

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No.13/2011

Reserved on 17.2.2014

Pronounced on 13th March, 2014

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

Utpal Kumar Nandi aged about 51 years son of late Sri D.K. Nandi
r/o House No. IInd , 60 A, Sleeper Ground, Railway Colony,
Alambagh, Lucknow.

Applicant

By Advocate: Sri D.K.Singh

Versus

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Works Manager, C&W Workshop, Northern Railway, Alambagh, Lucknow.
3. The Deputy Chief Mechanical Engineer (W), C &W Workshop, Alambagh, Lucknow.
4. Works Manager (C), C&W Shop, Alambagh, Lucknow.

Respondents

By Advocate: Sri S. Verma

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) That this Hon'ble Tribunal may kindly be pleased to set aside the punishment orders dated 8.8.2009 and 16.7.2010 passed by the opposite parties No. 4 and 2 contained in Annexure No. 8 and Annexure No. 12 to the present application with all consequential benefits.
- ii) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to reinstate the applicant in service on the post on which he was serving when the punishment order dated 8.8.2009 and 16.7.2010 were passed with all consequential benefits.
- iii) Any other order or direction which this Hon'ble Tribunal may deem fit , just and proper also be passed in favour of the applicant.

iv) Award the cost of original application in favour of the applicant.

2. The brief facts of the case are that the applicant while working in the respondents organization was charge sheeted on 27.5.2008 indicating therein that the applicant is found responsible for defrauding Railway by way of obtaining stolen 1st Class privilege pass No. 469447 and procuring journey cum return Ticket (JCRT) in favour of self and his family members by misusing his official position. It is also indicated in the charge sheet that he was also found responsible for attempting to mislead the investigation by way of providing factually false statement and concealing the facts. Along with charge sheet, the statement of imputation and list of relied upon documents were also provided. During the course of investigation, it is revealed that first class privilege pass Book supplied to the office of ASC/RPF Tundla some passes of this book were stolen by Sri Heera Singh Meena, Clerk of the Department and sold these stolen passes to one outsider Mohd. Sahid and accordingly a case was registered. The applicant was found in possession of on such pass book as such the applicant was found guilty, he was charge sheeted and thereafter enquiry officer was appointed and the enquiry officer conducted the detailed enquiry and submitted the report and came to the conclusion that the charges leveled against the applicant stands proved. The copy of the enquiry report was duly served upon the applicant and after submitting the reply, the punishment was awarded to the applicant and it was indicated by the disciplinary authority in his punishment order that since the charges leveled against the applicant are proved, as such he was awarded the punishment of removal from service with immediate effect. The applicant preferred an appeal on 24.8.2009 and the appellate authority vide order dated 30.9.2009, rejected the appeal of the applicant and after going through the

case, it was found that the applicant has been given opportunity to defend his case to meet the ends of natural justice and the charges leveled stands proved by the enquiry officer. Thus the punishment of removal from service imposed upon the applicant by the disciplinary authority is upheld. The applicant submitted the revision and the revisionary authority also dismissed the revision vide order dated 16.7.2010. The applicant has challenged the punishment order as well as revisionary order dated 16.7.2010 but he has not challenged the appellate order.

3. The respondents have put in their appearance through their counsel Sri S.Verma who has filed their reply and through reply, it was indicated by the respondents that the applicant was removed from service vide order dated 8.8.2009. The appeal of the applicant was also considered and dismissed by the appellate authority and revisional order was also passed by the revisionary authority. While considering the appeal and revision of the applicant, the appellate authority and revisionary authority has gone through the entire records and after that they came to the conclusion that the punishment awarded by the disciplinary authority is correct and it does not require any interference by the Tribunal. Apart from this, it is also indicated by the learned counsel for the respondents that the scope of judicial review is very limited in the disciplinary proceedings when there is no procedural lapses on the part of the respondents. It should not be interfered with. Not only this, it is also argued by the learned counsel for the respondents that the applicant could have asked for the documents as the same is mentioned in the charge sheet that if charged official desires to be given access to any other documents, which are in the possession of the Railway Administration, but not mentioned in the enclosed list of documents, he should give a notice to that effect within 10 days of the receipt of the memorandum. The learned counsel for the


respondents categorically pointed out that applicant has not made any request for grant of any documents. Apart from this, the signature of the applicant was also proved and he was involved in generating fake journey-cum-reservation ticket and thereafter got it cancelled. As such, enquiry officer came to the conclusion that the applicant was found guilty of the offences therefore, the charges leveled against the applicant stands proved. As indicated earlier, that the revisionary authority has revised the punishment of removal from service to compulsory retirement which is also as per rules.

4. Learned counsel appearing on behalf of the applicant filed their rejoinder reply and through rejoinder reply, mostly the averments made in the O.A. are reiterated and no other facts are brought on record by means of the rejoinder reply.

