

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01370/2014

HYDERABAD, this the 3rd day of December, 2020

(CAV on 23.11.2020)



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Amarlapudi Ravi Kumar,
S/o. A. Benjamin Carlyle, aged 57 years,
Ex. Station Superintendent, Kurichedu R.S,
South Central Railway, Prakasam District,
R/o. Near Ramalayam, Chandaluru Village,
J. Pungaluru Mandal, Prakasam District, A.P.

...Applicant

(By Advocate : Mr. K.R.K.V. Prasad)

Vs.

- 1.Union of India rep by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Passenger & Traffic Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
- 3.The Additional Divisional Railway Manager,
South Central Railway, Guntur Division, Guntur.
- 4.The Senior Divisional Operations Manager,
South Central Railway, Vijayawada Division, Vijayawada.
5. The Divisional Operations Manager (Coordination),
South Central Railway, Guntur Division, Guntur.
6. K.M. Varma, Enquiry Inspector &
Inquiry Officer, O/o. The Senior Deputy General Manager (Vigilance),
South Central Railway,
Rail Nilayam, Secunderabad.

....Respondents

(By Advocate: Mr.D. Madhava Reddy, SC for Railway)

ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

2. The OA is filed against the order of Compulsory retirement of the applicant vide memorandum dated 27.4.2011 of the disciplinary authority, as confirmed by the appellate authority vide order dt. 25.02.2013.



3. Brief facts of the case are that the applicant, while working as Station Superintendent, Undi Railway Station, under Vijayawada Division, vigilance wing conducted a decoy check on 27.12.2008 and based on the same, a charge memo was issued on 20.5.2009, with 3 Articles of Charge. Applicant was suspended and later, on revocation of suspension, was transferred to Guntur Division. Disciplinary inquiry was conducted and the Inquiry Officer held Articles I & III as proved while as Article II as partially proved. Disciplinary Authority imposed the penalty of Compulsory retirement on 27.4.2011 and on appeal, the penalty was confirmed on 25.2.2013. Aggrieved, the OA has been filed.

4. The contentions of the applicant are that the respondents accepting the charge sheet drafted by the vigilance wing, appointing an I.O. suggested by the vigilance wing and the disciplinary authority as well as the appellate authority imposing the penalty of compulsory retirement at the behest of the vigilance wing are decisions, which are irregular. Vigilance manual procedure prescribed in Paras 704 and 705 has not been followed. In this regard, applicant cited the judgment of the Hon'ble Supreme Court in *Moni Shanker v U.O.I., (2008) 3 SCC 484*. Inquiry officer is working under Sr.DGM (Vig.) and hence, is under obligation to prove the charges and therefore biased, particularly in the context of not appointing a



Presenting Officer. Illiterates have been used as decoy/ witnesses and trap money was given by the vigilance wing. Applicant raised 9 technical objections in regard to the conduct of the inquiry and that the charges were held to be proved without evidence. Excess cash is credited and any shortage is made good at the end of the shift. Disciplinary authority and the appellate authority have imposed the penalty in question without application of mind. Appellate Authority delayed the disposal of the appeal. Penalty imposed is disproportionate and Articles 14, 16 and 21 of the Constitution of India have been violated. Applicant accepted the retiral benefits because of the economic compulsions.

5. Respondents in their reply statement contend that the applicant is habituated to indulge in malpractices of demanding and collecting Railway fare more than the fare fixed from the passengers, while issuing Railway journey tickets. A decoy check was done on 27.12.2008, wherein the applicant had issued the ticket No.20198121 and collected Rs.770 against the fixed fare of Rs.767. Further, during the check, it was revealed that the personal cash declared by the applicant was Rs.454, whereas the actual cash with the applicant was found to be Rs.200 only. The intention to show excess cash in the personal cash register was to adjust any excess cash collected through malpractices. Even in the Railway cash a shortage of Rs.27 was noticed. Inquiry officer was appointed as per procedure, who held the Articles charges I & III proved and Charge II as partially proved. I.O. examined 5 witnesses and held the charges proved based on evidence. Statements were explained in vernacular language to the witnesses and their signatures were taken. Applicant used the services of 2 defence



