

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

**Original Application No. 290/439/2016,
Original Application No. 290/440/2016,
Original Application No. 290/441/2016
&
Original Application No. 290/442/2016**

Order Reserved on: 17.12.2018

DATE OF ORDER: 29.01.2019

CORAM

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

OA No. 290/439/2016

Santosh Kumar S/o Shri Mangi Lal, aged about 41 years, R/o Sargara Colony, 9th Chopasani Road, Near Mandap Restaurant, Jodhpur, Rajasthan.

....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.
4. The Chief Commercial Manager, North-Western Railway (CCM), Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan.
5. The Chairman of Railway Board, Rail Bhawan, New Delhi.

....Respondents

Mr. Kamal Dave, counsel for respondents.

OA No. 290/440/2016

Narayan Singh S/o Shri Bhim Singh Jodha, Aged about 43 years, R/o Village & Post Bithu, Tehsil Rohat, District Pali, Rajasthan.

....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.
4. The Chief Commercial Manager, North-Western Railway (CCM), Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan.
5. The Chairman of Railway Board, Rail Bhawan, New Delhi.

....Respondents

Mr. Kamal Dave, counsel for respondents.

OA No. 290/441/2016

Ummed Singh S/o Shri Bhagwat Singh, Aged about 39 years, R/o Village & Post Sarana, Tehsil Aahor, District Jalore, Rajasthan.

....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.
4. The Chief Commercial Manager, North-Western Railway (CCM), Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan.
5. The Chairman of Railway Board, Rail Bhawan, New Delhi.

....Respondents

Mr. Kamal Dave, counsel for respondents.

OA No. 290/442/2016

Babu Lal S/o Shri Bhanwar Lal, Aged about 51 years, R/o Near Hanuman Ji Ka Mandir, Baipura, Merta Road, Nagaur, Rajasthan, Rajasthan.

....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.
4. The Chief Commercial Manager, North-Western Railway (CCM), Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan.
5. The Chairman of Railway Board, Rail Bhawan, New Delhi.

....Respondents

Mr. Kamal Dave, counsel for respondents.

ORDER

Per: SURESH KUMAR MONGA, JUDICIAL MEMBER

With the consent of learned counsels for the parties, O.A. No. 290/439/2016, O.A. No. 290/440/2016, O.A. No. 290/441/2016 and O.A. No. 290/442/2016 were taken up together for hearing as the common questions of law and facts are involved in all these cases.

2. For the sake of convenience, the facts are noticed from O.A. No. 290/439/2016. The pleaded case of the applicant herein is that he was initially appointed as Ticket Collector on 14.08.1998 at Jaisalmer in the respondent-department. He was promoted as Senior Traveling Ticket Examiner in the month of 2003. He was further promoted to the post of Head Ticket Collector and was posted at Degana. Later on, he was deputed to work as such at Jodhpur. It has further been pleaded that he was surprised to receive an order dated 30.04.2012 wherein he was temporarily suspended from discharging his duties in the wake of initiation of disciplinary / criminal proceedings against him. He was served

with a memorandum of charges dated 16.05.2012 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 and allowed him to work vide order dated 19.06.2012. 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 No. S-1 and S-2 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 thereby tarnishing the image of the Indian Railways. The applicant denied the allegations leveled against him. The Disciplinary Authority being not satisfied with the reply submitted by the applicant, appointed an Inquiry Officer to probe into the charges leveled against him in the charge-sheet. It has further been pleaded that the Inquiry Officer conducted the inquiry in utter disregard to the prevailing D&AR Rules and Regulations. The Inquiry Officer has not even considered the defence projected by the applicant. It was also clearly reported in the medical report that the applicant had not consumed alcohol at the relevant time and there was no evidence to show that he ever entered in Coach No. HA-1 during the entire journey. The respondent-authorities simultaneously conducted the inquiry against the other officials, who allegedly committed the same set of offences along with the applicant. During the process of inquiry, the respondents found that one of the colleagues of the applicant namely Shri Hari OM Singh was

