

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2092/99

(16)

Tuesday, this the 10th day of April, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Shri Vijay Pal, S/O Sh. Ram Charan,
R/O : 5/2998 Siddharth Nagar,
(Chaharpur), P.O. Banna Devi,
Aligarh (UP).

..Applicant

(By Advocate: Shri Yogesh Sharma)

VERSUS

1. Union of India through the General Manager,
Northern Railway, Baroda House, N.Delhi.
2. The Chief Commercial Manager,
Northern Railway, Hd. Qrs. Office,
Baroda House, New Delhi.
3. Chief Traffic Manager,
Northern Railway, Kanpur (UP)
4. Chief Booking Superintendent
Northern Railway, Aligarh (UP)

..Respondents

(By Advocate: Shri B.S.Jain)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):

While posted as Booking Clerk at Aligarh, the applicant was charged in the following terms:-

"While calculating the distance and fare of circular train tickets, he failed to calculate the correct distance and fare on circular tour ticket. Thus debit for amount of Rs.27942/- was raised against him by TIA/ALJN in the month of Nov. 1995. Loss of Railway revenue was occurred due to his negligent acts.

By the above acts of omission and commission Shri Vijai Pal, Sr. PC/CNB failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of Railway Servant, thereby contravened the provisions of Rules 3.1(i),(ii) & (iii) of Railway Service (Conduct) Rules, 1966."

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2. He was accordingly proceeded against departmentally and a penalty of reduction to the grade of Rs.3200-4900/- was imposed on him and his pay was fixed at Rs.4390/- per month for a period of one year permanently. The aforesaid order also held out that the loss incurred by the Railways due to the applicant's action would be recovered after recalculating the levy of charge in respect of circular tour tickets issued by him. The disciplinary authority's order is dated 13.10.1998. The applicant went in appeal. The appellate authority by his order dated 1.4.1999 has upheld the order passed by the disciplinary authority. Both the aforesaid orders have been impugned by the applicant in this OA.

3. Heard the learned counsel on either side and have perused the material placed on record.

4. The learned counsel appearing on behalf of the applicant raises two main contentions. Firstly, according to him, the defence of the applicant has been seriously prejudiced on account of non-supply of statements of Shri Jitendra Varshney, CBS/ALJN and Shri Shisodia, TIA/ALJN. Secondly, the Railway Board's circular dated 9.12.1994, the implementation of which has given rise to the proceedings against the applicant, was, according to the learned counsel, belatedly received on 11.4.1995 and the applicant cannot be held guilty of not charging the enhanced rate prescribed under that circular.

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5. In support of his contentions, the learned counsel for the applicant has placed reliance on the provision made in rule 9 (8) of the Railway Servants (Discipline & Appeal) Rules, 1968 which, for the sake of convenience, is reproduced below:-

"The Railway servant may, for the purpose of his defence, submit with the written statement of his defence, a list of witnesses to be examined on his behalf.

Note:

If the Railway servant applies in writing, for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (6), the disciplinary authority shall furnish him with a copy each of such statement as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority."

6. The aforesaid rule clearly provides that if a Railway servant makes a written request for the supply of copies of statements of witnesses mentioned in the list referred to in sub-rule 6, the disciplinary authority shall furnish him with a copy each of such statements as early as possible. A perusal of the sub-rule 6 referred to in the above rule would go to show that the respondents are bound to supply copies of statements made by the witnesses included in the list of witnesses supplied by the respondents to the charged official. Insofar as the fact of supply of copies of the aforesaid documents is concerned, our attention has been drawn to the receipt placed at Annexure R-1. We have perused the same and find that the applicant has not been supplied with ^a copy of the report of TIA/ALJN (Shri Shisodia). By

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the same receipt, copies of the statements made by S/Sh. Jitendra Varshney, CBS/ALJN and Shri Shisodia also do not appear to have been supplied to the applicant. In any case, the respondents have admitted that the aforesaid statements have not been supplied. We thus find that the aforesaid provisions of the Railway Servant (Discipline & Appeal) Rules, 1968 have not been scrupulously followed by the respondents. It goes without saying that non-supply of the aforesaid documents is bound to have adversely affected the defence of the applicant.

