

Central Administrative Tribunal, Principal Bench

O.A. No. 1209/2000

New Delhi this the 21st day of September, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri O.P. Singh
S/o Shri Inderpal Singh
Ex. Travelling Ticket Examiner,
Under Divisional Railway Manager,
Central Railway,
Jhansi.

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Resident of

C/o Shri H.B. Singh
10-C, East Railway Colony,
Old Faridabad (Haryana).

...Applicant

By Advocate: Shri B.S. Maine.

Versus

Union of India

Through:

1. The General Manager,
Central Railway,
Mumbai CST.
2. The Divisional Railway Manager
Central Railway,
Jhansi.
3. The Senior Divisional Commercial Manager,
Central Railway,
Jhansi.

...Respondents

By Advocate: Shri V.S.R. Krishna.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA has assailed an order dated 4.8.99 passed by Divisional Personnel Commercial Manager, Central Railway, Jhansi (Annexure A-1) vide which the applicant had been ordered to be removed from service. The applicant has also assailed another order dated 23.2.2000 passed by the Senior Divisional Commercial Manager, Central Railway, Jhansi (Vide Annexure A-2) vide which the appeal preferred by the applicant

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against the order, Annexure A-1 had been rejected.

2. Facts in brief, as alleged by the applicant are, that while he was working as a Ticket Collector, he was proceeded departmentally on the allegations that he had allowed decoy passenger and his colleague to travel in coach S-9 from Agra Cantt. to Nizamuddin without tickets and collected an amount of Rs.130/- without issuing any Railway receipt. The applicant had also not declared his private cash amounting to Rs.570/- which was found to be in excess along with Railway cash.

3. It is further submitted that on the same very day, a vigilance check was conducted and 5 passengers were detected travelling in the coach manned by the applicant without proper tickets and Rs.503/- was collected from them. Based on these facts, a charge-sheet was issued against the applicant. The charges were denied by the applicant. Thereafter charges were framed against the applicant. Thereafter, an enquiry was held against the applicant and he was held guilty. He was punished and he filed an appeal, which was also rejected, so he had preferred an OA earlier vide OA No.2160 of 1996 which was decided vide judgment Annexure A-11. The OA was allowed and the punishment orders were set aside on technical ground of non-compliance with sub-rule 21 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules and failure of the disciplinary authority to notify the applicant of its intention to take into account the applicant's prior record of service in determining the quantum of punishment when he was found guilty. So after the OA was allowed, the respondents placed the applicant under suspension from the date of dismissal from service and called upon the applicant for questioning under sub-rule (21) of Rule 9

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of the Railway Servants (Discipline and Appeal) Rules and after recording the statement of the applicant, the Enquiry Officer submitted his report and in his report he had not held the applicant responsible for charges No.3 and 4 but the Enquiry Officer committed a grave error in holding the applicant guilty for charges No.1 and 2 and thereupon the disciplinary authority relying upon the erroneous findings of the Enquiry Officer, passed the impugned order without considering the representation of the applicant submitted vide Annexure A-14. Similarly the appellate authority did not consider the grounds taken up in appeal but passed the order rejecting his appeal vide Annexure A-2, which has been impugned in this OA.

4. In the grounds to challenge the impugned orders, the applicant has again alleged that no reasonable opportunity of defence was afforded to him and charges levelled against him were false. The Enquiry Officer was biased as there was no independent witness whatsoever during the enquiry and only 4 witnesses were examined and all those 4 witnesses were members of the raiding party. No independent witness had been examined and the appellate authority also did not apply its mind and should not have taken into consideration the past service of the applicant without notifying to the applicant that the intention of the appellate authority is to take notice of his past record in determining the quantum of penalty.

5. We have heard Shri B.S. Maine, counsel appearing for the applicant and Shri V.S.Krishna, counsel appearing for the respondents.

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6. The learned counsel appearing for the applicant submitted that the Enquiry Officer while recording the findings on the Articles of Charges had submitted in his report that the applicant is responsible for Article I and Article II but has not held the applicant responsible for Articles III and IV whereas the disciplinary authority had held the applicant responsible for guilty for the charges levelled against him meaning thereby that the disciplinary authority had held the applicant guilty for all the charges. Thus the disciplinary authority had taken a different view than that, which was taken by the Enquiry Officer. In case the disciplinary authority wanted to take a different view, then a dissent note should have been recorded and a copy of the same should have been supplied to the applicant, and his explanation should have been sought before passing the impugned order of punishment.

7. Similarly the appellate authority had passed the order without going through the record and passed the order as if all the four charges stood proved against the applicant and to support his contention, the learned counsel for the applicant has referred to a judgment entitled as Kunj Bihari Mishra Vs. Punjab National Bank, SLJ 1999 (1) page 271.