tested negative in the medical report dated 18.05.2012. It has further been submitted that Shri Hari Om Singh was found to have some alcohol in his medical report and, therefore, there is a possibility of false implication of the applicant by him in order to save his skin. The applicant has further averred that he was not allowed to cross examine the witnesses and as a result thereof, the veracity of their statements cannot be proved. The Inquiry Officer proceeded to complete the inquiry in haste and submitted the report by holding the applicant guilty of the charges on the basis of assumptions and presumptions. The Disciplinary Authority, while agreeing with the report of Inquiry Officer, passed an order dated 01.03.2013 whereby a penalty of removal from service was inflicted upon the applicant. Aggrieved by the said order of penalty, the applicant preferred an appeal before the Appellate Authority on 04.03.2013. It has further been averred that for the same set of charges, the criminal proceedings were also initiated against the applicant under Section 145 and 172 of the Railways Act and in the said case, the applicant was honorably acquitted by the Additional Chief Metropolitan Magistrate (Railway), Jodhpur vide order dated 05th July, 2013. Thereafter, the applicant submitted a representation dated 10.07.2013 for his reinstatement in service. The respondents have issued a circular dated 07.06.1995, which clearly lays down that the decision taken in departmental proceedings should be reviewed in the cases where Railway servant has been acquitted by the criminal court on the same charges. However, the Appellate Authority, vide order dated 06.11.2013, rejected the applicant's appeal and the penalty of removal from service was upheld.

3. Aggrieved by the order dated 01.03.2013 passed by the Disciplinary Authority and the order dated 06.11.2013 passed by the Appellate Authority, the applicant preferred an O.A. No. 510/2013 before this Tribunal, which was disposed of on 12.01.2015 with the following directions: -

"12. After considering the entire facts and circumstances of the case, we are of the view that the charges levelled by the Disciplinary Authority and the charges framed by the Railway Criminal Court appear to not to be substantially different and therefore instead of deciding the same on merit, we intend to dispose of the OA with certain directions: -

- (i) The respondent authorities shall decide the representation of the applicants dated 10.7.2013 (Ann.A/12 in OA 510/2013, 512/2013 and 513/2013 and Ann.A/11 in OA No. 511/2013) in the light of Circular dated 07.06.1995 (Ann.A/13 in OA No. 510/2013) within a month from the date of receipt of a copy of this order.
- (ii) The competent authority shall convey its decision to the applicants.
- (iii) If the applicants have any grievance after the decision, they can approach the appropriate forum.
- (iv) It is made clear that any observation made by us regarding the exactness of the chargesheet and criminal charge should not be a ban to draw independent conclusion on this point by the administrative authority as per law."

4. It has further been averred that pursuant to order dated 12.01.2015 passed by this Tribunal, the applicant presented a representation dated 29.01.2015 before the respondents requesting therein to decide the matter in the light of judgment dated 12.01.2015. The Senior Divisional Commercial Railway Manager, Jodhpur, however, rejected the review petition filed by the applicant vide order dated 25.02.2015 with the observations that the charges in criminal case and the departmental inquiry are different. Against the order dated 25.02.2015, a revision petition before the Chief Commercial Manager was preferred by the applicant but the same also came to be dismissed on

10.03.2016. Thereafter, an appeal was preferred before the General Manager, North Western Railway against the order dated 10.03.2016. Before the said appeal could be decided by the General Manager, North Western Railway, the appeal preferred by the prosecution against the order of acquittal of the applicant was also dismissed by the appellate court on 27.06.2016. Thereafter, the appeal preferred by the applicant was also dismissed vide order dated 27.07.2016 (Annexure A/1) while holding that the second appeal is not maintainable against the order of Disciplinary Authority. Aggrieved by the order dated 27.07.2016 (Annexure A/1), the order dated 10.03.2016 (Annexure A/2) and the order dated 25.02.2015 (Annexure A/3), the applicant has preferred the present Original Application while invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

5. 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 served with a charge-sheet dated 16.05.2012 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, for major penalty proceedings in respect of a charge of consuming liquor while serving as Checking Staff in Train No. 12461. After consumption of liquor, he created nuisance in the Cabin along with his colleagues. Repeated chain pulling on account of nuisance created by applicant and his colleagues resulted into unnecessary stoppage of train and, therefore, he was charged for violation of Rule 3.1(ii) and (iii) and G&SR-2.09(2). The inquiry was conducted after affording every opportunity to applicant to defend himself and after taking into consideration

the inquiry report, the Disciplinary Authority vide its order dated 01.03.2013 inflicted the penalty of removal from service upon the applicant. The appeal filed by the applicant against the said order was dismissed by the Appellate Authority. It has further been averred that the conduct of the checking staff directly affects the passengers' peaceful journey. The applicant was provided the required opportunity to defend his cause during the course of inquiry. He was allowed all relevant documents and permitted to inspect the documents also. It has further been pleaded that the medical report is not the only foundation in respect of the misconduct creating nuisance resulting into chain pulling by the passengers. The conduct of the applicant clearly tarnished the image of the Railways. It has further been averred that the acquittal in a criminal case cannot be a ground for not proceeding against the applicant departmentally. The circular as referred to by the applicant is not applicable in the present case. The parameters of disciplinary inquiry and criminal trial are totally different. With all these pleadings, the respondents have prayed for dismissal of the O.A.

