

**Central Administrative Tribunal
Principal Bench**

OA No. 1595/2013

This the 13th day of July, 2016

***Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)***

Rohtash,
S/o Late Jage Ram,
Aged about 61 years,
R/o 930, Vijay Chowk,
Narela,
Delhi-110040.

- Applicant

(By Advocate: Mr. K.K.Patel)

Versus

1. Union of India
Through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Regional Manager,
DRM Office,
Northern Railway,
New Delhi.
3. Sr. DEE (Coaching),
Northern Railway,
New Delhi.

- Respondents

(By Advocate: Mr.Kripa Shankar Prasad)

ORDER (ORAL)

Hon'ble Mr. V.N.Gaur, Member (A)

The present OA has been filed with the following prayer:

“(a) Call for the records of the case.

- (b) Quash and set aside the orders dated 24/02/2006 (Annexure-A/1), 15/11/2006 (Annexure-A/2) and 10/7/2007 (Annexure-A/3)
- (c) Award exemplary costs of the proceedings.
- (d) Pass such further order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

2. A departmental enquiry was held against the applicant on the following charges:

"Memorandum of Charge Sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968

Statement of Articles of Charge framed against Shri Rohtash, S/o Shri Jage Ram,

Designation: TLF, Grade-I, Elect. Depot/N.Rly/Ghaziabad,

Name and Designation of Railway Servant

Article I & II

"The employee Shri Rohtash, S/o Shri Jage Ram, TLF, Grade-I, working under Sr. Section Engineer/Elect/N.Rly/ Ghaziabad has forged the signature of Assistant Personnel Officer/Elect./Divisional office/N.Rly/New Delhi and stamped the "Salary-cum No objection certificate" for becoming a member of Delhi Nagrik Sehakari Bank Ltd. From this it is clear that after submitting false and forged documents and certificates he would have received loan from the bank and for which the bank and this department had to face difficulty and the reputation of this department would have been blamed. Thus, the said employee through those documents had laid a conspiracy by making this department as a party.

The employee shri Rohtash, S/o Shri Jage Ram, TLF, Grade-I, working under Sr. Section Engineer/Elect/N.Rly/Ghaziabad has forged the signature of Assistant Personnel Officer/ Elect./Divisional office/N.Rly./New Delhi has violated Rule 3.1 (i), (ii) and (iii) of Railway Conduct Rules, 1966".

3. An enquiry was held against the applicant and the enquiry officer submitted the report on 11.11.2005 with the finding that charges were proved. The applicant submitted his representation

on 07.12.2005. After considering the same the Disciplinary Authority (DA) passed order on 24.02.2006 imposing the punishment of *reduction to lower grade TLF-I to TLF Grade-III for a period of 5 years without postponing future increments*. The appeal submitted by the applicant was rejected by the Appellate Authority (AA) on 22.11.2006. The revision petition was also rejected on 10.07.2007. The applicant superannuated in September 2011. Learned counsel for applicant submitted that

- (1) The applicant could not become a member of the bank neither he pursued to get membership. His application was submitted by the agent who might have committed any forgery but the same could not have been accepted by the enquiry officer.
- (2) The enquiry officer did not allow him to inspect this crucial document where signature of the APO (Elect.) NDLS was alleged to have been forged. This was a serious lacuna in the enquiry sufficient to declare the entire proceeding to be vitiated.
- (3) The applicant's request for changing the enquiry officer was not accepted by the DA.
- (4) It was further argued that the respondents have not been able to show that there was any financial loss, or loss

of reputation, to the respondents because of the alleged forged salary/no objection certificate.

(5) Apart from the vitiated enquiry, the DA, AA and Revisioning Authority (RA) passed non-speaking and cryptic orders without dealing with the contentions raised by the applicant in his representation/appeal. It is trite that the orders passed by these authorities are quasi judicial in nature, and therefore, it has to be a speaking order dealing with all the points raised by the applicant.

(6) Counsel for the applicant also raised the issue of parity with another officer Sh. Balbir Singh, Tech.I in whose case the document prepared by the same agent was found to be forged but the enquiries against the applicant and Sh. Balbir Singh were entrusted to two different enquiry officers. The enquiry officer in the case of Sh. Balbir Singh found him not guilty, and innocent as the documents were not used for the purpose of getting the membership while the enquiry officer in the case of the applicant held him guilty on the basis of same evidence, same bank and same agent.

4. Learned counsel for the respondents, on the other hand, denied any violation of the rules and principles of natural justice in the disciplinary proceedings conducted against the applicant. According to him, no opportunity was denied to him while

defending himself. He further submitted that it was immaterial whether the respondents have suffered any financial loss or loss of reputation; the important thing was that forging the signature and putting a forged stamp on the salary-cum-no objection certificate was misconduct in itself. The applicant cannot shift the responsibility to the agent of the bank because it could not have been done without specific knowledge and tacit approval of the applicant.