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

6. Admittedly, the applicant was working in the respondents organization was charged sheeted on 27.5.2008, which is served upon the applicant. It is mentioned in the charge sheet that the applicant was found responsible for defrauding railway by way of obtaining stolen first class privilege pass No. 469447 and procuring journey cum return ticket in favour of self and his family members by misusing his official position and it is also mentioned in the charge sheet that he is responsible for attempting to mislead the investigation by way of providing factually false statements and concealing the facts. In the charge sheet it is also mentioned that in the imputation of misconduct that during the course of investigation, it was found that first class pass book containing Foil No. 469447 was supplied to the office of ASC/RPF. One outsider namely Mohd Shahid was arrested by the RPF, Lucknow and a case was registered vide crime No. 19/2005. Apart from this, blank and unused foil Nos. 469484 to 469490 and 3 used passes No. 469448, 469449 and 469468 were found in illegal possession of Sri Mohd.

Shahid. Apart from this, it is also submitted that 10 passes No. 469491 to 460500 and two stamps of ASC/RPF/TDL were recovered from illegal possession of Heera Singh Meena, an employee of ASC/RPF, Tundla. Apart from this, the statement of the applicant was also recorded in Railway Board on 13.4.2006 and during the course of his statement, he admitted that the name and address mentioned in the requisition cum reservation form was matching with his family members and his residence address and phone number. But despite that he denied that he used the first class privilege pass No. 469447 for obtaining reservation in 2nd AC for self and his family fraudulently misusing his official position. Not only this, the hand writing on all the documents was found to be matching with the requisition slip seized from PRS, Lucknow. After the said investigation, an enquiry officer was appointed and the enquiry officer came to the conclusion that the charges leveled against the applicant stands proved. During the course of enquiry, the enquiry officer examined all the witnesses and also examined the documents as mentioned in the charge sheet. The copy of the enquiry report was duly served upon the applicant and the applicant in his reply submitted that the impugned reservation forms were not provided to him for tallying the writing and signatures thereon. It is also indicated that the applicant was having a chance to ask for the documents but he failed to do so. After considering the applicant's reply as well as the enquiry officer's report, the disciplinary authority came to the conclusion that findings of the enquiry officer is correct and applicant is found guilty of the charges leveled against him. It is also indicated by the disciplinary authority that nothing has been explained by the C.O. in his explanation submitted by him in his defence except to repeat the old statement, as such disciplinary authority came to the conclusion that the charged official is liable to be punished for punishment of removal from



service. The appeal preferred by the applicant was also dismissed by the appellate authority, upholding the punishment awarded by the disciplinary authority and thereafter the applicant preferred the revision petition and the revisionary authority passed the order dated 16.7.2010 whereby the revisionary authority pointed out that during the vigilance enquiry, it was also established that sample hand writing obtained from Mr. Nandi was found to be, matching with the signatures found on requisition slip seized from PRS, Lucknow. Even then the applicant denied tendering of the reservation requisition slip. His specimen signatures were verified by expert agency and it was confirmed that the applicant has defrauded Railway by way of obtaining pass No. 469447 and procured journey cum return ticket for self and his family members by misusing his official position. After the dismissal of the appeal, in the revision petition, the revisionary authority found that no new facts has been brought out by the applicant. However, looking to the financial condition of the applicant who is very poor and the family is suffering badly on this account. Apart from this he has two daughters of marriageable age and old ailing mother and bearing his case of rendering 30 years blotless service. Therefore, considering the case on sympathetic and humanitarian ground and giving him an opportunity to realize and reform himself and therefore propose to revise the punishment from the removal from service to compulsory retirement.

7. Now, the question which requires determination is in regard to the scope of judicial review in disciplinary proceedings. In the instant case, the applicant was also participated in the enquiry. He was given full opportunity to participate in the enquiry and also not asked for the additional documents. Apart from this, order of removal was modified by the revisionary authority into the order of compulsory retirement.

8. As observed by 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."**

9. 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."

10. As observed by the Hon'ble Apex Court in the case of State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya reported in (2011) 4 SCC 584, the Hon'ble Apex Court has been pleased to observe as under:

"It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or

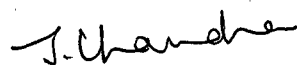
finding, on the material on record. The courts will however interfere with the findings, in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

11. Learned counsel for applicant has relied upon a decision in the case of **Narinder Mohan Arya Vs. United India Insurance Company Ltd. and others reported in (2006) 4 Supreme Court Cases, 713** and pointed out that *"Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances."*

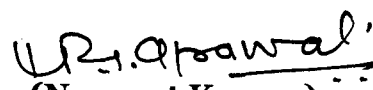
12. In the instant case, issue of suspicion or presumption is not involved. The applicant was given full opportunity to participate in the enquiry and applicant has not asked for any documents. Whereas during the course of vigilance enquiry, simple hand writing obtained from the applicant was matching with the signature of the applicant on requisition slip seized from PRS, Lucknow, as such, it cannot be said that the enquiry officer on the basis of presumption has come to the conclusion and found applicant guilty and the charges leveled against the applicant were proved.

13. In the entire proceedings, it is explicitly clear that the applicant was given full chance to participate in the enquiry, we do not find any infirmity in the entire disciplinary proceedings. Therefore, we are not inclined to interfere in the present O.A. As such, the O.A. is fit to be dismissed.

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



**(Jayati Chandra)
Member (A)**


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

HLS/-