

**Central Administrative Tribunal
Lucknow Bench Lucknow**

**Original Application No.164/2007
This, the 30th day of May 2008**

HON'BLE MR. M. KANTHAIAH, MEMBER (J)
HON'BLE MR SHAILENDRA PANDEY, MEMBER (A)

Mukesh Behari Srivastava, aged about 45 years, son of Late Sri Preen Behari Lal, presently posted as Commercial Superintendent Grade-I, Aishbagh Station, N.E. Railway, Lucknow and resident of 48-Dhaudpur, Gorakhpur, U.P.

Applicant.

By Advocate:- Shri Pankaj Nath.

Versus

1. Union of India through Secretary to Government, in the Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. The Railway Board through its Chairman, Railway Bhawan, New Delhi.
3. The General Manager, North Eastern Railways, Head Quarters, Gorakhpur.
4. The A.D.R.M. (Additional Divisional Railway Manager/The Appellate Authority, North Eastern Railways, Lucknow.
5. The Senior Divisional Commercial Manager, N.E. Railway, Lucknow.

... Respondents.

By Advocate:- Shri Ajmal Khan.

ORDER

BY MR. M. KANTHAIAH, MEMBER (J)

The applicant has filed the OA under Section 19 of the Administrative Tribunal Act, 1985 with a prayer to quash the impugned order Dt. 29.09.2006/27.10.2006 Annexure-1, passed by Respondent No.5 imposing the punishment reverting him from the general scale of pay of Rs. 6500-105000/- to one stage lower at Rs. 5500-9000/- at the basic pay of Rs.5500/- with cumulative effect for the period of three years and also the Appellate order Dt. 08.02.2007,

Annexure-2 passed by the Respondent No.4, upholding the orders of Respondent No.5 and also initiated disciplinary proceedings against him including the charge sheet Dt. 16.09.2004 covered under Annexure-A-4 alongwith consequential benefits.

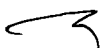
2. The respondent have filed Counter Affidavit, denying the claim of the applicant stating that the order passed by Respondent 5 and 4 and also the charge sheet covered under Annexure-A-4 are in accordance with rules and no justified grounds are there for interference of the Tribunal.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and also reiterated his pleas in the OA.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.


6. The admitted facts of the case are that the applicant while working on the post of Deputy Station Superintendent (Commercial) at Gorakhpur, was posted in the Booking Office, Gorakhpur in place of Shri Shiv Murti Rai Sharma who was posted in place of the applicant as Deputy Station Superintendent (Commercial), Gorakhpur. Annexure-A (ii) Dt. 17.02.2003 is the copy of such posting orders. Accordingly, the applicant took up his new assignment on 19.02.2000 from Shri Sharma. Subsequently, on the letter/complaint Dt. 22.09.2003 (Annexure-3) of Shri Shiv Murti Rai Sharma, the then Booking In charge in the Booking Office, Gorakhpur in respect of non-taking of charge from him, the Respondent No.5, vide order Dt. 24.09.2003 (Annexure-4) placed the applicant under suspension in contemplation of disciplinary proceedings and the applicant also handed-over the charge of Booking Office to Sri T.K. Acharya, Commercial Superintendent Grade-I covered under Annexure-5 Dt. 25.09.2003. After one and half months, when the applicant visited Respondent No.5 in her office on 12.11.2003 at Lucknow, whereupon, he received a sealed cover containing



two separate orders, one order Dt. 12.11.2003, which is in respect of revocation of his suspension order and another order Dt. 12.11.2003 (Annexure-7) sparing him for joining his duties as Station Superintendent at Golagokarannath. But the applicant did not join at Golagokarannath stating that it was not practicably possible to him to join there, without handing over the charge of Deputy Station Superintendent, Gorakhpur which amounted to Corers / Millions of rupees and on such ground, he addressed the letter Dt.19.11.2003 Annexure-A-8, requesting Respondent No.5 to provide him the reliever who may take charge of printed card tickets etc. pertaining to the Booking Office, NE Railway, Gorakhpur for compliance of the order Annexure-A-7 Dt. 12.11.2003. In the said letter he also informed the Respondent No.5 that he was trained in the commercial wing and he knew nothing about the work of Station Superintendent Grade-I and he was not having specialized training of the said job and on that ground he stated that he could not perform the duties of Station Superintendent Grade-I.

