
(2018) 08 CAT CK 0058

In the Central Administrative Tribunal

Case No : Original Application No. 1893 Of 2014

Mahender Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Citation : (2018) 08 CAT CK 0058

Hon'ble Judges : Nita Chowdhury, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Yogesh Sharma, Shailendra Tiwary

Final Decision : Allowed

Judgement

Nita Chowdhury, Member (A)

1. We have heard Shri Yogesh Sharma, learned counsel for the applicant, and Shri Shailendra Tiwary, learned counsel for the respondents.

2. In this case, the applicant has challenged the order of penalty issued by Disciplinary Authority dated 19.3.2010 (Annexure A/1), order of Appellate Authority dated 3.7.2013 (Annexure A/2), order of Revisional Authority dated 25.10.2013 (Annexure A/3) and Inquiry Officer's report (Annexure A/8) as well as chargesheet (Annexure A/10).

3. During the course of hearing, learned counsel for the applicant, besides other grounds to challenge the said impugned orders, has raised a ground that the inquiry initiated against the applicant pursuant to the chargesheet dated 6.6.2005 (Annexure A/10) is vitiated and not sustainable in the eyes of law, as the inquiry proceedings had been conducted by an officer of vigilance department and this fact has also been brought to the notice of the authorities concerned but of no avail. Counsel for the applicant relied upon the judgment of Hon'ble Supreme Court in the case of Union of India vs. Prakash Kumar Tandon, 2009 (2) SCC 541.

4. We have perused the impugned orders. The applicant, while working as Booking Clerk, was chargesheeted vide Memorandum dated 6.6.2005 and the following articles of charges were levelled against him:-

"1. He was found responsible for demanding and accepting Rs.600/- against the due fare of Rs.450/- from two II M/Exp., Adult tickets ex. NDLS to SHC bearing No's. D-25138375 and D-25138376, i.e., Rs.150/- were charged excess from the decoy passenger due to his malafide intention of earning illegal money for his personal gain.

2. He was also found responsible for having excess money of Rs.132/- in his Govt. cash, for which he could not give any reason at the time of check, it clearly shows that he earned this amount illegally during the duty hours."

The said articles of charges were levelled against the applicant pursuant to a Vigilance Check report, which was arranged at Booking Office/NDLS on 19.2.2005 at Counter No.61. The said inquiry was completed by Shri Surinder Singh, SEI/HQ, who was one of the officers of the Vigilance department of the respondents.

5. To the aforesaid contention of the learned counsel for the applicant, learned counsel for respondents submitted that that the said Shri Surinder Singh, SEI/HQ was no longer from Vigilance as his post was instead a headquarters controlled post under the administrative control of SDGM under whom function various departments including Work Study, Law, General, Planning, Vigilance etc.

6. It is evidently clear from the above that the inquiry officer in this case was from the Vigilance department and the Hon'ble Apex Court in the case of Union of India vs. Prakash Kumar Tandon, 2009 (2) SCC 541, held as follows:-

"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."

7. This Tribunal had earlier also by placing reliance on the aforesaid judgment of the Apex court decided the OA No.2216/2013 (Gyan Dev Prasad vs. Union of India and others) decided on 15.7.2014, observed that "It is in this context the submission of the Applicant that the enquiry was not held in a fair manner assumes importance. Admittedly, the Applicant was charge sheeted based on the report of a vigilance team. In such a situation, the enquiry should not have been conducted by the vigilance officers themselves. The contention of the Respondents that the Inquiry Officers who are vigilance Officers of the Railways were part of the panel prepared by them and, therefore, their appointment was in order, cannot be accepted. In a departmental proceeding, fairness and adherence to the principle of natural justice are two essential requirements."

8. In view of the above, for the forgoing reasons, the present OA is allowed and

the impugned order of penalty issued by Disciplinary Authority dated 19.3.2010 (Annexure A/1), order of Appellate Authority dated 3.7.2013 (Annexure A/2), order of Revisionary Authority dated 25.10.2013 (Annexure A/3) and Inquiry Officer's report (Annexure A/8) are quashed. The respondents are directed to proceed in the matter from the stage of issuance of the chargesheet and appoint an officer, as an Inquiry Officer in terms of the Rules and law on the subject, to conduct the inquiry. As the chargesheet was issued in 2005 and the applicant is a retired Govt. employee, we expect from the respondents that the inquiry should be completed as expeditiously as possible and preferably within six months from the date of receipt of a certified copy of this Order. There shall be no order as to costs.