

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Original Application No 293 of 2008
Order Reserved on.6.8.2014**

Order Pronounced on 28-08-2014

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

K. K. Srivastava aged about 52 years son of Late S. N. Srivastava R/o Banglow No. 59 under Bridge, Aishbagh Lucknow.

Applicant

By Advocate Sri M. A. Siddiqui.

Versus

1. Union of India through the General Manager, N.R. Raiwlay Gorakhpur.
2. The A.D.R.M. N.E. Railway Ashok Marg Lucknow.
3. The Sr. D.C.M. N. E. Railway Ashok Marg Lucknow.
4. The D.C.M. N.E. Railway, Ashok Marg Lucknow.
5. Shri Ram Komal (E.O.) Under S.D.G.M. , N.E. Railway Gorakhpur.
6. Shri Sunil Diwakar I.I.(V/ss) Through Secretary (Vigilance) Rail Bhawan New Delhi.

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:-

- (a) The Hon'ble Tribunal be graciously pleased to quash impugned orders as contained in Annexure A-5 passed by Disciplinary Authority, Annexure A-7 order passed by Appellate Authority and Annexure A-9 order passed by Revisionary Authority.

(b) After quashing Annexure A-5, A-7 and A-9 the Hon'ble Tribunal be further pleased to pass order/ directions for consequential benefits.

(c) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of applicant.

(d) Cost of this application be awarded in favour of applicant.

2. The brief facts of the case are that the applicant joined the respondents organization in 1974 and when the applicant was on duty on train No. 9038 between Groakhpur and Lucknow and was manning coach No. A-1, As-1 and As-2. A Vigilance check was conducted and the applicant was served with a major penalty charge sheet dated 2.3.2007 and as per the Article of charges, the applicant was found responsible for producing Rs. 500/= uncounted and undeclared cash with him without valid reason. Apart from this, he was also responsible for producing Rs. 61/- short in government cash without any valid reason and he was also found responsible for carrying 5 passengers in his manned coaches and was also found responsible for not regularizing one passenger allowed by him ex Gonda even after passing more than 30 minutes when there was clear vacancy in the coach. The applicant was also provided the statement of imputation and thereafter, the inquiry was conducted by the duly appointed inquiry officer who submitted his report and the inquiry officer found the charges No. 1, 2 and 3 as proved where as charge No. 4 stands not proved. In pursuance of the inquiry officer's report, the applicant was served with a punishment of reduction to the lower post/grade/service for a period of three years in the pay scale of Rs. 5000-8000 fixing his pay Rs. 5000/- per month for a period of three years. 10 months from the date

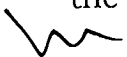
of his order with postponing future increments. The applicant has submitted the appeal and the appeal of the applicant was also rejected by the appellate authority. Not only this, the applicant submitted the representation which was dismissed by the revisional authority.

3. The learned counsel appearing on behalf of the applicant has categorically pointed out that the applicant was served with a multifarious punishment and no witnesses were examined by the inquiry office and the appellate authority has also not considered the grounds taken in the appeal. Not only this, it is also argued by the learned counsel for the applicant that the applicant was also not provided an opportunity of hearing as such there is a clear violation of principles of natural justice. Therefore, it requires interference by this Tribunal. The learned counsel for the applicant also relied upon the decision passed by the Cuttack Bench of this Tribunal and argued that the appellate authority cannot modify the order of the disciplinary authority by imposing multifarious punishments.

4. On behalf of the respondents, detailed counter reply is filed and through counter reply it is indicated by the respondents that bare perusal of the inquiry report will reveal that the inquiry has been conducted against the applicant as per Rule 9 of the Railway Servant Discipline and Appeal Rules 1968 and on the conclusion of the same inquiry officer submitted the report to the disciplinary authority and it cannot be said that the same was under the influence of the vigilance department. Not only this, it is also argued by the learned counsel for the respondents that bare perusal of the punishment order passed by the disciplinary authority would reveal that the disciplinary authority has considered each and every aspect of the matter and has passed a detailed and speaking order by reducing the

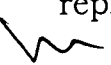
pay of the applicant and fixing the same as basic pay of Rs. 5000/- per month for a period of three years with postponing the future increment. The appellate order as well as the revisional order passed after due application of mind. Learned counsel Sri B. B. Tripathi has also pointed out that the inquiry officer has given due opportunity of hearing to the applicant before submitting the inquiry report and the appellate authority as well as the revisional authority has passed the order after considering the material available on record. It is also argued by the learned counsel for the respondents that the applicant was given due opportunity by the inquiry officer and he was associated in the inquiry and was allowed to examine and cross examine the witnesses. As such, no interference is required in the present O.A. He also relied upon certain decisions of the Hon'ble Apex Court such as **B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749, Union of India v. Upendra Singh reported in 1994(3) SCC 357, and State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya reported in (2011)4 SCC 584** and has pointed out that the scope of judicial review in the matters of the disciplinary proceedings is very limited and it does not require any interference by this Tribunal.

5. Sri M. A. Siddiqui learned counsel for the applicant has filed rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of counter reply are denied. The learned counsel for the applicant has once again reiterated that the perusal of the revisionary authority will show that the applicant was denied appearance of Sri S.M. Ali during personal hearing with ADRM on the ground that during the inquiry, Sri K. B. Lal has acted as defence assistant and not Sri S.M. Ali. The applicant has also alleged manipulation of RUD-1 at the later stage.



