

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH,  
ALLAHABAD**

Dated: This the **15<sup>th</sup>** day of February 2018.

PRESENT:

**HON'BLE DR. MURTAZA ALI, MEMBER – J**

**HON'BLE MR. GOKUL CHANDRA PATI, MEMBER -A**

**Original Application No.753 of 2007.  
(U/s 19, Administrative Tribunals Act, 1985)**

Vipul Kumar s/o Shri Akhileshwar, R/o 456-A, Krishna Nagar  
Private Colony, Gorakhpur.

.....Applicant

By Adv: Shri Shashi Ranjan

V E R S U S

1. Union of India through General Manager, Northern Eastern Railway, Gorakhpur.
2. Additional Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Senior Divisional Commercial Manager, North Eastern Railway, Varanasi.
4. Divisional Commercial Manager, North Eastern Railway, Varanasi.

..... Respondents

By Adv: Shri P.N Rai

**ORDER**

**BY HON'BLE DR. MURTAZA ALI, MEMBER – J**

The applicant has filed this OA seeking following relief (s) –

- “(i)        *Issue writ, order or direction in the nature of certiorari quashing the impugned orders*

*dated 26.2.2003, 31.3.2004, 19.11.2004 and 19.5.2006 passed by respondent Nos. 4, 3 and 2 respectively (Annexures A-2, A-10, A-13 and A-15 respectively).*

- (ii) Issue writ, order or direction in the nature of mandamus directing the respondents not to retire the petitioner compulsorily and reinstate him in service as Senior Commercial Clerk and pay the entire arrears of salary and other consequential benefit with interest as if the orders dated 31.3.2004, 19.11.2004 and 19.5.2006 have not been passed.*
- (iii) To issue any other writ, order or direction which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.*
- (iv) Award costs of the original application in favour of the applicant".*

2. The brief facts as stated in the O.A. are that the applicant was suspended on 1.2.2002 while he was posted at Siwan Railway Station as Senior Commercial Clerk and thereafter a charge-sheet dated 20.1.2003 (Annexure A-1) was served upon him alleging that he had forged and fabricated certain tickets for Phagwara, Jagadhari and Jalendhar and erased its slash number. It has been alleged that Shri A.K. Chatterjee, a retired railway employee was illegally appointed as enquiry officer. The applicant demanded certain additional documents such as T.C.R. book, ticket collector report book, passenger statement and original tickets vide letter dated 19.6.2003 (Annexure A-3) but the enquiry officer rejected

his request vide its order dated 23.6.2002 (Annexure A-4) without assigning any reasons. It has also been alleged that the enquiry officer did not compare the tickets from original platform tickets and did not supply the relied upon documents which is against the Railway Board Circular dated 2.8.1962 (Annexure A-5). It has further been alleged that the enquiry officer did not afford him proper opportunity of hearing. The applicant submitted his defence brief on 9.10.2003 (Annexure A-7) denying the allegations and pointing out non supply of desired documents but the enquiry officer submitted its report dated 9.12.2003 (Annexure A-8) holding the charges levelled against the applicant as proved. The applicant also submitted his reply (Annexure A-9) on the enquiry report but the Disciplinary Authority imposed the punishment of reversion from the scale of Rs.4000-6000 to Rs.3200-4900 for a period of 8 years vide impugned order dated 31.3.2004 (Annexure A-2) without considering the representation submitted by the applicant on the enquiry report. It has further been alleged that the appellate authority has wrongly enhanced the punishment of reversion from 8 to 10 years vide order dated 19.11.2004 (Annexure A-13) and the revisional authority further enhanced the punishment and compulsorily retired the applicant vide order dated 19.5.2006 (Annexure A-15) without considering the points raised by him.

