

**Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 2/2008**

Reserved on 27.3.2014

Pronounced on 15th April 2014

**Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms.Jayati Chandra,Member (A)**

Abul Muzaffar Khan aged about 53 years son of late Sri A.H. Khan, resident of Railwayganj, District Hardoi presently posted on the post of Booking clerk, Northern Railway, Hardoi.

By Advocate: Sri Praveen Kumar Applicant

Versus

1. Union of India ,through the General Manager, Northern Railway, Baroda House, new Delhi.
2. The Senior Divisional Commercial Manager, Northern Railway, Moradabad.
3. The Divisional Commercial Manager, Northern Railway, Moradabad.
4. Divisional Railway Manager, Northern Railway, Moradabad.

By Advocate: Sri S.Verma Respondents

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- i. to quash the punishment order dated 22.3.2007 and Appellate Order dated 7.9.2007 , notice dated 14.2.2008 as annexed as Annexure No.A-1 and A-2 and A-2A to this O.A. with all consequential benefits.
 - ii. To accord all withheld promotions on account of aforesaid punishment orders with all monitory benefits.
 - iii. Any other relief , which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
 - iv. Cost of the present case.
2. The brief facts of the case are that the applicant was appointed in the respondents organization in 1982. While he was working at Saharanpur on the post of Sr. Booking Clerk, he was implicated in a Vigilance case and was also issued the charge sheet in 2004. After the

issuance of the said charge sheet, the enquiry officer was appointed and applicant also made a request for change of enquiry officer. It is also submitted by the learned counsel for the applicant that the request of the applicant for change of enquiry officer was cursorily rejected by the respondents without indicating any reasons. The applicant under compelled circumstances, participated in the enquiry and the enquiry officer found the applicant guilty of the charges and submitted enquiry report which was served upon the applicant. The applicant submitted the reply to the said report. After submission of the report of the enquiry officer, the disciplinary authority passed the orders of punishment reducing the pay of the applicant to the lower grade of pay Rs. 3200/- in the scale of Rs. 3200-4900/- until he was found fit by the competent authority and after a period of five years, from the date of the order, the same be restored to the higher grade of Rs. 4000-6000/-. The Senior Divisional Commercial Manager who is the appellate authority suo-moto enhanced the punishment from a period of five years to a period of seven years without providing any opportunity of hearing to the applicant. Apart from this, the learned counsel for the applicant has also submitted that the respondents have violated the provisions of para 704 and 705 of the Indian Railway Vigilance Manual. After the enhancement of the punishment from the period of 5 years to a period of 7 years, the respondents issued a suo-moto notice of removal from service without any basis and the applicant was asked to give reply and it is also indicated that if no representation is received within the stipulated time, it will be presumed that you have nothing to say and orders will be passed on the basis of available facts and record. The said show cause notice was given by the revisional authority i.e. the Divisional Railway Manager, Northern Railway, Moradabad. The learned counsel for the applicant has also submitted that the respondents are on the behest of the Vigilance Department and it is also alleged that the Vigilance Team has

also provided draft charge sheet to be served on the applicant and there was no occasion for the revisional authority to issue suo-moto notice for proposing to issue order of removal from service and there is no authority vested with the revisional authority to suo-moto impose the punishment of removal and enhance the punishment .The learned counsel for the applicant has also relied upon the provision of Section 19(4) of the AT Act and also alleged that the action of the respondents is malafide, based on biasness and colourable exercise of power.

3. On behalf of the respondents, the reply was filed and through reply, it is indicated that the applicant was served with the major penalty charge sheet on the basis of vigilance check. It is also submitted by the respondents that applicant while working as Senior Booking Clerk at Saharanpur, involved in a vigilance case. As per the said charge sheet, it is mentioned that he demanded and accepted Rs. 100 excess over and above the actual printed fare on three 2nd Mail Express tickets of Darbhanga. Apart from this, it is also pointed out that he produced Rs. 138/- excess in Govt. cash with unconvincing explanation. Not only this, it is also alleged in the charge sheet that on seeing vigilance team coming towards him, he removed some cash from his Govt. cash also not-cooperated in check. On the basis of the said charge sheet, the enquiry officer was appointed and enquiry was conducted . The applicant also participated in the enquiry and there is no illegality in conducting the enquiry. The applicant was also served the copy of the enquiry report and he submitted the reply. Along with the reply, the applicant denied the charges leveled against him. Considering the reply of the applicant and the report of the enquiry officer, the disciplinary authority imposed the punishment which was subsequently enhanced by the appellate authority .The suo-moto notice was issued by the revisional authority was stayed by this Tribunal vide order dated 22.2.2008. Therefore, no order was issued by the competent authority till date. The learned counsel for respondents also

submitted that scope of judicial review in regard to disciplinary proceedings is not called for and only the procedural irregularities can be looked into by the Tribunal .

