

Central Administrative Tribunal, Lucknow Bench, Lucknow  
Original Application No. 130/2008

This the <sup>th</sup>20 day of December, 2013

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

Krishna Kumar aged about 45 years son of Mahendra Prasad r/o  
165, Andhiyari Bagh, South Gorakhpur.

Applicant

By Advocate: Sri A.Moin

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Addl. Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.
3. Senior Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.
4. Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.

Respondents

By Advocate: Sri D.B.Singh

(Reserved on 11.12.2013 )

**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:-

- a) to quash the impugned order dated 26.12.2007 passed by the opposite party No. 2 as contained in Annexure No.1 to the O.A.
- b) to quash the impugned order dated 20.9.2007 passed by the opposite party No. 3 as contained in Annexure No.2 to the O.A.
- c) to quash the impugned order dated 8.8.2007 passed by the opposite party No. 2 as contained in Annexure No.4 to the O.A. with all consequential benefits including arrears of pay.
- d) to direct the respondents to restore the pay of the applicant at Rs. 5100/- w.e.f. 8.8.2007 with all consequential benefits including arrears of pay.
- e) to direct the respondents to pay the cost of this application.
- f) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization and subsequently after qualifying the departmental examination, was promoted as Travelling Ticket Examiner (in short TTE) and while he was working as TTE in Train No. 5008 Dn. Ex. Lucknow to Gorakhpur, an incident took place on 2.5.2006 and it is alleged that he has given a berth to a person for his personal gains and on the basis of a complaint, a major penalty charge sheet dated 20.9.2006 was issued to the applicant. It is pointed out by the learned counsel for the applicant that in the list of witnesses indicated in the charge sheet, one Sri R.N.Singh is included, on whose complaint, the said charge sheet was given to the applicant and subsequently, the enquiry proceedings commenced but said Sri R.N.Singh i.e. the complainant failed to turn up in the enquiry proceedings despite being repeatedly summoned by the enquiry officer and subsequently, the enquiry officer has submitted the enquiry report on 12.4.2007 and on the basis of the enquiry report, the punishment was awarded to the applicant whereby, the applicant's pay was reduced at the stage of Rs. 4000/- for the period of 3 years with cumulative effect. After the said order of punishment, the applicant preferred an appeal and the said appeal was rejected by the appellate authority by means of a non-speaking order dated 20<sup>th</sup> September, 2007 as well as the revision was also rejected by means of order dated 26.12.2007. Feeling aggrieved by the said orders, the applicant preferred the present O.A.

3. The main contention of the applicant is that despite repeated reminders, the complainant failed to turn up in the enquiry and the enquiry officer proceeded with the enquiry which is a gross violation of Rule 9(17) of Railway Servants (Disciplinary and Appeal) Rules, 1968.




4. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it is pointed out by the learned counsel for the respondents that mere non- attendance of Sri R.N.Singh, i.e. the complainant, it does not lesser the gravity of his complaint and offence committed by the applicant. Apart from this, it is also pointed out by the learned counsel for respondents that after the full-fledged enquiry, the punishment was awarded to the applicant and there is no discrimination in awarding the such punishment to the applicant, as such it does not require any interference by the Tribunal. Not only this, even the appellate order and the revisionary order was passed by the authorities after considering all material available on record including enquiry report , complaint and statement recorded by the witnesses.

5. Learned counsel appearing on behalf of the applicant has filed their Rejoinder reply and through Rejoinder reply, mostly the averments made in the O.A. are reiterated.

6. Respondents counsel have also filed Supple.C.A. and through Supple. CA, no new facts were brought. Only it is submitted that the complainant Sri R.N. Singh participated in the investigation done by the Vigilance Department on his complaint and his statement was also recorded which is a part of relied upon document and indicated as RUD-4 in the charge sheet.


7. Learned counsel for the applicant has also filed Supple. R.A. to the Supple. C.A. and through Supple.R.A. it is once again pointed out by the learned counsel for the applicant that mere examining Sri R.N.Singh , the complainant, during the investigation by the Vigilance Department is not enough since the punishment is awarded to the applicant on the basis of enquiry report submitted by the enquiry officer and in the enquiry report itself the enquiry officer has indicated this fact that despite number of opportunities given to the complainant, the complainant failed to appear for



submitting his statement. As such, it is once again pointed out by the learned counsel for applicant that since the complainant himself was not examined, who is the sole complainant and on the basis of whose complaint, the punishment was awarded to the applicant, the entire punishment awarded is illegal and is liable to be quashed.

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

9. Admittedly, the applicant was working in the respondents organization and was promoted to the post of TTE and while he was working in Train No. 5008 Ex. Badshahnagar to Gorakhpur, a complaint was lodged by one Sri R.N.Singh and on the basis of the said complainant, a charge sheet was served upon him on 20<sup>th</sup> September, 2006. The bare perusal of the said charge sheet shows that for allowing a berth to the complainant, the applicant has asked for Rs. 200/- whereas the cost of ticket is only Rs. 70/-, therefore, he has claimed Rs. 130/- etc. On the basis of this allegation, the respondents have conducted an enquiry and the complaint given by Sri R.N. Singh is one of the document and Sri Singh is Regional Sports Officer, Gorakhpur was also named as one of the witness. It is needless to mention here that after the said charge sheet, enquiry was conducted and the enquiry officer issued notice to Sri R.N.Singh, Regional Sports Officer as one of the witness and fixed different dates for recording his evidence. It is also mentioned in enquiry report that the notice to the complainant was served by registered post on 2.2.2007, 14.2.2007, 7.3.2007 and 21.3.2007 but the enquiry officer without considering this fact proceeded with the enquiry without the complainant and found the applicant guilty of the offence. The learned counsel for the applicant has also taken us to the paper cuttings in regard to the conduct of the complainant. No cognizance can be taken of those paper cuttings. The Rule 9(17) of the Railway Servants (D&A) Rules, 1968 reads as under:-



“17) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross-examined by or on behalf of the Railway servant. The Presenting Officer, if any, shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.”