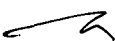
7. The Respondent No.5 issued a charge sheet Dt. 27.02.2004 (Annexure-9) alleging that despite expiry of seven months from the date of his joining at Booking Office, Gorakhpur, he had not taken over the charge from Shri Shiv Murti Rai Sharma, for which the applicant submitted his reply denying the allegations and charges leveled against him. Annexure-10 Dt. 18.10.2004 is the copy of said reply. Not being satisfied with his reply, when the respondents have initiated disciplinary proceedings, by appointing an enquiry officer that the applicant he participated in each and every date and the said enquiry is still pending at the stage of examination of prosecution witnesses till October 2006 and, there after, no further date of enquiry has been fixed is not in dispute.

8. During the pendency of the First enquiry, the Respondent No.5 issued another charge sheet on 16.09.2004



(Annexure-A-13) alleging unauthorized absence from duty on the post of the applicant by not joining at the transferred place i.e. the Station Superintendent, Golagokarannath. The applicant has submitted his reply Dt. 18.01.2005 (Annexure-A-14) denying the charges leveled against him. Thereafter, on 09.03.2005, the applicant submitted and reported for his duties at Golagokarannath after he met the Chief Commercial Manager and apprised his position for not joining there. Thereafter, he was transferred and posted as Chief Superintendent Grade-I, NER, Basti. Upon which, on 10.03.2005, he was relieved from Golagokarannath and joined at Basti on 12.03.2005 as Commercial Superintendent Grade-I. Annexure-15 and 16 are the copies of transfer and posting orders of the applicant Dt. 09.03.2005 and relieving order from Golagokarannath Dt. 10.03.2005 respectively.

9. In the meantime, the respondent authorities appointed Sri Gayassuddin, Divisional Commercial Inspector, Gorakhpur who is in the same rank as the applicant to conduct the second charge sheet enquiry. It is also the case of the applicant that Sri Gayassuddin, enquiry officer of the second charge sheet is also one of the prosecution witnesses in the earlier enquiry pending against him. After completion of the enquiry, the Respondent No.5 sent the copy of the enquiry report Dt. 01.03.2006 filed by Sri Gayassuddin for submission of comments of the applicant and Annexure-19 is the copy of the said letter together with the enquiry report. The applicant has submitted his comments to the report of enquiry officer and sought for acquittal from the charges leveled against him. Annexure-20 Dt. 02.08.2006 is the copy of such letter of the applicant. Thereafter, the Respondent No.5 passed orders covered under Annexure-A-1 Dt. 29.09.2006 under which, he imposed punishment reverting the applicant from general scale of pay of Rs.6500-10500/- to one stage lower at Rs.5500-9000/- and accordingly directed for fixing of his basic pay at



the initial scale of Rs. 5500/- for the period of three years with cumulative effect.

10. Against the said punishment order Annexure-1, when he filed O.A.No.558/2006 on the file of this Tribunal, the matter was disposed of at admission stage with a direction to the applicant to exhaust the departmental remedy first and if he was aggrieved even after exhausting such remedy, he may come to the Tribunal. In respect of the claim of the applicant for staying the impugned order, the Tribunal also directed him to make such request before the appellate authority which would consider the same in accordance with law and rules as expeditiously as possible. In pursuance of the direction of the Tribunal, the applicant preferred an appeal on 19.12.2006 and also sought for stay of the operation of impugned order Annexure-A-1. Annexure-23 is the copy of the appeal. Before filing appeal and immediately after disposal of OA.No.58/2006, the applicant also made representation to the respondent authorities requesting them not to implement the impugned order of punishment covered under Annexure-A-1 stating that he is going to file appeal before the authorities. Annexure-A-22 is the copy of the representation Dt. 06.12.2006. Thereafter, the Respondent No.4 passed the orders Dt. 08.02.2007 (Annexure-A-2) confirming the punishment imposed by the Respondent No.5 covered under Annexure-A-1. Against the orders passed by Respondent No.5 and 4 covered under Annexure-A-1 and Annexure-A-2 respectively, he filed this OA on 26.04.2007, challenging the punishment of reversion imposed by the disciplinary authority (Annexure-1) and the orders of the appellate authority (Annexure-2) and also questioned the validity of charge sheet Dt. 16.09.2004 (Annexure-A-4) and also the entire disciplinary proceedings initiated basing on such charge sheet.

11. The applicant has challenged the impugned orders covered under Annexure-1 and Annexure-2 and also the charge sheet Annexure-4 and also the disciplinary

proceedings based on such charges on the following points which are required for consideration for deciding the claim of the applicant.

I. Without completion of the enquiry based on the earlier charge sheet Annexure-A-9 Dt. 27.02.2004, initiating subsequent enquiry based on the impugned charge sheet Annexure-4 Dt. 16.09.2004 is not at all maintainable.

