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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2449/95

New Delhi this the 29th Day of April 1999.

Hon'ble Shri R.K. Ahooja, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Shri R.C. Wadhwa,
S/o Shri Bhagwant Dutt,
Chief Booking Clerk,
Northern Railway Booking Office,
New Delhi.
r/o WZ-6 Ram Garh Colony
Najafgarh Road,
New Delhi.

Applicant

(By Advocate: Shri G.D. Bhandari)

-Versus-

Union of India

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. C.C.M. (G),
Northern Rly. Hq,
Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
4. C.A.M.,
Northern Railway,
D.R.M. Office,
New Delhi.

Respondents

(By Advocate: Shri O.P. Kshatriya)

O R D E R

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant while working as Chief Clerk at New Delhi Railway Station was proceeded against under Rule 6(vi) of the Railway Servants (Discipline & Appeal) Rules 1968 for major penalty on the following charge:

"Shri R.C. Wadhwa, Sr. BC/NDLS while working as such and manning counter No. 8 in the morning shift in the Paharganj End Booking Office on 8.6.90 committed the following serious misconduct.

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That Shri R.C. Wadhawa in connivance with Shri Daulat Ram, CBS/NDLS dishonestly pocketed the refund amount of Rs. 36/- against Ticket No. 06688619 Ex. NDLS / Bayana dt. 8/6/90. That Shri R.C. Wadhawa created a shortage of Rs. 67/- in his Govt. cash. (11)

By the above act of omission and commission Shri R.C. Wadhawa failed to maintain absolute integrity exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant thereby contravened Rule No. 3(i)(ii) and (iii) of Railway Servant Conduct Rules, 1966."

2. On 8.6.1998, the applicant was on duty for issuing reserved tickets to the passengers. His co-accused in the inquiry against him Shri Daulat Ram was at that time working as Booking Supervisor. In case a passenger wanted to cancel his ticket, he was required first to go to the booking supervisor who would make the necessary endorsement of time; thereafter the booking clerk on duty was to make the refund to the passenger. On that date, following certain complaints, a vigilance team sent a decoy passenger to obtain cancellation/refund of a second class ticket to Bayana.. Since the ticket had been purchased from the booking counter No. 8, it was presented by the decoy passenger at that window on the pretext that he had found it lying on the ground and wanted it to be restored to its owner. The clerk on duty who was a fresher handed it over to Shri Daulat Ram, Booking Supervisor who after making the notation of time etc. gave it to the applicant herein who was at Counter No. 8. The vigilance party thereafter raided the counter. At that time the applicant had gone to attend call of nature and Shri Daulat Ram, Booking Supervisor was also looking after his counter No. 8 for a few minutes. The cash of the applicant was checked by the vigilance party in the

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presence of an independent witness and a shortage of Rs. 67/- in Government cash and Rs. 2/- in personal cash was found. However, private cash of Shri Daulat Ram was not checked. It was alleged that the refund amount of Rs. 36/- had been appropriated by the applicant in connivance with Shri Daulat Ram. This led to the issue of the chargesheet against the applicant and Shri Daulat Ram.

3. The applicant as well as Shri Daulat Ram were proceeded against in a common inquiry. The Inquiry Officer found that the charge against the applicant in respect of dishonestly pocketing the refund amount of Rs. 36/- against the ticket was established but the charge of creating shortage of Rs. 67/- in the Government cash was not established. On the basis of the inquiry report the disciplinary authority imposed the penalty of reduction from the post of Chief Booking Clerk in the grade of Rs. 1400-2300 (RPS) to the post of Sr. Booking Clerk in the grade of Rs. 1200-2040 and fixed the pay at the initial stage of Rs. 1200/- till retirement from service. The appeal against this order was also rejected. Aggrieved by these two orders, the applicant has now come before the Tribunal.

