Central Administrative Tribunal
Principal Bench: New Delhi

OA No.108/2014

Reserved on: 26.03.2018
Pronounced on:05.04.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Gopal s/o late Sh. Data Ram
Ex-STE, Northern Railway,
Najibabad
Residential Address
C-4G/85-B, Janakpuri,
New Delhi. ...Applicant

(By Advocate: Shri G.D. Bhandari)

Versus

Union of India through
1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad. ...Respondents

(By Advocate: Shri A.K.Shrivastava)

O R D E R

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

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

> "*i). Set aside and quash the impugned punishment orders dated 28.05.2013 (Annexure A1), rejection of appeal orders dated 16/22.07.2013(Annexure*

A-3) and rejection of revision petition orders dated 09.10.2013 (Annexure A03b), being badly vitiated as humbly submitted in the foregoing paras;

ii) Direct/command the respondents to reinstate the applicant forthwith with all consequential benefits of payment of wages and allowances with interest @ 24% p.a., seniority and promotion etc.

iii) Any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant along with heavy costs against the respondents, in the interest of justice."

2. Brief facts of the case are that after the death of applicant's father in harness on 12.03.2005, who was employed as MCM TL under the respondents, the applicant was appointed on compassionate ground as Ticket Collector initially in the Ticket Checking Staff Cadre in Northern Railway, Moradabad and later transferred to Najibabad. It is submitted that performance of the applicant has been to the entire satisfaction of his superiors, that his ACRs have been without any adverse remarks throughout the years, and that he has not been awarded any punishment except the one impugned in this OA. It is the contention of the applicant that on 21.11.2008, he was deployed for checking of passengers in Train 4043 Kotedawara to Delhi along with his senior Sh. C.P. Singh. He properly checked his allotted coaches where no irregularity was found with the passengers. However, when the train reached Gajraula Station, a passenger

approached him for allotment of a reserved seat and tendered Rs.20/-, two GC notes of Rs.10/- each towards the reservation fee of Rs.15/- and Rs.5/-was to be returned to him. It is further submitted that when the process was going on, an old person sitting on the adjoining seat requested for change against a GC Note of Rs.100/- as he had to pay Rs.5/- for a cup of tea to the vender. Before the applicant could complete the whole process, a team of Vigilance Inspectors caught hold of his hand and directed him to take out the cash for checking and did not permit him to complete the process. The Vigilance team seized the applicant's cash and did not permit him to return the GC note of Rs.100/- or the change to the old passenger, who protested against the attitude of the vigilance inspectors, who rebuked him and prepared an adverse report against the applicant. Subsequently, the said passenger lodged a complaint against the vigilance inspectors and entered the incident in the Complaint Book with Station Master, Najibabad. The applicant further submits that he came to know that the trap was laid at the instance of one regular passenger namely Tejpal Singh, a Cloth Merchant, who used to travel without ticket and once travelling without ticket he was caught and sent to jail under Railways Act under Section 137/179. He was convicted and sentenced

to 10 days RI and fine of Rs.500/- in addition to the ticket charges. Resultantly, the applicant earned his annoyance and ire and, therefore, he managed to have a trap laid against the applicant in an illegal manner. The applicant contends that the respondents initiated disciplinary proceedings against him in a *malafide* manner and a major penalty chargesheet dated 02.03.2009 was served upon him with twin charges namely(i) he failed to issue EFT/reservation coupons for Rs.30/- for regularizing the decoy passengers. So he is held responsible for demanding and accepting Rs.20/- as seating charge from the decoy passenger in coach D-1 and (ii) he was found responsible for Rs.115/- excess in his government cash. It is further submitted that the respondents took no effective steps to expedite the enquiry proceedings and dragged the same for a long time. Meanwhile, he was arbitrarily transferred out of the Division by the respondents in violation of rules and in connivance with said Tej Pal Singh, Cloth Merchant of the locality who was caught by the applicant and other TTE Mukesh Kumar. The representations submitted by him in this regard on the ground that the transfer order was not issued by the competent authority, did not yield any response either from the respondents or from the Tribunal despite filing of various Original Applications. However, he

was protected by the High Court of Delhi in WP(C) No.7238/2011 who was pleased to grant a stay order against inter-divisional transfer order of the applicant till finalization of disciplinary proceedings initiated against him. The contention of the applicant is that the enquiry officer did not examine independent witnesses in the enquiry. Rather the witnesses examined were of vigilance team. He further submits that as the inquiry officer was conducting the inquiry in an arbitrary and illegal manner, the applicant requested for change of inquiry officer but his request was not acceded to for the reasons best known to the respondents. The applicant contends that one Sandeep Kumar, his defence helper, was also transferred to Firozpur Division and because of which he was unable to continue to work as defence helper. At this the applicant requested for engaging another defence helper, even this request was also turned down. The applicant contends that the inquiry officer submitted his inquiry report dated 31.12.2012 holding the charges proved against the applicant. The disciplinary authority served upon a copy of the enquiry report vide order dated 22.01.2013 asking for his representation, if any, within 15 days of the receipt of the same. The application submitted his representation on 18.03.2013 that the inquiry has not been conducted in

