

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3370/2013

Reserved on : 03.03.2017.

Pronounced on : 23.03.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Ashok Kumar Mishra,
R/o H.No. 452/344, Ishawari Bhawan,
Subhash Nagar, Distt. Bareilly (UP). Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Chief Commercial Manager/PS,
Northern Railway, Baroda House, New Delhi.
3. Additional Divisional Railway Manager,
Northern Railway, Moradabad (UP).
4. The Sr. Divisional Commercial Manager,
Northern Railway, Moradabad (UP). Respondents

(through Sh. Shailendra Tiwary, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was working as a Head TTE when he was served with a charge sheet on 31.01.2011 containing the following charges:-

- “(i) Shri Ashok Kumar Mishra, Hd. TTE/BE was found in B/2 coach on seat No. 57 even though he was deputed to man the coaches No. S-8, S-9 & S-10.

- (ii) He produced Rs. 817/- as his private cash but the same was not found declared in the EFT foil and stated that he had declared Rs. 1100/- while working in train No. 4311 between BE-DLI on same date, thus Rs. 283 are short in his private cash, which he spent for food and medicine.
- (iii) Rs. 789/- Railway cash of dated 02.9.2010 were found with him which he did not remit it due to sickness and leave. Further his EFT book was found completely exhausted."

2. The Enquiry Officer (EO) submitted his report in which he found that charges No.1 & 3 against the applicant were proved. Thereafter, the applicant was provided a copy of the same and permitted to make his representation. After considering his representation, the Disciplinary Authority (DA) passed an order on 31.10.2012 compulsorily retiring the applicant from service with immediate effect. Appeal filed by the applicant was dismissed by the Appellate Authority vide order dated 09.01.2013. A revision petition filed against the same was dismissed on 30.05.2013. This O.A. has been filed challenging the above orders and seeking the following relief:-

- “(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 31.10.2012 (A/1), Appellate Authority order dated 09.01.2013 (A/2), Revisional Authority order dated 30.05.2013 (A/3), charge sheet dated 31.01.2011, IP report and complete disciplinary proceedings, declaring to the effect that the same are illegal, arbitrary, against the rules and against the principle of natural justice and consequently, pass an order directing the respondents to re-instate the applicant in service with all the consequential benefits including arrears of pay and allowance during the intervening period with interest.

- (ii) any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation."

3. In their reply, the respondents have submitted that a major penalty charge sheet was issued to the applicant on 31.01.2011. This was a consequence of a preventive check, which was conducted by the Central Railway Vigilance in Northern Railway on 10.09.2010 in Train No. 4312. During the check, it was found that the applicant had been sitting in B/2 coach on seat No. 57 even though his duty was in coaches No. S-8, S-9 & S-10. Moreover, he produced Rs. 817/- as his private cash, which had not been declared by him. Also Rs. 789/- of Railway cash was found on him, which he had not remitted due to his sickness and leave. His EFT book was found to be completely exhaustive.

3.1 The respondents have submitted that the enquiry against him has been conducted according to Rules and this O.A. deserves out right dismissal. They have relied on the judgment of Apex Court in the case of **Sh. Bhagat Ram Vs. State of Himachal Pradesh & Ors.**, AIR 1983 SC 454 to say that this Tribunal cannot function as a Court of appeal. They have further relied on the judgment of Hon'ble Supreme Court in the case of **UOI & Ors. Vs. Dwarika Pd. Tiwary**, 2006(10) SCALE 233 regarding scope of interference by the Courts in the quantum of punishment and said that such interference cannot be made in a routine manner.

4. We have heard both sides and have perused the material placed on record. Learned counsel for the applicant Sh. Yogesh Sharma pressed the following three grounds before us:-

(i) Sh. Sharma, learned counsel argued that the respondents have themselves acknowledged in the statement of imputation that the applicant was sitting in AC coach because he was not feeling well. As such, there was no mala fide on his part and hence, no misconduct is made out. In this regard, the applicant has relied on the judgment of a Co-ordinate Bench of this Tribunal in **OA-3642/2012** (Shiv Kumar Vs. UOI & Ors.) pronounced on 25.03.2014.

(ii) Next Sh. Sharma stated that the applicant was denied personal hearing by both the AA as well as Revisionary Authority. This according to him vitiated the orders passed by these authorities. In this regard, he has relied on the judgment of Apex Court in the case of **Ram Chander Vs. UOI & Ors.**, (1986) 3 SCC 103 in which the following has been held:-

“Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.”

(iii) Lastly, he submitted that the punishment of compulsory retirement meted out to the applicant was too harsh considering the lapse committed by the applicant.

5. I have considered the aforesaid submissions. Without going into the merits of other grounds, we find merit in the last ground taken by the applicant's counsel that the punishment meted out to the applicant was too harsh. We have seen the nature of charge levelled against the applicant. We have also seen the mitigating circumstances acknowledged in the statement of imputation itself that the applicant was not feeling well and was, therefore, sitting in the AC coach. We have also seen the averment made by the applicant in his OA in para-4.2 and para-4.3 in which the following has been mentioned:-

"4.2 That it is relevant to mention here that in the year 2010, the applicant while working as Head TTE became seriously ill due to Psychosis, and got treatment in different hospitals i.e. Rohi Khand Medical College & Hospitals, Railway Hospital Bareilly, N.R. Central Hospital, New Delhi, Mansik Chikitsalay, Bareilly etc. It is submitted that due to such the Chief Inspector Ticket (Stn.), Northern Railway, Bareilly, referred the applicant to the Sr. Divisional Medical Officer, Bareilly vide letter dated 20.10.2010. **(Annex.A-9)**

4.3 That the Medical Board was constituted in which the applicant was declared medically unfit to the post of Hd. TTE vide order dated 09.03.2011, and was posted on Special Supernumerary post, until his suitability adjudged by the Screening Committee for alternative post. It is submitted that the applicant has now been compulsory retired by the impugned order while working on supernumerary post. **(Annex.A-1)"**

Considering all these circumstances, we are of the opinion that the punishment of compulsory retirement was definitely too harsh. In fact, it was so harsh that it is shocking to the conscience.

5.1 We are aware of the settled law on this subject, namely, that the Courts should not act as an Appellate Authority and interfere in the quantum of punishment meted out to the charged officials and that this should be left to the judgment of the authorities concerned, until and unless, the punishment is so harsh so as to shock the conscience of the Court. In this case, we find that the punishment meted out to the applicant was indeed shocking and disproportionate to the lapse committed by him.

6. In view of the above, we set aside the orders passed by the DA, AA and RA. As a consequence of the same the applicant shall be taken back in service. The respondents shall thereafter be at liberty to pass fresh orders in the disciplinary proceeding against the applicant. They shall also pass separate orders regarding how the period between his compulsory retirement and his reinstatement be treated. The O.A. is accordingly allowed. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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