

Central Administrative Tribunal  
Principal Bench

O.A. 795/95

New Delhi this the 18 th day of November, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Shri S.P. Biswas, Member(A).

Gian Singh,  
S/o Shri Ram Singh,  
Qr. No. 124/3,  
Railway Colony,  
Kishan Ganj,  
Delhi.

... Applicant.

By Advocate Shri G.D. Bhandari.

Versus

1. Union of India through  
The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway,  
State Entry Road,  
New Delhi.
3. The Divisional Traffic Superintendent,  
Northern Railway,  
State Entry Road,  
New Delhi.

... Respondents.

By Advocate Shri B.K. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the order passed by the respondents dated 12.1.1990 imposing the penalty of removal from service and the appellate authority's order rejecting his appeal dated 12.6.1992.

2. The applicant had earlier filed O.A. 1108/92 which was disposed of by Tribunal's order dated 7.4.1993 (Annexure A-3(a)). The Tribunal had dismissed the application and directed the respondents to dispose of the departmental proceedings expeditiously which were pending against the applicant. The applicant had submitted a representation

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against the Inquiry Officer's report on 14.7.1993 (Annexure A-5 (a)). The applicant has contended that without taking into consideration the points taken in this representation, the respondents have again issued an arbitrary and mala fide order re-imposing the penalty of removal from service against which the appeal submitted by him on 11.9.1994 has again been rejected by the appellate authority by order dated 29.12.1994.

3. The applicant while working as a Booking Clerk at New Delhi Railway Station was issued a major penalty charge-sheet on 3.11.1988. The allegations against the applicant were that he had prepared BTP No. 309389 on 9.10.86 in different process for different particulars on passenger as well as record/Accounts foils intentionally to defraud Railway and pocket Govt. cash of Rs.652/- i.e. difference in amount in both of them; that he did not put his initials on passenger foil of BPT to avoid detection of his misdeed; and that he created false shortages in booking and huge amount of Rs.1052.50 was lying outstanding against him as on 18.8.1988. On these accounts, it was alleged that the applicant had failed to maintain integrity and devotion to duty and acted in a manner <sup>of B.</sup> ~~of~~ unbecoming ~~the~~ railway servant. Shri G.D. Bhandari, learned counsel, has challenged the impugned penalty order of removal as well as rejection of appeal by the appellate authority on a number of grounds which have been set out in Paragraph 5 of the O.A.

4. Learned counsel has very vehemently submitted that both the disciplinary authority's order (Annex. A-6) and the appellate authority's order (Annexure A-3(b)) are non-speaking orders. On perusal of these orders, we are unable to agree with his contention that disciplinary authority's order is a non-speaking order giving no reasons for the conclusions <sup>that B.</sup> he has

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arrived at. The order has also discussed the evidence. The appellate authority's order cannot also be accepted as a non-speaking order and this ground is, therefore, rejected.

5. Shri Bhandari, learned counsel, has submitted that the disciplinary authority's order had been issued without application of mind as the notice is stated to have been issued under Rule 6 (vi) of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the 1968 Rules'). The respondents in their reply have submitted that the order at Annexure A-6 has been passed under Rule 6(xiii) and not under Rule 6(vi) which, according to them, is a typographical error, although in the copy of the order dated 1.8.1994 (Annexure R-1) they have indicated it as Rule 6(viii). No doubt, the reply filed by the respondents has been somewhat callously done, although Respondent himself <sup>has</sup> indicated the correct Rule. However, it is settled law that provided the competent authority has the power under the Rules, which in this case is Rule 6(viii), the mere reference to a wrong provision of the Rules will not render the exercise of that power nugatory. In the circumstances of the case, the contention of Shri G.D. Bhandari, learned counsel for the applicant that the disciplinary authority's order removing the applicant from service on the ground that a wrong Rule has been indicated in the order is not sufficient ground to set aside this order. This ground also, therefore, fails.

6. Learned counsel for the applicant has contended that the respondents have not adduced any evidence to prove the charge. He has relied on the judgement of the Tribunal in Raj Pal Sing Vs. General Manager and Anr. (OA 747/95). In that case, the Tribunal had after discussing the evidence which had been adduced before the Inquiry Officer, including statements

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of some of the witnesses, came to the conclusion that the Inquiry Officer comparing the hand-writings in Ex.P-2 with those in the accounts and the BPTs held that the BPTs must have been prepared by the applicant. The applicant had claimed that the disputed hand-writing might be sent for examination by experts, but this was not done. It was held that merely on a comparison of the hand-writing by the Inquiry Officer, he held that it was the applicant who prepared the BPTs in question. It was further held that apart from that, there was no evidence at all to conclude that the applicant is guilty of the charges. In the circumstances of the case, the Tribunal held that any reasonable person will not conclude by a mere comparison of hand-writings with naked eye, without the help of an expert, that the disputed BPTs was prepared by the applicant just because in his view the hand-writings there resembled the hand-writings of the applicant in Ex.P2. The finding that the applicant was guilty of misconduct was found to be perverse and unsustainable and it was further held that the appellate and revisional orders are devoid of application of mind and are signed by incompetent persons. In the light of the findings of the Tribunal, the impugned orders were quashed and set aside. After careful perusal of the documents and records in the present case, we are unable to conclude that the reasoning in the judgement in Raj Pal Singh's case (supra) is applicable to the present set of facts and circumstances. The conclusion of the Tribunal to set aside the impugned orders in Raj Pal Singh's case (supra) was passed on a number of factors, including the conclusions arrived at by the Inquiry Officer on a comparison of the hand-writings in the documents placed before him and the absence of a hand writing expert. In the present case, it is seen from the extract of the Inquiry <sup>Officer's R.S.</sup> report placed by the applicant (Annexure A-7) and Annexure A-15 letter dated 7.3.1989 which was also pressed by Shri G.D. Bhandari,