3. In the counter reply, it has been stated on behalf of respondents that the applicant was placed under suspension from 22.1.2002 for committing forgery in SPTM tickets while he was posted as Senior Commercial Clerk at Siwan station. A detailed charge sheet was served upon the applicant vide letter dated 20.1.2003 alleging that while working at booking window No.1 he embezzled an amount of Rs.1556/- on 8.1.2002 by giving command of 4 tickets Nos and did not get them printed and by scratching the slash numbers of tickets. He also embezzled an amount of Rs.1175 on 11.1.2002 by issuing tickets for Phagwara, Jagdhari and Jalendhar city. It is further stated that Shri A.K. Chatterjee, a retired person was appointed as Enquiry Officer as per provision contained under Rule 9 (2) of D.A. 1968. The Enquiry Officer conducted the enquiry after giving full opportunity of hearing to the applicant. The applicant was also made available the copy of TCR book while other desired documents were not found proper to be supplied to the applicant. It is also stated that the name and address of passengers were not noted by Shri A.K Tripathi, CIT/CTT Squad and, therefore, it was not possible to cross examine them. It has also been stated that the Enquiry Officer concluded the enquiry proceeding after giving full opportunity to the applicant and the Disciplinary Authority awarded the punishment after giving him proper opportunity of hearing to the applicant on the enquiry report. The Appellate as well as

revisional authorities have also rightly rejected the appeal as well as revision preferred by the applicant against the said punishment.

4. Heard Shri Shashi Ranjan counsel for the applicant and Shri P.N Rai counsel for the respondents and perused the record.

5. Learned counsel for the applicant would contend that the applicant demanded certain additional documents such as TCR book, ticket collector's report book, passenger statement and original tickets vide letter dated 19.6.2003 (Annexure A-3), but his request was wrongly rejected by the enquiry officer vide its order dated 23.6.2003 (Annexure A-4). Thus, it has been contended that the applicant was not afforded full opportunity of being heard and whole disciplinary proceedings are liable to be quashed due to non-supply of desired documents. He relied upon the judgment dated 1.1.2002 passed by C.A.T, Principal Bench in O.A No. 649 of 1999 G.C. Gupta Vs. Union of India and others.

6. Learned counsel for the respondents submitted that the applicant was supplied the copy of TRC book while the other documents were not found proper to supply to the applicant and he was given full opportunity of being heard. It has also been contended that the Tribunal should not interfere in the order passed by the Disciplinary Authority as well as Appellate Authority and Revisional Authority as the respondents have conducted the

disciplinary proceedings in accordance with established principles of law.

7. It is trite law that the judicial review is not an appeal of a decision but a review of the manner in which the decision has been made. The purpose of judicial review is to ensure that the individual receives fair treatment. In the case of **Govt. of A.P. Vs. P. Chandra Mouli – 2009 (13) SCC 272**, it has been held by the Hon'ble Supreme Court that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere unless it is found that either enquiry proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defend, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee. Thus, the Tribunal cannot interfere with the findings of Enquiry Officer or Disciplinary Authority where they are not arbitrary or utterly perverse.

8. In the case of **B.C. Chaturvedi Vs. Union Of India & ors. – (1995) 6 SCC 749**, the Hon'ble Supreme Court has held as under:-

***“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***

*enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry 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 enquiry 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 re-appreciate 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 enquiry 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."*

9. Thus, it is clear from the above decisions that this Tribunal has very restricted power of judicial review in disciplinary proceedings and we have to ensure only that the employee receives fair treatment and relevant rules, regulations and principles of natural justice have been adhered to and the employee was afforded reasonable opportunity to defend. We

have not to re-appreciate the evidence and to arrive an independent finding but we have certainly to ensure that such findings must be based on some evidence and findings of Enquiry Officer or Appellate Authority are not arbitrary or utterly perverse. Therefore, it can be concluded that the judicial review lies on the aspect of procedural irregularity and denial of legitimate opportunity for presenting his case.

