

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 198 of 2007

Order Reserved on 11.2.2014

Order Pronounced on 20-02-2014

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

Rajendra Prasad Mishra, son of Late Ram Charan Mishra, R/o Village Bhandsara Post Office Bansgaon, Tehsil Karnailganj District Gonda. Presently residing in Railway Quarter No. T-34A Barabanki Railway Colony Barabanki.

Applicant

By Advocate Sri D. P. Awasthi.

Versus

1. Union of India, through General Manager Northern Railway Baroda House, New Delhi.
2. Divisional Rail Manager Northern Railways, Hazratganj, Lucknow.
3. Additional Rail Manager-1 Northern Railway Hazratganj, Lucknow.
4. Divisional Operating Manager Northern Railways Hazratganj, Lucknow.
5. Divisional Commercial Manager, Northern Railway Hazratganj, Lucknow.
6. B.P. Singh, Enquiry Officer/CC.E. I/HQ Northern Railway, New Delhi.
7. Imtiyaz Ahmad Divisional Operating Manager, Northern Railway, Lucknow.

Respondents

By Advocate Sri S. Verma

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 reliefs:-

- (i) *that the order of punishment dated 17.8.2004 confirmed by the appellate authority and revisional authority contained in Annexure No. 1,2 and 3 be quashed and the applicant be reinstated back in the service with all benefits as if there had been no break in service or the existence of punishment order at any point of time.*
- (ii) *That the notice dated 30.3.2007 contained in Annexure No. 10. be also quashed.*
- (iii) *that any other suitable order or direction be passed by this hon'ble Tribunal in favour of the applicant.*
- (iv) *cost of the litigation be allowed in favour of the applicant."*

2. The brief facts of the case are that the applicant while he was working on the post of Ticket Collector at Barabanki, a charge sheet was served upon the applicant and in the said charge sheet, the charges leveled against the applicant is his un authorized absence from duty. The Enquiry Officer, conducted the detailed inquiry and submitted the report to the Disciplinary Authority. The Disciplinary Authority passed punishment order dated 17.8.2004 whereby it is pointed out that the applicant failed to mark his attendance in attendance register which stands proved in this respect. It is also indicated by the Disciplinary Authority that the applicant while working as Ticket Collector, in another case was imposed with a punishment of compulsory retirement from service but was subsequently reinstated and reverted from T.C. to that of a Porter. But the applicant not improved his conduct and further remained unauthorizedly absent from essential duty. As such, a punishment of removal of service was imposed upon him. The applicant submitted an appeal against the said order and the appellate authority after considering the appeal rejected the same. The applicant feeling aggrieved by the said orders preferred the present O.A. and pointed out that the quantum of punishment is grave to the charges as leveled against the applicant and the same can to be looked into by the Tribunal. The learned counsel for the applicant has relied upon two decision of the Hon'ble High **Madhya Pradesh High Court (Indore Bench) in the case of Ashok Kumar Mishra Vs. State of Madhya Pradesh & Ors reported in 2005 LAB I.C. 3701** and another is Hon'ble Rajasthan High Court (Jaipur Bench) in the case of **Rajendra Singh Vs. Labour Court Bharatpur and Anr. Reported in 2006 LAB I.C. 3885** and pointed out that the Hon'ble High Court has been pleased enough to observe about the quantum of punishment can be look into by the courts.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it is indicated by the respondents that the

applicant was on official duty and he was supposed to mark his attendance in attendance register. But without doing so, he remained authorizedly absent from duty as such, a charge sheet is served upon the applicant and Inquiry Officer given full opportunity to the applicant as well as also examined the list of documents and also cross examined the witnesses and during the inquiry, the applicant fully participated and after going through the enquiry officers report, the Disciplinary Authority proceeded with the punishment awarded to the applicant. The appeal preferred was also considered by the Appellate Authority and the same was also rejected. As regard judicial interference and the quantum of punishment is concerned the same cannot be looked into by the Tribunal as observed by the Hon'ble Apex Court not in once but a number of decisions. The learned counsel for the respondents has relied upon few decisions of the Hon'ble Apex Court such as ***Regional Manager, U.P. SRTC, Etawah and others vs. Hoti Lal and another reported in (2003) 3 SCC 605*** as well as ***Union of India Vs. Sardar Pahadur reported in (1972) 4 SCC 618*** as well as in the case of ***Moni shankar Vs. Union of India and another reported in (2008) 1 SCC (L&S) 819.*** The learned counsel for the respondents has also submitted that the imposition of appropriate punishment is within the discretion of the disciplinary authority and the same has been done after considering the relevant facts of the record and the misconduct committed by the applicant as such, no interference is called for in the present O.A.