4. On behalf of the applicant, Rejoinder Reply was filed and through rejoinder reply, mostly the averments made in the O.A. are reiterated and denied the contents of the Counter reply.

5. The applicant through Rejoinder reply, once again vehemently argued that it is apparent from the enquiry officer's report that he came to the conclusion that the charges stands proved against the applicant without any sufficient material and this fact was again submitted by the learned counsel for the applicant that when a request for change of enquiry officer was made, then the authorities are under obligation to pass an order indicating the reason if they are not accepting the request for change of the enquiry officer. But in the instant case, no such reason was assigned for not accepting the request of the applicant for change of the enquiry officer. It is further submitted that the respondents in a very casual manner rejected the representation of the applicant for change of the enquiry officer and it is also directed to the applicant to be present before the enquiry officer. Apart from this, it is also submitted by the applicant that there was no occasion for the revisional authority to suo-moto issue a show cause notice and proposing to pass an order of removal and again alleged that the entire action is taken on the dictate of the Vigilance team and vigilance team does not have any role to advise the disciplinary authority etc.

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

6. Admittedly, when the applicant was working in the respondents organization, was served with a charge sheet dated 12.10.2004. The said charge sheet contains following charges.

- i) That, he demanded and accepted Rs. 100 excess over and above the actual printed fare on three 2nd Mail Express tickets of Darbhanga.
- ii) That, he produced Rs. 138/- excess in Govt. cash with unconvincing explanation.
- iii) That on seeing vigilance team coming towards him, he removed some cash from his Govt. cash and thus non-cooperated in check.
- iv) That, he produced a tickets in un-cancelled and un-defected condition from his possession but disallowed the same, thus he non-cooperated in check.

7. Along with the charge sheet, the statement of imputation of charges misconduct/ misbehavior is also mentioned and it is pointed out that it was noticed that booking clerk at window No. 2 was overcharging from the passengers. As such, it was decided to send decoy passenger at window No. 2. As per plan mentioned in test check memo Sri Ram Jit Singh (decoy passenger) was asked to approach window No. 2 and purchase three 2 mail express tickets for Darbhanga. Independent witness Sri Ravinder Kumar was instructed to position himself close to the decoy passenger to overhear and watch the conversation and transactions taking place between the decoy passenger and the booking clerk. In the said statement of imputation, it is also pointed out that after the completion of transaction when the Vigilance team entered booking office after getting a positive response from decoy passenger and independent witness, proceeded towards the applicant and when the applicant saw the vigilance team approached him, he hurriedly removed some cash from his cash drawer and thereafter, he was asked to stop further transactions. The applicant was found Rs. 138 excess in his Govt. Cash. Along with said charge sheet, the list of documents and list of witnesses were mentioned in which the name of decoy passenger i.e. Ram Jit Singh and the independent witness i.e. Sri Ravinder Kumar was mentioned as list of witnesses .

