

Central Administrative Tribunal
Patna Bench, Patna.
OA/050/00739/2016

Date of CAV :29.01.2020

Date of Order :- 14.02. 2020

C O R A M

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



Raj Kishore Ram, son of Late Sunder Ram, R/o Mohalla - Bhikhanpur, Gumti No.2, Near Bishahari Asthan, P.S. Ishakchak, Town & District - Bhagalpur.

....Applicant

By Advocate :Shri P.K.Jha with Shri R.K.Bariar

Vs.

1. Union of India, through the Secretary, Ministry of Railways, Govt. of India, Rail Bhawan, New Delhi.
2. The Chairman, Indian Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, East Central Railway, Hazipur, Bihar.
4. The General Manager, Eastern Railway, Fairly Place, Kolkata [W.B.].
5. The General Manager [Vigilance], Eastern Railway, Fairly Place, Kolkata [W.B.].
6. The General Manager [Vigilance], Eastern Railway, Hajipur, Bihar.
7. The Divisional Railway Manager, Eastern Railway, Malda [W.B.].
8. The Additional Divisional Railway Manager, East Central Railway, Dhanbad, Jharkhand-cum-the Appellate Authority.
9. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad.
10. The Senior Divisional Commercial Manager, East Central Railway, Dhanbad, Jharkhand-cum-the Disciplinary Authority/Punishing Authority.
11. The Enquiry Officer [Head Quarter], Eastern Railway, Fairly Place, Kolkata [W.B.].

..... Respondents.

By Advocate : Mr. B.K.Choudhary with Mr.P.K.Thakur

O R D E R

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

"8[i] For setting aside/quashing the memo of charge dated 27.11.1996 communicated to the applicant by the Respondent No.10 vide ref. no.C.744/50/VIG/96.

8[ii] For setting aside/quashing the Enquiry Report dated 13.08.1999, which was served upon the applicant on 11.09.1999, by the Respondent No.10, vide Ref. No.C.744/50/VIG/99 dated 08.09.1999.

8[iii] For setting aside/quashing the Order of Punishment dated 20.08.2001 issued by the Respondent No.10, vide Ref. No.C.744/50/VIG.96, whereby the following punishment has been awarded upon the applicant –“He is reduced to two stage lower in the time scale of pay for two years [cumulative], thus reducing his pay from Rs.6375/- [5500-175-9000] to Rs.6025/- only, which was ordered to be made effective from 01.09.2001.

8[iv] For setting aside/quashing the order dated 08.06.2016 passed by the Respondent No.8 in Applicant’s Service Appeal dated 26.09.2001 which had been directed against the order impugned of punishment dated 20.08.2001 and consequent upon the quashing of the order passed by the Appellate Authority dated 08.06.2016, the Respondents concerned may further be suitably directed to grant all its consequential benefits.

8[v] For grant of any other relief or reliefs to which the applicant may be found entitled to in the facts and circumstances of the case.”

2. The applicant’s case in short, runs as under : -

The applicant was served with a departmental memorandum dated 27.11.1996 [Annexure-A/3] under Rule 9 of the Railway Servants [Discipline and Appeal] Rules, 1968. The statement of imputations of misbehaviour in support of the Articles of Charge framed against Shri R.K.Ram, Ex. TTI/BGP [TTI/JMO], the applicant herein reads as under :-

“Article-I

On 05.1.96 a surprise Vigilance check was conducted at S/5 and S/6 of 3071 Up Jamalpur Express by Eastern Rly. Vigilance team Ex BWN-BHW wherein Sri R.K.Ram, TTI/ER/BGP was detected on duty.

