

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

ORIGINAL APPLICATION NO. 478 of 2011

ORDER RESERVED ON 23.4.2015

ORDER PRONOUNCED ON 11-05-2015

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

HONB'BLE MS. JAYATI CHANDRA, MEMBER (A)

A. K. Agarwal, aged about 54 years, son of late G. C. Agrawal, Resident of House No. 21, Krishna Vihar, Chinhut, Lucknow.

Applicant

By Advocate Sri A. Moin.

Versus

1. Union of India through General Manager, North Eastern Railways, Gorakhpur.
2. Divisional Railway Manager, Lucknow Division, Lucknow.
3. Senior Divisional Engineer-II, North Eastern Railway, Lucknow Division, Lucknow.
4. Additional Divisional Rail Manager, North Eastern Railway, Lucknow Division, 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. To quash the punishment order No. W/ Sr. DEN/III/LJNS/5-09/155/A.K.A/Vig/09 date 26.11.2010, issued by the respondent No. 3, whereby applicant was removed from the post of Section Engineer (PWlay,) copy of which is annexed as Annexure No. 1 to this application.

B. To quash the order No. डब्लू/वमई/111/एसएस/5.09/155 ए.के.अ./विज/09/दिनांक 08.04.11 amended by the order No. डब्लू/वमई/111/एसएस/5-09/155/ए.के.अ./विज/09/दिनांक 27.4.2011, whereby the respondent No. 4 has modified the punishment imposed to the applicant from removal to compulsory retirement from the services with effect from 26.11.2010 on appeal of the applicant dated 23.12.2010

against the aforesaid punishment order No. W/Sr. DEN/III/LJNS/5-09/155/A.K.A/Vig/09 dated 26.11.2010, coped of which are annexed as Annexure No.s 2 and 2A to this application.

C. To reinstate the applicant with continuity of service along with full back wages/salary and other benefits to which full back wages/salary and other benefits to which the applicant would have received as his was not compulsorily retired.

D. To grant any other relief in favour of applicant as against the respondents, which this Hon'ble Tribunal in the facts and circumstances of the case may deem fit, just and proper and nature of the case may admit of and

E. Award cost of the case in favour of the applicant as against the respondents.

2. The brief of facts of the case are that the applicant while working with the respondents organisation was charge sheeted in 2009 and the applicant was served with a copy of the charge sheet. After the service of the charge sheet, the inquiry was conducted and the inquiry officer submitted the report and the order of removal was passed. The applicant preferred the appeal and the appellate authority reviewed the order of removal and passed the order of compulsory retirement. Feeling aggrieved by the said order, the applicant preferred the present O.A. The Learned counsel for the applicant has categorically indicated that the provisions of Para 704 and 705 of Indian Railway Vigilance Manual are not being followed as such the present O.A. required interference by this Tribunal and the O.A. is liable to be allowed. Through supplementary rejoinder, it is also indicated by the learned counsel for the applicant that the witnesses so required to be examined were not examined and two persons namely Chief Vigilance Inspector and the Senior Khallasi does not fall within the ambit of being a Gazetted Witness as specified in Para 705 (a) and hence on this ground alone, the alleged entire vigilance trap becomes vitiated in the eyes of law. The learned counsel for the applicant has also relied upon a decision passed in O.A. No. 460/2007 and has indicted that the said

order was subsequently challenged before the Hon'ble High Court In W.P. No. 1581/SB of 2014 and the Hon'ble High Court affirmed the order of the Tribunal and dismissed the Writ Petition filed by the U.O.I. The learned counsel for the applicant has also indicted that the charges so levelled in the charge sheet and also the list of documents and witnesses so mentioned are not examined and once again it is reiterated by the learned counsel for the applicant that the provision of para 704 and 705 of the Indian Railway Vigilance Manual are not being followed and the entire witnesses were not examined as such, the entire proceedings is liable to be quashed.

3. On behalf of the respondents, detailed reply is filed through which it is indicted by the learned counsel for the respondents that the applicant was caught red handed by the vigilance team. Accordingly the charge sheet dated 24.6.2009 was served upon the applicant and the facts remains that a trap was conducted by the vigilance team at his residence on 23.1.2009 where the applicant was caught red handed for accepting bribe of Rs. 2000/- for forwarding application of transfer of one Shri Giriraj Prasad Meena, Trackman (Decoy) looking into the gravity and seriousness of the charges, the charge sheet dated 24.6.2009 was issued upon the applicant by the competent authority. The applicant submitted the reply to the said charge sheet and the inquiry officer was appointed and submitted his report on 3.12.2009 indicating there in that the charges levelled against the applicant stands proved. Accordingly, the removal is issued and subsequently, the appeal was preferred by the applicant which was considered by the appellate authority and the order of removal was modified and order of compulsory retirement was passed. The learned

counsel for the respondents has also argued and submitted that the inquiry officer has examined number of witnesses and after conducting the full fledged inquiry, the punishment was imposed upon the applicant.