accordance with rules and independent witnesses were also ignored. It is the contention of the applicant that the disciplinary authority, without applying its judicious mind, rejected the representation and imposed the penalty of removal from service vide order dated 28.05.2013. Aggrieved, the applicant preferred an appeal dated 25.06.2013 but the appellate authority also did not deal with the contents of the appeal and rejected the same in a mechanical manner vide order dated 16/22.07.2013. The applicant preferred a revision petition against the appellate order on 06.08.2013 and the revision petition also met with the same fate as the revision petition was dismissed vide order dated 09.10.2013. The applicant contends that it is to his dismay that despite performing his duties to the best of his ability and to the entire satisfaction of his superiors, he has been removed from service by the respondents even without taking into consideration his past conduct and service records, which are unblemished throughout. He, therefore, submits that the instant OA deserves to be allowed.

3. The respondents have filed their written statement denying the averments of the applicant contained in the OA. They have submitted that the applicant was given full opportunity to defend his case and to disprove the charges

levelled against him. The inquiry officer conducted the inquiry in a proper manner and after adducing the entire evidence the inquiry officer held the applicant guilty of the charges. The applicant was given a notice to show cause as to why impugned penalty should not be imposed upon him. The respondents further submit that the applicant has not been able to give any legitimate proof for the charges in his defence during the inquiry nor in his representation hence the representation preferred by him was rejected and punishment of removal from service was imposed upon him. The applicant also filed an appeal on 25.06.2013 which was rejected by the appellate authority on 16/22.07.2013 as the appeal was found to be misconceived. The applicant further preferred a revision petition on 06.08.2013 stating therein that the punishment order has not been passed by the competent authority and, therefore, needs to be re-visited. The Revision Authority considered the grounds raised by the applicant in the revision petition and rejected the same by a reasoned and speaking order dated 09.10.2013. The respondents, therefore, contends that in view of the submissions made by them, the OA deserves to be dismissed with heavy costs.

4. We have heard the learned counsel for the parties and perused the material on record.

5. A major argument of the applicant is that he was appointed on compassionate ground and, hence, his appointing authority was Divisional Railway Manager [DRM]. It is further argued that the order of removal from service has been passed by the Divisional Commercial Manager [DCM] whereas his appointing authority is DRM. Therefore, the impugned punishment order is illegal as having been passed by an incompetent authority. This argument is not acceptable. Normally the disciplinary authority for the post of Train Ticket Examiner [TTE] is Divisional Commercial Manager and, therefore, he is the disciplinary authority for the applicant as well. The appointment order signed by the DRM appointing the applicant on compassionate ground is a special provision because DRM has been made appointing authority for all compassionate appointments of the level where the applicant was appointed on compassionate ground. This does not mean that for every other purpose, the DRM shall continue to be the authority which will pass orders required in disciplinary matters or otherwise. The applicant was holding the post of TTE and for that post the disciplinary authority was DCM and that seems to be perfectly in order in law and in practice.

6. The other argument of the applicant is that the two decoy passengers, who were deployed to trap the applicant, were not examined in the enquiry. Out of two decoy passengers, one, namely Sanvar Ali s/o Sh. Alla Rakha did not turn up despite notice. Other one also did not turn up on notice. However, learned counsel for the applicant placed before us an affidavit dated 23.01.2011 which this decoy passenger, Sanvar Ali has sent which contradicts the charges made against the applicant. However, the respondents submit that such an affidavit is not part of the record and there is no evidence that it was received by them. It is difficult to take note of such an affidavit which has been sent by the witness avoiding his personal appearance. Firstly, there is no way to cross-examine the witness to verify the contents of its contention made in the affidavit, and secondly because it cannot be established that such an affidavit has indeed been sent by the said passenger, therefore, we cannot really attach much credibility to this affidavit. The indisputable fact is that the two witnesses were summoned but chose not to turn up to give evidence. Therefore, the willful non-appearance of independent witnesses cannot be held to have vitiated the enquiry process. The applicant also had the opportunity of presenting the decoy witnesses as defence witnesses to

establish his innocence but the applicant did not take recourse to this opportunity.

7. The applicant also argued that there was another independent witness, who claimed that he had given Rs.100/- to the applicant to get change but in the melee that occurred when the applicant was caught by the vigilance squad, the money was not refunded to him. The argument of the applicant is that excess money recovered from him could be on account of this Rs.100/- note that he had been given by the independent witness for getting change. It was also argued that the private person has lodged an FIR. There is nothing to verify this aspect at this point of time. What comes out from record is that this passenger was also part of the trap which was set up by Vigilance Department to catch the applicant in the act of accepting illegal gratification. The records reveal that the applicant had never summoned this witness as a defence witness during the enquiry. Moreover, this plea has not been raised during enquiry or even at the stage of appeal and revision. To us, it appears more as an afterthought.

