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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO. 060/00994/2014 Date of order:- 29.01.2016

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Harpreet Kaur , Enquiry & Reservation Clerk, Railway Station Dhandari Kalan, District Ludhiana.

.....Applicant.

(By Advocate :- Mr. N.P.Mittal)

Versus

1. Union of India through General Manager (P) Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Chief Commercial Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
3. Additional Divisional Railway Manager, Northern Railway, Ferozeppur Division, Ferozepur.
4. Senior Divisional Commercial Manager, Northern Railway, Ferozepur Division, Ferozepur.
5. Divisional Commercial Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.

...Respondents

(By Advocate : None).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Harpreet Kaur has filed the present Original Application praying for the following relief:-

"i) That the impugned charge memo SF-5 NIL (Annexure A-7) be declared invalidated quashed and set aside;

ii) That the impugned punishment order (Annexure A-4) passed by the Disciplinary Authority, respondent no.5, Annexure A-3 passed by the Appellate Authority, respondent no.4 and the Revisional order (Annexure A-3) passed by the Revisional Authority respondent no.3 as well

as impugned order Annexure A-1 with reference to the mercy appeal to respondent no.2 attached as Annexure A-1 be quashed and set aside with all consequential benefits, in the interest of justice;

iii) That the respondents be directed to refund the recovered amount due to reduction to lower stage to the applicant already recovered w.e.f. 29.1.2012 and continuing thereafter to the applicant with interest @ 12% per annum in the interest of justice".

2. Facts of the case are that the applicant was appointed on the post Enquiry & Reservation Clerk at Railway Station, Ludhiana, on 1.8.2006 on compassionate grounds as her father Shri Amarjeet Singh died on 8.5.2005 while working with the respondent Railways. Thereafter, the applicant was transferred to Railway Station Dhandari Kalan, in March, 2013. The applicant has stated that while working on Tatkal window no.930 on 20.2.2010, a sum of Rs.1396/- was found short on a checking done by the checker by ignoring the fact that no ticket was issued to passenger no.1. The applicant has further pleaded that as per the rules/system, new ticket was issued by the Supervisor, as such, there was no short-fall on the amount. The whole episode was also brought to the notice of the Chief Reservation Supervisor, Ludhiana, and even the applicant also made a representation dated 20.2.2010 by stating therein that there was no shortfall of any amount. Even then, the respondents issued a charge-memo SF-5, Annexure A-7, to the applicant. The applicant submitted her detailed reply to the charge-memo on 24.6.2010 by denying the allegations levelled against her. An Inquiry Officer namely Shri I.S.Bhatia, CMI-1, Amritsar, was also appointed to enquire into the allegations levelled against the applicant. The Inquiry Officer submitted his report on 25.5.2012 by holding that charges no.1 & 2 stand fully proved and charge no.3 stand partially proved and charge no.4 not proved. Feeling aggrieved against the enquiry report,

the applicant submitted her detailed representation. The Disciplinary Authority without giving any show cause notice of personal hearing had imposed a penalty of reduction in time scale for a period of three years vide order dated 29.10.2012 (Annexure A-4).

3. Feeling dis-satisfied with the order of the disciplinary authority, the applicant filed an appeal before the Appellate Authority i.e. respondent no.4 on 17.11.2012, but the same was dismissed vide order dated 13.12.2012. The applicant filed a revision petition on 6.3.2013 before respondent no.3 and the same was dismissed vide order dated 2.5.2013. Even the mercy appeal filed by the applicant was also dismissed vide order dated 29.5.2013. The applicant has relied upon an order dated 14.8.2014 (Amardeep Singh vs. Union of India & Ors.) passed by a coordinate Bench of the Tribunal in O.A.No.267/PB/2013. Hence the present OA.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that during a departmental surprise check by the Assistant Commercial Manager in booking office, Ludhiana, on 20.2.2010, four irregularities were detected, which has been enumerated as preliminary objection in the written statement. On the basis of the irregularities, major penalty charge-sheet was issued to the applicant on 3.5.2010 and an enquiry was conducted by following due procedure. The applicant herself admitted that Rs.1396/- was short in her government cash during the surprise check. Even the applicant had made following two different statements on 20.2.2010:-

> " i) Rs.1396/- found in her cash was balance amount to be taken from a passenger.
> ii) She opined that ticket was wrongly prepared of train no.2716 instead of train no.2926".

They have further averred that in support of the basis of the statement that the ticket was wrongly prepared, the applicant could not produce the statement of passenger whose ticket was wrongly prepared by her, which goes to show that the applicant had prepared ticket for ghost passenger/claimant as she could not produce any claimant/passenger of tatkal sewa ticket which was recovered from her drawer. These facts clearly depicts that the applicant had misused her official position to prepare tatkal sewa ticket for her personal gain, ignoring the priority of genuine passengers. Accordingly, the Disciplinary Authority had rightly imposed the punishment upon the applicant after following due procedure. Even the appeal, revision petition and mercy appeal also stand dismissed.

5. On merits, the respondents have stated that the applicant issued six tickets in just three minutes. To handle six applicants in three minutes is practically impossible as in order to check the requisition slip, to print ticket and to collect money from the passenger takes a reasonable time. Six tickets in 3 minutes can be prepared only if all the six requisition forms are kept together in a heap and nobody is disturbing the ticket issuing clerk. That is why she prepared her first ticket wrongly as the applicant was in hurry and kept preparing the tickets for ghost passengers ignoring the priority of genuine passengers. When the first ticket of the applicant was wrongly prepared, she was supposed not to issue it before preparing the second ticket. They have thus prayed for dismissal of the O.A.

