

**Central Administrative Tribunal, Lucknow Bench,**

**Lucknow**

**Original Application No. 35/2005**

This the 10/10 day of September, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)**  
**Hon'ble Dr. A.K. Mishra, Member(A)**

Om Prakash Gupta, Aged about 71 years, S/o late Sri R.B. Gupta, R/o 5/826, Viram Khand, Gomti Nagar, Lucknow.

...Applicant

By Advocate: Sri M.A. Siddiqui

**Versus**

1. Union of India through G.M., N.E.R., Gorakhpur.
2. G.M., N.E.R., Gorakhpur.
3. Dy. CPO (Gazetted), N.E.R., Gorakhpur.

.....Respondents

By Advocate: Sri N.K. Agarwal

**ORDER**

**By Dr. A.K. Mishra, Member-A**

The applicant has challenged the order dated 5.6.2001 issued by Chief Personnel Officer, N.E.R., Gorakhpur, communicating the approval of the President for a cut of 20% in his pension and the letter dated 3.6.2003 of the Joint Secretary, Railway Board, communicating the rejection of his representation/appeal filed against the penalty imposed on him.

2. The applicant was working as Divisional Commercial Superintendent at Izzatnagar and holding independent charge of the commercial branch during 1989-90. According to the applicant, the case of

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acceptance of credit notes of one trader Sri A.K. Chhabra was recommended by the Assistant Commercial Superintendent to the issuing authority, namely, Chief Commercial Superintendent and the applicant was no-where in the picture. The permission was granted by the Headquarter and the station master Lalkuwan was directed to accept freight charges through credit notes. On apprehension that the station staff would not accept the credit notes beyond Rs. 8 lac, the applicant spoke to one Sri Balcharan, Senior Commercial Officer, Headquarters Office at Gorakhpur, who clarified over telephone that there was no such limit and credit notes could be accepted beyond it so long there was no complaint from the cashier, or FA & CAO about encashment from the bank. This clarification was issued by the applicant on 21.5.1990 to the Station master, Lal Kuwan. He submits there was no complaint from the finance department about problems in encashment of the credit notes, although it is enjoined upon them in the accounts circular dated 27.9.1960 that they were to initiate action if they faced any such difficulty from the banker.

3. He received a major penalty chargesheet on the verge of his retirement on 31.12.93 with allegations that he had no powers to instruct the station master to accept the credit notes beyond Rs. 8 lac; that Sri Balcharan, ACO, Gorakhpur was not competent to give any advice in the matter; and further that his action resulted in loss of Rs. 3162190/- to the Railways. It is alleged by him that though it took more than 4 years for the respondent-authorities to finally appoint the Inquiry Officer (IO), the inquiry was hurriedly



conducted by the IO even in spite of receipt of specific request from the applicant for adjournment of inquiry proceedings fixed on 21.2.99 and 15.3.99 to some other dates as he was unable to attend it due to his illness. He had submitted medical certificates in support of his request, which was given a short shrift, and the inquiry was completed ex-parte within about two months. Besides, he had represented against the appointment of Sri Mahendra Pal, retired Dy. Engineer as Inquiry Officer on the ground that both of them were of the same rank and the inquiry had to be conducted by an officer of senior rank.

4. After getting a copy of the inquiry report, the applicant wrote a letter to the respondent no.2 on 31.8.1999 asking for a copy of the record of the proceeding, copies of statements of witnesses recorded in absentia and copies of the documents relied upon by the prosecution in order to file an effective representation; but no such opportunity was given and this letter of his was treated as his representation and the findings of the IO were accepted. He points out that a major discrepancy in the inquiry report (chargesheet refers to violation of Rule 3 (1)(i) and (iii) of Railway Servants (Conduct) Rules, whereas I.O. had found him guilty of violation of Rule 3 (1)(ii)(iii) of the Conduct Rules) was ignored and despite it, the findings of IO were accepted in toto. The matter was referred to Union Public Service Commission (UPSC) and on their advice, 20% cut in pension for five years was imposed upon the applicant. He filed O.A. no. 402 of 2002 challenging the penalty and this Tribunal gave a direction that the representation made by the applicant on 22.11.2001 to the President of India



should be disposed of within a period of six months. His representation/appeal was, however, rejected on 3.6.2003 in an order, which according to him, has not dealt with all the points raised by him in his appeal petition; hence this application.

