

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**Original Application No.21/715/2014**

**Hyderabad, this the 23<sup>rd</sup> day of January, 2020**



***Hon'ble Mr. Ashish Kalia, Member (Judl.)*  
*Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

S. Prem Kumar, S/o. Markandaya,  
Aged about 49 years, (Under orders of Compulsory Retirement),  
Occ: Chief Booking Clerk/ KMT,  
O/o. Station Manager, Khamma Railway Station,  
Secunderabad Division, SC Railway, Khammam.

... Applicant  
(By Advocate Mrs. S. Anuradha)

Vs.

1. Union of India, Rep. by  
The General Manager, South Central Railway,  
Rail Nilayam, III Floor,  
Secunderabad – 500 071.
2. The Additional Divisional Railway Manager (Operations)  
Secunderabad Division, SC Railway,  
Sanchalan Bhavan, I Floor, Secunderabad – 500071.
3. The Senior Divisional Commercial Manager,  
Secunderabad Division, SC Railway,  
Sanchalan Bhavan, I Floor, Secunderabad – 500071.
4. The Divisional Commercial Manager,  
Secunderabad Division, SC Railway,  
Sanchalan Bhavan, I Floor,  
Secunderabad – 500071.

... Respondents

(By Advocates: Mr. S.M. Patnaik, SC for Railways representing  
Mrs. A.P. Lakshmi, SC for Railways)

***ORAL ORDER***  
***{As per Hon'ble Mr.Ashish Kalia, Member (Judl.)}***

The applicant has filed the OA seeking the following relief:



*"Hence, in the interest of justice, this Hon'ble Tribunal may be pleased to, call for the records pertaining to the impugned order Nos. CON/SC/C/SF-V/05/2010, dated 11.09.2012 issued by the Second Respondent herein modifying the penalty of Compulsory Retirement on the applicant with 80% pensionary benefits to that of Compulsory Retirement on the applicant with 100% pensionary benefits in Revision, Order No. CON/SC/C/SF-V/ 05/2010 dated 09.02.2012, issued by the Third Respondent herein confirming the penalty of Compulsory Retirement on the applicant with 80% pensionary benefits in appeal, and order No. CON/SC/C/SF-V/ 05/2010, dated 19.05.2011, issued by the fourth respondent herein imposing the penalty of compulsory retirement on the applicant with 80% pensionary on the applicant and set aside by declaring the same as without jurisdiction, illegal, arbitrary, disproportionate, discriminative, violative of the RS (D&A) Rules, 1968 and violative of the Articles 14, 16 & 21 of the Constitution of India, and further direct the respondents to reinstate the applicant back in service with all consequential benefits.. "*

2. The applicant was initially appointed on 09.08.1985 with the Railways as Commercial Clerk in reserved category (SC). He was further promoted as Senior Booking Clerk in the year 1987 and subsequently, as Head Booking Clerk in the year 1989 and was functioning as such. While working as HBC/ RJY, the applicant was involved in a decoy check conducted by the Vigilance Branch of the South Central Railway on 22.01.2010. Basing on the check, the applicant was placed under suspension, which was later revoked and the applicant was transferred to Secunderabad Division. A charge sheet dated 31.03.2010 was served on the applicant with the following article of charges:

**“Article I:**

*That the said S. Prem Kumar, HBC/RJY while working as such at BO/RJY on 22.01.2010 manning Booking Window No.3 had committed a serious misconduct in that,*

*He had demanded and collected Rs.1325/- against the actual fare of Rs.1324/- and collected Re.1/- excess over and above the Railway fare due from Sri H.S. Srihari, Tech. II, DLS/GTL for issue of 3 adult & 2 child Super Fast tickets ex. Rajahmundry to Gowhati and 3 adult super fast tickets ex. Rajahmundry to Visakhapatnam during the departmental text check conducted against him.*



*Thus, Sri S. Prem Kumar, HBC/RJY had violated the instructions contained in Para 101 of IRCM Vol. I and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant thereby violated Rule 3(1)(i), (ii) & (iii) and Rule 26 of the Railway Service (Conduct) Rules, 1966.*

**Article II:**

*That the said S. Prem Kumar, HBC/RJY while working as such at BO/RJY on 22.01.2010 manning Booking Window No.3 had committed a serious misconduct in that, he had produced*

- i) *Rs.490/- as his on hand Personal cash against the declared amount of Rs.320/- i.e. he had produced Rs.170/- excess in his personal cash.*
- ii) *Rs.27,357/- as his on hand Railway cash against the account of Rs.27,359/- i.e. he had produced Rs.2/- short in his Railway cash during the vigilance check.*

*Thus, Sri S. Prem Kumar, HBC/RJY had violated the instructions contained in Para TRC-12 of 2000 and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant thereby violated Rule 3(1)(i), (ii) & (iii) and Rule 26 of the Railway Service (Conduct) Rules, 1966.*

