

CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH, LUCKNOW

This the 9th Day of April, 2014

**Hon'ble Mr. Navneet Kumar-JM**  
**Hon'ble Mr. Shashi Prakash- AM**

**Original Application No. 389 of 2006**  
(U/S 19, Administrative Tribunal Act, 1985)

Bhudhar Dwivedi, aged about 41 years, son of Shri Hausla Prasad Dwivedi, resident of Sahebganj, Daduwa Bazar, Gonda.

.....**Applicant**

**V E R S U S**

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

.....**Respondents**

Advocates for the applicant:-

**Shri Praveen Kumar**

Advocate for the Respondents:-

**Shri D.B. Singh**

**O R D E R**

**DELIVERED BY:-**

**HON'BLE MR. SHASHI PRAKASH, (MEMBER-A)**

The present original application has been filed for quashing the impugned order dated 22/26.08.2003 (Annexure A-1 of O.A)

61

with consequential benefit. Further prayer has been made for refund of amount of Rs. 1200/- as recovered from the applicant.

2. Briefly; the facts of the case are that initially the applicant's engagement as Volunteer Ticket Checker (in short "V.T.C") in the year 1993 was terminated by an oral order, which he challenged before this Tribunal and after the matter was upheld by the Apex Court, the applicant was re-engaged as VTC vide order dated 26.04.1996 and he was posted at Gonda Railway Station. Subsequently, the applicant alongwith some other V.T.Cs was considered for regularization and he was appointed in Group 'D' post (Gangman) in Varanasi Division through a notification dated 06.11.2001. The applicant did not join the post of Gangman and continued to work as VTC. The case of the applicant, as per the O.A, is that on 10.01.2003 when the applicant came out from Train No. 5322 (Kapilvastu Exp.) at Badhni Railway Station, where he had gone for the purpose of purchasing woolen cloths for his children, one Shri Shankar Ram started shouting that the applicant has obtained Rs. 90/- from him illegally. Thereafter vigilance team recovered Rs. 1200/- from the applicant and refunded Rs. 90/- to Shri Shankar Ram and deposited Rs. 1110/- in the railway revenue as per receipt dated 10.01.2003. It is alleged in the O.A that the vigilance team forcibly obtained signature of the applicant.

6

Consequently the applicant was served with a show cause notice dated 17/18.02.2003 (Annexure A-2 of O.A). He submitted his explanation to the show cause notice on 27.02.2003 and denied the allegation. However, the respondents passed the order dated 22/26.08.2003 whereby discontinuing the engagement of the applicant as VTC. Against the above order the applicant preferred an appeal dated 11.09.2003 (Annexure A-4 of O.A), which as per the O.A, is undecided. It is alleged by the applicant that the applicant was not afforded reasonable opportunity and the required documents and the action of the respondents is discriminatory, arbitrary and against the principle of natural justice because none of the papers show that the applicant had demanded money from any one. It is also alleged that the person who made statement against the applicant was never examined before the applicant and the respondents in colourable exercise of powers have passed the impugned order, which needs to be set aside.

3. The respondents have contested the claim of the applicant and filed Counter Reply. The respondents have stated that as per direction of the Hon'ble Apex Court in Civil Appeal No. 1015/1995 – Sagarchand Vishwas Vs. U.O.I & Ors., the applicant was considered for regularization and he was appointed as Gangman in Varanasi Division vide order dated 30.01.2002 but the applicant did

81

not join the said post and continued to work as VTC. The respondents have further stated that complaints regarding unauthorized act of VTCs were highlighted in news paper on 17.05.2000 hence a trap check was organized by the vigilance team and the applicant, who was checking the railway tickets unauthorisedly in Train No. 5332 on 10.01.2003, for which he was not entitled, was caught red handed by the vigilance team and Rs. 1200/- was recovered from him out of which Rs. 90- was returned to the watcher and rest of amount was deposited in government treasury. The respondents have further stated that the reply to the show cause notice submitted by the applicant was considered and an inquiry was conducted in the presence of vigilance watcher Shri Shankar Ram and Shri Ramesh Singh, the Head Constable of R.P.F. A copy of inquiry report was also sent to the applicant, which he received on 11.06.2003 but he did not file reply to the same. Therefore, the respondents were left with no other option but to pass the order dated 26.08.2003. It is stated by the respondents that as the applicant was neither regular nor a temporary status employee of the railways hence after giving show cause notice, his services have rightly been dispensed with and no interference of the Tribunal is required in the matter.

