

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 290/557/2013

Order Reserved on: 18.12.2018

DATE OF ORDER: 30.01.2019

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MS. ARADHANA JOHRI, ADMINISTRATIVE MEMBER

Hari Om Singh S/o Shri Ratan Singh, aged about 46 years, R/o Pipali Chouk, Gulab Sagar, Jodhpur, Rajasthan.

(The applicant was holding the post of C.T.I.).

....Applicant

Mr. Kuldeep Mathur, counsel for applicant.

VERSUS

1. The Union of India through the General Manager, North-Western Railway, Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan.
2. The Sr. Divisional Commercial Manager, North-Western Railway, Jodhpur, Rajasthan.
3. The Additional Divisional Rail Manager, North-Western Railway, Jodhpur Division, Jodhpur, Rajasthan.

....Respondents

Mr. Kamal Dave, counsel for respondents.

ORDER

Per: SURESH KUMAR MONGA, JUDICIAL MEMBER

The pleaded case of the applicant herein is that he was initially appointed by the respondents as Ticket Collector on 30.01.1992. He was promoted to the post of Senior Traveling Ticket Examiner in the year 1994. He was further promoted as

Head Ticket Collector and was posted at Jodhpur. Thereafter, he again got promotion on the post of C.T.I. in the year 2006 and remained posted at Jodhpur. It has further been pleaded that he was placed under suspension vide order dated 30.04.2012 in the wake of initiation of disciplinary / criminal proceedings against him. A memorandum of charge-sheet dated 16.05.2012 was served upon him wherein certain charges with regard to commission of indecent act, while discharging his duties, were alleged. However, the respondents withdrew the suspension order of the applicant on 20.06.2012 and allowed him to work. It has further been averred that during the intervening night of 28-29.04.2012, the applicant was discharging his official duty of supervision in Train No. 12461 from Delhi to Jodhpur and was deputed for examination of tickets in Coach Nos. HA-1, HEX-1 and A-1 of the said train. The charge-sheet served upon the applicant contained arbitrary and frivolous charges of consumption of liquor and creating nuisance along with his 04 other colleagues in Cabin 'C' of HA-1 Coach and tarnishing the image of the Indian Railways. The applicant denied the allegations leveled against him and stated that no passenger named Jitendra Chawala was travelling in Coach No. HA-1. However, one passenger named Jatin, who took reservation from current counter under PNR No. 2563693131 was having ticket upto Jaipur Station but wanted to travel upto Kuchaman City. He tried to bribe the applicant and since the applicant did not permit him to travel upto Kuchaman City, therefore, he had given a false statement against him. It has further been averred that the Railway Protection Force personnel had forcefully obtained his signatures on the statements recorded by them on

29.04.2012. Neither the applicant nor the other checking staff consumed alcohol in the train. He, thus, refuted all the charges. However, the Disciplinary Authority being not satisfied with the reply submitted by the applicant appointed an Inquiry Officer and ordered for a regular departmental inquiry. It has further been pleaded that the Inquiry Officer conducted inquiry in utter disregard to the prevailing D&AR Rules and Regulations. The defence projected by the applicant was not considered by the Inquiry Officer and he submitted the report merely on the basis of assumptions and presumptions. It has further been averred that as per the medical report, the applicant had not consumed alcohol at the relevant time and the very basis of the charges was not proved. Even the applicant was not allowed to cross examine the witnesses by the Inquiry Officer and as a result thereof, the veracity of their statements cannot be proved. The Inquiry Officer held the applicant guilty of the charges arbitrarily. The applicant submitted a reply dated 30.12.2012 pursuant to Inquiry Officer's report stating therein that the Inquiry Officer has failed to conduct the inquiry properly. The Disciplinary Authority, while agreeing with the findings recorded by the Inquiry Officer, imposed a harsh penalty of removal from service upon the applicant on 01.03.2013. Aggrieved by the said order of penalty, the applicant preferred an appeal on 19.03.2013. It has further been averred that for the same set of charges, criminal proceedings were also initiated against the applicant under Section 145 and 172 of the Railways Act wherein he stands acquitted vide order dated 05th July, 2013 passed by the Additional Chief Metropolitan Magistrate (Railway), Jodhpur. The Appellate Authority, vide order dated 25.10.2013, without

considering the appeal in an objective manner, has affirmed the order of penalty of removal from service passed by the Disciplinary Authority. Aggrieved by the aforesaid order dated 25.10.2013 passed by the Appellate Authority, affirming the order of penalty of removal from service passed by the Disciplinary Authority, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents by way of filing a joint reply have joined the defence and opposed the Original Application preferred by the applicant. It has been averred that the applicant was subjected to serious charges directly involving moral turpitude particularly when serving on a post directly connected with the public at large and also seriously reflective of the image of Railways. It has further been averred that the major penalty proceedings were initiated by way of serving a charge-sheet dated 16.05.2012 upon the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The applicant was assigned the duties of checking the Coach Nos. HA-1, HEX-1 and A-1. The applicant misused his official position and consumed the liquor putting the passenger to grave torture by his discourteous behaviour. It has further been averred that conduct of the applicant was reported by more than one travelling passengers. He, not only consumed the liquor while on duty, but also misbehaved with the traveling passengers. The nuisance created by the applicant even resulted into detention of train because of chain pulling and the checking staff were also arrested by the Railway Protection Force and were released on