The EFT Book and coach chart was demanded from Sri Ram which he handed over. There was no declaration of personal cash on the reverse of the last page issued on last days duty



as per rule. His EFT was blocked after departure of the train from BWN on the reverse of the page No.109175. His cash in possession was demanded to produce which was counted to be Rs.1639/- [One thousand six hundred thirty nine] only in mixed up condition in Govt. and personal cash. Demandedly Sri Ram declared Rs.143 [One hundred forty three] in the chart receiving Register at HWH & Govt. cash totalled to Rs.1556/- [One thousand five hundred fifty six]. Sri Ram did not justify the shortage in his clarifications.

S/5 was checked first where in 4 general II/ME ticket holders were charged by assisting 2 TTEs of Asansol Divn, but Sri Ram prepared another four tickets showing collecting station as HWH without realising penalty, for the same on the plea that the passengers were allowed at HWH to board. But in his clarifications Sri Ram could not justify the late in preparation of tickets up to BWN.

Vigilance team boarded S/6 at Bolpur and observing the inaction of Sri Ram to regularise the coach, a memo was served to him in this regard which he did not comply with up to Barharwa. However, the coach was regularised through assisting TTEs/ASN and fourteen general II/ME holders along with one without ticket passenger was regularised with penalty in that coach. There were a good number of irregular passengers who in active connivance with Sri Ram raised hue and cry and denied to pay the dues. Finding no other way a message was served to SAI/MMP Sri K.P.Singh who was on duty as Incharge/Escort party/3071 Up and who assured the vigilance team to remain in coach up to realisation of Rly. Dues. On 31.1.96 Sri Ram appeared to GM [Vig] Office with his EFT book which showed that he regularised only $[7+6]=13$ [thirteen] passengers in S/6 of which six were converted in SL and seven were for reservation charges only. Who were already charged by Squad TTEs/ASN. His EFT was also released with remarks on 31.1.96.

It is evident that Sri R.K.Ram, TTI/BGP was carrying those passengers for personal gains and had no intention to prepare tickets for the irregular passengers, otherwise he got clear two hours from starting of the train at HWH to boarding of vigilance team at BWN on departure of the train which left BWN not before 0/30 of 05/1/96. Sri Ram prepared tickets after stopping the train at BWN only on having intimation of Vigilance presence at BWN as he was although in S/5 while the Train was at BWN P.F.

By the above acts Sri Raj Kishore Ram, TTE/BGP violated rule 3.1[i][ii]&[iii] of Service Conduct Rules, 1966."

3. The applicant submitted his explanation whereby the applicant denied the allegations which were levelled against



him. It is contended that the documents relied upon by the Disciplinary Authority to sustain the charges but did not supplied the relevant documents i.e. cited at Sl. No.2, 4 and 5, which caused prejudice to the applicant.

4. The Disciplinary Authority appointed the Enquiry Officer to hold enquiry against the applicant, vide order dated 19.12.1996. However, none were appointed as Presenting Officer by the Disciplinary Authority to present the case of the Railway before the Enquiry Officer.

5. The Enquiry Officer has concluded the enquiry and recorded its finding in it that the allegations under article of charges levelled against the applicant do not establish. The said enquiry report dated 13.08.1999 [Annexure-A/7] was submitted to the Disciplinary Authority as also to the applicant. The applicant was directed to submit his representation to it. In response to it, the applicant has submitted his representation on 19.09.1999 [Annexure-A/8]. It is contended in the said representation that the Enquiry Officer had examined the multiple points of the case and prudently summoned up the evidences to trace any nexus with the imputations conveyed in the SF-5 [charge memorandum] and weighed with the emerging truth, and recorded his convincing findings. Allegations under articles of charge not established meaning by innocence has been established beyond any shadow of doubt and that he deserved exoneration. It is also contended in the said representation that he was satisfied with the enquiry report, the process of



evaluation of evidences and the findings and prayed the Disciplinary Authority to find him not guilty and accord exoneration with clean obit [Annexure-A/8 referred].