81

4. Applicant has filed Rejoinder in which nothing new has been added.

5. Head learned counsel for both sides.

6. Shri Praveen Kumar, learned counsel for the applicant argued that the charge of demanding Rs. 90/- from Shankar Ram by the applicant is totally false and seems to be an action with a view to frame up the applicant on account of some personal grudge on the part of Shri Shankar Ram. He contended that the incidence took place at Badhani Railway Station which is more than 60 Km away from Balrampur where the applicant was posted. He also questioned the inquiry conducted against the applicant by respondents merely relying upon the statement of certain interested persons and without serving a copy of the statement to the applicant. The respondents arrived at the decision unilaterally on the basis of statement of some persons, without giving opportunity to the applicant. Concluding his arguments, learned counsel for the applicant submitted that the action taken against the applicant is totally unfair, unreasonable and violative of principle of natural justice.

5

7. Shri D.B. Singh, learned counsel for respondents on the other hand argued that the applicant is merely a Ticket Checker engaged on voluntary basis. Such V.T.Cs were recruited by the railways basically to ensure random checking of tickets to reduce incidence of traveling without ticket prevailing on a particular route. They do not have any permanent status and can be disengaged at any point of time. He questioned the averment made by the learned counsel for the applicant that the mode of inquiry conducted against the applicant without providing him the documents on the ground that the applicant was only a daily wage employee engaged on voluntary basis and therefore, the Railway Servants (D&A) Rules are not applicable in his case. A copy of the inquiry conducted against the applicant was sent to him but he failed to give any reply to the same. As he did not respond for a period of four months in this connection, the respondents were left with no other option but to disengage him. In this regard, learned counsel for respondents argued that before discontinuing the services of the applicant, the respondents had completed the formalities as required in such matters and also provided opportunity to the applicant to submit his reply. As the applicant failed to do so, there is no ground to interfere with the action of the respondents.

5

8. We have carefully considered the rival submissions and perused the pleadings as well.

9. In the first place it is to be noted that a government employee such as the applicant, who was appointed temporarily on daily wage, has no right to hold the post. In the case of **State of U.P and another Vs. Kaushal Kishore Shukla -1991 (1) SCC 691**, Apex Court has clearly held that whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuation in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may decide to take punitive action against such a government servant. If the services of the temporary government servant is terminated in accordance with the terms and conditions of the service, it will not visit him with any civil consequences. In the instant O.A , it is observed that the applicant was a volunteer appointed to under take a specific task assigned to him by the respondents. Therefore, termination of his services do not require following of the procedure, as prescribed for regular railway employee. It is observed that the charge leveled against the applicant was duly intimated to him in the form of a Show Cause Notice and asking reply to the same. After receiving reply from the applicant, a confronted inquiry was conducted in which the

statement of Shri Shankar, Shri Shyam Dhar / Vigilance Inspector and Shri Ramesh Singh / Head Constable/ R.P.F was recorded and relying upon the statement of these material witnesses in the case , the respondents arrived at a conclusion that the applicant was indeed found to have asked for Rs. 90/- from Shri Shankar Ram. A copy of the aforesaid confronted inquiry, a copy of which has been appended at Annexure-8 of Counter Reply, was also sent to the applicant for his reply. From the proceedings it is seen that the applicant did not respond to this inquiry report. It is only after expiry of four months from the date of sending of the inquiry report to the applicant that the respondents took the decision to disengage him. As the applicant was only a volunteer and engaged by the respondents on a daily wages basis, the respondents appear to have followed the necessary procedure as warranted in the matter. Therefore, there does not appear any element of arbitrariness on the part of the respondents in the matter. Further it may be relevant to mention that by notification dated 06.11.2001 the respondents had offered to regularize the services of working V.T.Cs including the applicant to the post of Gangman in Varanasi Division. However, instead of joining the regular post offered to him, the applicant <sup>apparently</sup> continued to work as VTC which he <sup>perceived</sup> as more gainful. This act of the applicant is a clear reflection of the kind of mindset he had..

8u

10. Given the facts and circumstances above, we do not find any merit in the O.A and is liable to be dismissed. It is accordingly dismissed. No costs.

Shashi  
(Shashi Prakash)

Member-A

U.R. Kapoor  
(Navneet Kumar)

Member-J

Anand...