

Central Administrative Tribunal
Patna Bench, Patna.
O.A./050/00682/2016

Date of CAV :10.01.2020

Date of Order :- 29.01. 2020

C O R A M

Hon'bleMr. J. V. Bhairavia, Member [J]
Hon'bleMr. Dinesh Sharma, Member [A]



Chandrabhan, son of late Dinanath, resident of C/o Manoj Kumar
 [Advocate], Station Road, Gaya.

....Applicant

By Advocate :Shri Gautam Bose

Vs.

1. Union of India, through the General Manager, East Central Railway, Hajipur.
2. The Chief Commercial Manager, East Central Railway, Hajipur.
3. The Additional Divisional Railway, East Central Railway, Mughalsarai.
4. The Senior Divisional Commercial Manager, East Central Railway, Mughalsarai.
5. The Senior Divisional Personnel Officer, East Central Railway, Mughalsarai.
6. The Law Officer, East Central Railway, Mughalsarai.

..... Respondents.

By Advocate :Mr.S.P.Singh

O R D E R

Per J.V. Bhairavia, M [J] :- In the instant OA, the applicant
 has prayed for the following reliefs :

- "8[1] The impugned order as contained in Annexure A-1 dated 14.07.2016 may be quashed and set aside.
- 8[2] After setting aside the impugned order as contained in Annexure A-1, this Hon'ble Court may pass any such appropriate order/direction to the respondents, which may meet the ends of justice in the facts and circumstances of the case.
- 8[3] Any other relief or reliefs as your Lordships may deem just and proper in the facts and circumstances of the

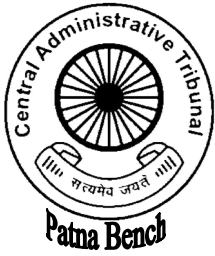
case may also be passed in favour of the applicant, which is found entitled to.

8[4] The cost of litigation may be awarded in favour of the applicant.”

2. In brief the case of the applicant is that –

2.1 While he was posted as Commercial Supervisor at Begusarai, a major penalty charge sheet was issued by the Sr. DCM, Eastern Railway, Mughalsarai (Mughalsarai was then in Eastern Railway and now it falls under the jurisdiction of EC Railway) on 26.05.1999 alleging, inter alia, that while he was posted as Booking Clerk, Bhabua Road on 20.07.1997, he indulged in malpractice by way of demanding and accepting Rs. 25/- in excess in II, M/E Ticket No. 6776-AI/82, Ex- Bhabua to Barali from one passenger as detected during vigilance check that day. The excess money was recovered during the vigilance check that day. It was further alleged that the applicant also indulged in temporary misappropriation of counter cash as during the vigilance check Rs. 307/- was detected short in his total counter earning. On the basis of the charge sheet an enquiry officer was appointed in which the charges were established. The Disciplinary Authority decided the case as per gravity of the offence and imposed the penalty of reduction of his pay to the lowest stage in the same time scale of pay, i.e. pay of Rs. 5500/- in the scale of Rs. 5500-9000/- vide punishment order dated 27.09.2005. This was upheld by the Appellate Authority and the Revisional Authority.





- 2.2 The applicant had come earlier in **OA** No. 89/2008 therein this Tribunal, vide its order dated 4th March, 2013 set aside the orders of Appellate and Revisional Authority, since these orders were non-speaking and remitted to the Appellate Authority to pass orders afresh after giving an opportunity to the charged official. Thereafter, the appellate authority passed a fresh speaking order dated 15.04.2013. Aggrieved by it, the applicant had filed OA No. 499/2013 and prayed for quashing and setting aside the orders passed by Disciplinary Authority and Appellate Authority. This Tribunal, vide its order dated 18.03.2016 in OA No. 499/2013 quashed and set aside the order passed by the Appellate Authority and further directed to hear the applicant again on the point of quantum of penalty and pass a reasoned and speaking order on the point of penalty within two months and accordingly the OA was disposed of [Annexure-A/13].
- 2.3 In compliance of order dated 18.03.2016 passed by this Tribunal, the respondents, i.e. the appellate authority passed the impugned order dated 14.07.2016 [Annexure-A/1], whereby the Appellate Authority upheld the punishment imposed by the Disciplinary Authority and rejected the appeal filed by the applicant.
- 2.4 The learned counsel for the applicant contended that on going through the impugned order dated 14.07.2016 [Annexure-A/1] it is apparent that the respondent authorities have got no regard for

the Hon'ble Court and has again passed the same order as they have passed earlier. He has also contended that the Appellate Authority has passed the impugned order ignoring the finding given by the Tribunal in the aforesaid OA particularly with regard to quantum of punishment and has maintained its original order.