6. It is contended that without issuing any show cause notice to the applicant for disagreement with the report of Enquiry Officer, the Disciplinary Authority, vide impugned order dated 27.11.1996, disagreed with the findings of the Enquiry Officer and the said Disciplinary Authority passed the order of punishment, vide impugned order dated 20.08.2001 [Annexure-A/10]. The speaking order of the Disciplinary Authority dated 20.08.2001 supplied to the applicant which reads as under :-



Speaking order

"I have gone through the articles of charges, enquiry proceedings of the EO and representation of the CO, therein. I do not accept the findings of the EO and thus, holding Shri Ram responsible in this case, he is reduced to two stage lower in time scale of pay for two years [cumulative] thus reducing his pay from Rs. 6375/- 5500-1750-9000] to Rs.6025/- only. This is without any prejudice."

It is further submitted by the applicant that along with the said order applicant was also served with punishment notice and informed that applicant can file appeal under Rule 1 and 2 of Rule 21 of RS Rules, 1968 against the penalty awarded by the Disciplinary Authority.

7. Being aggrieved, the applicant preferred an appeal dated 26.09.2001 [Annexure-A/11 series] before the Appellate Authority. In the said appeal, the applicant has raised the ground that the Disciplinary Authority without issuing show

cause to their disagreement straight away awarded the punishment, vide order dated 20.08.2001 and thereby the applicant has been deprived to submit his representation and explanation with respect to disagreement of the DA with the report of EO. It is also stated the DA did not give any reasons or findings for their disagreement with the report of the EO, and therefore, the said order of DA cannot be termed as speaking order. It is also contended that punishment awarded deserves to be quashed and he may be given further opportunity to explain his case.



However, in spite of various reminders, the said appeal was not decided by the Appellate Authority. Therefore, the applicant filed OA No. 267/2012 for quashing the charge memo dated 27.11.1996, enquiry report dated 13.08.1999 and the punishment order dated 20.08.2001. But the aforesaid OA was dismissed on the ground of delay, vide order dated 19.10.2012 [Annexure-A/12].

8. The applicant, thereafter, preferred a writ petition before the Hon'ble Patna High Court bearing CWJC No. 2284/2014, wherein the Hon'ble High Court on 03.11.2015 held that the Tribunal ought to have condoned the delay in filing the original application and was of the opinion that the Respondent No.8 to dispose of the appeal filed by the petitioner dated 26.09.2001 within reasonable time.

9. After various reminder, the applicant was served with the letter dated 22.03.2016 and directed to appear before the ADRM, Dhanbad on 31.03.2016 to take part in the personal

hearing in connection with his appeal dated 26.09.2001. The applicant availed the opportunity of personal hearing on 04.04.2016.

10. Thereafter, in compliance of the order passed by the Hon'ble High Court the Appellate Authority passed a speaking order dated 08.06.2016 whereby the punishment imposed by the Disciplinary Authority has been upheld, vide Annexure-A/18, which is also impugned herein. The Appellate Authority also failed to consider the ground raised by the applicant in his appeal. Not only that no reason stated by the AA with regard to disagreement with the findings of the report of Enquiry Officer. It is erroneously observed by the Appellate Authority he has not brought out any justification for his defence nor submitted any such statement during personal hearing in support of his innocence. In fact, the applicant has categorically stated in his appeal that the order passed by the Disciplinary Authority is vitiated due to non grant of any opportunity before disagreement with the report of EO. The copy of said order dated 08.06.2016 was communicated to the applicant, vide letter dated 16.06.2016.

11. Aggrieved by the order passed by the Appellate Authority, the applicant preferred a revision before the Revisional Authority, who vide its order dated 11.07.2016 disposed of the revision petition filed by the applicant on 09.08.2007 and observed that -

"After observation of all papers and documents in this case, it is clear that the concerned staff had erred in not



reporting the absence of TTEs who had run away from intermediate stations and he had been found wanting on all the charges. The then DRM/DHN had taken very lenient view and reduced the punishment. Now, after the retirement of the concerned staff, a sympathetic and lenient consideration is taken and the punishment order by the then DRM/DHN is allowed to stand. This is without any prejudice and bias."

