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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 702/2015

% *Judgment dated 6th August, 2015*

UNION OF INDIA & ORS Petitioners

Through : Malaya Kumar Chand, Adv.

versus

GYAN DEV PRASAD Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present petition has been filed by the petitioners under Articles 226 and 227 of the Constitution of India seeking a writ of certiorari or any other writ, order or direction thereby setting aside the Order dated 15.7.2014 passed by Central Administrative Tribunal (hereinafter referred to as “*Tribunal*”) in O.A.No.2216/2013 and thereby upholding the charge sheet dated 13.12.2004, the order dated 5.1.2012 passed by Disciplinary Authority, the order dated 22.8.2012 passed by Appellate Authority and the order dated 20.3.2013 passed by Revisional Authority, which are claimed to be illegal and contrary to the Rules by the respondent.
2. The necessary facts to be noticed are that the respondent, Sh.Gyan Dev

Prasad approached the Tribunal by filing O.A.No.2216/2013 challenging the Order dated 13.12.2004, the report of the inquiry officer dated 31.5.2011, order imposing penalty dated 5.1.2012, order passed by the appellate authority dated 22.8.2012 and the order passed by the Revisionary Authority dated 20.3.2013 claiming, *inter alia*, that they are illegal and contrary to the Rules.

3. The respondent was posted as an Enquiry and Reservation Clerk at Faridabad Station under the Northern Railways. He was served with a Memorandum dated 16.11.2004/13.12.2004 proposing to hold an inquiry against him under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968.
4. On 13.06.2007, an Inquiry Officer was nominated. The report of inquiry was submitted on 31.5.2011. The Disciplinary Authority by an order dated 5.1.2012 imposed a penalty on the respondent herein of “reduction in pay at initial stage in same time grade i.e., Rs.5200/- in Rs.5200-20200 + Grade pay for a period of 5 years with cumulative effect. By an order dated 22.08.2012, after considering mercy plea of the respondent, the Appellate Authority took a lenient view and ordered reduction in penalty to “reduction in pay by initial stage in the same time scale from 5 years to 3 years with cumulative effect”. On a revision filed, by an order dated 20.3.2013, the Revisional Authority ordered further reduction in penalty

to “reduction in pay to initial stage in the same time scale for a period of one year with cumulative effect”.

5. The Tribunal has allowed the said O.A. and quashed the orders so passed against the respondent, which has forced the petitioner to approach this Court.
6. Learned counsel for the petitioners contends that the impugned order dated 15.7.2014 passed by the Tribunal is illegal and the same is liable to be set aside. It is further contended that no allegations of bias were ever raised by the respondent and further the Tribunal has failed to take note of the fact that misuse of Circular Tour Ticket (CTT) by the respondent resulted in defrauding the Railways. Counsel further submits that the Tribunal has failed to consider the report of the inquiry officer and the reasoning in the order of penalty. The Tribunal has also failed to consider that the representation of the respondent was rejected by the appellate authority and the revisional authority. It is further contended that a complete fair procedure was followed by the Railways and the misconduct of the respondent stands duly proved.
7. We have heard learned counsel for the petitioners and also carefully examined the impugned order dated 15.7.2014 passed by the Tribunal.
8. At this stage, we may note that the respondent had approached the Tribunal raising the following pleas that:

- (i) the relevant documents listed along with the memorandum were not supplied to him, thus, depriving him of an opportunity to make an effective defence statement.
- (ii) Sh.M.K. Sharma, an officer from the Vigilance Department, was appointed as an Inquiry Officer, who was requested that relevant documents be supplied to the respondent but despite the matter being adjourned from time to time the documents were not supplied to him. Subsequently, Sh.Yogesh Sharma was appointed as an Inquiry Officer in place of Sh.M.K. Sharma, and the said, Sh.Yogesh Sharma, was also from the Vigilance Department.
- (iii) the charges levelled against the respondent were absolutely vague. There was no specific charge against him except that *“He misused the official capacity with dishonest motive and facilitated the passenger in defrauding Railways by violating the Railway Rules while neither the Inquiry Officer nor Disciplinary Authority had mentioned the relevant Rule, which had been violated by the respondent”*. The Inquiry Officer has failed to prove that the appellant (respondent herein) had misused his official capacity with dishonest motive.

- (iv) the respondent had also placed reliance on the report of the revisionary authority wherein it was observed that there were only procedural lapses and careless working on the part of the respondent herein.
- (v) the Revisionary Authority had specifically held that neither any *malafide* nor charge alleged of connivance had been established.
- (vi) respondent had also complained before the Tribunal that both the Inquiry Officers, who were appointed, belonged to the Vigilance Department of the Railways and, thus, the inquiry conducted by them was not fair as it was their endeavour to somehow prove the charges levelled against him by other Vigilance Officers.

