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Central Administrative Tribunal, Lucknow Bench, Lucknow.

Original Application No. 474/2007, 487/2005 and 568/2005

This the 16th day of September 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member (A)

(O.A.NO. 474/2007)

Virendra Singh aged about 47 years son of Sri Avadh Narain Singh, r/o Mohalla- New Basti, Near Khaira Mandir, Post Office- Bargon, District- Gonda (posted as Voluntary Ticket Collector (VTC), at Basti Railway Station.

Applicant

By Advocate: Sri A.R. Masoodi

Versus

1. General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager (Commercial), North Eastern Railway, Lucknow Division, Lucknow.

Divisional Railway Manager (Personnel) N.E.R., Lucknow.

Respondents

By Advocate: Sri Azmal Khan

(O.A.NO. 568/2005)

Alok Prakash Srivastava aged about 43 years son of Sri S.P.Srivastava, resident of 225, Bargaon, Kotwali Nagar, Gonda.

Applicant

By Advocate: Sri Praveen Kumar

Versus

Union of India through

1. General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.
3. The Assistant Security Commissioner, R.P.F., North Eastern Railway, Gonda.

Respondents

By Advocate: Sri Prashant Kumar for Sri Deepak Shukla

(O.A.NO. 487/2005)

Kamlesh Kumar Mishra aged about 41 years son of Sri Hari Saran Mishra, resident of lakshmanpur Haribansh Post- BHabbuni Kanoongo, Gonda.

Applicant

By Advocate: Sri Praveen Kumar

Versus

Union of India through

1. General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager (Commercial), North Eastern Railway, Lucknow Division, Lucknow.

Respondents

By Advocate: Sri S. Lavania

ORDER

BY HON'BLE MS. SADHNA SRIVASTAVA, MEMEBR (J)

Common question of law and facts arise for adjudication in the above three Original Applications, therefore, they are being disposed of by a common judgment.

The facts are like this: The Railway Ministry introduced a Scheme that Volunteers be drawn from amongst (i) wards of retired employees (ii) wards of railway employees (iii) bonafide scouts/guides to be engaged as Volunteer Ticket Collector (In short VTC) on payment of Rs. 8/- to work for four hours as and when deputed to work as pocket allowance in order to assist the regular railway ticket checkers in case of exigency at the earmarked Railway Stations with a view to improving detection of ticket less travel at the various exit points. The object was to intensify the ticket checking arrangements. In due course of time, the persons so engaged began to claim the status of a railway employee. There were rounds of litigation. The Supreme Court in ***Civil Appeal No. 1015/95 Union of India Vs. S.C. Biswas*** by judgment dated January 5, 1995 laid down that such persons were neither on railway establishment nor casual labour. They have never been



conferred with temporary status. However, the Apex Court approved the finding of Tribunal that these persons be considered for absorption as Group 'D' employee subject to availability of vacancy. The same view was reiterated by the Apex Court in its order dated 27.7.1995 in Special Leave Petition (Civil) Nos. 17971-71 A of 1993, 4995 of 1994 and others. Therefore, the applicants were offered regular appointment on Group 'D' post in the year 2001 but they declined to accept the same for their own reasons. At a later date, the competent authority has passed discharge orders in respect of the applicants. Virendra Singh (O.A.No. 474/2007) was discharged vide order dated 23.10.2007, Kamlesh Kumar Mishra (O.A.No. 487/2005) was discharged vide order dated 25.5.2005 and Alok Prakash Srivastava (O.A. NO. 568/2005) was discharged vide order dated 30.3.2003. Aggrieved with these orders, they have filed the above OAs.

3. We have heard the learned counsel for parties and perused the record.

4. In Civil Appeal No. 1015/95, **Union of India Vs. Sagar Chand Biswas and others**, the Apex Court has laid down regarding status of V.T.C. as follows:-

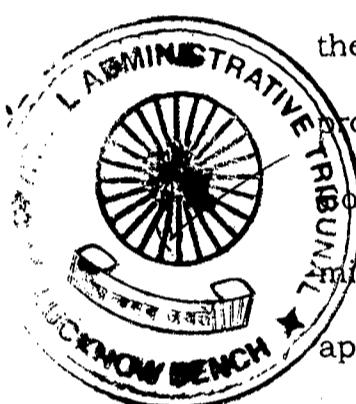
"Therefore, this is a special type of status, which is conferred by the Tribunal, perhaps under the establishment rules of the railways. But what is important is that the Tribunal desired that these respondents should be considered for Group 'D' post as and when vacancies arise. The ultimate effect of this is that the respondents will continue to work as volunteers on payment of out of pocket allowance at the rate of Rs. 8/- per day, but as and when vacancies arise in Group 'D' post, they should be considered for absorption in accordance with the inter-se-seniority between the volunteers. Nothing further than that is contemplated by the impugned order of the Tribunal. We were shown an order of South Eastern Railways dated 27th January, 1994, wherein 12 volunteers of the ticket checking branch, the very respondents, had been called for screening test for absorption in Group D vacancies and they have been required to undergo pre-recruitment medical examination. This shows that the order of the Tribunal is being

implemented by the concerned Railway Administration. In view of the above, since the position now stands clarified and any doubt which existed now stands removed by this order, nothing further remains to be done and we do hope that the question of absorption of the respondents, if not completed by now, will be completed expeditiously...." (emphasis added).

