

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 163 of 2007

Order Reserved on

Order Pronounced on 31-03-2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

B. K. Gupta
Aged about 43 years
Son of late Deep Chand,
Resident of Type III Q. 3
Thana Campus, Krishna Nagar,
Lucknow.

Applicant

By Advocate Sri Praveen Kumar.

Versus

1. Union of India
Through General Manager North Eastern Railway,
Gorakhpur
2. The A. D. R. M.,
N. E. Railway Ashok Marg,
Lucknow.
3. The Senior Divisional Commercial Manager,
North Eastern Railway,
Ashok Marg, Lucknow.
4. The Divisional Commercial Manager,
North Eastern Railway,
Ashok Marg, Lucknow.

Respondents

By Advocate Sri Rajendra Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following relief(s):-

- (a) To quash the impugned order dated 7.2.2007 passed by respondent No. 4 as contained in Annexure No. A-1 and also to quash the impugned appellate order dated 24.4.2007 passed by OP No. 3 contained in Annexure No. 13.

(b) After quashing the above impugned order the respondents be directed to give consequential benefits as due to the applicant.

(c) Any other relief as considered by the Hon'ble Tribunal proper in these circumstances be provided to the applicant.

(d) Cost of this application be awarded to the applicant."

2. The said O.A. was initially disposed of by means of an order dated 19.3.2009 whereby the Tribunal allowed the O.A. The Union of India/respondents preferred a Writ Petition before the Hon'ble High Court and the Hon'ble High Court vide order dated 3.7.2012 allowed the writ petition and remanded back this case to the Tribunal to decide the O.A. afresh keeping in view the pleadings on record and observations made above. While deciding the Writ Petition, the Hon'ble High Court has observed that the Tribunal allowed the O.A. solitary on the ground that the finding of the charges were based on predetermined mind leaving other grounds undecided. After the said orders of the Hon'ble High Court, the matter was heard finally.

3. As per the applicant the facts of the case are that the applicant joined the respondents organization as TC and thereafter, he was promoted to the post TTE Grade I. While working as TTE in 5008 down Lucknow to Gorakhpur Express on 17.8.1996, suddenly, he fell ill and as such, he reported sick at 11:00 PM on 17.8.1996. The said date being Saturday and on 18th August being Sunday, the sick certificate was issued by the Senior Divisional Medical officer Northern Railway Gorakhpur on 19.8.1996 for a period of 10 days w.e.f. 17.8.1996 and the applicant remained under treatment of a Doctor till 30th August 1996. When the applicant resumed duties, he was placed under suspension without any show cause notice which continued up to 5.12.1996 and no charge sheet was served nor any inquiry was initiated during the period of suspension. It is also indicated by the applicant that he was also called in the vigilance office for the irregularities found in S-3 coach of 5008 down on 17.8.1996/18.8.1996 for which, the applicant has categorically stated that on these two dates, the applicant was submitted his sick and

the certificate was issued to him on 19.8.1996. After a period of about 2 years, the applicant was served with a charge sheet along with the statement of imputation and misconduct along with list of witnesses were also enclosed. The applicant submitted his explanation to the disciplinary authority and denied the charges. The inquiry officer was appointed and after completion of the inquiry, the inquiry report was submitted to the disciplinary authority and the disciplinary authority did not find the applicant responsible for any of the allegations leveled against him. All of sudden, the disciplinary authority passed an order dated 24.7.2000 wherein, the applicant was punished a reduction to the initial stage of the lower grade for a period of 5 years on minimum pay. The applicant preferred an appeal and the appellate authority reduced/modified the punishment and the period of 5 years is reduced to a period of 2 years. The said orders were passed by the appellate authority on 21.11.2001/3.12.2001 and thereafter, the revisional authority has also passed an order. The applicant feeling aggrieved by the said orders preferred O.A. 299 of 2002 and the Tribunal disposed of the O.A. on 18th May, 2006. While deciding the O.A., the Tribunal observed as under:-

“We are of the view that the order of punishment as well as the appellate and revisional orders are vitiated in law for want of providing reasonable opportunity of hearing to the applicant at the stage mentioned above so these are quashed. It shall however, be open to the authority concerned to proceed from the stage of the receipt of the report of the inquiry officer afresh in accordance with law. We are not expressing any opinion on merits or demerits of charges.”

4. After the said orders were passed the disciplinary authority issued the disagreement memo on 18.8.2006 and also given opportunity to the applicant to submit the representation. The applicant responded to the same and thereafter, the disciplinary authority passed the punishment order by reduction to the initial stage of lower grade for a period of 5 years.

