

(Reserved on 06.02.2014)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW**

(Allahabad this the ^{1st}----- day of ^{April}----- 2014)

Hon'ble Ms. Jayanti Chandra, Member (A)
Hon'ble Mr. M. Nagarajan, Member (J)

ORIGINAL APPLICATION NO.71 OF 2009

(Under Section 19 of the CAT Act, 1985)

Jayanti Prasad aged about 51 years,

Son of late Bhiki, R/o Gram Paunisuchit,

Post Sardhashukla, Thana Gaur, District Basti.

-----Applicant.

By Advocate: Shri Abdul Moin.

Versus.

Union of India through

1. General Manager, North Eastern Railway, Gorakhpur.
2. Chief Commercial Manager, North Eastern Railway, Gorakhpur.
3. Additional Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.
4. Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.
5. Assistant Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.

-----Respondents.

By Advocate:- ~~Shri C.B. Verma~~ B.B. Tripathi JCh

corrected by
the order dated
24.4.2014.
J.Ch.

ORDER

(Delivered by Hon'ble Mr. M. Nagarajan, Member (J))

1. The applicant in the present O.A. seeking a writ of certiorari for quashing the orders dated 7.3.2008, 4.8.2008 and 24.11.2008 respectively passed by the respondent No.5, respondent No.4 and respondent No.3 and respectively at Annexure-A-3, Annexure-A-2 and Annexure-A-1. He is also seeking a direction to the respondents to allow him to continue his service till the age of superannuation i.e. on 30.9.2017 with all consequential benefits including arrears of pay.

2. Under the impugned order dated 7.3.2008 (Annexure-A-3) the respondent no.5 imposed the punishment of compulsory retirement on the applicant. As against the order of compulsory retirement dated 7.3.2008 the applicant preferred an appeal before the Divisional Commercial Manager and his appeal came to be rejected by the Divisional Commercial Manager (respondent No.4) by his order dated 4.8.2008 (Annexure-A-2). Being aggrieved by the order of the appellate authority dated 4.8.2008 he preferred a revision petition under Article 25 before the Additional Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow (respondent No.3) and the Revisional Authority also dismissed a revision petition by its order dated 24.11.2008 which is also impugned in the application at Annexure-A-1.

3. The brief facts of the case are that the applicant was initially appointed as Casual Labour in the year 1976 and thereafter he

M. Nagarajan

was regularized as Hammal. Subsequently, he was promoted to the post of Mark Man in the Commercial Department. While the applicant was working as Markman in Lucknow Junction under the office of Commercial Superintendent on a vigilance raid was conducted on 31.1.2007 on the complaint of one Sri Kushi Ram by a vigilance team led by Ved Prakash Tripathi, Chief Vigilance Inspector (Traffic) and others. On 31.1.2007 a decoy check was laid in the course whereof the applicant was found to have demanded Rs.400/- from a business man. Based on the incident a departmental proceeding was initiated for imposition of major penalty. The following imputation of charges were drawn by a notice dated 18.4.2007.

"आरोप सं०-१ श्री जयन्त्री प्रसाद मार्का मैन ने डिक्वाय से रू० 400/- अवैध धन की मांग किया परन्तु डिक्वाय ने पार्सल बाबू के निर्देशानुसार उन्हें रूपये 325/- देने की बातें बताई जिस पर श्री जयन्ती प्रसाद ने रू० 325/- अवैध धन की मांग डिक्वाय से किया तथा डिक्वाय से रू० 325/- अवैध धन स्वीकार किया।

आरोप सं०-२ इनके पास से अपने द्वारा कमाये गये अवैध धन रू० 1500/- पाया गया जिसे एम०आर० सं० एक्स-658126 दिनांक 30.1.2007 के अन्तर्गत रेल राजस्व में जमा किया गया।"

4. The applicant was required to submit his written statement of defence and in pursuance of the same the applicant has submitted his defence denying the said charges by means of his reply dated 8.5.2007. in his reply he indicated that Rs.325/- pertain to the amount that had been taken by the businessman

11.11.07

Sri Kushi Ram a day earlier from the applicant as after booking of his goods, he had fallen shortage of cash and accordingly the said sum of Rs.325/- was repaid to the applicant by the said Kushi Ram. In so far the second charge, the applicant replied that the cash amount of Rs.1500/- was taken by him from Sri Rafiq, a Dalal as he had to purchase certain things for his family. Being not satisfied with the advance statement an enquiry was ordered by issuing order dated 25.5.2007 (Annexure-A-5). In the departmental proceedings the applicant was found guilty of the said charges and as a result of which under impugned order dated 7.3.2008 by Annexure-A-3 a punishment of compulsory retirement was imposed on the applicant. As against the punishment order dated 7.3.2008 of compulsory retirement, the applicant preferred an appeal before the respondent no.4 and his appeal was rejected by the appellate authority by an order dated 4.8.2008 by Annexure-A-2. Consequently, he preferred a revision petition under Article 25 to the respondent no.3 and the Revisional Authority has also rejected his revision petition by its order dated 24.11.2008 (Annexure-A-1). Being aggrieved by the said order dated 7.3.2008, 4.8.2008 and 24.11.2008 respectively passed by the Disciplinary Authority, Appellate Authority and Divisional Authority, the applicant has presented this O.A. with the prayer to set aside the same contending that the departmental proceedings initiated against him is in gross violation of Statutory Rules and Para 704 and 705 of the Indian Railway Vigilance Manual. It is also contended by the applicant that without appreciating the material evidence which is available

on record the Disciplinary Authority has imposed the major penalty of compulsory retirement which according to him, is not only illegal but also disproportionate.