4. The learned counsel for the respondents has also indicted that the provisions of Para 704 and 705 of the Indian Railways Vigilance Manual were fully followed and the required witnesses were present at the time of the trap and the witnesses also heard the conversation so advanced between the applicant and the decoy. Not only this, it is also argued by the learned counsel for the respondents that the applicant was given full opportunity to nominate his defence counsel and to attained the inquiry proceedings. It is submitted by the respondents counsel that the enquiry officer had examined all the relied upon documents and prosecution witnesses and thereafter submitted the report. The learned counsel for the respondents has also relied upon the decision of the Hon'ble Apex Corut in the case of **Regional Manager, UPSRTC Vs. Hoti Lal reported in (2003) 3 SCC 605**, the Hon'ble Apex Court clearly observed that "**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.**" On behalf of the respondents, it is also argued that the applicant demanded and accepted Rs. 2000/- even the description of the currency notes was also given prior to the trap as such, it is explicitly clear that the applicant was involved in accepting the bribe as such, no interference is required by this Tribunal and the O.A. is liable to be dismissed ought rightly. It is also to be indicated that the respondents have also filed the supplementary counter reply through which the contents of the counter reply are reiterated.

4. On behalf of the applicant, rejoinder as well as supplementary rejoinder is filed through which the applicant reiterated the averments made in the O.A. and denied the contents of the counter reply as well as the supplementary counter reply. Through rejoinder, the learned counsel for the applicant has also indicated that the inquiry officer himself assumed role of prosecutor as well as judge which is illegal and unjustified and has given the report without considering the relevant facts

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

6. The applicant was initially appointed in the respondents organisation and was charge sheeted vide charge sheet dated 24.6.2009 wherein two charges are mentioned through which it is indicated that on the basis of some information that when the applicant was working as a Section Engineer, he demands bribe from the individuals for forwarding their applications. Accordingly, a trap was organised in which 4 persons were included from the engineering and the signal department and Sri Giriraj Prasad Meena was taken as a decoy and Sri Shiv Narain Prasad Singh was taken as an independent witness. The charge sheet also provides the numbers of currency notes given to the decoy and he was instructed that on demand he will handed over the amount to the applicant and the independent witness was directed to heard the conversation between the decoy and the applicant. It is also indicated that after the bribe is accepted certain signals are to be given and accordingly the search will be conducted.

7. With the above planning on 23.1.2009, the decoy along with the independent witness went to the official residence of the applicant where the applicant asked for a bribe of Rs.

2000/- which was given to him and after accepting the same, the applicant signed on the transfer application of the decoy. Accordingly a search was conducted and the amount so given to the applicant was recovered. The applicant has also given his statement. After the search was conducted, the charge sheet was served upon the applicant in June 2009 and the applicant submitted reply to the said charge sheet on 14.7.2009 and has indicated that the entire exercise which has been conducted is against the provisions of law and he has been falsely implicated and has also denied that he has demanded or accepted the money as claim by the Vigilance team. It is needless to make a mention here that the recovered currency note tellies with the numbers currency notes given to the decoy as indicated earlier earlier as such, it is established that the applicant accepted bribe of Rs. 2000/- for forwarding application of one Sri Giriraj Prasad Meena.

8. After the reply given by the applicant, the inquiry officer was appointed and inquiry officer conducted the inquiry and has also examined number of witnesses as well as the documents were also examined by them. The inquiry officer has also mentioned in his inquiry report that 4 currency notes of Rs. 500/- each were recovered from the official residence of the applicant which tellies with the number of currency notes given to the decoy before the trap.

9. Perusal of the entire inquiry report it is explicitly clear that the full fledged enquiry was conducted and the applicant was given full chance to participate in the enquiry and finally the inquiry officer has given the report and indicated that the charges so levelled against the applicant stands proved. The copy of the inquiry report was served upon the applicant. He

submitted the reply to the same. After considering the reply so submitted by the applicant as well as all the material available on record, the disciplinary came to the conclusion that the applicant is found guilty of the offence and accordingly passed an order of removal from service vide order dated 26.11.2010.

