

**Central Administrative Tribunal
Principal Bench**

OA No.4461/2013

Order Reserved on: 03.05.2016

Pronounced on:23.05.2016.

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Vinod Pratap Singh,
S/o Shri Ram Karan Singh,
R/o 40, Purusharthnagar 'C'
Jagatpura, Jaipur-302017 (Raj.)

-Applicant

(By Advocate Shri A.K. Trivedi)

-Versus-

1. Delhi Metro Rail Corporation Ltd,
Through its Chairman,
Metro Bhawan, 13, Fire Brigade Lane,
Barakhamba Road,
New Delhi-110001.
2. The Dy. General Manager/Ops/II
Delhi Metro Rail Corporation Ltd.
Shastri Park,
Delhi-110053.
3. The Manager/Operations/Line-2(S)
Delhi Metro Rail Corporation Ltd.
Qutab Minar Metro Station,
New Delhi-110074.

-Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for by the applicant in the OA read as under:

“(a) Quash and set aside the Impugned Orders dated 12/08/2013 passed by Disciplinary Authority and Order dated 02/12/2013 passed by Appellate Authority declaring as illegal, unjust, arbitrary and violative of article-21 of the constitution of India & judicial pronouncement on the subject

(b) Call for the complete records of Disciplinary proceedings.

(c) direct the respondents to re-instate the applicant in service wef the date of his Removal i.e. 12/08/2013 with all consequential benefits including seniority and pay and allowances etc.

(d) Any other relief which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. The brief facts of the case are as under.

2.1 The applicant was appointed as a Customer Relation Assistant (CRA) in Delhi Metro Rail Corporation (DMRC) on 19.02.2010. He was confirmed in the said post on completion of two years of service. He was placed under suspension on 04.02.3013. On 25.02.2013, Annexure A-3 charge-sheet was issued to him under the provisions of Rule 34 of DMRC (Conduct, Discipline and Appeal) Rules (in short, DMRC Rules). The articles of charge contained in the charge-sheet read as under:

“Shri Vinod Pratap Singh, CRA, E/N 10934, while working at Customer Care Centre of NDI & HKS stations, has indulged in corrupt practices, by garnering illegal money through transactions performed on CSCs (Smart Card) of passengers, and hiding the excess illegal cash, by multiple top-ups (Add Value Operations) on the CSCs performed on the same day and by retaining the same with himself. This serious misconduct has been found to be committed by him over a long duration i.e. about 12 months and during period he has done such Add Value operations amounting to Rs.1,450/- in various CSCs.

By the above mentioned act of serious misconduct and corrupt practices, Shri Vinod Pratap Singh has violated Rule 12 (C) of Delhi Metro Rail, General Rules, 2002 and Rule 4.1 (i), (ii) & (iii) of DMRC Conduct, Discipline and Appeal Rules, 2005, and has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant.”

2.2 An enquiry was held by appointing an Enquiry Officer (EO). The applicant participated in the enquiry. The EO submitted his report on 14.06.2013. Under the head ‘Findings’, the EO has stated as under:

“2. There was no instruction/guidelines prohibiting multiple add value in a card in a single day prior to 14.02.2013.

3. The surprise Cash check report of 4th Feb ‘2013 also states that neither any live card nor cash mismatch was found with Sh. Vinod Pratap Singh.

4. The previous cash check reports submitted by SM/M/MVNR & HKS also reveal that no cash mismatch was found in the cash of Sh. Vinod Pratap Singh.”

However, in the ‘Conclusions’ head of the report, the EO has stated as under:

“1. As regards the charge levelled vide Annexure-1, Article-1, it is evident from RUD-1 that multiple Add value transactions have been performed in CSCs on a single day in the shift of the CO. But it is practically not possible for a passenger that he/she get his/her card recharged again and again without travelling and then refunding the card. This indicates that mal-intention of the Charged Official. Hence the charge as per Annexure-1, Article-1 may be considered established.”