10. As stated above, the Tribunal or the Court cannot sit in appeal over the decision of disciplinary authority nor can substitute its view in place of the said authority. The disciplinary authority was within his right to issue appropriate punishment as he may have deemed fit and proper. The Tribunal is not competent to go into the quantum of punishment inflicted by the disciplinary authority unless it is shockingly disproportionate. The Tribunal cannot sit as an appellate authority on the decision of the disciplinary authority or exercise their jurisdiction of judicial review in disciplinary matters if there is no apparent illegality.

11. Learned counsel for the applicant has not pointed out any procedural irregularity in conducting the disciplinary proceedings except non supply of desired documents. The short controversy involved in this O.A. is whether the disciplinary proceedings is vitiated due to non-supply of documents desired by the applicant.



12. Following charges were levelled against the applicant vide chargesheet dated 20.1.2003 (Annexure A-1) -

**“Jh foig dækj dsfo: } dnkpkj dk fooj.k**

- 1- **blgkxus fnukad 08-1-2002 dks I hoku ta dsf[kMdh I a 1 ij dk;Z djrs gq fVdV I a 40079922] 40079924] 40079925] ,oa 40079928 ij lyVQkeZ fVdV tkjh djus dk deklM fn;k ijUrq bu fVdVka ij fitVj }kjk Nius ugha fn;k rFlk bu I kns fVdVka dks dæ'k% 2 ;kf=; ks grq yq/k; kuk 2 ;kf=; ks grq QxokMk] 2 ;kf=; ka grq tkyWkj rFlk 2 ;kf=; ka grq yq/k; kuk ds fy, tkjh fd;s tk jgs fVdVks ds ulps j[k dj dkcZu i }fr I s dæ'k% : 378@&] 406@&] ,oa 398@& ds fy, tkjh fd;k rFlk bu fVdVks ij vadr Lyg uEcj dks [kjkp dj fonfir dj fn;ka bl izdkj : - 1556@& dk xou buds }kjk fd;k x;ka**
- 2- **blgkxus fnukad 11-1-2002 dks I hoku ta f[kMdh I a 1 dk dk;Z djrs gq fVdV I a 37502789] 47502790 ,oa 47502801 ij lyVQkeZ fVdV tkjh djus dk deklM fn;k ijUrq bu fVdVka dks fitVj }kjk Nius ugha fn;k rFlk bu I kns fVdVka dks dæ'k% 3 ;kf=; ks grq QxokMk] 1 ;k=h grq txk/kjh ,oa 2 ;kf=; ks grq tkyWkj fl Vh I s fy, tkjh fd;s tk jgs fVdVks ds ulps j[kdj dkcZu i }fr I s dæ'k% : 609@&] 169@& ,oa 406@& ds fy, tkjh fd;k rFlk vius dæR; ka dks fNikus ds mnæ; I s Lyg uEcj dks [kjkp dj fonfir dj fn;k ftl I sosLi"V : i I si<s u tk I dA bl izdkj : 1175@& dk xou fd;ka**  
**bl izdkj Jh foig dækj us: 2731@& dk xcu fd;ka budk ;g dR; budh I R;fu"Bk] drD; ijk;.krk dks I anX/k fl } djrk gA rFlk ;g jsy deþkjh I svi\$kr I kekU; 0;ogkj ds Hh ifrdny gA budk ;g vkpj.k jsy I ok ¼/kpj.k½ fu;e 1966 ds fu;e 3-1 ¼¼ ¼¼¼ ¼¼¼½ ds ifrdny gA”**

13. While denying the above charges, the applicant submitted his representation and also prayed for supply of following additional documents vide his letter dated 19.6.2003 (Annexure A-3) by giving its relevancy –

- i) TCR book of Siwan for the period of January 2002.  
*Relevancy – It will show that I had viewed platform tickets which might have been collected by the T.C at the gate for early in the TCR as usual.*

Custodian : SS/Siwan

- ii) Passengers statement  
*Relevancy – statement of passengers will show if the alleged false tickets were purchased by the passengers themselves from the booking counter or by some third person from elsewhere.*

Custodian : GM/Vig./GKP

- iii) *The Original tickets alleged from which by carbon process fake tickets were prepared.*  
*Relevancy – it will prove that no tempering was done with the tickets.*

Custodian : GM/Vig./GKP"

14. From the letter dated 17.7.2003 (Annexure A-4) issued by the Enquiry Officer, it is apparent that the TCR book of Siwan for the period of January 2002 was made available to the applicant as additional document but remaining two documents were denied asserting that it had no relevancy to the charges.