5. We have heard the learned counsel for the parties and perused the record. A perusal of the forwarding note of the enquiry report dated 11.11.2005 does not throw any light on the fact whether the applicant had been shown the original of the forged salary-cum-no objection certificate. It has been averred in the counter that all the relied upon documents had been supplied to the applicant but whether the original of the forged document was shown to the applicant has not been clearly brought out. Since the full enquiry proceedings have also not been placed on record, we are unable to comment on it further. The applicant in his representation dated 02.12.2005 had raised various issues such as the salary-cum-no objection certificate was not made available for inspection in original; the departmental enquiry did not add anything fresh over what was reiterated by the fact finding enquiry; there is no documentary evidence against the charged officer of committing any illegal act; his request for

change of enquiry officer was rejected without mentioning any ground. The disciplinary authority, however, passed the following order:

“I have carefully considered your representation dated 27.12.04 and 07/12/05 in reply to the memorandum of Show Cause Notice No. 42/Elect/99/CHG/2004 dated 15/12/2004.

I do not find your representation to be satisfactory due to the following reasons:

Either you had forged or you had prepared the documents from someone, the signature of APO (Elect.), New Delhi and put forged stamp on the salary cum no objection certificate. For this illegal act I found you to guilty of charges.

I, therefore, hold you guilty of the charge (s) viz:

That either you had forged or you had prepared the documents from someone, the signature of APO (Elect.), New Delhi and put forged stamp on the salary cum no objection certificate.

Levelled against you and have decided to impose upon the penalty of reduction to a lower post/grade/service. You are, therefore, reduce with immediate effect/with effect from T.L.F. Grade-I to the lower post/grade/service of T.L.F. Grade-III in the scale of Rs.3050-4530 until you are found fit by the competent authority to be restored to the higher post/grade/service of Five years in scale of Rs.____ with postponing future increments for a period of ____ years ____ months/without postponing future increments.”

6. The applicant submitted his appeal dated March 11, 2006 in which he raised the issue of harshness of the punishment, besides repeating the assertion that the concerned agent was responsible for the act and that he had not caused any financial loss to the respondents. The AA disposed of the appeal vide order dated 15.11.2006 with the following order:-

“In spite of several chances given to the C.O. the C.O. has still not shown remarkable improvement in his working as certified by the controlling field officer which is unfortunate. In view of this the administration is left with no choice but to hold the penalty as originally given.”

7. The revision petition of the applicant again was dismissed by the revisioning authority in the following manner:

“I have gone through the complete D&AR case and the review appeal. After considering all the documents, I came to conclusion that there is no scope left for any reduction. The penalty imposed by DA stands good.”

8. A perusal of these orders will show that none of the authorities have dealt with the contentions raised by the applicant in their orders substantiating the allegation that there was no application of mind by these authorities. In **R.P. Bhatt vs UOI**, (2006) 3 SCC 674 Hon’ble Supreme Court emphasised that word ‘consider’ implied due application of mind by the appellate authority:

“The word 'consider' in rule 27 (2) implies due application of mind'. It is clear upon the terms of r. 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in cls. (a), (b) and (c) thereof.”

9. Another facet of the matter is that the applicant and Sh. Balbir Singh both had applied for the membership of the cooperative bank through the same agent and the agent had

adopted the same *modus operandi* of forging the signature of the APO (Elect.) on the salary-cum-no objection certificate while processing the applications. Only for the reason that the allegations against the two employees were enquired into by two different Enquiry Officers, they received different treatment from the respondents. Though the applicant had not raised this point before the AA and RA, he had mentioned this in his mercy petition dated 10.08.2009. The respondents have, however, neither replied to the mercy petition nor have reacted to this point in their counter reply. While it is true that the two proceedings were held independently, the respondents have not disputed that the claim of the applicant that allegations were identical and the extent of responsibility on the employees could not have been different by any stretch of imagination. We, therefore, do not see any logic in the different treatment given to them by the respondents. In **Rajendra Yadav vs. State of M.P.& Ors.** two employees were served with charge sheets who were involved in the same incident. A person who had more serious role was inflicted comparatively a lighter punishment than the appellant in the said case. This was held to be violative of doctrine of Equality Principles enshrined under Article 14 of the Constitution of India.

10. In the matter of **Apparel Export Promotion Council vs. A.K.Chopra** reported in 1999 (1) SCC 759 the Hon'ble Supreme Court held:

“22 The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. The High Court should not have substituted its own discretion for that the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone.”

11. In the case of **State of Meghalaya & Ors. Vs. Mecken Singh N. Marak** reported in 2008 (7) SCC 580, the Supreme Court reiterated the law by stating:

“14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. 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. In the impugned order of the High Court no reasons whatsoever have been indicated to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.”

10. In the light of the aforesaid discussion and the reasons, we do not find that the orders passed by the respondents dated 24.02.2006, 15.11.2006 and 10.07.2007 can be sustained. These orders are, therefore, quashed and the respondents are directed to consider the plea of the applicant regarding parity with the decision taken in the case of Sh. Harbir Singh Technician I under

SSE, Delhi and other contentions of the applicant raised in the appeal, and pass a reasoned and speaking order. In the event of the applicant being exonerated or visited by a lesser punishment, he will be entitled to all the consequential benefits including arrears, if any. No costs.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

July 13th, 2016

‘sd’