

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW**

**Original Application No 460 of 2007**

**Order Reserved on 23.04.2014**

**Order Pronounced on 15/5/2014**

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

Chhotelal Gupta,  
Aged about 52 years,  
son of Raurdeen Gupta,  
Resident of Village Darbapur,  
Post Maharani Paschim district Sultanpur.  
Presently working as Assistant Station Master,  
in the Office of Station Superintendent,  
Northern Railway, Sultanpur.

**Applicant**

**By Advocate Sri Praveen Kumar.**

**Versus**

1. Union of India through its General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Additional Divisional Railway Manager-II, Northern Railway, Hazratganj, Lucknow.
4. Senior Divisional Operating Manager, Northern Railway, Sultanpur.

**Respondents**

**By Advocate Sri B. B. Tripathi.**

**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) To pass appropriate orders or directions quashing the impugned punishment orders dated 12.2.2006, appellate order dated 4.9.2006 and the order passed on the revision petition dated 16.4.2007 as contained in Annexure No. 1, 2 and 3 to the original application with all consequential service benefits.
- (ii) This Hon'ble Tribunal may kindly be pleased to direct the respondents to treat the applicant in continuous service with all consequential service benefits as if the aforesaid punishment orders have never been passed and the applicant be given all such service benefits which would have been getting in normal and routine course.
- (iii) This Hon'ble Tribunal may further be pleased to pass such other orders which are found just fit and proper under the circumstances of the case.



(iv) This Hon'ble Tribunal may also be pleased to allow the cost of the original application."

2. The brief facts of the case are that the applicant was working with the respondents organization, was served with a charge sheet and in pursuance of the said charge sheet after due enquiry, the punishment was imposed upon the applicant vide order dated 10.2.2006 whereby the applicant pay has been reduced from Rs. 5500-9000 to the scale/grade of Rs. 4500-7000 for a period of three years with postponing future increments. The applicant preferred the appeal which was also rejected vide order dated 4.9.2006 passed by the ADRM and the revision petition was also rejected vide order dated 16.4.2007. The learned counsel for the applicant has categorically pointed out that all the aforesaid orders are passed mechanically and are perverse from material on record which have been impugned in the present O.A. The learned counsel for the applicant has also urged that the applicant was served with the disagreement memo along with finding of the enquiry officer's report. The applicant has also replied to the disagreement memo on 29.12.2005 in which it has categorically pointed out by the applicant that the charges which are said to have been proved on the basis of the reasons indicated in the disagreement memo cannot be said to have been proved and there is no substance or evidence in the disagreement memo on the basis of which the charges can be proved. Apart from this, it is also vehemently argued by the learned counsel for the applicant that he has not committed any misconduct by demanding and accepting Rs. 350/- from the decoy against the due fair of Rs. 336 for two Male Express Ticket Ex-Musafirkhana to Ludhiana. Not only this, the learned counsel for the applicant has also submitted that the provisions of paragraph 704 and 705 of Indian Railway Vigilance Manual were not followed. As such, the impugned order is liable to be quashed.

3. The respondents have filed their detailed counter reply and through counter reply, the respondents indicated that the applicant has

committed gross misconduct in demanding illegal gratification and there was a shortage of government cash in the cash box maintained by the applicant during his duty which was detected during surprise check conducted by the Vigilance Team and thereafter, the applicant was served with the charge sheet for the serious lapses. Apart from this, it is also argued by the learned counsel for the respondents that the punishment which was imposed is strictly as per relevant provisions of the D&AR Rules, 1968 for the malpractices found. The applicant was afforded an opportunity to prefer his appeal as well as the revision against the punishment order and after considering each and every aspect, the punishment has been awarded and there is no infirmity or illegality as such, it does not require any interfere by the Tribunal.

4. The respondents have also filed the supplementary counter reply and through supplementary counter reply, it is once again reiterated by the respondents that the applicant was afforded reasonable opportunity to defend his case right from the stage of the enquiry officer up to the stage of the revisional authority and there is no procedural lapses on the part of the respondents. It is also indicated by the respondents that a surprise check was done by the Vigilance team when the applicant was on duties for issuing the railway tickets and he was caught read handed by the aforesaid team for the serious lapses committed by him during the duty hours. As such, the punishment was awarded to the applicant.

6. On behalf of the applicant, the rejoinder as well as the supplementary rejoinder is filed and through supplementary rejoinder, the applicant filed two documents indicating there in that the disciplinary authority sought approval of the General Manager Vigilance before imposing punishment upon the applicant through letter dated 5.1.2006 and in reply to the said letter, on behalf of the General Manager Vigilance through his letter dated 3.2.2006, it is advised to issue an NIP and accordingly, the punishment order is issued on 10.2.2006.

