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

+ **W.P.(C) 10862/2016 & C.M. No.42557/2016 (for stay)**

DELHI METRO RAIL CORPORATION LTD (DMRC) & ORS

..... Petitioners

Through: Mr.V.S.R. Krishna, Adv.

versus

VINOD PRATAP SINGH

..... Respondent

Through: Mr.A.K. Trivedi & Mr.Naveen
Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **10.10.2018**

1. The petitioner/DMRC has challenged the order dated 23.05.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.4461/2013 filed by the respondent who was working on the post of a Customer Relation Assistant (CRA) and had prayed for quashing and setting aside an order dated 12.08.2013, passed by the Disciplinary Authority removing him from service w.e.f. 12.08.2013, upheld by the Appellate Authority vide order dated 02.12.2013.

2. By the impugned order, the Tribunal allowed the OA filed by the respondent and had quashed and set aside the orders dated 12.08.2013 and 02.12.2013 passed by the petitioner/DMRC with a direction to reinstate the respondent in service. However, liberty was granted to the

petitioner/DMRC to hold a fresh enquiry against the respondent in line with the observations made in the impugned order.

3. A glance at the brief facts is considered necessary. The respondent was appointed as a Customer Relation Assistant (CRA) in the DMRC on 19.02.2010. On completion of two years of service, he was confirmed on the said post. On 04.02.2013, the respondent was placed under suspension, which was followed by a charge-sheet dated 25.02.2013, issued by the petitioner. The Articles of Charge were as follows:-

“Shri Vinod Pratap Singh, CRA, E/N 10934, while working at Customer Care Centre of NDI & HKS stations, has indulged in corrupt practices, by garnering illegal money through transactions performed on CSCs (Smart Card) of passengers, and hiding the excess illegal cash, by multiple top-ups (Add Value Operations) on the CSCs performed on the same day and by retaining the same with himself. This serious misconduct has been found to be committed by him over a long duration i.e. about 12 months and during period he has done such Add Value operations amounting to Rs.1,450/- in various CSCs. By the above mentioned act of serious misconduct and corrupt practices, Shri Vinod Pratap Singh has violated Rule 12 (C) of Delhi Metro Rail, General Rules, 2002 and Rule 4.1 (i), (ii) & (iii) of DMRC Conduct, Discipline and Appeal Rules, 2005, and has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant.”

4. Upon the respondent denying the charges, an Enquiry Officer was appointed to conduct the disciplinary proceedings. The respondent participated in the said enquiry. It is an undisputed position that the petitioner/DMRC did not file any list of witnesses before the Enquiry Officer. Instead, it relied on some documents, copies whereof, were furnished to the respondent. The Enquiry Officer submitted a report dated

14.06.2013 holding that the charges levelled against the respondent were established on the basis of the documents submitted by the petitioner/DMRC. Upon consideration of the said report, the Disciplinary Authority i.e. Manager, Operations/L-2(S), vide his order dated 12.08.2013, directed removal of the respondent from service. Aggrieved by the removal order, the respondent filed a statutory appeal before the Statutory Authority i.e. DGM/Operations-II, who passed an order dated 02.12.2013, upholding penalty of removal imposed by the Disciplinary Authority.

5. Aggrieved by the said decisions, the respondent approached the Tribunal by filing an Original Application. The main plank of the arguments addressed by learned counsel for the respondent before the Tribunal was that the petitioner/DMRC had failed to produce any witnesses in the course of the enquiry to establish the misconduct of the respondent. It was further argued that the findings of the Enquiry Officer were without any evidence which fact was overlooked by both, the Disciplinary Authority and the Appellate Authority.

6. Per contra, learned counsel for the petitioner/DMRC had reiterated the allegations levelled against the respondent and submitted that the department was justified in imposing the penalty of removal of service on the respondent.

7. After examining the records and considering the pleas taken by the parties, the Tribunal observed as below:-

“6. We have considered the arguments put-forth by the learned counsel of the parties and have also perused the pleadings and the documents annexed thereto. We find that as per the existing system at the time when the alleged offence was committed by the applicant, the system was prone to misuse by customers/passengers/

others. CRAs did not have any direct duty to keep a watch over the illegal top-ups being indulged into by the culprits. It was only on 14.02.2013 that the DMRC issued specific instructions for prevention of such misuse vide their Note no.OCC/Rev/Inst/Misc/Feb/2013/01 dated 14.02.2013, which makes CRA responsible for preventing the misuse of the CSCs. Hence, we are of the view that on 04.02.2013 when the surprise check was done by the DMRC Team, no fault can be attributed to the applicant for the misuse of the top-ups by some persons by their CSCs. The respondents have also not produced any witness or credible evidence during the course of the enquiry which could establish the charge against the applicant. No money was recovered from the applicant at his work place on the day of the surprise check. We also notice that the orders passed by the DA and AA are not at all speaking orders. We are in agreement with the learned counsel for the applicant that the punishment of removal imposed on applicant is highly disproportionate to the alleged offence. In this regard, we would like to cite the judgment of the Hon'ble Supreme Court in the Ranjit Thakur v. Union of India & Others, [(1987) 4 SCC 611] in which the Hon'ble Apex Court has held as under:

“The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.”

