

(Reserved on 17.12.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD
Original Application No. 330/00692/2011

This the 03rd day of **January, 2019**

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Nawab Ali, S/o Mohd. Ishaq Ali, R/o D-50, Sarvodaya Nagar, Lucknow.

.....**Applicant**

By Advocate: Shri S.K. Om

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. Additional Divisional Railway Manager, North Eastern Railway, Lucknow.
4. Senior Divisional Personnel Officer, North Eastern Railway, Lucknow.

.....**Respondents**

By Advocate : Shri L.M. Singh

O R D E R

DELIVERED BY:-

HON'BLE MS. AJANTA DAYALAN, (MEMBER-A)

The present original application has been filed by the applicant Nawab Ali against the punishment orders dated 22.12.2009 (Annexure No. 1), 23.02.2010 (Annexure No. 2), 14.10.2010 and (Annexure No. 3) passed by the Disciplinary Authority, Appellate Authority and Reviewing Authority respectively and the order dated 30.03.2011 (Annexure No. 4) passed by the Revisionary Authority in a disciplinary case culminating in his compulsory retirement from his service. The applicant has sought quashing of these orders and reinstatement in service with consequential benefits including seniority.

2. The case of the applicant is that a vigilance trap was laid on him on 29.02.2009 and he was charged stating that he had demanded bribe from one Shri Ashok Kumar Singh for calculation of income tax and national holiday allowance and Rs. 100/- note marked by the vigilance team was recovered from him. An inquiry was conducted and he was punished vide the impugned orders. The applicant pleaded that for laying vigilance trap, there is a clear cut procedure laid down in the departmental rules. It is stated that as per para 704 and 705 of Indian Railway Vigilance Manual, two gazetted officers have to be part of the vigilance team and an independent eye witness has to be present at the scene. As per the applicant, these requirements were not followed in constitution of vigilance team as well as for eye witness and hence, the trap was illegal and in violation of departmental norms. Moreover, Learned counsel for the applicant stated that there was no evidence against the applicant for demanding bribe proving that 'money was demanded, given and accepted as bribe', which is the requirement for any vigilance trap. The learned counsel for the applicant further stated that the inquiry report itself is a proof of the fact that there was no evidence against the applicant. The Inquiry Officer, contrary to his own findings in the earlier portion of the report, has concluded in the end that the charge stands proved against the applicant. As such, the inquiry report cannot be relied upon. The learned counsel for the applicant further stated that the applicant was appointed on 13.11.1973 as Junior Clerk and he had completed over 25 years service before the incident and there was not a single complaint against him. Learned counsel

further stated that even the Inquiry Officer's report states that the applicant's dedication to work was commendable. Despite all the above, the applicant has been awarded with major punishment of compulsory retirement, which is too harsh and not commensurate to the charge levelled against him. Accordingly, the OA needs to be allowed and the orders of the respondents are liable to be quashed.

3. The counsel for the respondents, on the other hand, contested the claim of the applicant. He stated that purview of judicial review is rather limited and courts cannot substitute their decision in place of the decision of the statutory competent authority. Learned counsel for the respondents also stated that the punishment was inflicted upon the applicant after holding an inquiry and after giving reasonable opportunity to the applicant and based on the evidence produced during the inquiry. Learned counsel for the respondents also argued that it was not a vigilance trap but it was a routine check and hence, the procedure required for vigilance trap was not mandatory to be followed. He, therefore, argued that there is no ground made out for interference by the Tribunal in the orders of the respondents.

4. We have heard learned counsels for both sides, have gone through the pleadings and have given our thoughtful consideration to the matter.

5. It is settled law that the scope of judicial review is rather limited and the courts are not supposed to substitute their decision on the decision of the statutory authorities. It is only in the extreme cases that the courts intervention may be required. In the instant case, we however, note that the applicant had a long and unblemished service career of 25 years. During this whole period, admittedly there was not a single complaint of any nature against him. According to the department itself, his dedication to work was commendable.

6. The argument put forward by the respondents that the check dated 29.01.2009 was a routine check and not vigilance check is not acceptable. Learned counsel for the respondents did not specifically answer the query about the difference between the vigilance trap and routine check. We, however, are of the opinion that a vigilance trap would be one where there is specific information or a complaint about a specific type of illegality likely to take place at a particular time where vigilance team would gather and catch the official red-handed. On the other hand, a routine check would be where the team goes in routine manner to check normal functioning in a particular unit or at a particular desk to see whether any irregularities are taking place.

7. In the instant case, according to the respondents, there was a complaint from one Shri Ashok Kumar Singh against the applicant based on which a specific note of Rs. 100/- was offered as bribe to him and was

later on recovered from him. Hence, we are clear that the present incident on 29.01.2009 was a vigilance trap and not a routine check.

8. Once it is accepted that it was a vigilance trap, the procedure given in para 704 and 705 of the Indian Railway Vigilance Manual was mandatory, which requires presence of two gazetted officers of the Vigilance Department and one independent eye witness from out side the vigilance cell. This was not followed in the instant case and as such the trap itself suffers from irregularity.

9. Similarly, we find after going through the inquiry report that the Inquiry Officer has stated that dedication to work of the applicant was considered as commendable. It was also clearly stated that there was no complaint against the applicant ever in his long service career. In fact, in the inquiry report, it is also stated that Shri Ashok Kumar Singh himself has denied having made compliant against the applicant. Moreover, the Inquiry Officer himself has accepted contradictions in the different statements in the last but one para of the inquiry report but then goes on to prove the charge in the last para of the inquiry report. Thus, the inquiry report suffers from internal contradictions and does not seem to be based on evidence, as also pleaded by the learned counsel for the applicant.

10. Be the above as it may as these are matters of facts, we find that the punishment of compulsory retirement has been awarded to the applicant after 25 years of service on the charge of alleged bribe of Rs. 100/-. There is also no proof that the money was demanded by the applicant. Considering the amount involved, we are of the view that there may not have been any specific demand from the applicant's side and may have been offered by Shri Ashok Kumar Sing without any demand from his side at all. In any case, the amount involved is very meagre and petty and it is difficult to believe that it was a bribe money given to the applicant on his demand. This belief is also supported by the inquiry report that no one from the vigilance team saw the applicant demanding bribe from decoy Shri Ashok Kumar Singh. We are of the affirmed view that the punishment of compulsory retirement awarded to the applicant is disproportionate to the charge against him.

11. It is no more res integra that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only where (i) the disciplinary proceedings are initiated and held by an incompetent authority, (ii) such proceedings are in violation of the statutory rule or law, (iii) there has been gross violation of the principles of natural justice, (iv) there is proven bias and mala fide, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence

and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached.

12. In *B.C. Chaturvedi v. Union of India*, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon'ble Apex Court has held as under:

“12. 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 eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry 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 therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the 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 inquiry 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.”

13. In the light of all the above, we have no hesitation to hold the punishment of ‘compulsory retirement’ imposed on the applicant to be shockingly disproportionate to the charges levelled against him and to

be unfair and unjust. Besides, the disciplinary proceedings were in violation of the prescribed procedure laid down for vigilance trap. Accordingly, the impugned orders dated 22.12.2009, 23.02.2010, 14.10.2010 and 30.03.2011 are set aside and quashed. The case is remitted to the disciplinary authority with a direction to re-consider the matter again and to pass a fresh order as per the provisions of the Railway Services (Discipline & Appeal) Rules, 1968 within three months from the date of receipt of a copy of this order.

14. The OA is allowed as above. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...

