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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3182/2017**

OM PRAKASH KUMAR

..... Petitioner

Through: **Mr. Hemant Kumar & Mr. Sahil
Dabla, Advocates.**

versus

UNION OF INDIA & ANR

..... Respondents

Through: **Mr. Jagjit Singh, Sr Standing Counsel
with Mr. Preet Singh, Mr. Sukhdev
Singh & Ms. Kiran Kaushik, Adv for
Railways.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

19.04.2017

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1. The petitioner has preferred the present writ petition to assail the order dated 07.02.2017 passed by the Central Administrative Tribunal Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 1569/2013 as well as the orders dated 15.09.2011 and 26.02.2012 passed by the Disciplinary Authority and the Appellate Authority against the petitioner. The Tribunal, by the impugned order, has dismissed the Original Application preferred by the petitioner assailing the said orders dated 15.09.2011 and 26.02.2012.

2. The petitioner it appears, at the relevant time, was posted in MSR (N) Cell in the Ministry of Railways. There was source information that an authorised travel agent was carrying on the business of procuring and supplying railway tickets. He was able to get confirmed bookings of railway tickets through Emergency Quota by charging a premium. On that basis, a

decoy customer with the name of Sh. Prem Singh was sent to the travel agent M/s New Friends Travels, Bhikaji Cama Palace, New Delhi on 17.08.2004 for booking tickets for three persons by Train No.5622 of 19.08.2004 from NDLS to NJP in Sleeper Class. Sh. Ajay Kumar Bhagat, owner of the said unauthorised travel agency demanded Rs.1,500/- over and above the due fare of Rs.1,093/- for arranging confirmed berths from the Emergency Quota.

3. As per the plan, a raid was conducted by the vigilance team along with RPF/ Hazrat Nizamuddin at M/s New Friends Travels, UG-278, Som Dutt Chamber, Bhikaji Cama Place, New Delhi-66 at about 1600 hours on 18.08.2004 at the time of delivery of the ticket. Sh.Ashok Kanojia and Shri Ajay Kumar Bhagat were arrested and some incriminating documents were recovered from them. A case vide Crime No.47/2004 under Section 143 Railway Act dated 18.08.2004 was registered at the RPF Post/ NZM in this connection. Subsequently, wait listed ticket in favour of the Decoy passengers was found to have been confirmed through Emergency Quota in Coach No. S-3 and Berth No.20 and 21, as assured by the travel agent. During investigation, it was found that the waitlisted tickets of the decoy passenger was confirmed from the Ministry of Railways on the written request made by Shri Debashis Panja, 1st PA to the Minister of State for Railways to the Reservation Cell/ Railway Board. The request for confirmation of berth was referred by the petitioner Shri Om Prakash Kumar.

4. With these allegations, a charge sheet was issued to the petitioner. The first charge was that he misused his position for vested interest and for

his personal gain. The second article of charge against the petitioner was that the decoy passenger was neither the friend nor a relative of Shri Om Prakash Kumar. The recommendation for confirmation of berth from Emergency Quota was made by the petitioner in favour of the decoy passenger, who paid Rs.1,500/- extra for getting berth released through Emergency Quota to the unauthorized travel agent. The allegation was that the petitioner not only connived in the offence of procurement and supply of railway tickets, but also aided and abetted the same by arranging confirmation of berth from the Emergency Quota. He was alleged to be responsible for providing reservation through Emergency Quota, thereby denying and debarring other genuine passengers who might have got reservation otherwise. He was alleged to have failed to maintain absolute integrity, devotion to duty and to have acted in a manner which is unbecoming of a Railway Servant, thereby contravening provisions of Rule No.3(1)(i), (ii), (iii) of the Railway Services (Conduct) Rules, 1966.

5. The inquiry was initiated against the petitioner in the year 2004. However, the Inquiry Officer did not proceed and eventually the inquiry was started only in the year 2010. Eventually, the Inquiry Officer submitted his report on 25.04.2011. Though, the Inquiry Officer established the fact that the decoy passengers got confirmation of their tickets from Emergency Quota on the reference of the petitioner, but the Inquiry Officer held that there was no evidence/ documents/ statements to suggest, or arrive at the conclusion that the said tickets were released for monetary consideration in connivance with the travel agency, and the said release of quota in favour of decoy passengers deprived the genuine passengers of confirmed ticket in the

normal course of passenger reservation system.