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learned counsel during the hearing that the applicant has alleged that the shortage in money found in such cases is due to the defective procedure adopted by the respondents and that this is also a very normal situation occurring in the Railways because of the rush in the Stations by passengers booking tickets for travel. The applicant has also made good the shortage which was found against him for Rs.1052.50P which has also been referred to in the evidence led before the Inquiry Officer. In the cross-examination by the Defence Assistant of Shri Rajeshwar Vatse, CBS, NDLS during the Inquiry proceedings (Annexure A-6), the witness had said "I have seen the Ex. P-2 the record portion of the BPT No. 309389 and confirmed to have been issued by the CO. The record portion was issued for Rs.41/- and has been correctly accounted for. The desitnation station is Mujaffarpur.....". This witness had further given evidence about checking of the ticket stock record.

6. From the copies of the extracts of the deparmental proceedings annexed by the applicant himself at Annexure A-16, including the cross-examination of one of the witnesses, Shri Rajeshwar Vatse, CBS, NDLS who has confirmed that Ex.P-2 was issued by the applicant, it is seen that this is not a case of no evidence. Learned counsel for the applicant has very vehemently submitted that such shortage in the booking was an usual occurrence and even a register is maintained for this purpose. The applicant himself in his appeal dated 11.9.1994 has mentioned that although the said BPT was accounted for by him as it was meant for his counter i.e. No. 102, he did not, however, issue the BPT. He has also stated that he did not have time to check the BPT when he took over the charge, but he has admitted that he had to account for it as it was issued during the time he was in-charge of that counter. Therefore, taking into account the

documents on record, it was for the applicant to show that the BPT in question, had not been issued by him by calling the relevant witnesses, which he has failed to do. As this is also not a case where there is no evidence against the applicant, in the circumstances, the case of Raj Pal Singh relied upon by the applicant will not assist him.

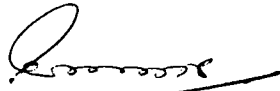
7. Another ground taken by the applicant was that the appellate authority had failed to give him a personal hearing along with his defence helper before passing the order. He has also referred to another case filed by him in the Tribunal (OA 1653/94) which was disposed of by order dated 5.4.1994. In this case, the applicant had prayed for quashing of the punishment order dated 1.8.1994 (Annexure A-6). The Tribunal has held that "We do not find that the facts and circumstances in this O.A. are such to warrant the exercise of the discretionary powers of doing away with the remedy of appeal. We do not find it necessary to go into the details of some other O.A. which is said to have been admitted as we are bound by the law laid down by the Full Bench". On perusal of the appellate authority's order dated 29.12.1994 and the provisions of Rule 22 of the 1968 Rules, it cannot be stated that the appellate authority's order is in violation of the Rules. He has considered the charges levelled against the applicant and <sup>whether</sup> the procedure laid down under the Rules has been followed in the case and has come to the conclusion that adequate opportunity has been afforded to the applicant to put forward his defence, which conclusion cannot be faulted as being either against the facts or law in the present case. In the circumstances of the case, we find that as the applicant has been given adequate opportunity to defend his case, the failure of the appellate authority to give him a personal hearing has not caused him any prejudice to justify setting aside the order at this stage. The punishment awarded against him is

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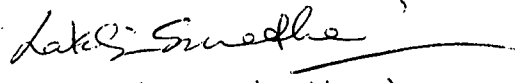
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also not excessive considering the nature of the charges against the applicant. Therefore, taking into consideration the settled law on the subject of interference by the Tribunal in disciplinary proceeding matters conducted by the competent authorities, we find no good ground to justify any interference in the matter (See the observations of the Supreme Court in Union of India Vs. Parma Nanda, AIR 1989 SC 1185, Union of India Vs. Upendra Singh, JT 1994(1) SC 658, Shriji Vidyalaya and Anr. Vs. Patel Anil Kumar Lallubhai & Anr, JT 1998(8) SC 460) We have also considered the other contentions raised by the learned counsel for the applicant but do not find any force to justify setting aside the punishment orders passed by the disciplinary authority or appellate authority.

8. In the result, for the reasons given above, O.A. fails and it is dismissed. No order as to costs.

  
(S.P. Biswas)  
Member(A)

'SRD'

  
(Smt. Lakshmi Swaminathan)  
Member(J)