

**Central Administrative Tribunal, Lucknow Bench,
Lucknow**

Original Application No. 117/2012

Reserved on 30.4.2015

Pronounced on 19-05-2015

Hon'ble Sri Navneet Kumar , Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

G.S. Barnwal aged about 54 years son of late Sri Jagannah Barnwal, resident of village and post Lambhua District- Sultanpur.

Applicant

By Advocate: Sri Praveen Kumar

Versus

Union of India through -

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Operating Manager, Northern Railway, Baroda House, New Delhi.
3. The Additional Divisional Railway Manager, Northern Railway, Lucknow.
4. The Senior Divisional Operating Manager, Northern Railway, 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:-

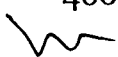
- i) to quash the punishment order dated 3.6.2010, order dated 3.10.2011 passed by the Appellate authority and order dated 4.1.2012 passed by the revisioning authority contained as Annexure No. A-1, A-1A and A-1B to this O.A. with all consequential benefits.
- ii) to reinstate the applicant in service forthwith and all service benefits like promotion , seniority , arrears of pay/ back wages etc. may be released forthwith to the applicant.
- iii) any other relief which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- iv) cost of the present case.



2. The applicant was working with the respondents organization and was charge sheeted in 2008. The allegations levelled in the charge sheet are that the applicant demanded and accepted Rs. 20/- excess over and above the due fare for two mail/express superfast adult tickets. Apart from this, he produced Rs. 1040/- as undeclared and unaccounted money from his possession. The statement of imputation of misconduct also mentions that on the basis of sourced information , a decoy check was conducted at Booking Office, Lambhua on 20.2.2008 and a team consisting of S/Shri Ugrasen Singh, A.K.Dwivedi and S.M. Prasad was constituted for the purpose and for the assistance, certain persons were taken to execute the check. Along with the charge sheet, list of witnesses as well as list of documents are mentioned.

3. The applicant submitted the reply to the same and thereafter, enquiry officer conducted the detailed enquiry and submitted the report. The applicant submitted the objections to the same and thereafter, the disciplinary authority passed an order of compulsory retirement. The applicant submitted the appeal to the appellate authority but the appellate authority also upheld the order of disciplinary authority. Subsequently, the applicant submitted the revision and the revision petition so submitted by the applicant was also rejected by the revisionary authority.

4. Learned counsel for applicant has categorically indicated that entire proceedings is violative of provisions of para 704 of Vigilance Manual as no independent witnesses were examined and the impugned order are silent in respect of grounds taken by the applicant in appeal. Learned counsel for applicant has also relied upon decision of Moni Shankar Vs. Union of India reported in 2008 (3) SCC 484 and decision of O.A. No. 460/2007 Chhotey Lal Gupta Vs. Union of India and indicated that the orders passed in O.A.No. 460/2007 was subsequently challenged before the Hon'ble High




Court and Hon'ble High Court affirmed the order of the Tribunal. Apart from this, it is also indicated by the learned counsel for the applicant that Vigilance Department has no locus to intervene in the disciplinary matters and to support his contention, he relied upon two decisions; one passed by the Hon'ble Apex Court in the case of Nagaraj Shivrao Karjagi Vs. Syndicate Bank reported in 1991 SCC (L&S) 965 and another decision of the Tribunal passed in O.A. No. 642/95 (Raja Ram Verma Vs. UOI and others).

5. On behalf of the respondents, detailed counter reply is filed and through reply, the respondents has categorically indicated that in the present Sri R.S.Verma is taken as decoy passenger and the decoy is not below then the status of the applicant. Apart from this, applicant has also not declared any private cash and he was in excess of Rs. 20.

6. Not only this, he also failed to correct the old rate of fare printed on the card tickets issued to passenger before issuing tickets and also habitual of not declaring private cash on the earlier occasions. The learned counsel for respondents has also categorically indicated that after service of charge sheet, the departmental enquiry was conducted and the applicant associated in the enquiry as such there is no violation of any vigilance manual and after considering all the facts, the disciplinary authority passed the order and appellate authority as well as revisionary authority has also passed the order after considering entire material available on record.

7. The learned counsel for respondents has also relied upon the decision of the Hon'ble Apex Court in the case of **Regional Manager, UPSRTC Vs. Hoti Lal reported in (2003) 3 SCC 605**, and indicated that since the applicant holds the post of trust, as such any lapses on the part of the applicant cannot be taken lightly and the same should be dealt with iron hands.