5. The applicant preferred the appeal against the orders passed by the disciplinary authority and the appellate authority has also passed an order on 24.4.2007 and retained the punishment awarded to the applicant. The learned counsel appearing on behalf of the applicant has filed a supplementary affidavit and through the said supplementary affidavit, he tried to indicate that the entire action taken against the applicant is on the dictates of the vigilance department and even the disciplinary authority and the appellate authority has passed the orders on the dictates of the vigilance department. For this, the applicant has filed number of documents 6. The learned counsel appearing on behalf of the respondents filed their counter reply and through reply it was indicated by the respondents that the entire process is done after due opportunity to the applicant and there is no illegality in conducting the inquiry. Apart from this, it is also argued by the learned counsel for the respondents that the matters of quasi judicial nature does not call for any interfered by the Tribunal. Not only this, it is also submitted by the respondents that through supplementary affidavit, the applicant tried to indicate that every action is taken on the advice of the vigilance but this fact is not correct. It is also argued by the learned counsel for the respondents that the applicant challenged all earlier orders by means of O.A. No. 299/2002 which is disposed by the Tribunal vide order dated 18th May 2006 and remanded back the matter at the stage of the report of inquiry officer and after that the disciplinary authority has given disagreement memo to the applicant and the applicant is also given the reply to the same and thereafter, the disciplinary authority has passed the order. The bare perusal of the disciplinary authority orders does not show this fact that the same was passed on the instructions of the vigilance department. Even the appellate authority order dated 23/24.4.2007 is also does not show that the vigilance department has given any instructions or directions for passing the said order.

7. The learned counsel for the applicant has filed the rejoinder as well as the supplementary rejoinder to the supplementary counter reply

and through rejoinder as well the supplementary rejoinder, mostly the averments made in the O.A. are reiterated.

8. Not only this, the learned counsel for the respondents has also filed the supplementary counter reply and through supplementary counter affidavit, it was indicated by the respondents that the applicant intentionally could not give any reply to the disagreement note. It is also pointed out by the respondents that a reminder dated 28.9.2006 was also served upon the applicant but the applicant did not give any representation before dated 21.7.2006. As such, the disciplinary authority has passed the orders and there is no illegality in passing order.

9. Heard the learned counsel for the parties and perused the record.

9. Admittedly, the applicant who was working in the respondents organization was charge sheeted and in the charge sheet, it is alleged that "during his duty hours on 17.8.1996 by 5008 Down he did not performed his assigned work properly and left his coach, without informing to the conductor and given reservation chart to such a person who had no authority to keep it. To cover his above mis-deed, the applicant in connivance with medical persons submitted the sick memo and has also not cooperate in vigilance investigation. The said charge sheet was accompanied by statement of imputation and misconduct along with a list of witnesses and documents. The inquiry officer was appointed and the inquiry officer in its finding has observed that "**No material could be brought by the prosecution on the record of enquiry by way of evidence which could substantiate any of the charge mentioned above against C.O. An overall assessment of the matter indicates that the story advanced by the prosecution is not true and defence version seems to be more probable.**" The said report was submitted to the disciplinary authority and the disciplinary authority given its finding and pass an order dated wherein, the punishment was imposed. The applicant preferred and O.A. No. 299/2002 which was remanded back at the stage of the inquiry officer vide order dated 18th May 2006. Soon thereafter, the applicant was

served with a disagreement memo vide letter dated 18.8.2006 which was indicated in the said letter that the applicant is at liberty to submit the representation asking within a period of 15 days if he desired so. The learned counsel for the respondents categorically pointed out through their supplementary counter reply that despite reminders, the applicant intentionally did not give any reply to the disciplinary authority on the disagreement note and the applicant has not given any such representation for documents as alleged by him. The bare perusal of the disciplinary proceedings file shows that the disagreement memo was duly served upon the applicant who was given a letter on 19.9.2006 indicating therein that he may be given one month more time to submit the reply and the said letter of 19.9.2006 of the applicant was duly replied back by the disciplinary authority vide letter dated 28.9.2006 granting him one month time to submit his reply. But till the date, the orders were passed, the applicant failed to give any reply. The applicant fail to submit any representation to the disagreement memo as the disciplinary authority was left with no other option accept to pass the punishment order on 7.2.2007. As regard the imposition of punishment with predetermined is concerned, the same was there but after the decision of the Tribunal in O.A. 299/2002 and specially after disagreement note given to the applicant. It is to be seen that whether the disagreement note is based on any instructions by the vigilance department or not. The letter dated 21.7.2006, annexed along with the supplementary affidavit provides that the vigilance comments on inquiry report was sent along with the letter dated 24.5.2000 and it is indicated that the same be kept in view of the letter dated 19.6.1998 and it is also indicated that if the disciplinary authority intends to impose a penalty which is at variance of the CVC first advice, he should record his previous decision only and should not go ahead with the actual action as per his previous decision and send the case file to the GM/vigilance through SDGM. The learned counsel for the applicant emphasized this issue that the respondents while taking a decision to impose a penalty

