two important prosecution witnesses two namely Sri Sudhakar Dutt Mishra and Sri Sunil Kumar Srivastava, during the course of enquiry, proceeding had stated that the applicant's achievement during the relevant year was quite near to the target, and as such his performance was satisfactory.

- iv) On the basis of the above, the applicant submits that the punishment awarded to him is dis-proportionate to the gravity of charges held as proved against him.
- v) That the enquiry officer should have considered the version of these witnesses instead of arriving at a hypothetical conclusion that had the applicant put in a little more effort in this regard, the target of 314 cases during the year could have been achieved.
- vi) That while the enquiry in this case was completed on 19.12.2005, the disciplinary authority i.e. respondent No. 7 passed the impugned order of punishment on 16.2.2005 which is a result of prejudice. The punishment imposed on him is, consequently, predetermined and is hit by malafides.
- vii) There is also no proper application of mind by the appellate authority while recording his order /decision dated 21.6.2006.
- viii) Applicant also submits that appellate authority has taken extraneous factors into consideration while passing the impugned order e.g. applicant has been in the habit of taking holidays etc.
- ix) Last of all, the applicant submits that the punishment imposed on him by these two authorities, namely Respondents No. 6 and 7, who are the Disciplinary And Appellate authorities in the case, is grossly disproportionate to the gravity of charges held as proved against him. Accordingly he prays for setting aside the impugned orders and seeks the following reliefs:-

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- a) To direct the opposite parties to reinstate the applicant in service on the post of Senior Ticket Collector in the pay scale of Rs. 3050-4590/-
- b) To issue an order or direction to the respondents to pay the arrears of salary etc. which has been deprived to him in pursuance of the afore mentioned orders of respondent No. 6 and 7.
- c) To issue any other order or direction which this Tribunal may deem fit and proper in the circumstances of the case
- d) To award the cost of the petition.

3. The respondents on their part have opposed the O.A. They submit that the applicant has failed to achieve the target for which he was punished after providing reasonable and adequate opportunities as per law. The punishment of compulsory retirement was accordingly awarded to him by the Disciplinary authority (Respondent No.7); On an appeal filed by the applicant, the appellate authority considered the facts and circumstances of this case and found the punishment of compulsory retirement disproportionate to the gravity of charges held as proved and accordingly set aside the penalty of compulsory retirement imposed on the applicant. In his order in appeal, the appellate authority however reduced the scale of pay of the applicant to the next lower pay scale of Rs. 2550-3200 and fixed the pay of the applicant in the scale at Rs. 2900/- for 3 years. In view of these facts, the respondents submit that the punishment imposed on the applicant by the

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appellate authority is correct and maintainable in law and the O.A. deserves to be dismissed as devoid of any merit.

4. The applicant as well as respondents were heard through their respective counsel on 15.3.2007. Sri S.P. Singh appeared for the applicant and Sri Arvind Kumar appeared for the respondents. At the time of personal hearing, both the counsels reiterated their submissions as above.

5. We have carefully considered the submissions made by the learned counsel on both sides and have also perused the records of the case.

6. Before we arrive at any positive conclusion in the matter, we may like to refer to the the decision of the Calcutta High Court in the case of **S.R. Biswas Vs. Collector of Customs** {Reported in **AIR 1964, Cal. 415**). According to this decision of the Hon'ble Calcutta High Court, the devotion to duty means "Faithful service". Lack of efficiency or failure to attain the highest standard of performance does not constitute any misconduct."

7. The dictum laid down by the Hon'ble Calcutta High Court, as per above judgment has to be applied as a touch stone even in this case. If we apply this law strictly, the entire proceedings including the wires of rules would peter out on judicial scrutiny. But as wires of rules are not under challenge, we stop sought of taking any definite decision in the matter on that basis. We also find that the applicant has given 308 cases as against the target of 314. The applicant cited the version of Chief Ticket Collector and other two prosecution witnesses like Sri Sudhakar Dutt Mishra and Sri Sunil

Kumar Srivastava during the course of enquiry proceedings had stated that the applicant's performance was satisfactory during the year and that his achievement of 308 cases was very much near the target of 314. As per applicant, the version of these officials should have been relied upon by the enquiry officer in making his enquiry report but the same has been conveniently ignored.