After receipt of said charge sheet, the competent authority appointed

an enquiry officer vide order dated 5.8.2005. After appointment of the enquiry officer, the applicant submitted a representation to the Divisional Commercial Manager who is the disciplinary authority in the case of the applicant for change of the enquiry officer the request of the applicant was rejected by means of a non-speaking order dated 6.10.2005 indicating therein that the representation of the applicant was considered and it was rejected and he was also directed to remain present before the enquiry officer and also to cooperate. The applicant having no other option except to appear before the enquiry officer, submitted a detailed reply and requested for judicious and sympathetic consideration and also denied the charges leveled against him. The enquiry officer proceeded with the enquiry and finally came to the conclusion that the charges leveled against the applicant stands proved. The applicant submitted reply to the enquiry officer's report. After the said report of the enquiry officer, the disciplinary authority imposed the punishment of reduction in lower grade at the pay Rs. 3200 in the pay scale of Rs. 3200-4900/- until he was found fit by the competent authority and after a period of five years from the date of order, the same be restored to the higher grade Rs. 4000- Rs. 6000/- without postponing future increments. The applicant feeling aggrieved by the action of the disciplinary authority, preferred an appeal to the Appellate authority indicating therein that at the initial stage when he made a request for change of enquiry officer, the enquiry officer was not changed and reply was given by the disciplinary authority which is a non-speaking order. Apart from this, the applicant has also pointed out that he has not demanded any excess money. Only the actual fair was received and there was no independent witness as provided in para 704 and 705 of Indian Railway Vigilance Manual. The appellate authority without giving any show cause notice to the applicant enhanced the punishment from a period of 5 years to a period of 7 years and passed orders on 7.9.2007. Not only this, the revisional

authority suo-moto issued a notice upon the applicant proposing removing the applicant from service without any reason whatsoever. The applicant preferred an M.P. for interim relief as well as amendment in the OA and this Tribunal vide order dated 22.2.2008, stayed the show cause notice issued by the revisional authority. As such, no action was taken by the respondents on the said show cause notice. Undisputedly, Section 19(4) of the AT Act ,1985 reads as under:-

“Where an application has been admitted by a Tribunal under sub-section (3) , every proceedings under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

8. Not only this, in the case of **Prem Baboo Vs. Union of India and others reported in (1987) 4 ATC 727**, the coordinate bench of

this Tribunal observed that “**rejection of appeal by an appellate authority after filing of the application under Section 19 of the AT Act is nonest in view of the provisions contained under Section 19(4) of the AT Act.**”

9. In the case of **Jai Prakash Gupta Vs. Union of India and others reported in (1988) 7 ATC 947**, it is observed that “**Once the application has been filed, the respondents are barred from passing any order on the representation favourably or unfavourably.**”

10. The Hon’ble Apex Court in the case of **Union of India Vs. Prakash Kumar Tandon reported in (2009) 1 Supreme Court Cases (L&S) 394** has observed that “**Disciplinary proceedings**

were initiated against respondents and Inspector of Works in the Railway on the ground that he has accepted supply of sub-standard wood. Raid was also conducted by the Vigilance Department and subsequently, the Chief of the Vigilance Department was appointed as enquiry officer to conduct the enquiry against the respondents; held not fair."

11. The Hon'ble Apex Court also in the case of **Punjab National Bank and others Vs. Kunj Behari Mishra** reported in 1998(2) SC SLJ 117 has observed that "*Whenever the disciplinary authority disagrees with the findings of the inquiring authority on any article of charge and records its own findings, then reasons for such disagreement must be recorded and the delinquent officer must be given an opportunity to represent his case.*"

12. Not only this, it is also to be noted that if a request is being made for change of enquiry officer, the authority should pass a reasoned and speaking order which has not been done in the instant case. The bare reading of provision of para 704 and 705 of Indian Railway Vigilance Manual is absolutely clear and the same is reproduced 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
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

"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 prepared 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)
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 XXXXXX."

13. In the instant case, it is explicitly clear that the applicant was served with a charge sheet. He submitted a request to the authorities for change of enquiry officer. Request of the applicant was cursorily rejected by the authorities without indicating any reason as to why the authority will not change the enquiry officer and after that applicant participated in the enquiry. The disciplinary authority has passed the order imposing certain punishment upon the applicant and the appellate authority enhanced the punishment without giving any

show cause notice to the applicant and thereafter the revisional authority suo-moto issued a show cause notice for proposing to issue removal order. This all shows the malafide act of the respondents and non-application of mind.

14. Considering the submissions made by the learned counsel for the parties, we deem it appropriate to interfere in the present O.A. Accordingly, the impugned punishment order dated 22.3.2007, Appellate order dated 7.9.2007 and show cause notice dated 14.2.2008 are quashed. The applicant is entitled for all consequential benefits. The respondents are at liberty to proceed from the stage of charge sheet after appointing another enquiry officer and conduct the enquiry

15. With the above observations, O.A. is allowed. No order as to costs.

J. Chandra
(JAYATI CHANDRA)

MEMBER (A)

Navneet Kumar
(NAVNEET KUMAR)

MEMBER (J)

HLS/-