bail bond. The respondents have further averred in their reply that the applicant was given due opportunity to defend his case during the course of inquiry. It has further been averred that the Disciplinary Authority has passed a reasoned order after examining the entire record. The applicant was provided opportunity to defend his case and there was no infirmity in the procedure followed during the inquiry proceedings. The Appellate Authority also considered his appeal objectively and rejected the same in accordance with law. With all these pleadings, the respondents have prayed for dismissal of the O.A.

3. Heard learned counsels for the parties.

4. Learned counsel for the applicant contended that it is a case of no evidence as no independent witness has been examined by the Presenting Officer during the inquiry proceedings. He further contended that the passenger on whose complaint, the inquiry proceedings were initiated against the applicant, even he has not been examined during the inquiry proceedings. He further argued that burden to prove the charges was upon the prosecution and the prosecution has miserably failed to prove the charges leveled against the applicant. Learned counsel further argued that on the same set of facts, the applicant was also subjected to a criminal trial under Section 145 and 172 of the Railways Act wherein he was acquitted by the Additional Chief Metropolitan Magistrate (Railway), Jodhpur on 05.07.2013. He, thus, argued that since there was no evidence before the Inquiry Officer and subsequently even the applicant has been acquitted, therefore,

the order of penalty of removal from service cannot be sustained. In order to support his above contentions, learned counsel for the applicant placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank and Others**, (2009) 2 SCC 570 and a Division Bench judgment of the Hon'ble High Court of Rajasthan at Jodhpur in the case of **Special Judge (Essential Commodities Act Cases), Jodhpur & Ors. vs. Anand Swaroop Sharma**, 2013 (3) WLC (Raj.) 653.

5. Per contra, learned counsel for the respondents argued that the acquittal of the applicant by Additional Chief Metropolitan Magistrate (Railway), Jodhpur is of no consequence as there, in the said case, the applicant was tried by the criminal court for endangering the safety of travelling passengers by his rash and negligent act as well as for consuming liquor while on duty and in the state of intoxication, endangering the safety of travelling passengers. Whereas, in the departmental inquiry, he was facing the charges of creating nuisance after consuming liquor, which resulted into detention of train because of repeated chain pulling by the passengers and, therefore, it tarnished the image of Indian Railways. It was the argument of learned counsel for the respondents that the inquiry has been held independently of the criminal proceedings and acquittal of the applicant in criminal case is of no avail. In order to support his said contention, he placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Management of Bharat Heavy Electricals Ltd. vs. M. Mani**, AIR 2018 SC 384. Learned counsel further argued that the matter was reported by

various passengers to Railway Protection Force and because of apprehension of arrest, the applicant alongwith his four other colleagues, disappeared from the spot when the train arrived at Jaipur during midnight. However, later on, they were arrested by the Railway Protection Force. He further argued that the Inspector, Railway Protection Force, recorded the statement of applicant and prepared a report. Learned counsel further argued that the applicant has not alleged any malice against anybody and, therefore, it cannot be said that he was falsely implicated in the inquiry proceedings.

6. Considered the rival contentions of learned counsels for the parties and perused the record.

7. Admittedly, the incidence of nuisance after consuming the liquor by the applicant and four others in Cabin 'C' of HA-1 Coach was reported by the passengers to Railway Protection Force. The fact with regard to repeated chain pulling between Dausa and Jaipur is also not disputed. The applicant disappeared when the train arrived at Jaipur and he was later on arrested by the Railway Protection Force. He, while making his statement before the Inspector, Railway Protection Force also disclosed the names of his four other colleagues, who consumed the liquor and created nuisance in Cabin 'C' of HA-1 Coach. The Presenting Officer cited the Inspector, Railway Protection Force as a witness in the inquiry proceedings and he was also examined before the Inquiry Officer. The report prepared by the said Inspector on the basis of statements of the applicant and the passengers, was also produced during the inquiry

proceedings. The applicant has not alleged any malice against any of the officials of the Railways or of the Railway Protection Force. If the plea raised by the applicant is accepted that he did not create nuisance after consuming the liquor then there was no occasion for him to disappear from the platform when the train arrived at Jaipur during midnight. In the totality of facts and circumstances available on record, it cannot be said that it is a case of no evidence.