II. The enquiry conducted by Sri Gayassuddin, as enquiry officer basing on impugned charge sheet Annexure-4 is void-ab-initio and in a nullity, since he was the complainant / prosecution witness in the enquiry proceedings initiated on the first charge sheet Dt. 27.04.2004.

III. that the impugned charges sheet Annexure-4 Dt. 16.09.2004 and disciplinary proceedings conducted on such charge sheet are liable to be quashed.

IV. that the impugned punishment order covered under Annexure-1 Dt. 29.09.2006/27.10.2006 passed by Respondent no.5 is arbitrary, malafide and discriminatory and liable to be quashed.

V. that the orders of the appellate authority Respondent No.4, covered under Annexure-2 Dt. 08.02.2007, upholding the orders of Respondent no.5 is perverse and without applying mind and liable to be set aside.

VI. To what relief.

Rest grounds are discussed below:-

Point No.1:-

The charges leveled against the applicant under the impugned charge sheet Annexure-4 is that he did not join at Golagokarannath (till now) as per the orders Dt. 12.11.2003 (Annexure-7) and as a result of his absence for more than 10 months without any sanction of leave, hindrance has been caused in the working of the administration and he thus violated Rule-3 (i) (ii) and (iii) of the Railway Service (Conduct) Rules, 1966. Coming to the allegation of the earlier charge sheet (Annexure-9) in respect of which enquiry proceedings are

still pending relating to the charge of not joining at Booking Office at Gorakhpur on 19.03.2003, the applicant had not taken over the charge of the tickets from his predecessor Sri S.M.R. Sharma and another charge that on 27.02.2004 evening, the applicant created galata at the booking office, Gorakhpur and lowered down the image of the administration, which also amounts to violation of Rule 3.1 (ii) and (iii) of the Railway Servants (Conduct) Rules, 1966. From both these charge sheets Annexure-9 and Annexure-4, it is clear that the date of incident place and also commission of officers or allegations are entirely different and distinct and there is no material to connect with each other. In such circumstances, causing of any prejudice to the applicant for initiating enquiry based on 2nd charge sheet Annexure-4 is not at all maintainable and justified and thus there is no validity in the arguments of the applicant in raising objection on such count. Hence this point is decided against the applicant.

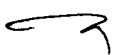
Point No. II:-

It is an undisputed fact that Sri Gayassuddin was one of the complainant against the applicant in respect of charge that on 27.02.2004 evening at the booking office, Gorakhpur the applicant alongwith others created galata and also closed booking counters and thus lowered down the image of the administration and Annexure-9 page -51 and 52 is the copy of such complaint of Sri Gayassuddin. He was also cited as one of the witness and his complaint/report is also shown as one of the document in the said charge sheet Annexure-9 to prove the charge against the applicant. After supply of such charge sheet and all other connected documents and also after commencement of disciplinary enquiry proceedings against the applicant, the impugned charge sheet Annexure-4 has been issued to the applicant and thereafter Sri Gayassuddin, was appointed as an enquiry officer, to conduct enquiry against the

applicant basing on subsequent charge sheet Annexure-4. On the date of appointment of Sri Gayassuddin as enquiry officer for the charge sheet Annexure-4, the applicant was aware that in earlier enquiry proceedings, the said Sri Gayassuddin was cited as procession witness, to prove the charges against him therein and inspite of such knowledge, he did not raise any objection or protest, for appointing Sri Gayassuddin as enquiry officer against him. Similarly, even during enquiry proceedings also, the applicant did not raise his observation finger against the enquiry officer, Sri Gayassuddin in conducting proceedings against him, on the ground that he was one of the prosecution witness against him in earlier enquiry. Before completion of enquiry proceedings, an opportunity was given to the applicant for his defence and at that time also the applicant did not point out any such objection against the enquiry officer Sri Gayassuddin, when the disciplinary authority supplied copy of enquiry report for his explanation/objection the applicant submitted his reply covered under Annexure-20 Dt. 2.8.2006 in which he did not say any thing against enquiry officer Sri Gayassuddin, stating that any prejudice has been caused to him.

12. All the above circumstances clearly shows that the applicant kept quiet till the completion of the enquiry and also, subsequently while submitting explanation to enquiry report covered under Annexure- 20 Dt. 2.08.2006, having done this, now taking a plea of prejudice having been caused to him as the enquiry officer Sri Gayassuddin was a prosecution witness in the earlier enquiry is only an after thought and developed version and further he is estopped to take such stand against the enquiry officer at this belated stage. Thus finding fault against the enquiry officer and his enquiry report Annexure-A-19 at page-104 to 106 is not at all maintainable and thus this point is decided against the applicant.

