

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2605/2001

New Delhi, this 14th day of August, 2002

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Vinod Kumar Gupta
Sr. Ticket Collector
Northern Railway
Ghaziabad

Applicant

(Shri B.S. Mainee, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway, New Delhi
3. Sr. Divisional Commercial Manager
Northern Railway, New Delhi

Respondents

(Shri Rajeev Bansal, Advocate)

ORDER(oral)

Shri M.P. Singh, Member(A)

Heard the learned counsel for the parties and
perused ther records.

2. The admitted position is that the applicant, while working as Sr. Ticket Collector, was charge-sheeted by Memo dated 12/99 under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 for imposition of major penalty upon him. The alleged charges levelled against him were that the applicant had changed the class of journey from Chair Car to Executive Car and also that Rs.220/- were found excess in his cash. On his denying the charges, an enquiry officer (EO) was appointed to conduct an enquiry. EO conducted the enquiry and submitted his report on 4.7.2000 substantiating the charges against the applicant. A copy of enquiry report was given to the applicant, who

made a representation to the disciplinary authority(DA) on 17.7.2000. Thereafter, DA vide its order dated 5.3.2001 imposed a penalty of reduction of pay of the applicant from the grade of Sr. TCR Grade Rs.4000-6000 to the grade of Rs.3050-4590 and also fixed his pay at Rs.3050 for a period of five years with immediate effect with postponing his future increments. He preferred an appeal on 17.4.2001 and the appellate authority(AA) vide its order dated 28.5.2001, while agreeing with the punishment of reduction to grade Rs.3050-4500 for a period of five years, ordered that the pay of the applicant should be fixed in the grade Rs.3050-4500 on substantive basis. Aggrieved by this, applicant has filed the present OA seeking direction to quash and set aside the orders of DA and AA dated 5.3.2001 and 28.5.2001.

3. The main grounds taken by the learned counsel for the applicant during the course of the arguments are that (i) it is a case of no evidence; (ii) DA has not applied its mind while imposing the penalty and that the applicant has been imposed dual penalties; and (iii) the AA has passed a non-speaking order while rejecting applicant's appeal.

4. We have gone through the enquiry report and we find that the enquiry has been conducted in accordance with rules and the applicant has been given reasonable opportunity to defend himself. The charges against the applicant have been proved by EO on the basis of oral and documentary evidence. It is settled legal position that the Tribunal cannot reappreciate the evidence in departmental proceedings and come to a different

MD

conclusion. In view of this position, the first ground that it is a case of no evidence is not tenable and therefore this ground is rejected. As regards the second ground, the learned counsel for the respondents has drawn our attention to point No.(vi) to Railway Board's clarificatory letter dated 3.10.96 relating to Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968, in which it has been clarified that "The penalty of reduction to the lower grade and the fixation of pay at the minimum of that grade does not amount to dual penalty as it is within the ambit of Rule 2024 (now Rule 1322) (FR 28) of IREC Vol.II. We are also satisfied that the DA has passed a speaking order after due application of mind. Thus the second ground taken by the applicant is also rejected. However, we find that AA has not taken into consideration the various pleas made by the applicant in his appeal and has passed a non-speaking order dated 28.5.2001 without applying its mind, as contended by the learned counsel for the applicant. For this reason, AA's order is liable to be set aside.

5. In the result, the order of AA dated 28.5.2001 is quashed and set aside. The case is remitted back to the respondents for placing it before the appropriate appellate authority and passing a fresh speaking, reasoned and detailed order accordingly, within a period of three months from the date of receipt of a copy of this order. OA is disposed of in the aforesaid terms. No costs.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(A)

/gtv/