10. The learned counsel for the applicant has also taken us to the appellate order and has also pointed out that in terms of Rule 22 of the Railway Servants (D&A) Rules, 1968, the appellate authority is required to consider the appeal and shall pass a detailed order. The Rule 22 of Railway Servants (D&A) Rules, 1968 reads as under:-

**“22. Consideration of appeal –**

- (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
- (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-
  - (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the constitution of India or in the failure of justice;
  - (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
  - (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-
    - (i) confirming, enhancing, reducing or setting aside the penalty;
    - or
    - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.”

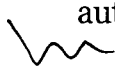
11. Now, we come to the point of no evidence. It is true that in the disciplinary proceedings, technical rules of evidence are not

applicable and court cannot enquire the correctness of findings in a disciplinary proceedings. Similarly, standard of prove in criminal cases vis-à-vis departmental proceedings is different.

12. In fact the case of **Roop Singh Negi Vs. Punjab National Bank and others reported in (2009) 2 Supreme Court Cass , 570** is one of the leading cases on the matters of departmental enquiry wherein several decisions of the Hon'ble Apex Court have been considered comprehensively. In para 16, one of such decision in the case of Union of India Vs. H.C. Goel reported in (1964) 4 SCR 718 has been referred, wherein it was laid down that the court can and must enquire whether there is any evidence at all in support of impugned conclusion and if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved. This approach will avoid weighing the evidence . Applying this test, the Hon'ble Court opined that the order of dismissal in that case was not justified because the finding in respect of relevant charge was based on no evidence.

13. It is a case of no evidence and the enquiry officer arrived at his findings against the principle of natural justice and fair play. In the case of **Kuldeep Singh Vs. Commissioner of Police and others reported in (1999) 2 SCC page 10**, cited on behalf of the applicant, it was held that judicial review is not totally barred. Although finding of guilt would not be normally interfered with but the court can interfere if the same is based on no evidence (as in the present case) or is such which could not be reached by any ordinary prudent man or is perverse or is made at the dictates of superiour authority.

14. If a thorough examination is done to the appellate order or revisionary order, it is undisputedly clear that neither the appellate authority nor the revisionary authority has considered this fact that



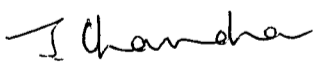
the complainant on the basis of whose complaint, the charge sheet was issued was never present in the enquiry proceedings and even the statement given before the Vigilance Department by the

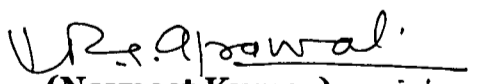
complainant was not considered in which he himself said “

“प्रश्न न. 5 - श्री कृष्ण कुमार ने पुनः आपका कृपे पर कथं उपलब्ध कराया एवं आपसे टिकट कानून के खर्च में कितने रुपये की मांग किया?  
उत्तर:- इन्हीं मुझे गौड़ा में कथं उपलब्ध कराया। हमने इनके टिकट कानून देते 500/- रुपये का नोट दिया इनके द्वारा मुझे 10/- रुपये का खर्च टिकट कानून कर दिया गया एवं 300/- नगद दिया गया। मैंने उनसे जब पूछा कि मुझे 430/- रुपये वापस मिलना चाहिए तो उन्होंने बताया कि मेरे पास अब भी चेन्ज पैसा नहीं है। कुछ टिकट कानून कि आपसे शेष 130/- वापस कर दूंगा। गोरखपुर स्टेशन पर उतरते समय मैं इनसे पैसा लेना भूल गया था पहुँचने पर मुझे याद आया कि मुझे टीटीई से 130/- रुपये और वापस मिलना था मुझे सो आभास हुआ कि इनके द्वारा मेरे साथ थिएटर करते हुये जान-बूझ कर पैसा वापस नहीं किया गया। जिस कारण मैं गुस्से में आकर इनकी शिकायत इरआध पर उप मुख्य अधिकारी आतायात की कर दिया, पुनः 10 कजे कार्यालय खुलने पर श्री कृष्ण कुमार मुझे खोजते हुये मेरे कार्यालय आये और कौले में आपका गोरखपुर स्टेशन पर कार्की तल्लाश किया, लेकिन मेरी भुलाकात माप से नहीं हुई। मैं आपसे 130/- रुपये मेरे पास कच गये थे। उसे आप रख लें।”

15. While considering the statement made by the learned counsel for the parties and also perusing the records and after thoroughly perusing the impugned orders, it is clear that the impugned orders suffer from infirmities, as such we found that these orders were passed without proper application of mind and in gross violation of statutory provisions of the Railway Servants (D&A) Rules, 1968 as well as the Principle of Natural Justice and fair play. As such, O.A. deserved to be allowed.

16. Accordingly, O.A. is allowed. The impugned orders dated 8.8.2007, 20.9.2007 and 26.12.2007 are quashed. The applicant is entitled for all consequential benefits. No order as to costs.

  
(Jayati Chandra)  
Member (A)

  
(Navneet Kumar)  
Member (J)

HLS/-