8. At the time of oral arguments, the applicant also placed before us the following judgments:-

i) Jasmer Singh vs. State of Haryana & Another [2015 (4) SCC 458];

ii) Selvaraj vs. State of Karnataka [2015 (10) SCC 230];

iii) Dr. D.P.S. Luthra vs. Union of India & Ors. [1988 (8) ATC 815];

iv) N.K. Varadarajan vs. Senior Deputy Director General, AMSE Wing, Geological Survey of India and Anr. [OA No.1012/1988 decided by Bangalore Bench of CAT on 04.12.1990]

v) Hari Om Singh vs. D.T.C. & Ors. [OA No.2351/2015 and others decided by CAT, Principal Bench vide common order dated 26.10.2016];

9. We have gone through the above citations with due care and we find that these rulings pertain to the procedural issues and hold that procedural lapses do vitiate the process of enquiry. However, as we examine the instant case, we do not find any irregularity in procedure whose magnitude justifies setting aside the disciplinary proceedings. We have already discussed the issue of independent witness and have observed that the witnesses did not turn up despite being summoned and they willfully chose not to testify before the inquiry officer and, therefore, the respondents have to rely on other evidences which were overwhelmingly pointing to the misconduct committed by the applicant.

10. The Hon'ble Apex Court in the case of ***Government of Andhra Pradesh v/s. Mohd. Nasrulla Khan*** [2006 (2) SCC 82) has held that the scope of judicial review is confined to correct the errors of law or procedural error if results in manifest miscarriage and justice or violation of

principles of natural justice. The Hon'ble Court in para 7 has held that:-

> *"By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority."*

11. The Hon'ble Apex Court in the case of ***S.R.Tewari versus Union of India*** [2013 (7) SCALE 417] has reiterated 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.*"

12. In another judgment, the Hon'ble Supreme Court has reiterated his earlier view that the High Court as well Tribunal under Article 226 of the Constitution of India cannot sit as Court of appeal over the decision of the authorities holding departmental proceedings against a

public servant. After relying upon the judgment in ***State of Andhra Pradesh and Others v. Sree Rama Rao*** [AIR 1963 SC 1723] dismissed the SLP in case of ***State Bank of India vs. Ram Lal Bhaskar and Another*** [2011 (10) SCC 249], Para 13 of the judgment reads as under:-

> *"13. Thus, in a proceeding under Article 226 of the Constitution of India, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decision by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against the respondent no.1 do not constitute any misconduct and that the respondent No.1 was not guilty of any misconduct."*

Culled out from these judgments, the following broad guidelines, *inter alia*, emerge

a) *Tribunals should not, generally, re-appreciate the evidence considered by the disciplinary authority, as they should not act like an appellate authority;*
b) *They should not interfere unless there is a substantial procedural lapse committed by the enquiry officer;*
c) *They should not interfere unless there is evident violation of Principles of Natural Justice and fair opportunity of hearing has not been afforded to the charged officer;*
d) *They should not go into the question of quantum of punishment unless it is grossly disproportionate to the gravity of misconduct and/or shocking to the conscience.*

13. These guidelines for the Tribunals get strong support and endorsement from a recent judgment of the Apex Court in the case of ***Union of India versus P.Gunasekaran*** [2015 (2) SCC 610] wherein it has been 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:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

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*
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> *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.*
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> *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."*

14. In the matter of imposition of sentence too, 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. We have, however, carefully considered the arguments of the applicant on the issue of

punishment, which, the applicant contends, is grossly disproportionate to the alleged misconduct committed by him. Ordinarily courts should not interfere in the matter of award of punishment unless the punishment is so harsh and so disproportionate that it shocks one's conscience. In this case, the applicant was appointed on compassionate ground because his father died in harness. At the time of the alleged incident i.e. on 21.11.2008, applicant's age was just over 22 years, as one of the documents on record shows his date of birth as 29.04.1986. We have also noted that he had accepted the bribe of the tune of Rs.20/-. We are quite conscious of the fact that the charge of corruption need not be judged on the basis of the amount or money involved in corruption cases, but that is not to negate that a bribe of Rs.20/- or Rs.2000/- or Rs.2.00 lakhs could be deemed alike for the purposes of imposition of punishment. While it is not our view that because the amount involved is extremely meagre, the charge of corruption does not stand proved or that the applicant should not be punished, but we do find that the punishment of removal from service which means he loses government job for all time to come at this stage of his life particularly in view of the fact that he is still quite young as also that his appointment was on compassionate ground, seems too harsh.

15. We, therefore, quash the impugned orders only in respect of punishment i.e. removal from service imposed upon the applicant. However, we do not intend to prescribe a particular punishment to the applicant. Instead, we will rather like to leave it to the respondents to re-consider only the aspect of the quantum of punishment and after due consideration including affording an opportunity of personal hearing to the applicant, award a punishment, which is lesser than that of removal from service. This consideration must take place within a period of three months from the date of receipt of a certified copy of this order. The applicant must be informed about the fresh order on his punishment in writing as soon as it is passed. There is no order for re-instatement of the applicant till the respondents pass a fresh order in regard to his punishment as directed above. However, to make sure that respondents do complete the above direction within the time frame stipulated above, the failure to comply with the direction of passing a fresh order on his punishment within three months, will entail his reinstatement. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/AhujA/