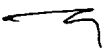
Point NO.III:-



The applicant has also challenged the charge sheet Annexur-4 and also consequential enquiry proceedings. But admittedly, it is not the case of the applicant that while supplying charge sheet, the disciplinary authority did not supply the copy of charges, the statement of imputations and the list of witnesses and documents. Similarly, it is not the case of the applicant that the misconduct or misbehavior in support of each article of charge leveled against him is not definite and distinct and without any such lapses, finding fault with the charge sheet or charges made there in is not at all maintainable for questioning its validity in respect of enquiry proceedings conducted against the him. It is not the case of the applicant that the enquiry officer did not follow the procedure while conducting the proceedings or no opportunity was provided to him to defend his case properly. It is also his case that there was any violation of principles of natural Justice, while conducting the enquiry and thereafter. Without pointing any such defects his request for quashing the enquiry proceedings against him based on Annexure-A-4 charge sheet is not at all maintainable, hence this point is decided against the applicant.

Point NO. I to V:-

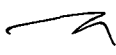
Admittedly, the charge sheet issued against the applicant covered under Annexure-4 is in respect of major penalty. After the enquiry, the enquiry officer filed his report stating that the charges levelled against the applicant are all proved. Thereafter, the disciplinary authority (Respondent No.5) supplied copy of enquiry report to the applicant and also sought explanation under Annexure-A-19 under Railway Service (discipline & Appeal) Rules, 1968. After receiving the same, the applicant also submitted his explanation covered under Annexure-20 Dt. 2.8.2006. The disciplinary authority (Respondent No.5) considered the said remarks/ explanation of the applicant



but did not accepted any of the explanations of the applicant and upon which, he imposed punishment reverting him from the general scale of pay Rs. 6500-10500 to one stage lower scale of pay of Rs. 5500-9000 at the basic pay of Rs. 5500/- with cumulative effect for a period of three years. The punishment imposed against the applicant is within the purview of major penalties. Thus, the claim of the applicant in challenging the punishment imposed by disciplinary authority (Respondent No.5) covered under Annexure-A-1 Dt. 29.09.2006/27.10.2006 is not at all maintainable.

13. The applicant also challenged the orders of appellate authority covered under Annexure-A-2 Dt. 8.02.2007 stating that the authority did not apply his mind while rejecting the appeal and confirming the order passed by disciplinary authority covered under Annexure-A-1. On perusal of Annexure-A2 Dt. 8.2.2007 passed by Respondent NO.4, he has given clear finding stating that he did not accept the defence taken by the applicant as he was in possession of charge of various tickets and other items as such he did not go for joining his duties at Golagokarannath after his transfer, was not acceptable for the reason that it was in violation of the order of administration. He also further stated that his first and foremost duty was to join at Golagokarannath after having been spared for Golagokarannath station and arrangements would have been made by the Administration afterwards for handing over/ taking over of the charge.

14. Admittedly, it is not at all the case of the applicant that he did not join at Golagokarannath for about 10 months after he was spared on 12.11.2003 covered under Annexure-7 on which this impugned charge sheet Annexure-A-4 has been issued to the applicant. The only defence he has taken in the enquiry and also in his explanation is that without making arrangements for handing over of his charge his joining at Golagokarannath is not at all possible, and upon



which the appellate authority also given his finding stating that such ground of the applicant is not at all justified. Thus, the appellate authority after discussing the defence of the applicant has accepted the finding of the enquiry officer and also confirmed the order passed by the disciplinary authority including punishment. (It is not within the scope of the Tribunal to interfere with the punishment imposed by the disciplinary authority and appellate authority, if the said punishment is within the purview of the said penalties). Thus the arguments of the applicant in finding fault with the orders of the appellate authority (Respondent No.4) covered under Annexure-A-21 is not at all maintainable and justified hence, this point is decided against the applicant.

Result:-

Point NO. I to V having been decided against the applicant thus, there are no merits in the claim of the applicant in challenging the impugned orders passed by Respondent No. 5 and 4 covered under Annexure-A-1 and Annexure-A-2 respectively and also the charge sheet Annexure-A-4 and disciplinary proceedings basing on such charge sheet and as such OA is liable for dismissal.

In the result, OA is dismissed. No costs.


(SHAILENDRA PANDEY)
MEMBER (A)


(M. KANTHAIAH)
MEMBER (J)

30.05.2008

/amit/