- 2.5 It is further submitted that the applicant ought not to be allowed to continue at the lower stage forever from Sept., 2005 till his retirement, i.e. 31.07.2015. The Appellate Authority failed to appreciate that there is no disclosure in the punishment order about the period for which the alleged punishment of reduction at the lowest stage of Rs. 5500/- per month has been passed. For the said reason, earlier this Tribunal remitted the matter to the appellate authority for fresh consideration on the point of quantum. However, again the appellate authority has not assigned any reason for upholding the punishment awarded by the Disciplinary Authority. Therefore, the impugned order is bad in law and required to be set aside.

3. The respondents filed their written statement and contended that-

- 3.1 A major penalty charge-sheet was issued by the Disciplinary Authority [Respondent No.4] alleging that while working as Booking Clerk at Bhabhua Road Station on 20.07.1997, the applicant demanded and accepted Rs.141/- only from one passenger for one II Class M/E ticket No.6776 A1/82 Bhabhua

Road Station to Bareilly where as the actual fare of ticket was Rs.116/- only. The excess money of Rs. 25/- was recovered from the applicant during the vigilance check in addition to above amount of Rs. 307/-.



3.2 The respondents further contended that the applicant was found indulged in malpractice by way of keeping the excess cash in his pocket and claiming the same as his personal cash as detected during the vigilance check conducted on 20.07.1997. That apart, the applicant was also indulged in temporary misappropriation of Government Cash of Rs. 307/-, which was detected short in the total amount of Rs. 953/- which was approximately one third of the total earning and for such lapses the applicant was issued a major charge sheet, vide memorandum dated 28.05.1999.

3.3 The respondents further submitted that the applicant acknowledged the major charge-sheet dated 28.05.1999 but he did not submit his defence reply within ten days from the date of receipt of the memo. Thereafter, the respondents [Sr. DCM/MGS] appointed ShriPrathikMazumdar as an enquiry officer to inquire the charges levelled against the delinquent employee.

3.4 The respondents submitted that instead of submitting his defence, the applicant demanded additional documents, vide his application dated 25.08.1999 [Annexure-A/5] but the respondents did not supplied and advised him that the documents demanded

by him has no relevance in this case. However, the respondents further advised him to file his defence within a week so that the case may be finalized. When the respondents did not receive any defence reply from the applicant, the Enquiry Officer, to avoid the further delay, requested the applicant that the additional documents may be shown to him at the time of DAR enquiry, if found necessary. Thereafter, the Enquiry Officer conducted the DAR Enquiry on the basis of charges framed under SF-5 [major penalty] memorandum dated 28.05.1999 by giving full opportunity to the applicant to defend his case.



3.5 It is further contended that the Enquiry Officer, as per documents cited in the relied upon documents, which were duly signed by the applicant clearly indicate that the applicant had taken the amounts by the decoy passenger which was later on recovered from the applicant during vigilance check and thus it is evidently clear that the applicant had demanded and accepted the amount from the decoy passenger, and after completion of DAR enquiry, he submitted his report.

3.6 The respondents further contended that on receipt of the findings of the Enquiry Officer, in which the charges were established, was supplied to the applicant. On the basis of such findings, the Respondent No.4, the Disciplinary Authority after going through the entire case, imposed punishment for reducing the pay at the

lowest stage in the same time scale of pay with cumulative effect. The applicant preferred an appeal to Addl. Divisional Railway Manager, Mughalsarai, who also considered the entire case of the applicant and as per gravity of the offence decided to uphold the punishment already imposed by the Disciplinary Authority. The applicant filed a revision before the Chief Commercial Manager, East Central Railway, Hajipur. The Reviewing Authority [CCM/Hajipur] after going through the case also decided by way of issuing reasoned and speaking order and upheld the punishment already imposed by the Disciplinary Authority.



- 3.7 The learned counsel for the respondents vehemently submitted that in compliance of the directions given by this Tribunal, the Appellate Authority passed the impugned reasoned and speaking order dated 14.07.2016 [Annexure-A/1] therein all aspects of the case has been considered including the directions issued by this Tribunal with regard to quantum of punishment and cogent reason has been assigned. It is also submitted by the respondents that they have taken a lenient view and passed the impugned order of lesser punishment, otherwise, as per para 307.2 and 307.11 of the Vigilance Manual, the penalties like compulsory retirement, removal or dismissal from service might have been passed.
- 3.8 It is submitted that the appellate authority has also recorded its finding that intention of the Disciplinary Authority was to place the

applicant at the lowest stage of pay in time scale till his retirement.

4. No rejoinder has been filed by the applicant.
5. Heard the learned counsel for the parties and gone through the materials on record.



6. It is noticed that in pursuance of directions issued by this Tribunal, vide order dated 08.03.2016 in OA 499/2013, the Appellate Authority has passed the impugned reasoned and speaking order dated 14.07.2016 [Annexure-A/1], which reads as under : -

“Action in light of the Tribunal order dated 18.03.2016 :

In light of observation of the Tribunal in Para 15 of the order dated 18.03.2016, as stated above, the applicant was advised vide letter No.LS/CAT/PAT/OA 499-13 dated 16..2016 to attend the office on 27.6.2016 for personal hearing before the Appellate Authority i.e. ADRM/MGS. Accordingly, the applicant appeared on 27.6. 2016 and was personally heard by the undersigned.

