

(W)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

2.1.2007

OA 474/2006

Mr. Amit Mathur, counsel for applicant.
None present for respondents.

Learned counsel for the applicant prays for adjournment.

Let the matter be listed on 1.3.2007.



(J.P. SHUKLA)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

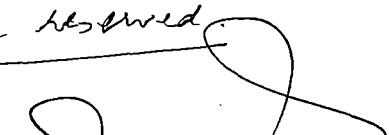
vk

01/31/2007 Mr. Amit Mathur, counsel for applicant.

Heard. Order reserved



(J.P. SHUKLA)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

2/31/07

Order has been pronounced
today in the open court by Drs.


2/31/07

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 474/2006.

Jaipur, this the 2nd day of March, 2007.

CORAM : Hon'ble Mr. M. K. Gupta, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Suresh Chand Gupta
S/o Late Shri R. C. Gupta,
Aged about 59 years,
R/o 18, Khedli Phatak,
Near Station Road,
Kota.

... Applicant.

By Advocate : Mr. Amit Mathur.

Vs.

1. Union of India through
General Manager,
West Central Railway,
Jabalpur (MP).
2. The Divisional Railway Manager (Estt)
West Central Railway,
Kota.
3. Senior Commercial Manager,
West Central Railway,
Kota.

... Respondents.

: O R D E R :

Per M. K. Gupta.

The applicant challenges the validity of order dated 30.12.2004 whereby the authority has imposed punishment of reduction of pay one stage below in the existing pay scale for a period of 6 months with future effect, as

upheld by the appellate order dated 20.04.2005 and Revisional Authority order dated 11.09.2006 with all consequential benefits and costs. As per charge memorandum dated 27.08.2002 it was alleged that the applicant collected Rs.80/- from a group of 3 passengers and permitted them to travel in general coaches and did not issue any receipt to the passengers concerned. The said amount was collected with the help of a constable without issuing any EFT. Since the said allegations were denied, an oral inquiry was held. Vide report dated 27.08.2004, the Inquiry Officer concluded that the charges leveled were partially proved. It is on the said finding and after considering the defence submitted by the applicant, Disciplinary Authority vide order dated 30.12.2004 imposed the aforesaid punishment holding that unless and until the illegal gratification had been taken by the applicant one would not dare to make a complaint and that too before a higher judicial authority. In this case the complainant S/s Amar Singh, Mukesh Kumar and Sukhram Meena have given in writing a joint complaint to Upper Chief Judicial Magistrate (Railways, Kota) about having been taken Rs.80/- from them but due to obvious reasons such as fear of waste of time etc. they did not attend inquiry despite being summoned through registered A/D notices. It cannot be ruled out that the illegal gratification had not been taken from them. On a statutory appeal filed against the aforesaid penalty, DRM, Kota, vide order dated

20.04.2005, finding no merits in the appeal dismissed it and upheld the penalty imposed. Chief Commercial Manager, West Central Railway, being the Revisional Authority considered Revision Petition dated 19.01.2006, which was time barred and after noticing that all the points had already been considered by the Appellate Authority, came to the conclusion that the charges were proved during the course of inquiry and he being found guilty of serious misconduct, passed order dated 11.09.2006 upholding the penalty imposed.

2. Shri Amit Mathur, Learned Counsel, vehemently contended that the charges were proved based on mere assumption, no statement was recorded by the Railway Magistrate. In departmental inquiry also, the department has to prove the charge leveled beyond doubt. The three complainants were not examined in the inquiry and, therefore, he was deprived of right to cross examination. Charge sheet was prepared on incorrect facts and the concerned authorities did not take into consideration that the said charges were based on malice. It was further urged that various defence raised had not been considered which renders the entire action illegal.

3. We heard the Learned Counsel for the applicant and perused the pleadings carefully.

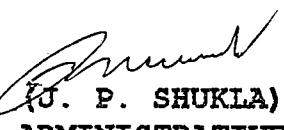
4. It is well settled law as observed in 1996 SCC (L&S) 80, B. C. Chaturvedi vs. Union of India & Ors., that the judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment 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. 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.

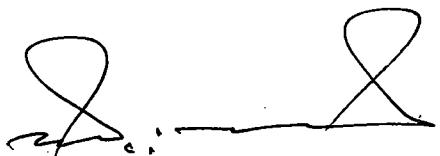
5. If we examine the contentions raised in the present case vis a vis the law noticed hereinabove, we would find that what has to be seen is whether findings or conclusions arrived at by the authorities were based on "some evidence". Moreover, the technical rules of

Evidence Act is not applicable and the test is preponderance of probability and not establishing misconduct beyond reasonable doubt. The Inquiry Officer, in our considered view, rightly concluded that the charges were partially proved on the ground of doubt. Merely because the complainants did not attend the inquiry despite being called, could not be a ground to arrived at a different conclusion. The applicant in his defence (Annexure A/16) had clearly stated that fine of Rs.500/- per person was imposed upon the said 3 complainants by the Learned Railway Magistrate. Applicant's contention that the charges must be established beyond reasonable doubt cannot be accepted as the test and concept of proving the charge beyond reasonable doubt is inapplicable to department inquiry. In our considered view, it is not a case of "no evidence" as projected by the applicant. Moreover, we find that the Disciplinary Authority had taken a lenient view and imposed the punishment of penalty of reduction of his pay by one stage in the pay and scale for a period of six months only. We may also note the fact that the applicant is due to attain superannuation in less than one year. The adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. We find no justification in the contentions raised and reason for interfering in such findings. The applicant has not only filed an appeal but

also filed his Revision Petition too, which were duly and objectively considered by the concerned authorities.

6. In these circumstances, we find no merits in the contentions raised and finding that the conclusion arrived at were based on "some evidence", we dismiss the present OA at the admission stage without issuing any notice.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(M. K. GUPTA)
JUDICIAL MEMBER

P.C./