8. The counsel for the applicant has mentioned in his appeal that only three charges had been proved and 4th charge has not been proved but still the disciplinary authority and appellate authority had punished him for all the four charges.

9. We have also gone through the record.

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10. As far the plea of the applicant that the Enquiry officer has held him guilty for charges No. I and II is concerned, the same are not sustainable because the findings on Article No. III also shows that the Article III has also been proved because the findings recorded on Article III by the Enquiry Officer do show that the amount found in excess should have been deposited in the sundry account which has not been done, thus the applicant has been held responsible on account of Article III of the charge also. However, the fact remains that the Enquiry officer has categorically held that the applicant is not responsible with respect to the charge framed under Article IV and it appears that neither the disciplinary authority nor the appellate authority has taken care of the same.

11. Though Shri V.S.R. Krishna, Counsel appearing for the respondents has submitted that the disciplinary authority had simply recorded that he agreed with the findings of the Enquiry Officer, which means that the disciplinary authority had agreed with the findings recorded by the Enquiry officer which includes the findings recorded on Article IV having not been proved, so the counsel for the respondents submitted that there is no infirmity in the passing of the order by the disciplinary authority. However, on going through the order passed by the appellate authority we find that the appellate authority has categorically recorded about the of Articles of Charges, i.e., I, II, III and IV in seriatim and has further observed that all the charges have been proved during the course of enquiry, which goes to show that the disciplinary authority had not taken note of the findings recorded by the Enquiry Officer and in a mechanical way has held that all the four charges had been proved against the applicant and upheld the order of the disciplinary authority.

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12. Thus, it appears that the order passed by the disciplinary authority as well as by the appellate authority had been passed without applying their mind.

13. Besides that, we note that in paragraph 2 of the order passed by the appellate authority, the said authority had again mentioned that a "persual of the service record of the applicant indicates that he was punished as many as 4 times for irregularities committed by him" and on this aspect again we are constrained to observe that the disciplinary authority had not even bothered to read the judgment given in the earlier OA filed by the applicant wherein it was specifically mentioned that in case the appellate authority goes by the past record of the applicant it must indicate before considering the same and issue a notice to the applicant so that he may render his explanation for not considering his past record of service and despite the fact that earlier order had been set aside by this Tribunal, the same error has been repeated by the appellate authority in the impugned order vide Annexure A-2 and again no opportunity has been afforded to the applicant by giving him a notice that the appellate authority wants to rely upon his past record on the quantum of punishment, so on this score again this order cannot be sustained.

14. The counsel for the applicant has also stated that no independent witness had been joined when the test check was conducted by the Vigilance Team and to that extent he has referred to Method of Investigation in Railway Board's Office and Railways and referred to paragraph 704 which prescribes procedure for laying a trap and submitted that two or more independent witnesses must be joined to hear the conversation which should establish that the money was being passed as illegal

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gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused and the transaction should be within the sight and hearing of two independent witnesses and after referring this, the learned counsel submitted that since no two independent witnesses had seen the trap led by sending a decoy witness, the same is vitiated and as such it cannot form the basis of the charge.

15. As against this, the learned counsel for the respondents submitted that it is not a case of laying trap where applicant demanded bribe money, rather it was a simple checking of passengers travelling without tickets by the Vigilance Team and to know whether compartment in-charge was permitting persons without ticket or not and there was no occasion to associate independent witnesses. To our mind also the directions, as contained in the instructions issued by Railway Board trap purposes are not of binding nature for the purposes of test check conducted by the Vigilance Department to find out the ticketless travelling permitted by the applicant in the compartment as there was no complaint with regard to demand of bribe or accepting of bribe which required two witnesses to be associated, so on that score also no fault can be found that the test check was conducted without associating independent witnesses.

16. However, since we have already held that the disciplinary authority as well as the appellate authority had not passed the orders by applying their mind and the order passed by the appellate authority is based on erroneous presumption that all the charges against the applicant had been proved and the appellate authority had again considered the past record so we find that the order of the appellate authority is liable to be

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quashed. Similarly the order of the disciplinary authority appears to have been passed in a mechanical manner without applying its mind so is liable to be quashed.

17. Hence, we quash both the disciplinary authority's order as well as of the appellate authority order's order and direct that the applicant be reinstated in service. However, it is open for the respondents, if they so like, they may pass fresh order after giving an opportunity of hearing in accordance with the rules, instructions and judicial pronouncements on the subject. The compliance of the order be made within one month from the date of receipt of a copy of this order.

18. With the above directions, OA stands disposed of. No costs.


(Kuldip Singh)

Member (J)


(V.K. Majotra)

Member (A)

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