12. The learned counsel for the applicant submitted that the Disciplinary Authority failed to appoint the Presenting Officer during the enquiry. The Enquiry Officer conducted the enquiry in absence of Presenting Officer as also adjudicator which is impermissible in the eye of law, therefore, the enquiry is vitiated in the light of judgment passed by the Hon'ble High Court of Patna in the case of Lalan Pandey vs. State of Bihar, vide CWJC No. 270 of 2016 decided on 26.10.2016. The Hon'ble High Court of Patna in the aforesaid judgment held that -

"In the circumstances so discussed above where there was no Presenting Officer to lead or to prove the evidence that was collected against the petitioner, the Enquiry Officer could not have assumed this duty to examine the evidence himself and to hold the same sufficient to uphold the guilt of the petitioner. Even if the case of the petitioner is of allegedly being caught red-handed while accepting the bribe and even if strict rules of evidence are not to be followed in the disciplinary proceeding yet a duty is cast on the Enquiry Officer to examine the evidence to see whether it is supportive of the allegation made and connects the delinquent with the charge. In absence of the Presenting Officer this mandatory procedure could not have been discharged by the Enquiry Officer himself.

In the uncontested circumstances discussed it is only a completion of formality to hold that the entire proceeding beginning from the Enquiry Officer's report impugned at Annexure-14 culminating in the punishment order passed by the Disciplinary Authority dated 20.3.2014 impugned at Annexure-18 as well as



the order in appeal communicated vide Memo No.1778 dated 28.05.2014 impugned at Annexure-20 cannot be upheld and are accordingly quashed and set aside. The matter is remitted for its conclusion in accordance with law from the stage of Enquiry."

By relying upon the aforesaid judgement, the learned counsel for the applicant submitted that serious prejudice has been caused to the charged officer, i.e. the applicant herein during the entire departmental proceedings. The decision making process of the Disciplinary Authority as also Appellate Authority and Revisional Authority suffers from infirmities, therefore, the impugned orders deserve to be set aside. Hence, this OA.



13. On the other hand, the respondents filed their written statement and denied the contentions of the applicant. It is mainly submitted that the applicant participated in the enquiry and at no point of time, he raised any grievance for non-appointment of Presenting Officer. In fact he has not stated any prejudice caused to him due to non-appointment of Presenting Officer in the departmental enquiry.

14. The respondents further contended that as per the instructions issued in RB dated 20.10.1971 [Annexure-R/4 of OA No. 761/2016], it is not mandatory to appoint any Presenting Officer in the departmental enquiry. The Id. Counsel for the respondents placed reliance on the judgment passed by Hon'ble Delhi High Court in the case of DTC vs. Hanumant Kumar decided on 17.01.2013 in WP[C] 717/2011 and CM No.1512/2011 and contended that the requirement of

presenting officer is not mandatory and non compliance of which cannot invalidate the enquiry.

15. The Id. Counsel for the respondents further submitted that, it is evident that fair opportunity was granted to the applicant by the Enquiry Officer and initially the Enquiry Officer had recorded its finding in favour the applicant. However, on the basis of materials available on record, the Disciplinary Authority did not agree with the findings of the Enquiry Officer and concluded that there is sufficient materials on record which prove the charges levelled against the applicant.

16. The Appellate Authority has also considered the grievance of the applicant and passed a reasoned and speaking order. The Appellate Authority recorded its finding that the applicant in his appeal has not brought any justification for his defence nor submitted any such statement during personal hearing in support of his innocence, therefore, the Appellate Authority came to the conclusion that there is no reason for reducing the punishment imposed by the Disciplinary Authority. And, accordingly the appeal of the applicant was rejected.