We are fully convinced that the punishment meted out to the applicant is highly disproportionate to the offence committed, which has shocked our conscience.

8. Aggrieved by the aforesaid order, the petitioner/DMRC has filed the present petition.

9. Mr.Krishna, learned counsel for the petitioner submits that the Tribunal has misdirected itself in passing the impugned order without appreciating the facts that the disciplinary proceedings had been conducted strictly in accordance with the provisions of the DMRC Disciplinary Conduct and the Appeal Rules and the respondent was granted every opportunity to defend himself; that the reasoning of the Tribunal for setting aside the orders passed by the Disciplinary Authority and the Appellate Authority are without any basis and in doing so, it has ignored the modus operandi adopted by the respondent for garnering excess money from innocent passengers through illegal transactions. Lastly, learned counsel submits that the Tribunal has ignored the Instructions dated 14.02.2013, issued by the DMRC regarding multiple pop ups which was issued after the date of the surprise check conducted on the respondent.

10. On the other hand, learned counsel for the respondent supports the impugned judgment and reiterates the position taken by him before the Tribunal to the effect that the petitioner/DMRC had failed to produce any witness before the Enquiry Officer which goes to the root of the matter and thus, vitiates the entire enquiry proceedings.

11. We have heard learned counsel for the parties and have examined the impugned judgment in the light of the pleadings and the documents placed on record.

12. At the outset, we may note the legal position regarding production of documents without examining any prosecution witness, which has been

clarified by the Supreme Court in the case of *State of Uttar Pradesh vs. Saroj Kumar Sinha*, reported as (2010) 2 SCC 772 as follows:-

“26. An inquiry officer acting in a quasi- judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. **Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the Respondents.**

27. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service." (*emphasis added*)

13. Further, in the case of *A.K. Saxena vs. Union of India*, W.P.(C) No.3127/2014 decided on 10.08.2015, it was held as follows:-

"36. The Supreme Court has consistently held that a

departmental inquiry is akin to a quasi judicial proceeding. It has also been held that mere production of documents is not enough, the contents of the documents have also to be proved by examining the witnesses. This has been held while taking into consideration the fact that though the provisions of the Evidence Act may not be applicable in departmental proceedings, but the principles of natural justice would certainly be applicable.”
(*emphasis added*)

14. Having regard to the settled legal position, we are firmly of the opinion that it was incumbent on the part of the Enquiry Officer to ensure that inferences qua the fact situation were based on some evidence laid before him and there ought to have been at least some evidence presented by the petitioner/DMRC before the respondent was indicted in the disciplinary proceedings. In the present case, the petitioner/DMRC having failed to produce any evidence before the Enquiry Officer in support of the Articles of Charge levelled against the respondent, it has to be held that the respondent was deprived of an opportunity to rebut the said evidence, resulting in making the principles of natural justice a casualty. In the absence of any oral evidence, mere reliance on the documents filed by the petitioner/DMRC could not have been sufficient for the Enquiry Officer to have returned the findings against the respondent, as was done in the present case. For this reason alone, the disciplinary proceedings are held to be unsustainable. As a result thereof, the order passed by the Disciplinary Authority and the Appellate Authority can also not be sustained.

15. In view of the aforesaid facts and circumstances, we do not find any infirmity in the impugned judgment, which is upheld. The petitioner/DMRC is directed to reinstate the respondent in service as per the directions issued by the Tribunal, within six weeks. However, liberty is granted to the

petitioner/DMRC to hold a fresh enquiry against the respondent.

16. If the petitioner/DMRC conducts a fresh enquiry against the respondent, then they would be at liberty to produce adequate evidence in support of the Articles of Charge framed against him and the observations made by the Tribunal on the merits of the case, will not be an impediment for the Enquiry Officer to return his findings based on the evidence that is produced before him. The question as to whether the respondent would be entitled to backwages and other benefits from the date of his removal from service, till his reinstatement would depend on the final outcome of the disciplinary proceedings.

17. The petition is dismissed of along with the pending application.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 10, 2018

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