**Article III:**

*That the said S. Prem Kumar, HBC/RJY while working as such at BO/RJY on 22.01.2010 manning Booking Window No.3 had committed a serious misconduct in that,*

*He did not cancel the second Super Class Ticket Number 29940080 surrendered for cancellation by H.S. Srihari, Tech-I, DLS/GTL in the system, but deducted Rs.30/- towards clerkage charges and resold the same ticket to Sri G. Nagesh, Tech III, DLS/GTL for my monetary gain during the departmental check conducted against me and pocketed the said amount for my pecuniary gain.*

*Thus, Sri S. Prem HBC/RJY had violated the instructions contained in Para ‘J’ of Joint Accounts and Commercial Procedure order for operation and compilation of Accounts of unreserved ticketing system (UTS) for S.C. Railway No.1/2005 and failed to maintain absolute integrity, devotion to duty and acted in a manner*

*unbecoming of a Railway Servant thereby violated Rule 3(1)(i), (ii) & (iii) and Rule 26 of the Railway Service (Conduct) Rules, 1966. ”*



3. On completion of inquiry, the Inquiry Officer submitted report to the disciplinary authority, who has agreed with the findings of the IO, on mere suspicion and assumptions. The disciplinary authority, vide Penalty Order No. 137 of 2011, dated 19.05.2011, awarded penalty of compulsory retirement with immediate effect purely on humanity grounds with 80% pensionary benefits. Applicant has preferred an appeal and the appellate authority, vide order dated 09.02.2012, has confirmed the penalty imposed by the disciplinary authority, which is alleged to be a non-speaking order. The applicant has also preferred a revision, whereupon the Revising Authority, vide order dated 11.09.2012, modified the penalty as that of compulsory retirement with 100% pensionary benefits.

4. The sole convincing ground taken by the applicant apart from other grounds is that the impugned penalty order dated 19.05.2011 passed by the Divisional Commercial Manager, Secunderabad is bad in law, as he is not the appointing authority of the applicant. According to the applicant, the appointing authority of the applicant, after getting promotion to the post of Head Booking Clerk, is Senior Divisional Commercial Clerk, Secunderabad, who ought to have passed the order and thus, the impugned order is not sustainable.

5. Notices were issued. Replies were filed. The respondents have reiterated the fact that the applicant was subject to decoy check; he was issued with charge memo and inquiry was held in proper manner. In regard to the above contention of the applicant as to the competency of the disciplinary authority, the respondents in their reply only submitted that it is a vague allegation without giving any description as to who is the actual appointing authority of the applicant.



6. After hearing both sides at length, after giving a day's adjournment, we have been informed that Senior Divisional Commercial Manager is the competent authority for passing any order like the one impugned, against the applicant. Thus, the impugned orders passed by the disciplinary authority as confirmed by the subsequent authorities viz., Appellate and Revising authorities, is not sustainable in the eye of law, as held by the Apex Court in *Union of India Vs. Hasmukhbhai Hirabhai Rana, 2006 (12) SCC 373.*

7. Learned counsel for the applicant cited judgment rendered by this Tribunal in OA 20/14/2013, wherein reliance was placed on the judgment of the Apex court cited supra and held as under:

*"6(c) In case the applicant is aggrieved, he is at liberty to file an appeal in accordance with the Rules on the subject, against the order of the appointing authority before the competent authority who would function as the appellate authority and decide the appeal in accordance with the extant Rules on the subject. Time scheduled for this purpose is six weeks from the date of submission of the appeal.*

(d) *The period from the date of compulsory retirement till the date of reinstatement shall be treated as period of suspension. In case the proceedings end in exoneration of the applicant, the said period shall be treated as duty as well as qualifying service and the applicant is entitled to payment of salary for the said period including annual increment. If the case results in imposition of any kind of penalty, the period of suspension shall be treated as such and the applicant shall be entitled only to the grant of subsistence allowance which would be quantified by the competent authority designated to deal with the issue. As the minimum that the applicant would get is the subsistence allowance till his date of reinstatement as per this order, the same may be released to the applicant within three months.”*



8. Thus, we are convinced that there is merit in the OA. We hereby set aside the impugned orders up to the order of the Revising Authority and remand the matter back to the competent disciplinary authority to pass a speaking orders, after due consideration of all the facts and circumstances, and if need be, they may give personal hearing to the applicant. All other consequential reliefs will be considered by the said disciplinary authority. This exercise shall be completed within a period of 90 days from the date of receipt of copy of this order.

9. The OA is accordingly allowed. There shall be no order as to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

**(ASHISH KALIA)**  
**MEMBER (JUDL.)**

/evr/