7. Heard the learned counsel for the parties and perused the record.

8. The applicant was working with the respondents organization was served with the charge sheet and the statement of Article of charges are mentioned as under:-

**"STATEMENT OF ARTICLE OF CHARGES ON THE BASIS OF WHICH ACTION UNDER D&AR IS TO BE TAKEN AGAINST Sh.**

**Chottee Lal Gupta, ASM/MFKA**

Sh. Chottee Lal Gupta, ASM/MFKA while working at booking counter at MFKA on 28.11.2002 was committed grave misconduct is as much as. That he was detected to have committed following serious lapses:-

- (i) For Demanding and accepting Rs. 350/- from the decoy against the due fare of Rs. 336/- for two 2<sup>nd</sup> M/Exp tkts Ex MFKA to LDH./ Thus, he charged Rs. 14/- excess as illegal from the decoy with his malafide intention.
- (2) For having shortage of Rs. 234/- his govt cash for which he could not give any satisfactory reason.
- (3) Beside he charge Rs. 14/- excess from the decoy, but he produced Rs. 234/- short in his govt. cash. Its clearly indicates that he shifted some amount in advance to cover up his illegal transaction.
- (4) He did not declare his private cash during the duty hours thus he violation the instructions of Railway Board regarding declaration of private cash during duty hours.

By the above acts of omission and commission Sh. Chottee Lal Gupta, ASM/MFKA working under SS/MFKA failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby contravened the k provisions of Rule 3.1(i),(ii), & (iii) of Railway Service Rule/1966."

Along with the charge sheet, the statement of misconduct as well as the list of witnesses and documents were also mentioned. The applicant submitted the reply. The enquiry officer was appointed and after due enquiry, the disciplinary authority has issued the disagreement

memo. The applicant submitted the reply to the disagreement memo and while giving reply, it is indicated by the applicant that the charges leveled against him are wrong and has also indicated that the proper process of Vigilance Manual has not been followed. Apart from this, the learned counsel for the applicant has also relied certain decision of the Tribunal as well as also submitted that the decision of Hon'ble Apex court in the case of *Moni Shanker Vs. Union of India* reported in 2008 (3) SCC 484 has not been followed. The learned counsel also relied para 704 and 705 of Indian Railway Vigilance Manual.

9. Para 704 and 705 of the Indian Railway Vigilance Manual, are quoted below:-

**Para 704:** When laying a trap, the following important points have to be kept in view:

(a) Two or more independent witnesses must hear the conversation which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.

(b) The transaction should be within the sight and hearing of two independent witnesses.

(c) There should be an opportunity to catch the culprits read handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it off.

(d) The witnesses selected should be responsible witnesses who have not appeared as witness in earlier cases of the Department or the Police and are men of status considering the status of the accused. It is safer to take witness who are in government employment and of other departments.

(e) x x x xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

**"Para-705:** For departmental traps the following instructions in addition to those contained under Paragraph 704 are to be followed:

(a) The investigating officer/inspector should arrange two gazetted officers from Railway to act as independent witness as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately the services of non-gazetted staff can be utilized.

(b) The decoy will present the money which he will give to the defaulting officers/employees as bribe money on demand memo should be prepared by the Investigating Officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the G.C. notes for legal and illegal transactions, the memo thus prepares should bear the signature of the decoy, independent witnesses and the Investigating

Officer/Inspector/Inspector. The independent witness will take up position at such a place where from they can see the transactions and also hear the conversation between the decoy and the delinquent with a view to satisfy themselves that the money was demanded given and accepted as bribe a fact to which they will be deposing in the departmental proceedings at a later date. After the money has been passed on, the Investigating Officer/ Inspector should disclose the identify and demand in the presence of the witnesses to produce all money including private. Railway and bribe money the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses decoy and the accused as also his immediate superior who should be called as witness in case the accused refuses to sign the recover memo and sealing of the notes on the envelope.

(c)to(e)xxx."

10. The bare perusal of the aforesaid manual is absolutely clear that two gazetted independent witness to be included in the raid and they must be participated to hear the conversation. Admittedly , none of them had witnessed the incident or over heard the conversation which is admitted by the Inquiry Officer in the enquiry and accordingly not following of the mandatory provision and enquiry has been vitiated as held by the Hon'ble Apex Court in Moni Shanker Vs. UOI (Supra).

11. On careful consideration of the rival contentions of the parties, if an authorities is to act it has to act in a particular methodology set out in the rules and no other methodology can be adopted. The provisions of the Indian Railway Vigilance Manual read in conformity and co -jointly and violation of these mandatory provisions vitiates the enquiry and punishment awarded cannot be sustained. As per the mandatory provision, two gazetted witnesses is required to be associated with the vigilance raid. It is absolutely clear that the provision of Para 704 and 705 have been clearly violated and the Inquiry Officer has totally discarded the defence of the applicant. The departmental authorities while applying their mind to the contention raised by the applicant have not at all adverted to this legal lacuna and passed orders which cannot by any stretch of imagination be treated as speaking order.

12. It is also to be mentioned that the impugned punishment order is passed on 10.2.2006 and prior to that , the disciplinary authority has sough approval from the General Manager Vigilance in January 2006 which was accorded to him on 3.2.2006, as such, it is clear that the disciplinary authority has not applied his mind and on the dictate of the vigilance authority, passing the orders.

13. Having a cumulative effect of illegality in the enquiry, considering the violation of Para 704 and 705 of the Indian Railway Vigilance Manual, the punishment imposed upon the applicant and as affirmed in appeal and revision cannot be sustained in law.

14. Accordingly, the O.A. is allowed. The impugned orders dated 10.2.2006, 4.9.2006, and 16.4.2007 are quashed. No order as to costs.

*J. Chandra*  
(MS. JAYATI CHANDRA)  
MEMBER (A)

*V.K. Agarwal*  
(NAVNEET KUMAR)  
MEMBER(J)

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