8. The judgment of the Hon'ble Supreme Court in the case of **Roop Singh Negi** (supra) cited by learned counsel for the applicant is of no avail to applicant as in the said case, the Hon'ble Supreme Court found that the Inquiry Officer, while holding inquiry against the delinquent official, placed reliance upon the FIR registered against him and the purported evidence collected during investigation by the Investigating Officer against the accused persons. No witness was examined to prove the documents and the management witnesses merely tendered those documents and did not prove the contents thereof. It was further noticed by the Hon'ble Supreme Court in the said judgment that the delinquent official was forced to sign a confessional statement as he was tortured in the police station. Since the management failed to prove the said confession of the delinquent official and also failed to bring on record any evidence of theft of the bank draft book by the delinquent official, therefore, in those circumstances, the Hon'ble Supreme Court came to a conclusion that it was a case of no evidence in the inquiry proceedings and, thus, while setting aside the judgment

of the Hon'ble High Court, the delinquent official was ordered to be reinstated in service.

9. The judgment of the Hon'ble High Court of Rajasthan in the case of **Anand Swaroop Sharma** (supra), as relied upon by learned counsel for the applicant, also cannot be pressed into service in the facts and circumstances of the present case as in the said case, the delinquent official, who was working as a Lower Division Clerk in a court, was facing the charge that he did not prepare a certified copy of an order on an application submitted by Shri D.K. Loonker, Advocate, and also indulged into an act of misbehaviour with him. The Hon'ble High Court of Rajasthan, while scrutinizing the record of the inquiry, found that the certified copy of the order as demanded by the Advocate, was prepared by the delinquent official and it was also delivered to him. It was also noticed by the Hon'ble High Court that Shri Loonker, at whose instance the inquiry proceedings were initiated against the delinquent official, had made a statement that delinquent official did not misbehave with him. While noticing those facts, the Hon'ble High Court had arrived at a conclusion that the case before it, was a case of no evidence and held that mere suspicion cannot bring home guilt against a delinquent official. Whereas, in the case in hand, it was not mere suspicion on the basis of which the applicant was held guilty by the Inquiry Officer.

10. So far as the argument of learned counsel for the applicant that the applicant was not given proper opportunity to defend himself during the course of inquiry proceedings, we do

not find any substance in the said argument also, as the record reveals that he was given due opportunity to defend himself during the inquiry proceedings. He submitted his reply to charge-sheet. He was allowed to cross examine the witnesses. There is nothing available on record to hold that the Inquiry Officer failed to follow the due procedure established by law. We do not find any infirmity in the process of whole inquiry proceedings.

11. Equally untenable is the argument of learned counsel for the applicant that since the applicant has been acquitted in the criminal case, therefore, no penalty can be imposed upon him as the departmental proceedings were initiated on the same set of facts. We are not inclined to accept the said argument also as the parameters to prove a charge before a criminal court and the parameters to prove a charge in departmental proceedings are totally different. In the departmental proceedings, the charges can be proved against a delinquent official on preponderance of probabilities. Whereas, in criminal proceedings, the charges are required to be proved beyond reasonable doubt. It has been repeatedly held by the Hon'ble Supreme Court through various judicial pronouncements that acquittal in a criminal case is of no avail where the departmental inquiry has been conducted independently. Reference in this regard can be made to paragraph 21 of the Hon'ble Supreme Court's judgment in the case of **M. Mani** (supra), which reads, thus:-

"21. This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal Court is of

no avail. It is held that even if a person stood acquitted by the criminal Court, domestic enquiry can still be held – the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. (See Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao (2012) 1 SCC 442).

12. Even otherwise, a perusal of the charge-sheet divulges that the applicant in the departmental proceeding was facing the charges of creating nuisance after consuming liquor, which resulted into detention of train because of repeated chain pulling by the passengers and, therefore, it tarnished the image of Indian Railways. Whereas, in the criminal case, he was tried under Section 145 and 172 of the Railways Act, 1989 for endangering the safety of travelling passengers by his rash and negligent act as well as for consuming liquor while on duty and in the state of intoxication, endangering the safety of travelling passengers.

13. The facts and circumstances of the present case divulge that the incidence of nuisance after consumption of liquor by the applicant and his four other colleagues was reported by the passengers of HA-1 Coach. The officials of Railway Protection Force also reached at the spot when the train arrived at Jaipur. The applicant disappeared from the spot at that time. The fact with regard to repeated chain pulling has also come up on record. In these circumstances, the misconduct of the applicant cannot be overlooked as he tarnished the image of Indian Railways by his said act.

14. In the conspectus of discussions made hereinabove, we do not find any infirmity in the order dated 01.03.2013 passed by the Disciplinary Authority inflicting the penalty of removal from service upon the applicant as well as the order dated 25.10.2013 passed by the Appellate Authority affirming thereby the order of penalty.

15. Accordingly, the present Original Application is hereby dismissed. There shall be no order as to costs.

(ARADHANA JOHRI)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

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