8. Learned counsel for respondents has also denied that the transfer of the applicant from Lucknow Dn. to Mooradabad Dn. is on the dictates of vigilance authority. In fact, it is indicated by the learned counsel for respondents that entire story has been concocted by the applicant and the O.A. is liable to be dismissed with heavy cost.

9. On behalf of applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated and contents of counter reply are denied.

10. Heard the learned counsel for parties and perused the records.

11. The applicant was initially appointed on the post of Assistant Station Master and was transferred to Lucknow Dn. On 20.2.2008, when the applicant was posted at Lambhua Station, he was implicated in a vigilance case and in pursuance thereof, a charge sheet dated 13.5.2008 was issued wherein four charges have been mentioned, namely:-

Article 1

He demanded and accepted Rs.20/- excess, over and above the due fare for two II M.E. super fast (adult) tickets Ex LBA –DLI from the decoy passenger.

Article 2


He produced Rs. 1040 as undeclared and uncounted money from his possession claiming the same as his private cash.

Article 3

He failed to correct the old rate of fare printed on card tickets issued to passengers before issuing the tickets.

Article 4

He failed to declare his private cash on the Station Diary Book meant for the purpose and is habitual of not declaring private cash on the said book.




12. Along with the charge sheet, statement of imputation of misconduct, list of witness and relied upon documents are also mentioned. Copy of the charge sheet was served upon the applicant and thereafter the detailed enquiry was conducted.

13. Enquiry officer recorded the deposition of prosecution witnesses as well as the defence brief was also prepared and finally came to the conclusion that all the charges levelled against the applicant stands proved. The copy of the enquiry report was served upon the applicant and the applicant submitted the comments and replied to the same.

14. The documents was subsequently placed before the disciplinary authority and disciplinary authority vide order dated 3.6.2010 passed an order of compulsory retirement against which the applicant preferred appeal and the appellate authority also passed an order on 3.10.2011 in which it is indicated that during the course of enquiry, the applicant was given enough time to prove himself innocent of the charges and he was given full opportunity to defend himself. The appellate authority has also observed that since the applicant was involved in financial irregularity, as such he cannot be spared for the lapses committed by him. Apart from this, the appellate authority also observed that there is no violation of vigilance manual and also considered the grounds taken in the appeal.

15. After considering the appeal sympathetically, the appellate authority revised the punishment order of compulsory retirement to reduction in pay from Rs. 9300-34800 Grade Pay Rs. 4200/- to Rs. 5200-20200 Grade Pay Rs. 2800/- for a period of five years with cumulative effect and also observed that for the period from the date of compulsory retirement till the date of implementation of this order, leave, if due can be sanctioned.



16. The applicant not being satisfied , again preferred the revision to the revisionary authority and the revisionary authority has also passed the order on 4.1.2012 and has indicated that theft, even of Rs. 1 is theft and the matter of only Rs. 20/- does not absolve the applicant of theft/ wrong act done by him. Accordingly, revision so submitted by the applicant was rejected.

17. The bare perusal of the entire proceedings shows that there was a vigilance check and the applicant charged Rs. 20/- excess from the normal fare and was found Rs. 1040/- as undeclared and uncounted money and also not declared the private cash. The entire proceedings were conducted in a proper manner after giving full opportunity of hearing to the applicant and authority duly considered all aspects of the matter and thereafter the disciplinary authority passed orders of compulsory retirement .The appellate authority considered and taken lenient view and modified the order of compulsory retirement to reduction in pay.

18. 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."**

19. 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.

20. 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

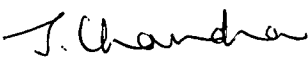
21. In the case of **Regional Manager, UPSRTC Vs. Hoti Lal (Supra)** the Hon'ble Apex Court clearly observed as under:-

“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.”

22. Since neither there is any violation of any provision of vigilance manual or the impugned order is passed on the dictate of vigilance authority, as such case law cited by the applicant are not applicable in the present case.

23. As per the observations of the Hon'ble Apex Court and on the basis of pleadings available on record, the charges levelled against the applicant are grave in nature and his integrity is doubtful, as such we are not inclined to interfere in the present O.A.

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


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER (J)

HLS/-