5. The grounds taken are as follows:

that the allegation of the railway administration about sustaining any loss for his action was incorrect inasmuch as the Divisional Railway Manager (Commercial) had informed in his letter dated 3.11.1999 that none of the credit notes had been dishonoured by the bank and no debit notes had been raised against the station by the accounts department; that there was material discrepancy in respect of the findings of the charges made by the IO with reference to the articles mentioned in the chargesheet; that no opportunity was granted to him to participate in the inquiry and in spite of his genuine request for adjournments on medical grounds, the inquiry was hurriedly conducted ex-parte; that the I.O., who was of the same rank as he is, could not have conducted the inquiry in face of his specific objection in the matter; that before imposing the penalty, no show cause notice was issued to him, which according to him, was mandatory; that there was inordinate delay in taking up the inquiry itself by appointing the I.O. and finalization of proceedings after receipt of the inquiry report, but his simple request for two adjournments on medical grounds, were rejected.

6. At the time of hearing, the learned counsel for the applicant laid emphasis on the fact that an officer similar to the applicant in rank, could not have taken



up the inquiry even after protest by the applicant. Further, there was violation of natural justice in taking up the inquiry ex-parte by rejecting the genuine request of the applicant for two adjournments on medical grounds; besides, his request for copy of inquiry proceedings, statements of witnesses, documents relied upon were not allowed causing serious prejudice to the applicant to make an effective reply.

7. The respondents submitted that the disciplinary proceedings were initiated against the applicant on specific charges, which were communicated to him alongwith statement of imputations and list of documents and witnesses. The inquiry was conducted by an officer duly appointed for the purpose. As the applicant did not co-operate in conducting of inquiry proceedings, it had to be taken up ex-parte. On the basis of the inquiry findings, a decision was taken by the President of India, after consulting with UPSC to impose 20% cut in the pension of the applicant for 5 years. It was argued that the I.O. was a regular Junior Administrative Grade {JAG} officer; whereas the applicant was appointed on adhoc basis to be JAG grade and retired as such. Therefore, it could not be claimed by him that both he and I.O. belonged to the same rank or that the IO was not senior to him.

8. Rule 9(2) states that the disciplinary authority can either itself inquire into the charges, or appoint a Board of inquiry, or any other authority to inquire into the truth thereof. Rule 9(3) says that where a Board of inquiry is appointed under sub-rule (2), it shall consist of not less than two members, each of whom shall be

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higher in rank than the railway servant against whom the inquiry is being held .....

9. This point was considered by the UPSC while giving its advice to the President of India in the matter of imposing penalty. It says that the Railway Board clarified that the IO was confirmed JAG grade officer and is senior to the charged officer, who was holding the post on adhoc basis and on that ground, the request to change the IO was not acceded to. After examining the statutory rules, it came to the conclusion that no such requirement is stipulated in cases of single IO/authority. It relied on the following observations of the Hon'ble Supreme Court, but has not cited the case reference.

*“Though it is always desirable that an officer higher in rank than the delinquent officer should be directed to conduct an enquiry, the enquiry is conducted as a delegate of the disciplinary authority. Therefore, the ultimate decision is to be taken by the disciplinary authority. By mere delegating the enquiring whether the enquiry officer is of the same cadre or of higher grade than that of the petitioner, it did not cause any material irregularity nor resulted in any injustice to the petitioner.”*

The main point is whether any prejudice has been caused to the applicant by the inquiry being conducted by an officer of the same rank. The applicant could not establish any such prejudice.