9. The learned Tribunal while passing the impugned order has taken note of the judgment rendered in the case of ***Union of India v. Prakash Kumar Tandon***, reported at 2009 2 SCC 541, wherein it was held as under:

“12. The disciplinary proceedings were initiated only after a raid was conducted by the Vigilance Department. The enquiry officer was the Chief of the Vigilance Department. He evidently being from the Vigilance Department, with a view to be fair to the delinquent officer, should not have been appointed as an enquiry officer at all.”

10. It is not a matter of dispute that in this case also the inquiry was conducted by Mr.M.K.Sharma and Mr.Yogesh Sharma who were two Vigilance Officers. Thus, in our view, the Tribunal has rightly rendered a finding that the inquiry conducted by them was not fair.
11. We have also examined the Memorandum of Charge and find that no Rule has been stated therein, which has been violated by the respondent and, thus, in our view in the absence of reliance on specific rules the respondent was put at a definite disadvantage during the inquiry proceedings.
12. We may also note that the respondent had demanded the following documents as he claimed that no Rules governing allegations made against him were available:

S.NO.	Document demanded	Reason for not permitting being not relevant to charge as :
1.	Photocopies of complete rules specifying under which conditions free EFT is issued.	No specific rule number indicated in the list.
2.	Photocopies of relevant rules/Circular issued if any restraining the ERC.	No specific rule number indicated in the list.
3.	Photocopies of the direction/rules for making the endorsement on the CTT.	No specific rule number indicated in the list.
4.	Photocopy of the direction/rules	No specific rule

	got noted by the CO.	number indicated in the list.
5.	Photocopy of rules taught to the reservation clerk.	No specific rule number indicated in the list.
6.	Photocopy of rules taught to the TTE for checking of genuineness of fake ticket.	No specific rule number indicated in the list.
7.	Photocopy of rules, which provides the methods/system to verify the genuineness of CTT.	No specific rule number indicated in the list.
8.	Photocopies of the rules/instructions of type of frauds running.	No specific rule number indicated in the list.
9.	Photocopies of MR i.e. Rs.8900/- fare of fake CTTs No.575835 and 575922 for the loss.	No specific MR number indicated in the list.

13. But none of the documents were supplied to him on the ground that no such rules governing them were in existence.

14. The Tribunal has also taken note of the fact that the respondent had submitted that the Inquiry Officer did not take into consideration the defence of the respondent not to hold him guilty in the absence of any specific Rule. The submissions were included in the report which reads as under:

“a. Rule Violated: CO is not obliged issuing a ticket to a passenger unless there are any guidelines, circular/orders issued by the competent authority for the staff. “There is no rule available in this office at present as mentioned by CO in his request for add.

Documents”. Moreover, the alleged violated rules were not adduced during the course of entire proceedings by any of the officers, i.e., the DA, PO and PW-2. It may be appreciated under the above circumstances how the case could be contested by the poor employee to save his skin from being blamed, hence the charge is not made out at all.”

15. Having regard to the settled position of law as laid down in the case of ***Union of India vs. Prakash Kumar Tandon*** (supra) the Tribunal has correctly reached a conclusion that in a departmental proceeding, fairness and adherence to the principle of natural justice are two essential requirements.
16. The Supreme Court of India in the case of ***Union of India vs. Prakash Kumar Tandon*** (supra) has also observed that even though strict Rules of evidence are not applicable in departmental inquiry proceedings, the allegations against the delinquent officer must be established by such evidence acting upon which a reasonable person with objectivity may arrive at a finding against the delinquent officer [Also see 1999 (5) SCC 762].
17. The Tribunal has also taken note of the observations made by the Supreme Court of India in the case of ***Union of India v. J. Ahmed***, reported at 1979 (2) SCC 286, wherein it has been held by the Apex Court in clear terms that negligence or inefficiency in performance of duty would not amount to misconduct. It was also held that an act or omission

or lack of efficiency or failure to attain highest standard of efficiency in discharge of duty attached to public office would *ipso facto* not constitute misconduct. The Apex Court again in its judgment rendered in the case of ***Inspector Prem Chand v. Government of NCT of Delhi and Others***, reported at 2007 (4) SCC 566 held that error of judgment or negligence simpliciter would not be misconduct. The respondent in our view had raised a reasonable and cogent defence as detailed in para 12 above but the same though noted by the IO was not considered at all.

18. Having carefully examined the judgment passed by learned Tribunal, we find no grounds to entertain the present petition, the same is without any merit and is dismissed accordingly.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 06, 2015

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