

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW****Original Application No 347 of 2008****Order Reserved on 18.3.2015.****Order Pronounced on 31/3/15****HON'BLE MR. NAVNEET KUMAR MEMBER (J)****HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Tapan Kumar Chakarvarti aged about 50 years S/o A.T. Chakravarti  
R/o C-42, Sarvoday Nagar Lucknow.

**Applicant****By Advocate Sri M. A. Siddiqui.****Versus**

1. Union of India through the General Manager N.E. Railway Gorakhpur.
2. The Divisional Commercial Manager N.E. Railway, Ashok Marg Lucknow.
3. The Senior Divisional Commercial Manager N.E. Railway, Ashok Marg Lucknow.
4. The Additional Divisional Railway Manager N.E. Railway, Ashok Marg Lucknow.

**Respondents****By Advocate Sri Narendra Nath.****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) That this Hon'ble Tribunal be graciously pleased to quash impugned orders dated 8.10.2007 passed by the disciplinary authority and is contained in Annexure A-4.
- (b) That this Hon'ble Tribunal be graciously pleased to quash the Appellate order dated 14.1.2008 passed by the learned Sr. DCM as contained in annexueA-6 and also quash the orders Revisionary authority A.D.R.M Dated 7.5.2008 as contained in Annexure A-8.
- (c) After quashing Annexure A-4, A-6 and A-8 the Hon'ble Tribunal be pleased to accord consequential benefits.
- (d) Any other relief as considered proper may be granted to applicant.
- (e) Cost of the application be awarded to applicant.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization in 1983 and while he was working in booking office Lucknow, a preventive check was conducted by the Vigilance team and in pursuance thereof, the major penalty charge sheet was served upon the applicant. After the service of the charge sheet, the inquiry officer was appointed and he submitted the report in which, the charge No. 1 and 3 stands proved whereas, the charge No. 2 is partly proved. The disciplinary authority given the disagreement memo along with the reasons. The applicant thereafter submitted the reply to the disagreement memo as well as reply to the inquiry report and the same was duly considered by the disciplinary authority and the disciplinary authority imposed the punishment of reduction to the lower stage from Rs. 4135 to Rs. 3965 in the pay scale of Rs. 3200-4900 for a period of three years with postponing future increment vide order dated 8.10.2007.

3. The applicant preferred the appeal against the said order and the appeal so submitted by the applicant was also considered and decided by the appellate authority vide order dated 14.1.2008. Feeling aggrieved by the said orders, the applicant preferred the revision and the revision so submitted by the applicant was also considered by means of an order dated 7.5.2008. Feeling aggrieved by the said order, the applicant preferred the present O.A.

The applicant categorically submitted that the disciplinary authority as well the appellate authority has not considered the grounds raised by the applicant in his appeal as well as the reply so submitted by him. It is also indicated by the learned counsel for the applicant that the private cash though it was declared by him, but on account of load of work, he could not declare the entire private cash which was lying in his pocket. Apart from this, it is also indicated by the applicant that the punishment imposed is excessive in nature and does not commensurate with the misconduct if any committed by the applicant.

3. On behalf of the respondents, reply is filed and through reply it is indicated that the applicant was found with excess amount then he declared cash in his pocket at the time of vigilance check and on account of which, the charge sheet was issued, wherein three charges were leveled

against the applicant. Out of three charges, charge No. 1 and 3 stands proved and charge No. 2 stand partly proved, but the disciplinary authority disagreed with the same and giving disagreement memo. Apart from this, it is also indicated by the learned counsel for the respondents that the charge sheet or the impugned order is not issued under the influence of the vigilance department whereas only check was conducted, all relied upon documents were served upon the applicant. The learned counsel for the respondents has also pointed out that the role of the Vigilance is very vital and is also advisory in nature. Primary responsibility for maintaining highest standard of integrity and efficiency, rests with the executive and not with the vigilance organization. The learned counsel for the respondents has also relied upon the decision of Hon'ble Apex Court in the case of **B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749** and in the case of **Union of India v. Upendra Singh reported in 1994(3)SCC 357** and has indicated "that interference in the disciplinary proceedings is hardly called for and the same does not require any interference by the Tribunal. He has also relied upon the decision of Hon'ble Apex Court in the case of **Suresh Patherella Vs. Oriental Bank of Commerce reported in (2007) 1 SCC (L&S) 224** and has indicated that " **the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding.**"

4. On behalf of the applicant, rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. The learned counsel for the applicant has also relied upon the decision of the coordinate bench of this Tribunal at Cuttack Bench in O.A. No. 530 of 1997 in the case of **Bansidhar Das Vs. Director, ARC Headquarters, New Delhi and Ors** and has indicated that the applicant was suspended and charge sheeted and an order of reduction in pay for one year with cumulative effect was issued. Period of suspension treated as no duty. Held it amounts to double punishment.

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

6. The applicant was initially appointed in the respondents organization and while he was working as Booking Clerk a vigilance check was conducted

and in pursuance thereof, the charge sheet was served upon the applicant.

The charges so leveled against the applicant are as under:-

**"Article-1**

**That he produced Rs. 185/- excess in his private Cash without any valid reason.**

**Article -2**

**That he is found responsible for keeping 6 II ME tickets neither cancelled nor crossed/defaced with an intention to resale and pocket the cancellation charges for his personal gain.**

**Article-3**

**That he is also responsible for producing Rs. 57/- excess in his Govt. Cash with an unconvincing reason."**

Along with the charge sheet the statement of imputation of misconduct as well as the list of witnesses and list of documents were mentioned.