7. In support of his contention regarding non-supply of the aforesaid documents, the learned counsel for the applicant has also placed reliance on the case of State of U.P. Vs. Shatruhan Lal & Anr., reported as JT 1998 (6) SC 55. We have perused the same and find that the same deals with the supply of copies of statements taken during the course of preliminary enquiry. In the present case, the statements in question were admittedly taken during the course of preliminary enquiry. Thus, the principle upheld by the Hon'ble Supreme Court in the aforesaid case will find application in the present case. This is what the Supreme Court has held in the said case.

"1. The respondent who was a Lekhpal in the service of the State Government, was dismissed from service after a regular departmental inquiry. The order of dismissal was challenged before the U.P. Public Services Tribunal which, by its judgment dated 13.3.1981, allowed the claim petition with the findings that the departmental proceedings conducted against the respondent as also the order dated 28.2.77 by which he was removed from service were illegal and void. The State of U.P. then filed a writ petition in the High Court which was dismissed summarily on 4.2.82.

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2. We have heard learned counsel for the parties. The Tribunal has found as a fact that copies of the documents which were proposed in the charge-sheet to be produced in the departmental proceedings as proof in support of articles of charges were not supplied to the respondent. This finding was based on the own admission of the appellant in the written statement that the copies of the documents mentioned in the charge-sheet were not supplied to the respondent which could be inspected by him at any time. The Tribunal further found that the copies of the statement recorded during the preliminary inquiry on the basis of which the charges were subsequently framed against the respondent were also not supplied to him. It was, on these two grounds that it was held by the Tribunal that the inquiry proceedings were bad in law."

3. It would be seen that both in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968 as well as in keeping with the principle upheld by the Supreme Court, the respondents were duty bound to supply copies of the aforesaid statements. The argument advanced by the learned counsel for the respondents that copies of the aforesaid statements were not supplied on the ground that they were not relevant for the purpose of enquiry cannot, in the circumstances, be accepted. His plea is accordingly rejected.

4. Insofar as the receipt of the controversial circular of the Railway Board is concerned, there is evidence enough and of a circumstantial nature that the same had not been received in the office of the respondents until 11.4.1995. We find on a perusal of record (Annexure-9) that on that very date, the Chief Booking Supdt., Northern Railway, Aligarh had addressed a letter to Sr. Divisional Commercial Manager, Northern Railway, Allahabad, stating clearly that the said circular had been received on 11.4.1995 itself and

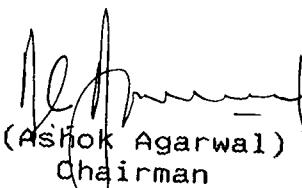
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seeking clarifications, at the same time, with regard to the contents of the circular. In view of this, we are not prepared to accept the plea advanced by the learned counsel for the respondents that since a part of the provision made in the aforesaid circular of 9.12.1994 had been implemented by the applicant in time, therefore, the applicant was in a position to implement the other part also. The part implemented by the applicant related to the extension of the validity periods of the tickets. The other part, relevant for the purpose of this OA, relates to enhancement of charges in respect of circular tour tickets. The aforesaid circular provides for an increase of 15% in the fare chargeable in respect of the circular tour tickets until 1.1.1995. The applicant started charging enhanced rates immediately after the receipt of the aforesaid circular of 11.4.1995 and thus, according to the learned counsel for the applicant, no fault can be found with him for whatever loss might have accrued to the Railways on account of the enhanced charges not being levied in the period prior to 11.4.1995.

10. For all the reasons that have been mentioned in the preceding paragraphs, we find no force in the pleas advanced by the learned counsel for the respondents. The OA is, therefore, allowed. The orders dated 13.10.1998 and 1.4.1999 are quashed and set aside. The applicant will be entitled to all the consequential benefits. No costs.


(S.A.T. Rizvi)
Member (A)

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(Ashok Agarwal)
Chairman