6. The applicant has filed a rejoinder by generally reiterating the averments made in the OA.

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7. None has put in appearance on behalf of the respondents despite one pass-over. While proceeding under Rule 16 of the C.A.T.(Procedure) Rules, 1987, we have heard the learned counsel for the applicant.

8. During the course of arguments, the learned counsel for the applicant stated that the only mistake or misconduct committed by the applicant was issuing a ticket and keeping that ticket with herself while the purchaser had gone to mobilize the extra money that was required to be paid by the purchaser. It was during this period that the cash balance kept by her was checked and there was a shortage. As soon as the concerned purchaser came back with balance money to collect ticket, the loss was made good, as such there was no loss to the Government. It is his submission that the issue is very trivial whereas the imposition of penalty was very harsh and disproportionate to the gravity of the misconduct. His further argument is that while dismissing the appeal, revision petition and mercy appeal, the points raised by the applicant in her appeal/revision/mercy appeal have not been considered by the concerned authorities while passing the impugned order.

9. We have gone through the charge-sheet. The articles of the charges framed against the applicant are as follows :-

> " 1. Her Govt. cash was checked by closing the shift. A shortage of Rs.1396/- was detected in her govt. cash.
> 2. One PRS ticket generated under Tatkal Sewa amounting to Rs.9978/- recovered from her.
> 3. Requisition slips recovered from her counter revealed that serial no. was not marked on these requisition slips. Some important columns of these requisition slips were also found blank.
> 4. She prepared first six tickets in just 3 minutes. All the six tickets were Tatkal Sewa tickets. She prepared these Tatkal Sewa tickets in a hurry with malafide intention to corner the Tatkal Sewa seats in connivance with touts/agents".

While there is some sort of explanation for charges no.1 & 2, but no explanation was offered by the applicant as regards other charges during the course of arguments. Each one of them in itself is a serious charge reflecting on the integrity of the applicant. The Inquiry Officer has in his report conclusively found that the charges 1 & 2 are wholly proved while the charge 3 is partially proved against the applicant.

10. As regards the procedure followed in conducting the enquiry and giving opportunity of personal hearing to the applicant, it is found that there is no procedural lapse in holding the enquiry. It is also noted from the letter dated 20.2.2010 that the applicant had apologized for her conduct and has assured that such mistake will not be committed by her in future. A similar admission has also been made by her in her letters addressed to Regional Manager, N.R. Ferozepur and Chief Manager, Ferozepur (Pages 34 & 35 of the paper book).

11. As regards the issue that the points raised by the applicant in her appeal/revision petition/mercy appeal have not been considered by the concerned authorities, we have gone through the orders. The orders though brief are explicit and has taken into account the enquiry report, charges and the relevant documents pertaining to the case. After application of mind, the Appellate Authority has found the punishment awarded to the applicant as adequate. He has further recorded in the appeal that no fresh grounds, other than grounds taken during enquiry has been taken in the appeal. The revision has been turned down on the ground that the revision petition has not been preferred within the prescribed time limit and no reason has been given by the applicant for not preferring the revision petition in time. Thus, without going into the merit of the

appeal, the same is dismissed being time barred. The mercy appeal has been turned down in view of the fact that no new facts/material has been placed in the mercy appeal and, therefore, mercy appeal cannot be forwarded to the headquarters office. It is seen from the above fact that the applicant's contention that the appellate authority and revisional authority have not applied their mind while passing the respective orders, does not sustain.

12. The other argument of the applicant is that the punishment is disproportionate to the gravity or quantum of her to misconduct. We do not agree with this contention. As a matter of fact, if we look at the charges levelled against the applicant, the charges are quite grave and even reflect the integrity of the applicant. Therefore, the punishment awarded to the applicant i.e. reduction to lower stage (two steps) in the same time scale for a period of three years with cumulative effect cannot be termed as disproportionate, excessive or too harsh.

13. In OAs challenging the orders in disciplinary proceedings, the scope of interference of the Tribunals is very limited. In a catena of judgments by the Hon'ble Apex Court, it has been held that the judicial review in the disciplinary matters should not be in the form of re-appreciation of evidence. The Courts should only look at the correctness of process and not get into re-evaluation of evidence before the Inquiry Officer. The findings recorded by the Disciplinary Authority which are affirmed or diluted by the Appellate Authority should not be interfered with unless the applicant shows that the order is without jurisdiction; or that there is procedural irregularity in conducting the enquiry. The Hon'ble Apex Court in the case of **S.R.Tewari** vs. **Union of India** (2013(7) Scale Page 417) has held

that "The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice".

14. We believe this case does not merit consideration because the punishment is not so gross and excessive to shock the conscience. In the matters of disciplinary enquiry, the scope for interference has been circumscribed by various judicial pronouncements by several High Courts and by the Hon'ble Apex Court. Recently, the Hon'ble Apex Court in the case of **Union of India** versus **P.Gunasekaran** (2015 (2) S.C.C. Page 610), in paras 12, 13 & 20 has held as follows:-

> "12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:
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> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:
(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.
Xx xx xx
19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.
20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford

dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

The guidelines enunciated in the judgment above are as relevant and useful for adjudication of Departmental Proceedings in Tribunals also as they are for High Courts. If we consider the guidelines laid down by the Hon'ble Apex Court in the case of P.Gunasekaran (supra), we cannot fail but conclude that the instant case does not merit any interference by us as no aspect of this case qualifies for an intervention by the Tribunals. In the instant case, the enquiry has been conducted following due process of law, there are no procedural lapses or irregularity and the principles of natural justice are not violated in any manner and the punishment imposed by the Disciplinary Authority is neither disproportionate nor excessive.

15. In view of above discussion, we find that no interference is called for by us in the impugned orders and accordingly the OA is dismissed. No costs.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:-29.01.2016.
Kks