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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO: 468/89

New Delhi this 8th day of March 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. B.K. Singh, Member (A)

Shri Lokesh Kumar,
252/1D-Shivlok, Kankarkhera,
Meerut Cantt, U.P.

... Applicant

(By Advocate : Shri B.S. Charya)

Versus

1. The General Manager,
Northern Railway,
Baroda House,
New Delh

2. Union of India,
Ministry of Railways,
New Delhi through its
Secretary

3. The Sr. Commercial Officer (G),
Northern Railway,
Baroda House,
New Delhi.

4. The Additional Chief Commercial Superintendent,
Northern Railway,
Baroda House,
New Delhi.

... Respondent

(By Advocate : Shri Ramesh Gautam)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant who joined as Parcel Clerk in November 1976 was posted after January 1982 in New Delhi Parcel Office. He was served with a memo dated 31.10.1983 along with the Statement of Article of charges and Statement of Imputation alleging that the applicant connived with one Shri Hiron Ishwarari, Reservation Clerk, first class reservation Office, New Delhi on duty on Counter No. 17 in the evening shift on 9.10.1982 and mis-appropriated Government cash amounting to Rs. 3,660/- by manipulating ROPD Statement (Receipt of previous date). It was further

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alleged that while he was on duty on 10.10.1982 allegedly checked ROPD Statement dated 9.10.1982 and Counter Nos. 13 to 22 (including Counter No. 17) of his own and collected the connected documents to escape detection as it was the duty of one Shri Toheed Alam, Booking Clerk, to check and collect these documents and ROPD Statements. Further, these statements were found missing by Chief Booking Clerk on 11.10.1982. He was issued a charge sheet that he committed violation of the provision of Rule 3(1)(i)(ii) and (iii) of the Railway Service Conduct Rules, 1966. The applicant was also placed under suspension vide order dated 1.2.1983 under Rule 5(1) of the Railway Service (discipline and Appeal) Rules 1968. Shri B.R. Sharma was appointed as Enquiry Officer. Shri V.P. Sharma was appointed as Presenting Officer and Shri R.P. Singh was the defence helper of the applicant. The Enquiry Officer after concluding the enquiry submitted the report on 1.10.1984 on the basis of which the disciplinary authority passed the punishment order dated 23.3.1985 inflicting the punishment of removal from service with immediate effect and also levying a sum of Rs.1,830/- which was mis-appropriated. The applicant appealed against the same to the General Manager, Northern Railway and the Chief Commercial Superintendent by the order dated 28.1.1987 rejected the appeal.

2. Earlier the applicant filed D.A. No. 1329/87 which was disposed of by the order dated 12.10.1987 by which the respondents were directed to dispose of the appeal by a speaking order after quashing the appellate order dated 28.1.1987. Finally, the appeal was again rejected by the order dated 28.1.1988 and aggrieved by the same the applicant filed the present application on 3.3.1989

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in which he has prayed that the order of removal from service dated 15.3.1985 as well as the order rejecting the appeal dated 28.1.1988 be quashed and the respondents be directed to reinstate the applicant in service with full salary and allowance and other benefits.

3. A notice was issued to the respondents who contested the application and stated that the charges against the applicant ^{were} found fully proved and he was given full opportunity by the Enquiry Officer to defend himself. According to the gravity of the offence, the disciplinary authority passed the punishment order from removal from service. The application, therefore, is devoid of merit and ~~be~~ dismissed.

4. We have heard the learned counsels for the parties at length and perused the record. The appellate authority in this case passed on 28.1.1988 again a non-speaking order. The appellate authority, Chief Commercial Superintendent did not discuss the various points raised by the applicant in the Memo of appeal. The earlier order passed by the Tribunal in D.A. No. 1329/89 permitted the applicant to raise afresh grounds he has raised in paragraphs (a) to (t) of the application by way of an application before the appellate authority and in pursuance that the applicant filed afresh memo of appeal dated 30.11.1987. This memo of appeal has been filed by the applicant and in Annexure P4 of the Paper Book from Pages 48 to 73. The applicant has taken a number of grounds but the appellate authority has not at all applied his mind. The order passed by the appellate authority is reproduced below:

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NORTHERN RAILWAY

Registered AD

Headquarters office
Baroda House,
New Delhi

No. 21-RTA/NDCR/Loss Tickets/14/82

Dated : 28.1.1988.

Shri Lokesh Kumar,
Booking Clerk/NDCR,
R/O House No. 252/10, Shivlok,
Kankarkhera,
Meerut Cantt. U.P.

I have given careful consideration to the various points raised in your appeal received in this office on 7.12.1987, against the imposition of punishment of removal from service. This punishment imposed upon you is correct. I fully agree with the findings of the Enquiry Officer who has held you responsible for the article of charges framed which have been proved in the DAR Enquiry.

A perusal of records reveal that the Enquiry Officer has afforded all reasonable opportunity to you during the course of enquiry. He has observed all the relevant rules and procedure in vogue. Based on direct and indirect evidences produced in DAR Enquiry as well as evidences on record, this article of charges have been proved. The grounds listed out in your appeal are not tenable.