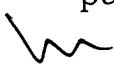
6. Heard the learned counsel for the parties and perused the record.

7. The applicant was served with a major penalty charge sheet. On account of vigilance check was conducted while the applicant was on duty on train No. 9038 between Groakhpur and Lucknow and was manning coach No. A-1, As-1 and As-2. In the charge sheet dated 2.3.2007, 4 charges were leveled against the applicant in which, it is mentioned that the applicant is responsible for producing Rs. 500/- uncounted and undeclared cash with him without valid reason and he was also responsible for producing Rs. 61/- short in government cash with an unconvincing reason and there was also responsible for carrying 5 passengers within his duty beat traveling in his manned coaches with IInd ME tickets. Apart from this, it is also mentioned in the charge sheet that the applicant was also found responsible for not regularizing one passenger allowed by him Ex Gonda even after passing more than 30 minutes when there was clear vacancy in the coach. The applicant has not asked for any additional documents and has also completed the required inspection under Rule (21) and also submitted the written brief under Rule 9 (22) of the Railway Servants (D&A) Rules, 1968. The inquiry officer after examining the entire evidence available on record, has come to the conclusion that the charge No 1, 2 and 3 stands proved against the applicant whereas charge No. 4 stands not proved. The copy of the inquiry report was duly communicated to the applicant. The disciplinary authority disagreed with the finding of the inquiry officer as such, passed an order on 21.9.2007 indicating there in that the charge No. 4 also stands proved against the applicant and the applicant was given an opportunity to give representation. The applicant submitted the reply to the disagreement memo vide his reply which is undated



as contained in Annexure-A-4 to the O.A. In the reply, the applicant denied the charges leveled against him and has also categorically pointed out that none of the passengers has submitted any complaint against the applicant and has also not indicted this fact that the applicant has charged any money from any passenger. The disciplinary authority passed the detailed order and came to the conclusion that the applicant failed to discharge his duties as such penalty of reduction of pay was imposed upon the applicant for a period of 3 years. The applicant preferred the appeal and in the appeal, number of grounds were taken by the applicant and has also alleged that there is the manipulation of RUD-1. Apart from this, the applicant has also taken a ground that the statement recorded during vigilance check were also not considered by the disciplinary authority. The appellate authority rejected the appeal of the applicant vide order dated 31.1.2008. The applicant feeling aggrieved by the said order also preferred the representations, and the revisional authority also rejected the revision petition of the applicant vide order dated 2.4.2008. The revisional authority also reduced the punishment of the applicant from the period of 3 years to 18 months. The applicant feeling aggrieved by the said order preferred the present O.A.

8. Be that as it may, the applicant being an employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The undisputed fact is that the applicant is working in the department which requires with trust of public at large and absolute devotion, diligence, integrity and honesty need to be preserved so that the confidence of the public is not impaired.



9. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. Sardar Pahadur** reported in 1972 4 SCC-618

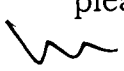
"A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts."

In the case of **Cholan Roadways Ltd. Vs. G. Thirugnanasambandam** reported in (2005) 3 SCC 241, the Hon'ble Apex Court has been pleased to observe as under:

"It is now a well settled principle of law that the principles of Evidence Act have no application in a domestic enquiry."

10. The scope of judicial review in disciplinary matters are very limited. The Court or Tribunal can interfere only if there is violation of principles of natural justice and only if there is violation of statutory rules or it is a case of no evidence. The applicant could not point out that any provisions of the principles of natural justice have been violated. Neither any ground of non-supply of relied upon documents is taken by the applicant, as such, this Tribunal can only look into that to what extent it can go into the scope of judicial review in the matter of disciplinary proceedings.

11. The Hon'ble Apex Court in the case of **B.C. Chaturvedi v. U.O.I. & ors.** reported in 1995(6) SCC 749 again has been pleased to observe that **"the scope of judicial review in**



disciplinary proceedings the Court are not competent and cannot appreciate the evidence.”

12. In another case the Hon'ble Apex Court in the case of Union of India v. Upendra Singh reported in 1994(3)SCC 357 has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

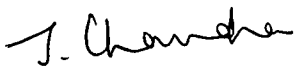
“In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.”

13. In the case of **MOni Shankar v. Union of India & Ors.** reported in **(2008)1 SCC(L&S)-819** “The procedural fairness in conducting the departmental proceeding is a right of an employee. However, in this case the Hon'ble Supreme Court has also pleased to observe that the scope of judicial review in disciplinary proceedings is very limited. The Administrative Tribunals are to determine whether relevant evidences were taken into consideration and irrelevant evidences are excluded.

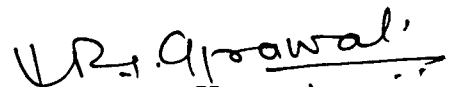
14. The applicant must indicate the shortfalls in the enquiry proceeding and submit the same to the disciplinary authority and in case it is submitted, it is expected that the disciplinary authority will consider the procedural lapses if any and take a decision , as such it cannot be said at this stage that the Disciplinary Authority has acted arbitrarily without considering the representations of the applicants.

15. On the basis of the observations made by the Hon'ble Apex Court as well as the pleadings of the present case, we do not find any reasons to interfere in the disciplinary proceedings since the applicant fail to indicate any lapses or shortfalls in the entire disciplinary proceedings. Therefore, the O.A. is fit to be dismissed.

16. Accordingly, the O.A. is dismissed. No order as to costs.



(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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