6. Heard learned counsels for the parties.

7. Learned counsel for the applicant submitted that the applicant was deputed for examining the tickets in Coach Nos. S-1 and S-2 in Train No. 12461 and there was no occasion for him to remain present in Coach No. HA-1 where the alleged incidence of nuisance had taken place. He further submitted that one of the applicant's colleagues Shri Hari Om Singh, who was deputed in Coach No. HA-1 on the fateful day, was found consuming liquor in the said coach and he in order to save his skin might

have divulged the name of the applicant herein while making statement before the Railway Protection Force. The applicant, in any case, was not involved in the alleged incidence and he was falsely implicated in the said incidence.

8. Learned counsel for the applicant further 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. Learned counsel

further argued that the order of penalty passed by the Disciplinary Authority is contrary to Railway Board Circular dated 07.06.1995 as the applicant has been acquitted in the criminal case.

9. Per contra, learned counsel for the respondents argued that the acquittal of 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.

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

11. 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. One of his colleagues namely Shri Hari Om Singh, who was deputed in Coach No. HA-1, disclosed the applicant's name along with his other three colleagues namely Shri Narayan Singh, Shri Ummed Singh and Shri Babu Lal while making a statement before the Inspector, Railway Protection Force. 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.

12. 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.

13. 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.

14. 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.

15. 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).

16. 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.

17. We even do not find any infirmity in the order dated 25.02.2015 passed by the Senior Divisional Commercial Manager, North Western Railway, Jodhpur, who has considered the applicant's representation in the light of Railway Board's Circular dated 07.06.1995 pursuant to order dated 12.01.2015 passed by this Tribunal in OA No. 510/2013. A perusal of the said Circular dated 07.06.1995, which has been placed on record as Annexure A/16, reveals that there is no bar to initiate departmental inquiry where criminal prosecution is already in progress. It further reveals that the departmental and the criminal proceedings can be initiated simultaneously and the disciplinary proceedings can also be allowed to continue and be concluded without having any wait for the conclusion of criminal cases. However, while making a proviso, it has been laid down that if the facts, circumstances and the charges in the departmental proceedings are exactly identical to those in the criminal case and the employee is acquitted on merit then the department may review its decision, if the delinquent official makes a representation in this regard. Paragraphs 2 and 3 of the aforesaid Circular dated 07.06.1995 are reproduced here as under:-

"2. It is clarified that there is no legal bar to the initiation of departmental disciplinary action where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredient of delinquency, misconduct in criminal prosecution and departmental cases, as well as the standards of proof and required in both cases are not identical. Thus, the departmental and criminal proceedings will be initiated simultaneously against the delinquent employee and disciplinary proceedings can also be continued and concluded with waiting for the conclusion of criminal case against the employee on the same charges.

3. However, if the facts, circumstances and the charges in the Departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated/acquitted in the criminal case on merit (without benefit of doubt or on technical grounds), then the departmental case may be reviewed if the employee concerned makes a representation in this regard."

18. The facts and circumstances of the present case reveal that the charge against the applicant in the departmental proceeding was that he tarnished the image of Indian Railways by consumption of liquor and creating nuisance in Cabin 'C' of HA-1 Coach of the train, as it caused discomfort to the passengers because of repeated chain pulling and unnecessary detention of the train. Whereas, in the criminal case, the applicant 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. Accordingly, the order dated 25.02.2015 passed by the Senior Divisional Commercial Manager, North Western Railway, Jodhpur cannot be termed to be in violation of Railway Board Circular dated 07.06.1995.

19. We also do not find any infirmity in the impugned order dated 10.03.2016 as the Revisional Authority after construing the whole record, affirmed the order dated 25.02.2015. The second appeal preferred against the order dated 10.03.2016, in any case, was not maintainable and, therefore, the competent authority has committed no error while passing the order dated 27.07.2016.

20. In the conspectus of discussions made hereinabove, O.A. No. 290/439/2016, O.A. No. 290/440/2016, O.A. No. 290/441/2016 and O.A. No. 290/442/2016 sans merit and those are liable to be dismissed.

21. Accordingly, all the aforesaid Original Applications are hereby dismissed. However, there shall be no order as to costs.

**(ARADHANA JOHRI)
ADMINISTRATIVE MEMBER**

**(SURESH KUMAR MONGA)
JUDICIAL MEMBER**

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