The undersigned, after going through the facts of the case, findings of the enquiry officer, defence reply, Tribunal’s order dated 18.3.2016, personal hearing of the applicant and provisions under Discipline & Appeal Rules, as well as Vigilance Manual, observes the follow : -

[1] The applicant was found demanding and accepting Rs. 141/- i.e. Rs. 25/- extra, from the decoy passenger for one mail/express ticket against the actual value of the ticket being Rs. 116/-.

[2] The applicant was also found short of Rs. 307/-, after sale of just 23 tickets, in his total counter earning at the time of the vigilance check, which amounts to misappropriation of Govt. cash.

[3] The guilt of the applicant stands proved and upheld by the Tribunal as mentioned in Para 14 of the order dated 18.3.2016.

[4] The guilt of the applicant is very serious in nature and it makes him a regular offender and wrongdoer. The decoy check is conducted at the vulnerable location and against regular extorters. [Ref.: 307.2 of Vigilance Manual].

[5] It appears that the Disciplinary Authority has already taken a lenient view on the guilt of the applicant, since such a proved decoy check would otherwise entail imposition of penalties like compulsory

retirement, removal or dismissal from service, under Rule 6 of the RS [D&A] Rules.[Ref. : Para 307.11 of Vigilance Manual].

[6] It appears that intention of the Disciplinary Authority was to place the applicant at lowest stage of pay in time scale till his retirement.

In view of the above, there appears no need to interfere with the quantum of punishment imposed by the Disciplinary Authority.

Thus, order dated 18.3.2016 passed by Hon'ble CAT/Patna in OA No.499/2013 has been fully complied with."

7. It is seen that the Appellate Authority has observed in para 3 of its order that the guilt of the applicant stands proved and upheld by the Tribunal as mentioned in para 14 of the order dated 18.03.2016. It is further observed that the guilt of the applicant is very serious in nature and it makes him a regular offender and wrong doer and assigned the reason on the point of quantum of punishment. In this regard, it is apt to quote para 307.2 and 307.11 of Vigilance Manual under Rule 6 of RS [D&A] Rules stipulates as follows : -



***“307.2** The spot for the trap should be selected very carefully after thorough ground work. If one has studied the field conditions well, then one would know which are the vulnerable locations and who are the regular extorters. For example, checks on booking windows are most rewarding when there is a huge rush at the windows and the booking clerks help themselves to extra cash by way of keeping the change, dropping of cash etc. Similar would be the case in an overflowing train during the vacation period.*

***307.11** It is essential that a successful decoy check should be followed to its logical conclusion, namely - **the issue of a major penalty charge sheet which should eventually entail imposition of penalties of compulsory retirement, removal or dismissal from service. Rule 6 of the RS(D&A) Rules specifies dismissal/removal for proven cases of bribery & corruption.** The disciplinary authority should not take up a position of misplaced sympathy for people who don't deserve it. If not, then the message that is conveyed to delinquent employees - present and potential - is that 'anything goes' (sab chaltahai) and they can get away with just about anything. The Executive and Vigilance wings need to cooperate in making the tool of decoy checks a very effective deterrent to the wrongdoer, and not take up a confrontationist approach which would ultimately benefit him."*

8. In view of above, we are in agreement with the observation made by the Appellate Authority in para 5 of the impugned order that the

Disciplinary Authority has already taken a lenient view on the guilt of the applicant and declined to interfere with the quantum of punishment imposed by the Disciplinary Authority.

9. The judgement passed by the Hon'ble Apex Court in the case of Rajendra Yadav vs. State of M.P. and Ors., [Civil Appeal No. 1334 of 3013] as relied upon by the applicant, is not at all applicable in the facts and circumstances of the present case.



10. As noticed hereinabove, the issue relating to quantum of punishment has been re-examined by the Appellate Authority and passed the reasoned and speaking order. The Appellate Authority has assigned the cogent reason for upholding the punishment awarded by the Disciplinary Authority after giving due opportunity to the applicant. Therefore, it cannot be said that there is any violation of principle of natural justice. As noted hereinabove, the charges levelled against the applicant was proved and upheld by this Tribunal in its earlier order. The findings recorded by the Appellate Authority with respect to quantum of punishment considering the gravity of charge and provisions for major penalties, in our considered view do not suffer from any infirmities. It is also noticed that the Appellate Authority has categorically stated in its order that the Disciplinary Authority had awarded the punishment placing the applicant at lowest stage of pay in time scale till his retirement. Therefore, the submission of the applicant that no period for

which the punishment of reduction at the lowest stage of Rs. 5500/- per month has been passed by the authorities, is also not tenable.

11. In view of above, we do not find any merit in the present OA.

Accordingly, the same is dismissed with no orders as to costs.

Sd/-

[Dinesh Sharma]M[A]

Sd/-

[Jayesh V. Bhairavia]M[J]



mps