

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.723/2002

Wednesday, this the 27th day of November, 2002

Hon'ble Shri Shanker Raju, Member (J)

Shri G.P.Aggarwal
Reservation Clerk (II)
Northern Railway, Reservation Office
Karkardooma, Delhi-92

..Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi
2. The Chief Commercial Manager (PM)
Northern Railway
IRCA Reservation Complex
New Delhi
3. The Senior Divisional Commercial Manager (DB)
Northern Railway
IRCA Reservation Complex
New Delhi

..Respondents

(By Advocate: Shri V.S.R.Krishna)

O R D E R (ORAL)

Applicant impugns the respondents' order dated 21.2.2000 imposing upon him a minor penalty as well as orders passed on 24.4.2000 and 20.8.2001 in appeal and revision respectively upholding the punishment. He has sought quashment of the same with all consequential benefits.

2. Briefly stated the facts of the case are that while working as Enquiry-cum-Reservation Clerk, applicant has been served upon a minor penalty charge-sheet on the allegations that on 9.12.1998 while cancelling ticket, he refunded a lesser amount to the passenger and kept the

8

(2)

rest of the amount for his personal gain and ulterior motive. On an investigation, upon a complaint made by the passenger, the applicant had refunded the money indicating his malpractice and earning of illegal amount. Applicant responded to the show cause notice and demanded the copy of the complaint and Chief Reservation Supervisor's diary. The minor penalty was confirmed on him, and on an appeal and revision, the same have been upheld giving rise to the present OA.

3. Learned counsel for the applicant Shri B.S. Mainee contends that he has been deprived of a reasonable opportunity insofar as denial of copy of the complaint along with Chief Reservation Supervisor's diary despite his specific request to the disciplinary authority is concerned.

4. He further states that the order of the disciplinary authority is contrary to the Board's letter which mandates in case of a minor penalty recording of detailed reasons.

5. It is stated that the orders of appellate authority as well as revision authority are also non-speaking. Shri Mainee contends that whereas it is alleged that the applicant with ulterior motive and personal gain kept the amount, but in the order of the disciplinary authority, he has been held guilty of not depositing the cash as excess in booking which is a charge different to what has been alleged against him against which he has not been afforded a reasonable opportunity to defend.

(3)

6. Lastly, it is contended that the applicant has no culpability in the alleged episode as on that date due to rush hours, the amount was inadvertently not collected and as soon as it had come to his knowledge, applicant contacted the aforesaid passenger and returned the amount on the next date taking his acknowledgement on a receipt. This fact is duly recorded by the Chief Reservation Supervisor in the daily diary book. As he had informed the authorities, there is no whisper of ulterior motive or personal gain alleged against him. As such, the punishment imposed upon him is without any misconduct.

7. On the other hand, the learned counsel for the respondents Shri V.S.R.Krishna denied the contentions and stated that if the action of the applicant was bonafide, he could have deposited the sum on the same date and should have intimated the higher authorities. His refund of the amount to the passenger only after the complaint was made and investigations were held by the vigilance is an after thought and as the charges have been established. The orders have been passed taking into consideration his contentions and the same are speaking. No procedural illegality has been highlighted which could have vitiated the inquiry. It is stated that the Chief Reservation Supervisor's diary has not figured the name or telephone number of the passenger and in the same as a post script something has been added subsequently showing malafide of the applicant.

8. I have carefully considered the rival contentions of the parties and perused the material on record.

(4)

9. The orders impugned are contrary to law and cannot be sustained on the ground that the applicant has prayed for copy of the complaint made by the passenger in his reply to the show cause notice but the same has neither been served upon him, nor was he afforded an opportunity to inspect the file as the complaint was the basis of the punishment non-supply of which has really prejudiced the applicant in his defence.

10. Insofar as the plea that the applicant has been punished on a different charge what has been alleged against him is concerned, I have perused the charge-sheet and find that the applicant has been charged for non-refund of the actual amount and keeping this amount for his personal gain with ulterior motive, whereas in the order passed by the disciplinary authority, he has been charged for not depositing the Govt. cash in excess which has not been alleged against him and against which he has not been afforded an opportunity to defend. It is cardinal principle of law that no one can be punished being unheard. As the applicant has been held guilty of an extraneous charge which has not been put to him, the aforesaid procedure certainly is not in consonance with the principles of natural justice and fair play. On this count alone, the impugned orders are to vitiate. Moreover, I find that no where in the punishment orders, the applicant has been held to have acted with ulterior motive or kept the amount for personal gain.

11. Insofar as the allegations are concerned, though it does not lie under the jurisdiction of this Tribunal

(u)

(5)

to go into the truth or correctness of the charge, but in view of the decision of the Apex Court in Union of India & Others Versus J. Ahmed, AIR 1979 SC 1022, every conduct alleged against a Government servant would not be a misconduct unless it is contrary to any Rule or instructions or the negligence would not per se misconduct unless there is culpability present in the action. I find that the applicant had not returned the excess amount on cancellation of ticket as the passenger had already left due to rush. Thereafter, the applicant contacted the passenger and got an entry recorded through Chief Reservation Supervisor in the daily diary book. Ultimately, on the next date, the amount was returned. This shows the bonafide of the applicant. I am of the considered view that this does not involve any ulterior motive or malafide intention. This, to my considered view, would not amount to any misconduct. As such punishment based on no misconduct cannot stand the scrutiny of law.

12. I also find that in a minor penalty, a detailed inquiry is precluded but as per Railway Board's letter dated 17.2.1986 in case of imposition of minor penalty where no inquiry was held while issuing orders, the disciplinary authority should communicate brief reasons recording the guilt of the employee. From the perusal of the disciplinary authority's order, I find that none of the contentions of the applicant has been disclosed or taken into consideration and merely because the defence was found to be an after thought on an extraneous charge, the punishment has been imposed which cannot be countenanced.

(12)

(6)

13. I have also perused the orders passed by the appellate authority as well as the revisionary authority. The same are also non-speaking without dealing with the contentions of the applicant. Although, it cannot be said that all the contentions should be verbatim reproduced and controverted in the order passed by a quasi judicial authority but from the perusal of the orders, it should transpire in a judicial review that the contentions have been considered and reasons have been recorded to this regard. As these conditions have not been fulfilled, the orders being contrary to the Board's instructions cannot be legally sustained.

14. For the reasons recorded above, I allow the present OA. The impugned orders are quashed and set aside. Applicant shall be entitled for all the consequential benefits. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of the present order. No costs.

S. Raju
(Shanker Raju)
Member (J)

/sunil/