It is to be pointed out that on 21.8.2006, a preventive check was conducted by vigilance in Booking Office Lucknow Junction and during the course of the vigilance check, the applicant was found manning counter No. 4. He was subjected to check. After his declaration that there is no transaction due. His private cash was checked. The applicant produced Rs. 300 as his private cash against the declared private cash of Rs. 115/-. As such, he produced Rs. 185/- excess in his private cash and explaining the reason for this excess money, he stated that Rs. 185/- were in his pocket and was not in his knowledge. As such, the applicant could not declare this amount in his private cash. The said statement of the applicant was not found convincing because he produced Rs. 300/- as his private cash. Not only this, the applicant has also produced Rs. 46748/- as his Government cash whereas as per the ITC summery, the Government cash should have been Rs. 48300/- and the applicant has also produced Rs. 1552 short in his Government cash. Further six IInd mail /express tickets which were neither crossed nor defaced are recovered from his counter. Not only this, he was also asked to clarify the reasons for this heavy shortage of Rs. 1552/- in the Government cash and also he was asked that under what circumstances he kept those IInd Mail/ Express tickets with him which were neither crossed nor defaced. On explanation, he took plea in his clarification that due to heavy rush, he could not cancel these tickets in system although he made refund to the passengers after deducting cancellation charges. The above plea of the applicant was also not found convincing because he should have immediately cancel the tickets in system/cross/deface but he failed to do so

intentionally. After the service of the charge sheet, the applicant was expected to submit the reply which he did by means of his reply dated 26.12.2006 and thereafter, inquiry officer was appointed and the inquiry officer conducted the detailed inquiry. It is indicated by the inquiry officer that the Vigilance check was conducted around 21:20 hrs whereas the Pushpak Express left the station at 19:45 hrs. The inquiry officer submitted the report through which the charge No. 1 and 3 stands proved whereas, the charge No. 2 stands partly proved. The disciplinary authority being not satisfied with the finding of the inquiry officer, given served the disagreement memo on 12.9.2007 and has indicated that the applicant has deliberately not cancelled six tickets of Mail Express and he deliberately kept those tickets with him for ulterior motive. The applicant submitted the reply to the disagreement memo and the reply to the inquiry officer report which was placed before the disciplinary authority and the disciplinary authority passed the detailed order indicating the reasons and finally the punishment of reduction to the lower stage from Rs. 4133/- to 3965 in the pay scale of Rs. 3200-4900 for a period of three years with postponing future increment vide order dated 8.10.2007. Undisputedly, the appeal and the revision so submitted by the applicant was considered and decided by the authorities concerned. While deciding the same, the Appellate Authority as well as the Revisionary authority has given the reasons for rejecting the same, and passed speaking order. Undisputedly the applicant was having money then the declared cash and an amount of Rs. 185/- was found excess in private case and there was an excess amount of Rs. 1552/- in the Government cash as well. The applicant could not give appropriate explanation for the same as such, it is clear that the punishment so awarded to the applicant commensurate with the misconduct as committed by the applicant.

7. In the case of **Regional Manager, UPSRTC Vs. Hoti Lal** reported in **(2003) 3 SCC 605**, the Hon'ble Apex Court clearly observed as under:-

**"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."**

8. In the case of **State Bank of India Vs. Ram Lal Bhaskar and Another** reported in (2011) 10 SCC 249, the Hon'ble Apex Court has observed as under:

“ Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has reappreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against Respondent 1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct.”


9. 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.”

10. 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.”

11. Not only this the Hon'ble Apex Court has even observed in regard to scope of judicial review as well as in regard to the quantum of punishment and in the case of **State of Rajasthan v. Md. Ayub Naaz** reported in 2006 (1) SCC 589. The Hon'ble Apex Court has been pleased to observe as under:-

“10. This Court in **Om Kumar v. Union of India** while considering the quantum of punishment / proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive



infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for."

12. The Hon'ble Apex Court in another decision of **State of UP v. Saroj Kr. Sinha** reported in 2010 (2) SCC 772 has been pleased to observe that "the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him." In the instant case the entire proceedings were carefully considered by the disciplinary authority and full opportunity was given to the applicant in conducting the enquiry and applicant also his defence submitted the reply etc.

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. It is also to be pointed out that the role of the Vigilance is very vital and is also advisory in nature. Primary responsibility for maintaining highest standard of integrity and efficiency, rests with the executive and not with the vigilance organization. In the instant case, the applicant was asked to declare his private cash but at the time of declaration of the same, he was found excess then his declared cash.

15. The judgment so referred by the applicant is not applicable in the case since in that case the suspension and the punishment both were awarded together and in the present case, the applicant was not under suspension. Not only this, after the charge sheet and due inquiry, the punishment was awarded to the applicant.

16. Considering the submissions of the learned counsel for the parties as well as observations made by the Hon'ble Apex Court, we do not find any

justification to interfere in the present case. Accordingly, O.A. is dismissed. No order as to costs.

*J. Chandra*

**(Ms. Jayati Chandra)**  
**Member (A)**

*Navneet Kumar*  
**(Navneet Kumar)**  
**Member (J)**

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