4. Learned counsel appearing on behalf of the applicant has filed the rejoinder affidavit and through rejoinder, mostly the averments made in the O.A. are reiterated. Apart from this, it is also indicated by the applicant that the applicant lost his mental equilibrium due to severe punishment of reversion in Class IV cadre he fell ill and remained under PMC. It is also indicated by the learned counsel for the applicant that the inquiry was not conducted properly as per the provisions of Rule 9 of the D&AR Rules 1968. As such, it is once again argued by the learned

counsel for the applicant that the punishment is very harsh, it requires consideration by the Tribunal.

5. Heard the learned counsel for the parties and perused the record carefully

6. Certain facts are undisputed to the extent that the applicant was initially appointed in the Railways and thereafter, he was promoted to the post of Ticket Collector. while he was posted in Barabanki, a charge sheet was issued upon him. The perusal of the charge sheet, clearly shows that the applicant while working as TC under CIT/BBK on 24.11.2000 committed misconduct by remaining absent from duty during taking charge on 24.11.2000 without any information. He also ran away after the vigilance check without intimation to avoid detection of his colleague who has demanded Rs. 100/- from decoy and ran away from the office by pushing the vigilance Inspector, the imputation of misbehavior and list of documents were also mentioned in the charge sheet. The applicant given his statement and in which he has admitted to this fact that around 9 'O' clock , he took his wife to hospital and from where, he came back at about 1 'O' clock and thereafter, he came to office. It is also indicated by the applicant in this statement that he has not signed the attendance register. After that the detailed inquiry was conducted and inquiry officer has examined all the witnesses as well as documents available on record, and the Inquiry Officer has submitted his report to the disciplinary authority and pointed out that the charge No. 2 stands proved. The Disciplinary Authority has stated in its order that the applicant remained absent from duty without any information as such, the charges leveled against him are proved and the charged officer was punished with an order of removal from service. Undisputedly, the applicant preferred an appeal and in the appeal, he has categorically pointed out that he was not present on duty and he came to know subsequently about arrival of vigilance team and has also prayed for kind consideration of his case. The appellate authority while considering the appeal of the applicant and also after pursuing the relevant record

found that the charges leveled against the applicant stands proved during the course of the inquiry. It is also pointed out that the applicant was given an opportunity to defend himself as per rules and there is no violation of principle of natural justice. Accordingly, the appeal filed by the applicant rejected by the appellate authority. Not only this, the applicant was absent from official duty unauthorizedly and in the inquiry the said charges also stands proved against the applicant.

7. Now the question which requires determination is whether quantum of punishment can be looked into by the Tribunal or whether the Tribunal can interfere and invoke powers of judicial interference in the matters of disciplinary proceedings.

8. As observed by the Hon'ble Apex Court in the case of ***Regional Manager, U. P. SRTC, Etawah and others vs. Hoti Lal and another*** reported in ***(2003) 3 SCC 605*** “***If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, held the matter should be dealt with iron hands and not leniently.***” It is further observed by the Hon'ble Apex Court in the aforesaid judgment that the “***Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases.***” Not only this, in the case of ***Moni Shankar Vs. Union of India and Another*** reported in ***(2008) 1 SCC (L&S) 819***, the Hon'ble Apex Court further observed that “***the departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justices are required to be complied with.***”

9. It can further be said that as observed by the Hon'ble Apex in the case of ***Union of India Vs. Sardar Pahadur*** that the “***Tribunal cannot look into the quantum of punishment and***

also the issue of judicial interference cannot be looked into by the Tribunal."

10. As observed by the Hon'ble Apex Court in the case of **State bank of India and Others Vs. Samarendra Kishore Endow and Another reported in 1994 SCC (L&S) 687**, the Hon'ble Apex Court has been pleased to observe as under:

"Imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court. Bhagat Ram Vs. State of H.P. is no authority for the proposition that the High Court or the Tribunal has jurisdiction to impose any punishment to meet the ends of justice. The Supreme Court in Bhagat Ram case exercised equitable jurisdiction under Article 136. The High Court and the Tribunal has no such power or jurisdiction."

11. As observed by the Hon'ble Apex Court in the case of **State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya reported in (2011) 4 SCC 584**, the Hon'ble Apex Court has been pleased to observe as under:

"It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings, in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

12. In the instant case, it is explicitly clear that the applicant was unauthorizedly absent of his official duty. The due process of inquiry was conducted and there appears to be no lacuna in the entire proceedings, as observe by the Hon'ble Apex court that the imposition of appropriate punishment is within the discretion and the judgment of the disciplinary authority and only the same can be open by the appellate authority to interfere with it and not the Tribunal.

13. In view of the above facts and circumstances, we do not find any reason to interfere in the present O.A., accordingly, the O.A. is dismissed no order as to costs.

J Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

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