17. The respondents further submitted that the applicant never raised any objection for non-appointment of the Presenting Officer or about non issuance of show cause before disagreement with the report of Enquiry Officer by the Disciplinary Authority. Therefore, it is not opened for the applicant to raise this issue in the present OA. It is submitted



that the impugned orders passed by the Disciplinary Authority as also by the Appellate Authority are just and proper which are based on materials on record. Therefore, the applicant is not entitled for reliefs as sought in the present OA.

18. The applicant has filed rejoinder to the written statement and reiterated his submissions. The learned counsel for the applicant additionally submitted that the applicant has raised the grievance before the Appellate Authority in his appeal with respect to non-grant of due opportunity to explain his case before the Disciplinary Authority since the Disciplinary Authority had not issued any show cause before recording its final findings in disagreement with the report of Enquiry Officer. Therefore, it is utter violation of principle of natural justice in the present case while imposing punishment upon the applicant. In this regard, the learned counsel submits that it is settled principle of law that non giving of opportunity to the petitioner before differing with the findings of the Enquiry Officer clearly violated the principle of natural justice as held by Hon'ble Apex Court in the case of Punjab National Bank & Ors. Vs. Kunj Bihari Mishra reported in [1998] 7 SCC 84

19. Heard the learned counsel for the parties and gone through the materials on record.

20. It is noticed that departmental enquiry was instituted against the applicant, vide charge memorandum No.C. 744/50/VIG/96 dated 27.11.1996 under Rule 9 of Railway Servants Discipline and Appeal Rules, 1968. The charge-sheet/enquiry was related to a vigilance check carried out by a



team of Vigilance Inspector, Kolkata on 05.01.1996, in Coach No.S/5 and S/6 attached to Train No. 3017 Up [Jamalpur Exp.] leaving Howrah on 04.01.1996.

21. The main charges levelled against the applicant that while functioning as Coach TTE in 3017 Up leaving HWH on 04.01.1996, the charged official [applicant herein] indulged in gross malpractices by way of carrying 32 irregular passengers holding general M/E ticket and one without ticket in coaches and thereby an amount of Rs.1847/- was realised which would have gone abegging but for vigilance intervention it was detected. He did not cooperate the vigilance teach by not preparing tickets as advised by vigilance team. The applicant indulged in malpractices by way of regularising four general II Class M/E ticket holders without realising penalty. The applicant did not follow the instructions and violated Rule 3.1 [i][ii]&[iii] of Railway Service Conduct Rules, 1966, and accordingly committed misconduct under the said Rules. The Disciplinary Authority had supplied Article of Charges, Statement of imputation of misconduct as also list of documents. The applicant submitted his explanation and denied the charges levelled against him.

22. It is noticed that the Disciplinary Authority appointed the Enquiry Officer with a direction to conduct a departmental enquiry. It is also noticed that undisputedly the Disciplinary Authority did not appoint any Presenting Officer to represent the Authority. The Enquiry Officer concluded the enquiry in absence of Presenting Officer. The charged official, the



applicant herein, was granted due opportunity to examine the documents relied upon under the charge memorandum. He was allowed to nominate his defence helper. The applicant had participated in the said enquiry without any objection with respect to non-appointment of Presenting Officer. On conclusion of the enquiry, the Enquiry Officer recorded his findings based on the materials on record as also by taking into consideration defence note submitted by the applicant and concluded that the charges levelled against the applicant in his enquiry report dated 13.08.1999 [Annexure-A/7]. On receipt of it, the applicant had submitted his representation dated 19.09.1999 [Annexure-A/8] therein he had categorically stated that he is satisfied with the report of Enquiry Officer, the process of evaluation of evidences and the findings, the Enquiry Officer has examined the multiple points of the case and prudently summon up the evidences to trace any nexus with the imputations conveyed in the SF-5 and thereafter, he had recorded his findings. Accordingly, he requested the Disciplinary Authority to accord exoneration. In our considered view the aforesaid admission on the part of charged official in his representation with respect to findings of report of Enquiry Officer has declared his utmost satisfaction and had not raised any grievance about any prejudice caused to him for want of Presenting Officer during the departmental enquiry. In absence of any material placed on record to establish prejudice caused to the applicant due to non appointment of Presenting Officer during departmental enquiry, in our considered view, the submission of the applicant in this



regard is not tenable . Further considering the said factual matrix, as narrated hereinabove, the judgment relied upon by the counsel for the applicant passed by Hon'ble High Court in the case of Lalan Pandey vs. State of Bihar [supra] is not helpful.