The disciplinary authority after careful consideration of the findings of the Enquiry Officer and relevant factors has correctly imposed on you the punishment of removal from service.

I, therefore, do not see any reason to modify the orders passed by the disciplinary authority on 23.3.1985.

In view of the above, I, therefore, reject your appeal and uphold the punishment of removal from service imposed on you by SCC (G) on 23.3.1985.

Sd/-
I.R. Srivastava
Chief Commercial Superintendent

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5. On this ground alone the impugned order passed by the appellate authority cannot be sustained. This order has merged in the order of disciplinary authority dated 23.3.1985. We have also considered the case on merit and we find that the procedure adopted by the Enquiry Officer is totally illegal and he has not followed the procedure laid down under the rules. The first charge against the applicant was of mis-appropriating the Government cash and the second charge was that though on 10.10.1982 he was on cash duty yet he checked RPOD Statement dated 10.9.1982 of Counter Nos. 13 to 22 of his own accord and collected the connected documents escaped detention as it was the duty of Toheed Alam, to check and collect the same. He also removed those statements which were found missing by the Chief Bookin Clerk on 12.10.1982. Firstly, we find that the Enquiry commenced as joint enquiry both against the applicant and Hiron Ishwarari as is evident by the Order Sheet, and the Enquiry dated 22.2.1984 and 14.3.1984. It appears on 16.4.1984 that the enquiry proceeded against the applicant as the order sheet does not find the mention of the name of the other charged employee Shri Hiron Ishwarari. The perusal of the order dated 26.4.1984 shows that again the name of the other charged officer Shri Hiron Ishwarari is mentioned in the subject of the enquiry but it is not revealed whether the other charged employee Shri Hiron Ishwarari has also participated in these proceedings or not. It is also not evident that the proceedings against Hiron Ishwarari were separated at any point of time from this general enquiry.

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6. It also appears from the record that Hiron Ishwarari who was the charged official and the charge was that the applicant connived with that charged official for mis-appropriating the amount has also been examined as a witness against the applicant. The Enquiry Officer has accepted the evidence of the ~~charged~~ charged employee and he was examined as a Prosecution Witness against him. Though Hiron Ishwarari was mentioned as a witness against him but he cannot be at the same time charged alongwith the applicant for the same mis-conduct and also cited as a Prosecution Witness against the applicant. This is gross illegality because an accomplice cannot be a witness and moreover he has been let off with the lighter punishment while the applicant has been awarded the punishment of removal from service.

7. The Tribunal cannot appreciate the evidence but can go into the matter whether the procedure prescribed under the rules have been fully followed. The Tribunal can also find whether there is any evidence on which the conclusion has been drawn by the Enquiry Officer. Further, the findings has to be in consonance with the evidence adduced which can be arrived at by a person acting in a reasonable manner. The procedure adopted by the Enquiry Officer therefore was illegal in as much as the statement of another delinquent employee who was charged alongwith the applicant for the same misconduct, has been accepted. Even the statement of Hiron Ishwarari goes to show that he was on duty on 9.10.1982 and himself prepared ROPD statement and the refund was granted by him. He, however, stated that refund of EFT No. 765916 was given in good faith on the request of Shri Lokesh Kumar. This witness

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also stated that he did not see the EFT in question but he only relied on it as the same was held by Shri Lokesh Kumar. He further stated that he briefed on the particulars dictated by Shri Lokesh Kumar to whom he has trusted. The cancellation was recorded by the witness on the EFT and ticket particulars were also noted in the slip by him. This statement goes to show that the refund was done by Hiron Ishwarari and he did not himself scrutinised the EFT and only accepted the representation made by Shri Lokesh Kumar. From the above it is clear that Shri Hiron Ishwarari did not perform his duty to the extent he was required to do in dealing with the matters like refund and unused tickets. The only statement which goes against the applicant is that applicant mis represented about the truthfulness of the EFT 765916. This is not the charge against the applicant. The charge against the applicant as well as against this witness Shri Hiron Ishwarari is that they mis-appropriated the amount of EFT by obtaining wrong refund. Thus, there is no evidence worth the name that applicant has in any way mis appropriate the refund amount of EFT. 765916. Moreover, the original passenger foil of EFT 765916 was not placed before the Enquiry Officer and the applicant has been deprived of cross examining the witness on the same. The expert evidence was also tendered before the Enquiry Officer who has submitted the report that the cancellation foil was not filled up by the applicant Shri Lokesh Kumar. In view of this any finding of mis-appropriation of money by the applicant is not deducible from the evidence on record.