15. I have also gone through the judgment in G.C. Gupta (supra). In the said case also, the charged employee had sought for supply of certain additional documents for his proper defence. In the said case after examining the relevancy of desired documents, the Enquiry Officer had permitted the applicant to inspect the same documents with the exception of one which was the reply to a questionnaire sent to him by vigilance which was not available on record. It was contended on behalf of applicant that the denial of additional documents prejudiced him in his defence. In this regard, reliance was placed upon proviso to Rule 14 (12) CCS (CCA) Rules which permits the Enquiry Officer to refuse to requisition such of the document as are in its opinion not relevant to the case by recording its reasons in writing. In the said case, the Enquiry Officer earlier permitted the applicant to access some documents which he considered relevant for the enquiry but lateron he denied. Considering the facts, it was held that the applicant was denied reasonable opportunity for his proper defence and opportunity and the disciplinary proceedings was quashed.

16. We are of the view that the judgment in G.C. Gupta (supra) is not relevant in the instant case as the Enquiry Officer never permitted to access the documents required by the applicant and ordered to provide document mentioned at Sl. No. 1 only and did not find the relevancy of documents mentioned at Sl. No. 2 and 3

and denied the same. The applicant has failed to convince us that in what manner, these non-supplied documents were relevant for the purpose of his defence. Even in the representation preferred against the enquiry report, the applicant had not stated that due to non supply of desired documents, he was in any way prejudiced. Later on no such ground has been taken in the memo of appeal and the issue of non supply of desired documents was not raised even at the time of personal hearing and while filing representation in response to the notice of proposed enhancement of punishment issued by the appellate as well as revisionary authorities. Thus we find that non-supply of these documents did not prejudice the applicant and the enquiry conducted by the respondents cannot be vitiated on this ground. We also do not find any irregularity in the conduct of enquiry and thus we are of the considered view that the applicant was afforded full opportunity of being heard. Thus the O.A. is devoid of any merit and liable to be dismissed.

17. Accordingly, OA is dismissed. No order as to costs.

Member (A)

Member (J)

Manish/-

## APPENDIX

## Applicant's Annexures in O.A

Sl. No.	Particulars	Dates	Annex.
1.	Copy of chargesheet	20.1.2003	A-1
2.	Copy of order	26.2.2003	A-2
3.	Copy of letter	19.6.2003	A-3
4.	Copy of order issued by Enquiry Officer.	23.6.2003	A-4
5.	Copy of Railway Board Circular	2.8.2002	A-5
6.	Copy of statement		A-6
7.	Copy of defence brief submitted by petitioner.		A-7
8.	Copy of enquiry report submitted by Enquiry Officer	9.12.2003	A-8
9.	Copy of enquiry report	19.12.2003	A-9
10	Copy of order	31.3.2004	A-10
11.	Copy of appeal.	14.5.2004	A-11
12	Copy of notice	17.6.2004	A-12
13.	Copy of order	19.11.2004	A-13
14	Copy of notice	4.4.2005	A-14
15.	Copy of letter dated 7.6.2006 and order dated 19.5.2006 issued by respondent No.	7.6.2006 19.5.2006	A-15

## Respondents Annexures in C.A.

Sl. No.	Particulars	Dates	Annex.
1.	Copy of Railway Board letter		CA-1
2.	Copy of letter issued by Enquiry Officer	23.6.2003	CA-2
3.	Copy of relevant documents showing that the additional documents were given to the applicant		CA-3
4.	Copy of document		CA-4
5.	Copy of daily ordersheet	23.9.2003	CR-5.