23. At the same time, we find force in the submission of the learned counsel of the applicant that the Disciplinary Authority failed to grant due opportunity to the charged official before recording its final findings by way of punishment order that too without issuing any show cause for their tentative reason for disagreement with report of the Enquiry Officer. The said submission has not been rebutted by the respondents. It is revealed from the records that undisputedly the Disciplinary Authority issued impugned order of punishment without forwarding its tentative reasons for disagreement with the findings of the Enquiry Officer. In this regard, it is also apt to note provision of Rule 10 of the Railway Servants [Discipline & Appeal] Rules, 1968, which stipulates the procedure for action on the enquiry report. The said Rules reads as under :-

"Rule 10 Action on the inquiry report :-

(1) If the disciplinary authority --

(a) after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;

(b) is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9, as far as may be.

(2) The disciplinary authority:-



(a) shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub-rule(1) (a) together with its own tentative reasons for disagreement, if any, with findings of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant;

(b) shall consider the representation if any, submitted by the Railway Servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5).

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in rule 11, make an order imposing such penalty: Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway Servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses(v) to (ix) of rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the railway servant".

From the aforesaid Rules, more particularly Rule 10[2][a] stipulates that the Disciplinary Authority shall forward its own tentative reason for disagreement, if any, with finding of the Enquiry Authority or any Article of Charge to the



Railway servant who shall be required to submit if he so desires, his representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable to the Railway Servant. In the present case, as noticed hereinabove, the Disciplinary Authority failed to follow this mandatory condition and deprived the charged official to file a representation before recording findings of the Disciplinary Authority. The said decision making process is vitiated in the light of aforesaid Rules as also law laid down by the Hon'ble Apex Court in the case of Punjab National Bank and Ors. Vs. Kunj Bihari Mishra [supra] as also judgment passed by Hon'ble High Court of Judicature at Patna in CWJC 6279 of 2018 decided on 13.01.2020.

24. In view of above discussion and in the facts and circumstances of the case, we are of the considered view that the authority which finally passed the order of punishment, not having given an opportunity to the charged official to file a representation before recording its finding in disagreement to the enquiry report, clearly violated the principle of natural justice as also the law laid down by the Hon'ble Apex Court and Hon'ble High Court [supra].

25. Thus, the orders punishment dated Impugned order dated 20.08.2001 [Annexure-A/10] passed by the Disciplinary Authority and the order passed by Appellate Authority dated 08.06.2016 [Annexure-A/18] are quashed and set aside. The matter is remitted to the Disciplinary Authority with a direction to take appropriate decision in accordance with Rule 10 of



Railway Servants [Discipline & Appeal] Rules, 1968 as also in view of law laid down by Hon'ble Supreme Court and High Court in the aforesaid cited judgments within six months from the date of receipt of a copy of this order, since the applicant has already retired in the year 2011. If the respondents failed to take final decision in the departmental proceeding within six months from the date of receipt of a copy of this order, the entire disciplinary proceeding shall abate. The applicant is also directed to co-operate the Disciplinary Authority to conclude the proceedings as directed hereinabove.



26. In view of the aforesaid observations and directions, the OA is partly allowed. No costs.

Sd/-
[Dinesh Sharma]M[A] **Sd/-**
[Jayesh V. Bhairavia]M[J]

Mps.