upon the applicant were under the influence of the GM and even after from the stage of the inquiry officer, there are number of correspondences which shows that the approval was sought from the vigilance department before imposing the punishment. Needless to say that the order of the Hon'ble High Court is absolutely clear to the extent that the O.A. was decided only the ground that the finding of the charges were based on predetermined mind leaving other grounds which are undecided as such, it was remanded back. The bare perusal of the impugned order dated 7.2.2007 shows that the same is based on the disagreement memo and has also pointed out that the applicant was TTE who was assigned the train No. 5008 DN and was allowed coach No. S-3 and he fail to manage the same and allowed the unauthorized passengers to travel in the same compartment. Not only this, it is also indicated in the punishment order that he failed to get the vigilance check done and left the compartment without indicating to the competent authorities. Apart from this, he has also handed over the chart of S-5 coach to one unauthorized person and reported himself to be sick. The disciplinary authority has also indicated that the applicant has given different statements on different dates and tried to indicate that he was not available on duty during the relevant time and the said contradictory statement clearly shows that the applicant deliberately tried to twist the fact and fail to perform his duty assigned to him. Needless to say that the inquiry officer could not found any charges proved against the charge official. The disciplinary authority without giving the disagreement note passed the orders. The same was done by the Appellate Authority as well as revisional authority and the Tribunal decided the O.A. directing the authority to proceed from the stage of the receipt of the inquiry officer afresh and thereafter, the disagreement note was given in 2006 and the applicant was asked to submit his reply which he failed to do so. The entire pleadings also does not show that the applicant has given any reply to the disagreement memo which is dated 18.8.2006. rather by means of the supplementary affidavit, the

learned counsel for the applicant has pointed out that by order dated 21.7.2006 as well as by order dated 23.8.2006, the respondents prepared the disagreement note on the basis of letter dated 24.5.2000 which is absolutely on the dictates of the GM Vigilance. As such, it is indicated by the learned counsel for the applicant that the entire proceedings is based on the instructions of the Vigilance department. The learned counsel for the applicant has also relied upon the decision of the **Hon'ble Apex Court in the case of Kuldeep Singh Vs. Commissioner of Police and Others reported in (1999) 2 SCC 10** and pointed out that "**finding of guilty although would not be normally interfered with, the court can interfere therewith if the same is based on no evidence or is such as could not be reached by an ordinary prudent man or is perverse or is made at the dictates of superior authority.**" Apart from this, the learned counsel for the applicant has relied upon the decision of a case of **Raja Ram Verma vs. Union of India and Ors** passed in O.A. No. 642 of 1995 by this Tribunal wherein, it is observed that issuance of fresh charge sheet on the dictations of the vigilance authorities is a non application of mind. The Hon'ble Supreme Court in the case of **Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office Manipal and another reported in 1991 SCC (L&S) 965** has been pleased to observe that Bank Officer compulsorily retired by mechanically accepting Central Vigilance Commissioner's recommendations without considering whether the punishment was commensurate with gravity of the misconduct or not in the fact situation of the case and as held that the order of compulsory retirement vitiated by non-application of mind. Not only this, it is also to be seen that disciplinary authority while imposing a penalty being influence by an external agencies which has no role to play is illegal. The bare reading of the pleadings of the present O.A., is clear to the extent that after the order passed by the Tribunal in O.A. No. 299 of 2002, the matter was remanded back and a disagreement note was issued on 18.8.2006. Letters enclosed with the supplementary affidavit dated

21.7.2006, as well as 23.8.2006 clear provides the basis of disagreement note on the basis of earlier letter dated 24.5.2000 which is issued by General Manager Vigilance. The letter dated 21.7.2006 that "**Vigilance comment on inquiry report was sent to you vide this office letter of even No. dated 24.5.2000 a copy of which is again enclosed. While preparing disagreement note, facts mentioned therein may be kept in view.**" This clearly shows that the disagreement note was prepared keeping in view of the letter dated 24.5.2000 which is on the dictates by the GM, vigilance. As such, the action taken by the disciplinary authority appears to be unjustified, unconstitutional and is liable to be interfered with. It is undisputed that the applicant has not submitted any reply to the disagreement memo but there was no occasion for the disciplinary authority to pass orders on the dictates of the vigilance department.

10. Accordingly, the O.A. is allowed. The impugned order dated 7.2.2007 passed by the disciplinary authority as well as the appellate authority dated 24.4.2007 are liable to be quashed. The applicant is entitled for all consequential benefits. No order as to costs.

J. Chandra
 (Ms. Jayati Chandra)
 Member (A)

Navneet Kumar
 (Navneet Kumar)
 Member (J)

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