4. The order of the disciplinary authority is assailed on grounds of legal infirmities as well as on the ground of no evidence. It is contended that the order of common proceeding was issued by an authority higher than the disciplinary authority which deprived the applicant of an opportunity to be heard at the appropriate levels. It is also contended that the Inquiry Officer was changed without authority and

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further that the punishment which could be imposed on the applicant as a result of the inquiry was not specified with the nomination of the disciplinary authority. We find no merit in any of these contentions. In a common proceeding the orders have to be issued by the authority competent to punish the highest ranking of the charged officer. Consequently, the issue of the charge-sheet by an authority higher than the disciplinary authority of the applicant herein was not wrong. Similarly the change of the first Enquiry Officer Shri P.M.Ahlawat, Sr. E.O. Headquarter took place because he retired from service and Shri R.D. Chaudhary, Railway Enquiry Officer was Shri P.M.Ahlawat's

successor. The change in the officer acting as disciplinary authority also took place because of the change of incumbency. Since the powers of the disciplinary authority in regard to the punishments had already intimated, there is no prejudice caused to the applicant if these were not reiterated when the new officer took charge.

5. It is next contended by the applicant that he was deprived of ^{a fair} hearing because the defence witnesses as well as the various documents asked for by him were not allowed. The applicant had asked for three defence witnesses of which the Enquiry Officer allowed only two and the third was refused on the ground that he was not necessary. These three witnesses were Shri B.R. Bekolia, CBS/NDLS and CBS/BTI who had to prove that the refund of pick pockets never took place at NDRS. Shri Surinder Kumar was said to be a person ^{who} had come following the day of the raid and had stated that he had received Rs. 36/- in excess while receiving the refund

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of his own ticket on the day of the raid. The third witness one Shri Rameshwar Nagrath was to explain the working system and disposal of unclaimed tickets if deposited or the tickets collected from the Booking Officer. Shri Bekolia and Shri Surinder Kumar deposed before the Inquiry Officer but Shri Nagrath was not allowed. Since the applicant himself seeks to establish that refund was not made on the unclaimed ticket therefore do not find that the case of the applicant can be said to be prejudiced for the non-production of this witness.

6. As regards the documents, the applicant has not stated as to in what way the non-production of such documents has prejudiced his case. The order sheet of the enquiry dated 23.7.1993 shows that the applicant had asked for six documents of which the Inquiry Officer permitted document Nos. 1, 4 and 5 and ordered that these be made available to the charged officer and in case the same was not available, a certificate to that effect be recorded. The Item No. 1 was already available as Exh. P-3. It was contended by Shri G.D. Bhandari, learned counsel for the applicant that now the Inquiry Officer had permitted the production of these documents show that these were relevant to the defence of the charged officer. The respondents say that whatever was available was produced but the applicant does not say as to what exactly was not given and in what way the non-production of documents affected his defence. Exh. D-1/A in the enquiry file shows that the documents allowed were the transaction sheet of computer tickets sold by the booking clerk. We find that the computer sheet showing the refund of the ticket in

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question had already been introduced as Exh. 2-7 and since the first part of the charge was only related to the refund of this ticket, it cannot be said that the non-production of computer sheet in relation to other refunds has a bearing on the first part of the charge.

7. We also do not find that in the presence of the evidence recorded of the prosecution witnesses and the shortage of cash it can be said that there was no evidence against the applicant.

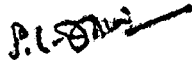
8. We therefore find that in so far as the disciplinary proceedings against the applicant are concerned, there is no ground for any interference. However, the same can not be said of the punishment imposed on the applicant. The applicant has been inflicted not only the penalty of reduction to a lower grade but also reduction in the lower grade to the minimum of that grade. In the normal course on reduction to a lower grade the pay would be fixed as if the charged officer had never been promoted to the higher grade. The reduction to a lower stage in the same stage would be a different penalty under Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968. The disciplinary authority, therefore, could not combine the two penalties. We however find from the Inquiry report file that the disciplinary authority itself has amended the penalty order by reducing the applicant to a lower pay grade but fixing his pay at Rs. 1760/- instead of Rs. 1200/-.

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9. We further find from the Annexure A-1 order of penalty that a third punishment has been imposed viz. that no increment will be earned by the applicant till retirement in the lower grade. Since the main penalty is reduction to a lower grade and not reduction in the same scale with or without cumulative effect, the disciplinary authority could not have added this short penalty also.

10. In the light of the above discussion, we partly allow the O.A with the direction that the penalty will be modified only to reduction in the lower pay scale of Rs. 1200-2400.

There will be no order as to costs.


(S.L. Jain)
Member (J)

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(R.K. Anooja)
Member (A)