2.3 Acting on the EO's report, the Disciplinary Authority (DA), i.e., Manager, Operations/L-2(S), vide his impugned Annexure A-1 order dated 12.08.2013 removed the applicant from service. The applicant filed his statutory appeal before the departmental Appellate Authority (AA), i.e., DGM/Ops-II, who vide his impugned Annexure A-2 order dated 02.12.2013 dismissed the appeal. Aggrieved by the orders of the DA and AA, the instant OA has been filed by the applicant.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. Thereafter, the applicant filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 03.05.2016. Shri A.K. Trivedi, learned counsel for the applicant and Shri V.S.R. Krishna, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant pointed out several loopholes in the EO's report. He said that during the course of enquiry, no witness was produced nor the misconduct of the applicant has been established. Elaborating further on the issue of misconduct, the learned counsel drew our attention to the judgment of the

Hon'ble Supreme Court in the case of **Union of India & Others v. J. Ahmed**, [(1979) 2 SCC 286], in which the Hon'ble Apex Court has held that lack of devotion to duty and deficiencies attributable to the government servant cannot be construed as misconduct. He said that the applicant has been wrongly charged of corrupt practices, by garnering illegal money through transactions performed on CSCs of passengers and hiding the excess illegal cash by multiple top-ups (Add Value Operations). If some persons were indulging in the misuse of CSCs, the applicant cannot be blamed for that. He was in no way responsible to prevent such misuse in absence of any specific guidelines/instructions to that effect. The learned counsel further stated that literally speaking, it was quite possible that on a day, a person could do 1500 transactions on his CSC. He said that the applicant has been punished by DA and AA without any evidence and that the impugned orders passed by them are cryptic and non-speaking. He also submitted that even if, for the argument sake, the charge is taken as proved against the applicant, the punishment of removal from service inflicted on him is highly disproportionate to the offence committed. Concluding his arguments, the learned counsel stated that for the reasons argued by him, reliefs

sought by the applicant may be granted and the OA may be allowed.

5. Per contra, the learned counsel for the respondents stated that on 04.02.2013, a surprise check was carried out by DMRC Team at the work place of the applicant. It was found that as per the data provided by Automatic Fare Collection System of DMRC, multiple add value amounting to Rs.1450/- were done by the applicant during the year 2012. For the said offence, in terms of DMRC Rules, Annexure A-3 charge-sheet was issued to the applicant for imposition of major penalty on him. The learned counsel argued that people have reposed a lot of faith in DMRC for its high quality services and customer care. The employees like the applicant tarnish the image of the organization, which ultimately would lead to DMRC losing the trust and faith of the commuters. The learned counsel also cited the judgment of this Bench of the Tribunal in OA no.4521/2013 – **Sh. Praveen Dhull v. DMRC Ltd. & Ors.**, decided on 29.06.2015, wherein the applicant had also been removed from service of DMRC for similar charge and the Tribunal dismissed his OA. Concluding his arguments, the learned counsel submitted that for the reasons argued by him, the applicant deserved the punishment

given to him, by the DA and AA and as such the OA may be dismissed.

6. We have considered the arguments put-forth by the learned counsel of the parties and have also perused the pleadings and the documents annexed thereto. We find that as per the existing system at the time when the alleged offence was committed by the applicant, the system was prone to misuse by customers/passengers/others. CRAs did not have any direct duty to keep a watch over the illegal top-ups being indulged into by the culprits. It was only on 14.02.2013 that the DMRC issued specific instructions for prevention of such misuse vide their Note no.OCC/Rev/Inst/Misc/ Feb/2013/01 dated 14.02.2013, which makes CRA responsible for preventing the misuse of the CSCs. Hence, we are of the view that on 04.02.2013 when the surprise check was done by the DMRC Team, no fault can be attributed to the applicant for the misuse of the top-ups by some persons by their CSCs. The respondents have also not produced any witness or credible evidence during the course of the enquiry which could establish the charge against the applicant. No money was recovered from the applicant at his work place on the day of the surprise check. We also notice that the orders passed by the DA

and AA are not at all speaking orders. We are in agreement with the learned counsel for the applicant that the punishment of removal imposed on applicant is highly disproportionate to the alleged offence. In this regard, we would like to cite the judgment of the Hon'ble Supreme Court in the **Ranjit Thakur v. Union of India & Others**, [(1987) 4 SCC 611] in which the Hon'ble Apex Court has held as under:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

We are fully convinced that the punishment meted out to the applicant is highly disproportionate to the offence committed, which has shocked our conscience.

7. For the reasons discussed in pre-paras, we are of the opinion that the impugned orders passed by the DA and AA deserve to be interfered with. We accordingly quash and set aside Annexure A-1 order dated 12.08.2013 passed by the DA and Annexure A-2 order dated 02.12.2013 passed by the AA. We also direct the DMRC

to reinstate the applicant in service. The DMRC would, however, be at liberty to hold fresh enquiry against the applicant, keeping in view the observations made by us in this order, if so advised. Accordingly the OA is disposed of.

8. No order as to costs.

(K.N. Shrivastava)
Member (A)

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

‘San.’