5. The Full Bench, on a reference made by a Division Bench in the above three cases has laid down in para 29 of judgment dated 31.3.2009 that Railway Servants (Disciplinary and Appeal) Rules, 1968 would not apply to VTCs engaged under the Scheme of 7.7.1983.

6. The status of VTCs thus, is neither that of a casual labour as defined in chapter 20 of IREM nor that of any employee under the statutory rules. Thus, they are not Civil post holder. If so, protection of Article 311 will not be available to them. Consequently, an order of disengagement on the ground of misconduct can be certainly passed after a show cause notice. The applicants have been accorded special type of status for purpose of consideration for absorption in Group 'D' post subject to availability of vacancy. The applicants have already declined offer for Group 'D' post. Therefore, the only question is whether the disengagement order has been passed fairly after consideration of the facts and explanation offered by the applicants. Before, we deal with the same, it may be mentioned that this Tribunal, in the exercise of power of judicial review cannot act as an appellate authority. In our opinion, we can exercise the same power as available to us while dealing with the punishment awarded in disciplinary proceedings. It would mean that we have to find out whether it is a case of no evidence on which the finding of misconduct has been arrived at or the findings are perverse. We cannot reassess the evidence.

7. Judging in the light of above, we are of the opinion that the applicant did not enjoy immunity from action against them if they



were guilty of misconduct which tarnished the image of the railway administration or prejudicially affected its working. If they failed to maintain absolute integrity, devotion of duty or their conduct was unbecoming, action could certainly be taken against them. Since the applicant did not enjoy the status of an employee as discussed above and neither the disciplinary rules nor the provision of constitution were applicable to them, they can be dealt with only after following the principles of natural justice. It would mean that issuance of show cause notice inviting their explanation in respect of alleged misconduct and thereafter pass a reasoned and speaking order in a fair manner, whether the order is stigmatic or not.

8. Taking up the order of disengagement dated 23.10.2007, in respect of Virendra Singh (O.A.No. 474/2007), the allegation was that he displayed lack of integrity in as much he accepted money from a ticketless traveller. The money was recovered also. The explanation offered by the delinquent was contradictory. Once he stated that the money was given by a member of Vigilance team. Second time, he denied having received the money. On facts, the competent authority concluded that the delinquent had committed misconduct.

9. Alok Prakash Srivastava (O.A. No.568/2005) was initially disengaged by order dated 8.4.2004. However, the order was set aside by a Division Bench of this Tribunal in O.A. No. 161/2004 decided on 3.2.2005 with a direction to pass an order after reconsidering the explanation of the applicant. Pursuant to the said order, the delinquent was given personal hearing on 14.3.2005 and the facts of the incident dated 18.11.2003 were reconsidered and final order passed on 30.3.2005. Thereafter, the competent authority came to the conclusion that the delinquent had not come to the enquiry office where he was deputed on

18.11.2003 from 6 to 10 hrs. Instead, he was found checking the luggage of passengers in an unauthorized manner with a view to extorting money from them. It was being done by the delinquent in the company of one Dinesh Chandra Srivastava who had already been disengaged earlier from the work of VTC on 14.11.2003.

10. Kamlesh Kumar Mishra (O.A.No. 487/2005) was initially disengaged vide order dated 7/11.11.2003. However, in O.A. No. 163/2004, the said order was quashed by judgment dated 6.4.2005 with a direction to reconsider the matter. Pursuant to the order of Tribunal, the delinquent was given personal hearing on 5.5.2005 and the impugned order was passed on 25.5.2005 disengaging the delinquent from the work of VTC. The competent authority has considered the incident dated 3.9.2003 carefully. The facts of the incident are like this: The delinquent was not on duty on 3.9.2003. He was however, found in the enquiry office at Gonda Station demanding Rs. 80/- from two illiterate bonafide passengers who were holding ticket No. 89165980 from Delhi to Gonda on the ground that they were not holding ticket for superfast train while the fact was that the ticket was issued for superfast train. Another VTC on duty in the enquiry office at Gonda supported the incident. Taking into account the facts of incident and after analyzing the available evidence, the competent authority concluded misconduct on the part of delinquent. Therefore, he was disengaged vide order dated 25.5.2005.

11. We are of the considered opinion that the above three impugned orders are based on evidence. It can not be said that there was no evidence in support of the impugned orders. We also cannot treat the above orders as perverse. We do not possess jurisdiction to reassess the evidence and draw our own

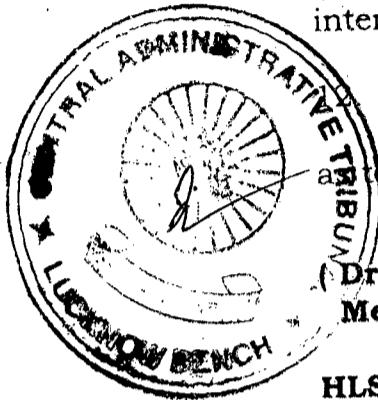


conclusion. In our opinion, the conclusion drawn is fair and one which a person of ordinary prudence will draw on the given facts and circumstances. Therefore, we do not find any reason to interfere.

Done

Resultantly, all the three O.A.s ~~are~~ dismissed without any order

as to costs.



HLS/-

Dr. A.K. Mishra
Member (A)

16/9/09

Isadhna Srivastava
Member (J)

Certified Copy

16/9/09
Section Officer (Judicial)
Central Administrative Tribunal,
Lucknow Bench, Lucknow

(i) Date of Order *16/9/09*
(ii) Date of Preparation *17/9/09*
(iii) Date of Receipt *18/9/09*