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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2363/2001
M.A. NO.1967/2001

This the 6th day of August, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Phool Kumar Sharma S/O B.L.Parashar,
Special Ticket Examiner,
Northern Railway,
New Delhi.

... Applicant

(By Shri S.K.Sawhney, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Chief Traffic Manager,
Northern Railway, Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway,
D.R.M. Office, Chelmsford Road,
New Delhi.
4. Senior Divisional Commercial Manager,
Northern Railway,
DRM Office, Chelmsford Road,
New Delhi.

... Respondents

(By Shri Rajeev Bansal, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Vide Annexure A-1 dated 21.9.1999 passed by Senior Divisional Commercial Manager, Northern Railway, New Delhi, punishment of dismissal from service was imposed upon applicant. This punishment was modified to reduction to lower post of Special Ticket Examiner (STE) in the scale of Rs.4000-6000 at Rs.6000/- till applicant's retirement, vide Annexure A-2 dated 23.12.1999 in appeal by Chief Traffic Manager, Northern

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Railway. Revision petition of applicant dated 25.1.2000 was rejected vide Annexure A-3 dated 13.6.2000. Applicant has challenged Annexures A-1, A-2 and A-3.

2. While working as Junior Inspector of Ticket (JIT) applicant was issued a chargesheet dated 25.8.1998 (Annexure A-4). The charges against applicant are as follows :

"That he was intentionally carrying as much as two passengers holding II M/E tickets and three passengers without tickets in III Tier AC coach after collecting subsidised fares from four of them to the tune of Rs.1800/- (eighteen hundred) without issuing any receipt in lieu thereof. He had yet to collect fares from one passenger holding II M/E Tkts. travelling with his connivance.

He had a malafide intention of pocketing the amount and an ulterior motive to deprive the Rlys. of its legitimate dues to the tune of Rs.2114/- plus Rs.10/- produced as excess in Govt. cash.

Thus causing pecuniary loss of revenue to the tune of Rs.2124/- in a single trip (duty) to the Railways.

By the above act of omissions and commissions, Shri Phool Kumar Sharma, JIT/DLI failed to maintain absolute integrity, devotion to duty & acted in a manner unbecoming of a Rly. servant, thereby contravened Rule No.(3.1) (i), (ii) & (iii) of Rlys. Service Conduct Rules, 1966."

3. The learned counsel of applicant stated that whereas respondents relied upon the statements made by passengers, he was not afforded an opportunity to cross examine them. He further stated that the crucial document of reservation chart was not produced and brought on record. Thirdly, the appellate authority breached the provisions of Rule 22(2) of Railway Servants

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(Discipline & Appeal) Rules, 1968. Lastly, he submitted that the appellate authority imposed punishment of reduction to the lower post upon applicant in breach of provisions of rule 6 inasmuch as the order of reduction to lower post has been passed for the entire remaining service of applicant which is illegal.

4. The learned counsel of respondents has, first of all, taken the plea of limitation. According to him, whereas the appellate order is dated 23.12.1999 and the revisionary order is dated 13.6.2000, the limitation will start from 23.12.1999 and that applicant has not given any good ground for condonation of delay. He further submitted that the appellate authority has followed the requirements laid down in rule 22(2) ^{1/2} ibid. He stated that it is not necessary to allow applicant to cross examine the witnesses as in the departmental enquiry preponderance of probabilities has to be seen. The learned counsel further stated that reservation chart of the train could not be made available to the enquiry officer as the same became time barred.

5. Applicant has made an application, MA No.1967/2001, for condonation of delay. It is stated that he had filed a mercy petition on 5.1.2001 which was rejected by a letter dated 18.7.2001 by respondents. Thus, delay caused by applicant should be condoned. Respondents have not rebutted the fact of applicant having made a mercy petition on 5.1.2001 which was rejected on 18.7.2001. Even if limitation is to be counted from 13.6.2000 when applicant's revision petition

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was rejected, there is a delay of three months only which is condoned in the interest of justice.

6. From a perusal of the enquiry report and Annexure A-1, it is seen that respondents have relied upon the statements made by passengers. However, applicant has not been afforded cross examination of such witnesses. This is in violation of principles of natural justice. Whereas respondents should have seized the reservation chart of passengers, the same was not made available to the enquiry officer and a very lame excuse has been provided by respondents to state, "the same had become time barred". If an enquiry was to be conducted against applicant relating to collection of fares from passengers, this document should have been seized and produced in the enquiry to establish the identity of the passengers from whom fare was collected and ultimately pecuniary loss to Railways was caused. This also adds to a serious flaw in the conduct of the present enquiry.

7. In the appellate order, the appellate authority has not stated whether the requirements of rule 22(2) *ibid* have been met. Whereas there are procedural flaws as stated above, the appellate authority has not dealt with the procedural requirements in this enquiry. The appellate authority has also erred in imposing the penalty of reduction to lower post without specifying the period. It is stated that the punishment will continue till his retirement which is certainly in breach of provisions of rule 6 (vi) *ibid* which reads as follows :

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"(vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;"

8. In **V.V.Ramaiah v. Union of India per General Manager, S.C.Rly., Secunderabad**, 1993 (2) ATJ 424 (OA No.712/1990 decided on 21.7.1993 - Hyderabad Bench), it was held as follows :

"...the reduction shall be for a specified period. Hence the original pay has to be restored after the period of punishment. The restoration does not arise after retirement. If the reduction is ordered so as to be effective till the date of retirement the question of restoration does not arise. It follows that the reduction under Rule 6(v) cannot be ordered so as to be effective till the date of retirement."

This ratio is certainly applicable to the facts of the present case and the orders of reduction could not have been passed for the entire service. The punishment could not be kept for an open-ended unspecified period till applicant's retirement. As such, it is illegal.

9. In view of the serious procedural infirmities in the enquiry and the impugned orders and for reasons stated above, we find merit in this OA and allow the same. Orders at Annexures A-1, A-2 and A-3 dated 21.9.1999, 23.12.1999 and 13.6.2000 respectively are quashed and set aside. Respondents are directed to restore applicant to the post of Junior Inspector of Tickets with consequential benefits to be accorded within

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a period of three months from the date of communication of these orders.

10. The OA is disposed of in the above terms.

S. Raju

(Shanker Raju)
Member (J)

V. K. Majotra

(V. K. Majotra)
Member (A)

/as/