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8. Regarding the other evidence that the applicant himself checked ROPD on 10.10.1982 and that they were found missing is also not evident from the evidence of Shri Toheed Alam. It was the duty of Shri Toheed Alam to check the ROPD statements on 10.10.1982. If Shri Lokesh Kumar has without any authority undertook that business then Shri Toheed Alam should have complained to the Chief Booking Clerk regarding the intervention of the applicant in the discharge of his duties. The Enquiry Officer examined 7 Prosecution Witnesses and held that there is substantial evidence to prove involvement of Shri Lokesh Kumar in getting fraudulent refund of Rs. 3,660/- on a spurious EFT. In order to substantiate this finding he has referred to the statement of Shri Hiron Ishwarari which could not be taken into account, as he was tried alongwith the applicant jointly in the joint enquiry proceedings and it is expected that in order to save his own skin he can give statement which cannot be accepted as a truthful statement. Again the Enquiry Officer has lightly brushed aside the statement of Shri Kundan Lal and Shri Bhim Sain Sharma who categorically stated that Shri Lokesh Kumar who was on cash collection duty was not suppose to check ROPD statement at all which has also been confirmed by another PW Shri G.R. Mehra. The Enquiry Officer, therefore, introduced his own opinion that on some Sundays Booking Clerk on Cash collection duty was also required to assist the Booking Clerk on ROPD Statement checking duty under verbal instructions from the Chief Booking Clerk depending on the workload. There is no written order on record with regard to this fact. The Enquiry Officer has referred

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to answer to Question No. 5 of the witness Shri Nirmal Singh Bhatia at page No. 100 but this answer to Question No. 5 only refers to the duties of Shri Lokesh Kumar and Shri Toheed Alam on 10.10.1982. There is no mention of the fact that when there was a workload there were instructions from the Chief Booking Clerk that on Sunday Booking Clerk on cash collection duty was also to assist the Booking Clerk on ROPD Statement. These findings, therefore, are not based on the testimony of any of the witnesses examined on behalf of the administration. Another witness Shri Bhim Sain Sharma, AFI has stated that it was the circumstantial evidence and statement of Shri Hiron Ishwarari checking of the ROPD on next day which is a documentary proof against Shri Lokesh Kumar. The Enquiry Officer has referred to certain defence statements in support of his findings that when there was a workload, the Booking Clerk on Cash collection duty was also to help the Booking Clerk on ROPD statements. Shri Biri Singh was also examined as a defence witness and he was asked a question whether he ever checked ROPD statements in addition to cash duty on Sundays to which he gave reply in affirmative but stated that after checking ROPD statements they were handed over to the actual man on ROPD checking duty of that day. Another defence witness Shri Abhimanyu Shukla has clearly stated that he does not remember as to on how many occasions he worked on Cash duty and also checked the ROPD statements. If there was a joint order of Chief Booking Clerk that those who were working on the counter of cash collection would also help the Booking Clerk performing the ROPD

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checking duties. It is, therefore, evident that there is no evidence against the applicant that he was ever asked to check the ROPD statements on 10.10.1982 as he was posted on cash collection duty. The findings of the Enquiry Officer is, therefore, totally based on surmises and conjectures such a findings cannot be allowed to stand as the same is perverse and cannot be reached by reasonable man.

9. Another illegality in the proceedings of the enquiry is that the Enquiry Officer has cross examined the witnesses of the administration as well as of the defence in a manner which goes to show that the purpose of the questions put to the witnesses was not to thrashout the truth but to fill up the lacuna of the prosecution. Such questions, therefore, should not have been put by the Enquiry Officer which shows he was having certain bias against the applicant. Such a findings, therefore, based on such cross examination not to elicit the truth but to fill up the lacuna is not justified.

10. We have also considered that the order of the Appellate Authority is a non speaking order. The Appellate Authority has the duty to apply its mind and to consider the various points averred in the memo of appeal. Merely disposing of the appeal by a general order without commenting or discussing the various points raised in the appeal would be totally unfair and unjust. In the case of Ram Chander Vs. Union of India reported in 1986 (2) SLJ P 250 the Hon'ble Supreme Court held that the Appellate Authority should even give personal hearing to the aggrieved employee and also

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to dispose the appeal by reasons. The order passed by the Appellate Authority is not only an administrative order but also quasi judicial in nature. In spite of the fact that in the order passed in the earlier O.A. No. 1329/87 the Tribunal by the Order dated 12.10.1987 quashed the earlier appellate order which was only 3 lines order that CCS has considered the issues raised in the appeal and has rejected the same was quashed and the Appellate Authority was directed to dispose of the appeal after considering all grounds. The Appellate Authority has not complied with this order at all otherwise the Appellate Authority would have been also reached on a conclusion other than arrived at by the Enquiry Officer and the Disciplinary Authority.

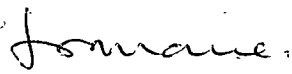
11. In view of the above facts and circumstances the impugned order of punishment of 22.3.1985 and the order of the Appellate Authority dated 28.1.1988 are quashed and set aside and the applicant shall be reinstated in service forthwith within a period of one month from the date of receipt of the copy of this order and the period of suspension shall also be treated as a period spent on duty for all purposes. The applicant shall be entitled to his salary and allowances from the date he is reinstated and for the back wages from the date of his removal from service i.e. 23.3.1985 till the date of his reinstatement by virtue of this order shall be considered by the respondents and if the applicant was not gainfully ^{engaged} elsewhere during this period he will be entitled to all back wages and allowances for that period also, which should be paid within a period of

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three months from the date of his reinstatement
or pass a suitable order in that regard. The
parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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