8. We have considered these mentioned submissions and find that all the three evidences emanating from Chief Ticket Collector and the two witnesses have already been taken into consideration by the enquiry officer while formulating his report dated 19.12.2005. The Tribunal has no power to substitute its decision for that of the authority. In the case of **Parma Nanda V. State of Haryana and others** {Reported in 1989 (2) Supreme Court cases 177}, the Hon'ble Apex Court has held as under :

"The jurisdiction of the Tribunal to interfere with the disciplinary matters of 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."


9. In the case of **State Bank of India Vs. Samarendra Kishore Endow** {Reported in 1994 (1) SLR 516}, the Hon'ble Supreme Court has again reiterated their earlier ruling that a High Court or Tribunal has no power to substitute its own discretion for that of the authority. As the findings of the enquiry officer is neither arbitrary nor perverse and the charges of not having achieved the target of 314 cases is clearly borne out on record, we cannot

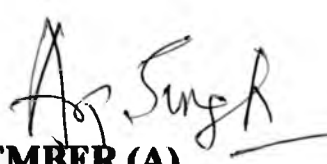
interfere with the findings of the Enquiry Officer at this stage. However, there are two very important points in favour of the applicant. In the first place as per dictum enunciated by the Hon'ble High Court of Calcutta, as discussed above, lack of efficiency or failure to attain the highest standard of performance does not constitute any misconduct. This point goes in favour of the applicant. In the second place, the applicant has brought to our notice that the Chief Ticket Collector, under whom the applicant was working and the other two prosecution witnesses who are his colleagues in the Department, namely Sudhakar Dutt Mishra and Sri Sunil Kumar Srivastava have consistently stated that the performance of the applicant has been satisfactory throughout the year and applicant has never absented himself from his duty without valid reasons and that his performance has been very much near the target.

10. The punishment of compulsory retirement, therefore, imposed by the Disciplinary Authority as per order dated 16.2.2005 and that of reduction in the pay scale of the applicant from Rs. 4000-6000 to Rs. 2550-3200 and fixing his pay at Rs. 2900/- for 3 years with immediate effect appears grossly disproportionate to the gravity of charges held as proved against the applicant. The applicant has given 308 cases against the target of 314 cases. The non achievement of target cannot attributed only to lack of efficiency on the part of the applicant. It could be under the stress of circumstances beyond his control. Moreover, it is on record that applicant had to attend to many other duties like providing

amenities to the passengers, booking of retiring rooms, making announcements in regard to arrival of trains etc. and as well as taking care of waiting / inspection rooms. There were in addition to his regular duty of checking the tickets. His performance therefore should have been judged in totality and not in isolation. Moreover, the figure of 308 cases is very much near to the target of 314 cases in the year. Under these circumstances the punishment of compulsory retirement imposed on the applicant by the Disciplinary Authority and reducing his pay from Rs. 4000-6000 to Rs. 2550-3200 as well as fixing his basic pay at Rs. 2900/- for a period of 3 years appears to be grossly disproportionate to the gravity of charges held as proved against him. This punishment is accordingly quashed and set aside. The Appellate Authority who is respondent No. 7 is hereby directed to reconsider his decision in regard to imposition of penalty on the applicant a fresh, on the basis of our observations and the facts discussed above. It has also been brought to our notice that while the enquiry officer submitted his enquiry report on 19.12.2005, the punishment of compulsory retirement imposed on the applicant by the Disciplinary authority is dated 16.12.2005, which purports or amounts to prejudging the issue. The facts may be verified by the appellate authority in this regard. On full appreciation of evidences available on record and after taking into account all the relevant material on record as well as the facts and circumstances of the case, the authority may re-decide the quantum of penalty on the applicant within a period of 2 months from the date of receipt of a certified copy of the order.

10. O.A. is disposed of in the manner as stated above without any order as to costs.


MEMBER (J)
3.4.07
HLS/-


MEMBER (A)