5. The respondents have filed the reply contending that there is no violation of any Statutory Rule and adherence to para 704 and 705 of Indian Railway Vigilance Manual is not mandatory, but the same is directory.

6.
corrected note
order dated
24.04.2014
J. Ch

6. Heard the learned counsel for the applicant Sri Abdul Moin and *B. B. Tripathi J. Ch* Sri ~~C. B. Verma~~ learned counsel for the respondents. Perused the pleadings and the documents annexed to the pleadings of both the parties.

7. Sri Abdul Moin learned counsel for the applicant argued that
- i. The respondents have committed a serious errors in passing the impugned order in so far as this failed to take into consideration that the Railway authorities were required to follow paragraphs 704 and 705 of the Manual scrupulously.
 - ii. The Disciplinary Authority has failed to appreciate the evidence available on record, particularly as to the cross examination of one Sri Arvind Kumar Singh an independent witness.
 - iii. The appointment of retired person as Enquiry Officer is violative of Statutory provisions of Rule 9 of Railway Servants (D&A) Rules.

T. S. P.

6.
8. Per contra, the learned counsel for the respondent Sri C.B. Verma submitted that non adherence to the instructions and guidelines contained in para 704 and 705 of the Vigilance Manual does not result in vitiating the department proceeding initiated against the applicant by the Railway Authority. Inviting my attention to the judgment of the Hon'ble Supreme Court dated 16.4.2010 In Civil Appeal No.3369 of 2010 he further submitted that as per the judgment of the Hon'ble Supreme Court in the said case any retired officer can be appointed as Enquiry Officer. He further submitted that the argument of the learned counsel for the applicant that the Disciplinary Authority has not properly appreciated the evidence is not tenable.

9. The learned counsel for the applicant Sri Abdul Moia in support of his argument that failure to comply with the requirement of para 704 and 705 of the Manual vitiates the entire proceedings, placed reliance upon the order of the Tribunal dated 21.11.2013 in O.A. No.64 of 2009 (R.N. Singh Vs. Union of India and others). He also placed reliance upon yet another order of this Tribunal dated 5.9.2008 in O.A. No.40 of 2004 in the case of M.P. Rawat Vs. Union of India and others. This Tribunal by the said two orders quashed the impugned orders in the said two O.As. on the ground of non adherence to Para 704 and 705 of the Indian Railway Vigilance Manual.

T. S. P.

B.B. Tripathi 22
C.B. Verma
converted
by order
dated
24.4.2019
J. M.

10. Mr. Abdul Moin learned counsel for the applicant had drawn my attention to the judgment of Hon'ble Supreme Court in the case of *Moni Shanker Vs. Union of India and others* (2008)3 SCC 484 and submitted that the Hon'ble Supreme Court in the said *Moni Shanker* case has held that Paras 704 and 705 cover the procedures and guidelines to be followed by the Investigating Offices who are entrusted with the task of investigations of trap cases and departmental trap cases against the Railway officials and as such the said Paras 704 and 705 of the Indian Railway Vigilance Manual is required to be adhered to. Admittedly, in the case on hand it is not pointed out by the respondents that the procedure contained in Paras 704 and 705 were followed. In view of this position and in view of fact that this tribunal in O.A. No.40 of 2004 and O.A. No.60 of 2009 quashed the orders passed by the Disciplinary Authority on the ground of non-adherence to the said Paras 704 and 7-5 of the Indian Railway Vigilance Manual we have no option, but to conclude that the impugned orders are liable to be quashed on the ground of non-adherence to the para 704 and 705 of the Indian Railway Vigilance Manual.

11. Mr. Abdul Moin learned counsel for the applicant referred to the cross examination to the question no.10 which reads as:

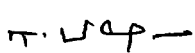
"-----Prashana 10: Shri Kushi Ram Ne Aaropi of
Kitne paisa diye the ?

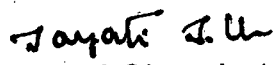
Uttar: Aaropi ko paisa mere samne nahi diye gai
the."

T U P

The settled position of law is that while re-appreciation of evidence is not within the domain of the tribunal, an absurd situation emanating from the statement of the witness can certainly be taken note of. In view of this position if we were to take note of the aforesaid question and answer of the witness necessarily we have to hold that the disciplinary authority has not at all appreciated the evidence properly. Thus, this is a lacuna which warrants an interference in the impugned orders.

12. In view of the cumulative effect of illegality in the enquiry and considering the violation of Paras 704 and 705 of the Indian Railway Vigilance Manual, the punishment of compulsory retirement imposed on the applicant and affirmed on appeal and revision cannot be sustained in law. Accordingly, the O.A. is allowed. The impugned orders dated 7.3.2008, 4.8.2008 and 24.11.2008 respectively at Annexure-A-3, Annexure-A-2 and Annexure-A-1 are quashed. The respondents are directed to reinstate the applicant in to service immediately with all consequential benefits except the back wages. No order as to costs.


(M. Nagarajan)
Member (J)


(Ms. Jayanti Chandra)
Member(A)