10. The applicant submitted the appeal to the appellate authority and the appellate authority after considering the appeal of the applicant passed an order through which the order of removal was reviewed and an order of compulsory retirement was passed.

11. The bare perusal of the entire proceedings shows that the applicant accepted the brief of Rs. 2000/- and the currency note given to the decoy tellies with the currency note which were recovered from the residence of the applicant as such, it cannot be said that the applicant has been falsely implicated. The learned counsel of the applicant has relied upon the case of **Moni Shankar Vs. U.O.I. and Others 2008 (3) SC 325** in that case, the trap was organised by the trapping team without procuring the Gazetted Officers and only a Head Constable of the Railway Protection Force was made a witness during the trap, who was present at the distance of more than 30 meters from the place of trap. The decoy passenger neither counted the money at the window nor protested that the balance amount was less than by Rs. 5/- and in fact admitted to have left the window and came back half an hour later with the Vigilance Inspector.

12. In the instant case, the department has examined number of witnesses including independent witness and the perusal of the evidence adduced by the witness shows that all the witness have corroborated the factum of trapping and also factum of accepting the bribe by the applicant. The judgment so relied

upon by the applicant does not apply in this case as the applicant was trapped for accepting the bribe and the trapping was duly organised by the vigilance team.

13. The Hon'ble Apex Court in the case of **State Bank of Patiala and others Vs. S.K. Sharma (1996) 3 Supreme Court Cases 364**, after discussing various cases on the point of disciplinary inquiry and orders of punishment imposed by an employer upon an employee, made the following observations: -

"(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent

officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.(emphasis supplied) ”

From the observations of the Hon'ble Apex Court in the above case, also it is clear that in a case of procedural provisions, which is not of a mandatory character, the complaint of violation of the rules has to be examined from standpoint of substantial compliance. The order passed in violation of such a provision can be set aside only where such violation has occasioned and prejudiced to the delinquent employee. The Court or the Tribunal should inquire whether the provision followed is of substantial nature or whether it is procedural in character. In the present case, since four independent witnesses have been procured at the time of alleged trap, who were not inimical to the appellant nor under pressure of the vigilance team, sufficient opportunity has been given to the applicant to defend himself, he has entered in defence and actively participated in the inquiry proceedings and the findings recorded by the Disciplinary Authority have been confirmed by the Appellate Authority and the Revisional Authority, we can observe that substantial compliance has been done in this case.

14. The respondents have placed reliance on the observation made by the **Hon'ble Apex Court in the case of Union of India**

Vs. Parma Nanda in Civil Appeal No. 1709 of 1988 and Special

Leave Petition (Civil) No. 6998 of 1988 Parma Nanda Vs. State

of Haryana and others, wherein it has been observed that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

15. As observed by the Hon'ble Apex Court in the case of **Commandant, 22nd Battalion Vs. Surinder Kumar reported in 2011 (10) SCC 244**, that "**Courts interference is warranted not only when punishment is disproportionate but it should be shockingly disproportionate.**"

16. The Hon'ble Apex Court in the case of **B.C.Chaturvedi v. Union of India & 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 . In this regard, the Hon'ble Apex Court has been pleased to observe as under:-

“The Enquiry Officer submitted his report holding the charges against the appellant to have been proved. After consultation with the UPSC, the appellant was dismissed from service by an order dated 29.10.1986. The Tribunal after appreciating the evidence, upheld all the charges as having been proved but converted the order of dismissal into one of compulsory retirement. The delinquent filed an appeal challenging the finding on merits, and the Union filed an appeal canvassing the jurisdiction of the Tribunal to interfere with the punishment imposed by it. Allowing the appeal of the Union of India and dismissing that of the delinquent.

Per Ramaswamy and Jeevan Reddy, JJ

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould

the relief so as to make it appropriate to the facts of each case."

17. 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 submitted the defence reply etc

18. In the case of **Regional Manager, UPSRTC Vs. Hoti Lal (Supra)** 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."

19. In view of the above observations made by the Hon'ble Apex Court a well on the basis of the facts of the case, it is explicitly clearly that accepting bribe of Rs. 2000/- for forwarding application of the decoy is undisputed and accordingly the trap was conducted and the currency notes of the same number were recovered from the residence of the applicant, the applicant was given full fledged opportunity to participate in the inquiry and after due inquiry, the punishment was awarded to the applicant and after considering the condition of the applicant, the appellate authority reduced the punishment from removal to compulsory

retirement as such, we do not find any reason to interfere in the present O.A.

19. Accordingly, the 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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