10. As regards the second ground that the inquiry was conducted in a hurry and two simple adjournments sought by the applicant, were not

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granted by the IO, the reply of the respondents is that the I.O. afforded reasonable opportunities to the applicant and as the applicant did not co-operate and stayed away from the inquiry, it had to be taken up ex parte. A perusal of the inquiry report reveals that the preliminary hearing was held on 6.11.1998. The applicant demanded a number of additional documents, but according to the IO, his request lacked in details about their custodians and the relevance. Nevertheless, some of these documents were supplied to the applicant. Thereafter, regular hearings in the inquiry were taken up on 24.2.99 to 26.2.99 and 3.3.99 to 4.3.99, but the charged officer absented himself. The I.O. received a letter dated 15.3.99 on 20.3.99 alongwith a medical certificate that he could not participate in the inquiry because of his illness. The I.O. held that this letter had become irrelevant as the inquiry had already been completed by that time. Further, he mentioned that the objection regarding rank of the officer should have been made before the administration before commencement of the inquiry and not before him when the inquiry was completed. Thus, he came to the conclusion that the applicant was trying to put obstructions in completion of the inquiry.

11. The contention of the applicant that he had informed about his illness in a letter dated 21.2.99 has been denied by the respondents. On the other hand, they have stated that the applicant has himself delayed in submitting the request letter alongwith medical certificate by a couple of weeks. This issue was also considered in the advice note of the UPSC. It had endorsed the view of the IO that the request for

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adjournments alongwith medical certificate was received on 20.3.99 when the inquiry was already completed.

12. This Tribunal provided another opportunity for consideration of the detailed representation of the applicant. We find that his representation dated November, 2001, at Annexure-12, was a fairly exhaustive one, which was considered and rejected by the President of India. Therefore, it would be difficult to uphold his contention that reasonable opportunity had not been given to him. He himself had deliberately stayed away from the inquiry proceedings and taken undue long time in informing the inquiring authority about adjournments which he was seeking. By then, the inquiry was over and the inquiry report had been submitted.

13. The respondents have relied upon the following case law:

- (i) ***Kuldeep Singh Vs. Commissioner of Police & Ors. (1999) 2 SCC 10;***
- (ii) ***Damoh Panna Sagar RRB Vs. Munna Lal in Civil Appeal no. 8258 of 2004;***
- (iii) ***Dr. Anil Kumar Vs. U.O.I. (1998 (9) SCC 47);***
- (iv) ***B.C. Chaturvedi Vs. U.O.I. (1995 (6) SCC 749);***
- (v) ***Government of Tamil Nadu & Ors Vs. S. Vel Raj (1997 (2) AISLJ 32);***
- (vi) ***Government of Tamil Nadu Vs. N. Ramamurthy AIR 1997 SC 3571;***
- (vii) ***Government of Tamil Nadu and Anr. Vs. A. Rajapandian (AIR 1995 SC 561);***



**(viii) R.S. Saini Vs. State of Punjab and Others**

**(JT 1999 (6) SC 507);**

**(ix) Bank of India Vs. Digale**

**Suryanarayanan (1999 (5) SCC 762;**

**(x) Parma Nanda Vs. State of Haryana & Ors. SLP (Civil) no. 6998 of 1988;**

in support of their contention that the Tribunal's power of judicial review is very limited; it should not interfere in respect of appreciation of evidence, it is only in respect of perverse decisions, or those which are based on no evidence that the Tribunal has a cause of action to interfere. In this case, the applicant has not disputed that he had written a letter to the station master, Lalkuwan asking him to accept credit notes beyond Rs. 8 lac. Admittedly, he did not have an authority to issue such a letter in the face of express instructions of G.M. (Commercial). It is also a fact that he could not rely on the verbal instructions of some one, who did not have any authority to issue such instructions and who subsequently did not admit to have issued such instructions. He has sought to insinuate that no loss had been caused to the railways. He himself has mentioned in his memorial to the President of India that the finance department was to blame for the loss of the railways in the matter. According to him, it was a conspiracy amongst the trader, officials of finance wing and the office of Chief Commercial Superintendent. In other words, he has admitted that heavy loss had been sustained by the Railways in extending credit notes facility to the traders notwithstanding his plea to the contrary in this application.

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14. We find that there are no violations of statutory rules, or principles of natural justice to justify any interference by us, nor it is a case of no evidence.

15. In the circumstances, the application is dismissed. No costs.

  
**(Dr. A.K. Mishra)**  
**Member-A**

  
**(Ms. Sadhna Srivastava)**  
**Member-J**

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