6. The Disciplinary Authority, however, disagreed with the findings of the Inquiry Officer and issued a disagreement note dated 20.06.2011. After receiving the response of the petitioner, the Disciplinary Authority passed a detailed order dated 15.09.2011 imposing the penalty of reduction to lower stage in the time scale of pay by one stage, for a period of two years, which was to have effect of postponing the future increments of his pay.

7. The petitioner's department appeal was partially allowed by the Appellate Authority. The Appellate Authority, while agreeing with the findings returned by the Disciplinary Authority, reduced the period of penalty from two years to one year vide order dated 26.07.2012.

8. The Tribunal, as aforesaid, has dismissed the petitioner's Original Application.

9. The submission of learned counsel for the petitioner is that the charges against the petitioner have not been proved, since it has not been established that the petitioner misused his position for vested interest and for his personal gains. He submits that the second charge also could not be established for the same reason, since the said charge was of aiding and abetting the arrangement of confirmed railway reservation tickets from the Emergency Quota for consideration.

10. Learned counsel for the petitioner has argued that the Inquiry Officer for cogent reasons, returned the finding that the charges against the petitioner were not proved. He submits that merely on account of the fact that the petitioner had sent the request for confirmation of the tickets of the decoy passenger, it did not mean that the said ticket was confirmed from the

Emergency Quota on the petitioners asking since there were other authorities involved in the matter of releasing of the Emergency Quota tickets. However, they have not been proceeded against.

11. Having heard learned counsel for the petitioner and perused the impugned orders and also the orders passed by the Disciplinary Authority and the Appellate Authority, we are of the view that there is no merit in this petition. It is not for this Court, while sitting in judicial review, to re-appreciate the evidence led in the enquiry proceedings. The Disciplinary Authority and the Appellate Authority have passed detailed and considered orders recording their reasons for holding the petitioner guilty.

12. We may only observe that the background in which the petitioner was charged, itself suggests that there was cogent material/ evidence to hold the petitioner guilty of misconduct. There were reports about the involvement of the travel agent – M/s New Friends Travel getting confirmed tickets booked by charging a premium. On that basis, a decoy customer was sent and he purchased the ticket, as aforesaid, and also paid the premium of Rs.1,500/- over and above the due fare for the ticket. It has also been established that the said ticket of the decoy customer was got confirmed from the Emergency Quota on the request of petitioner. Pertinently, the petitioner and the said decoy customer had no connection or concern, whatsoever. It is obvious that the petitioner sent the ticket of the decoy customer for confirmation through Emergency Quota, only on account of his connection with Mr. Raj Kumar – another person involved in the racket, who was admittedly known to him. Pertinently, in the aforesaid case under the Railways Act, the accused Ajay Kumar Bhagat and Ashok Kanojia were

convicted. It is thus obvious that the petitioner misused his position for confirmation of the tickets booked by the travel agent by charging a premium and exploiting the Emergency Quota. Merely because the consideration for which the petitioner may have exploited his official position may not have not been established – on account of the relationship between M/s New Friends Travel and the petitioner being undisclosed, it does not follow that the petitioner can be assumed to have acted without any consideration. It is not explained by him, as to how and why he had sent the request for confirmation of the said ticket of the decoy customer.

13. Pertinently, in the vigilance inquiry, the petitioner had admitted of his sending such requests a couple of times on a weekly basis. It is seen from the order passed by the Disciplinary Authority, that the petitioner sought to claim that his statement was obtained through coercion in the vigilance enquiry. However, he did not withdraw his statement at the earliest, and this was not the stand taken by him - except before the Disciplinary Authority. Even in the inquiry proceedings, he did not raise any such defence.

14. In view of the aforesaid, we do not find any infirmity in the orders passed by the Disciplinary Authority, as well as the Appellate Authority and we are not inclined to interfere with the impugned order passed by the Tribunal as well. In fact, it appears to us that the petitioner has got away very lightly for his misconduct. Dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 19, 2017

B.S. Rohella