Assistants to defend his case. The Disciplinary and Appellate authorities have carefully gone through the case and decided/confirmed the penalty. Appellate authority took time to confirm the penalty in order to ensure that an inappropriate penalty is not imposed on the applicant. Applicant has not filed revision petition though provided under Rules and without doing so, the OA has been filed. However, applicant has accepted retiral benefits consequent to his compulsory retirement. Vigilance wing is an advisory body of the respondents organization and its advise is sought in vigilance cases. Appellate authority has tried to impose a lesser penalty, but the vigilance wing corrected the penalty and advised the Appellate Authority accordingly. Hence, the Appellate authority upheld the penalty imposed by the Disciplinary authority. The 9 points raised as failures of the Inquiry officer are not tenable. There is delay of 194 days in filing the OA. Private cash has to be declared at the commencement of duty. At any given time, cash should tally and not at the end of the shift, so as to establish that there is no misappropriation of railway cash.

6. Heard learned counsel for the applicant and perused the pleadings on record. Ld Counsel sought permission to file Court judgments to support the contentions made. Respondents were also granted liberty to file judgments, if any, in their support. Despite granting one week time, neither of the parties filed any judgments.

7. I. It is not under dispute that the applicant was subjected to a decoy check by the vigilance wing and based on the findings of the vigilance check, charge memo was issued with 3 articles of charge. The articles of charge as follows:

Article (i):

That the said Sri A. Ravi Kumar, SS/UNDI while functioning as such on 27.12.08 in Booking-cum-Reservation Office, UNDI has committed serious misconduct in that he demanded and collected Rs.3/- over and above the ticket fare from the decoy passenger Sri D. Rajeswar for issuing of JCRT tickets for 4 Adults ex.BVRT to HYB.

Thus, the said Sri A. Ravi Kumar, SS/UNDI has violated the instructions contained in para 2430 of IRCM Vol. II and also failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant thereby violated Rule 3(1)(i)(ii)(iii) and Rule 26 of Railway Services (Conduct) Rules, 1966.

Article (ii):

That the said Sri A. Ravi Kumar, SS/UNDI while working as such on 27.12.08 in Booking-cum-Reservation Office, UNDI has committed the following irregularities in that:-

- (1) He has declared Rs.200/- in the system as his on hand personnel cash as against of Rs.454/- produced (or) Rs.254/- produced excess in his personnel cash.*
- (2) He has produced an amount of Rs.4833/- as his on hand Government Cash as against the Account of his records of Rs.4860/-or Rs.27/- found short in his Government Cash.*

Thus, the said Sri A Ravi Kumar, SS/UNDI has violated the instructions contained in Para 101 of IRCM Vol. I and also failed to maintain devotion to duty thereby violated Rule 3(1)(ii) and Rule 26 of Railway Services (Conduct) Rules, 1966.

Article (iii):

That the said Sri A. Ravi Kumar, SS/UNDI while working as such on 27.12.08 in Booking-cum-Reservation Office, UNDI has committed the following irregularities in that:-

He has not declared his private cash in the Private Cash Declaration Register provided at BO/RO-UNDI for this purpose.

Thus, the said Sri A Ravi Kumar, SS/UNDI has violated the instructions contained in letter No.B/C.81/P/Vol.II dt. 05.03.2008 and also failed to maintain devotion to duty thereby violated Rule 3(1)(i)(ii) and Rule 26 of Railway Services (Conduct) Rules, 1966."

Inquiry officer appointed to inquire into the charges, has held Articles I & III as proved, and Article II, as partially proved. Applicant has pointed out 9 technical defects in the conduct of the inquiry. They were not properly rebutted in the reply statement. Applicant claims that the disciplinary authority and the Appellate authority wanted to impose a lesser penalty but on the insistence of the vigilance wing, penalty of compulsory retirement

was imposed. However, the most important aspect is that the respondents have admitted in the reply statement that the Appellate authority was influenced by the vigilance wing in confirming the penalty of compulsory retirement. In their own words, at para 7 of reply statement, respondents have stated as under:



“...In this case also AA tried to impose lesser penalty. As vigilance organisation is an advisory body, corrected the penalty and advised Appellate Authority ie Chief Passenger & Traffic Manager/ Secunderabad accordingly. So AA upheld the penalty imposed by the DA.”

The role of the vigilance wing is advisory in nature in respect of imposing penalties. They can only tender an advice to the disciplinary or the Appellate Authority when sought for. However, they cannot correct the penalty as has been admitted by the respondents. Imposition of penalty is a statutory function and it has to be discharged by application of mind independently by the designated statutory authorities and not at the behest of others. Hence, the Appellate Authority should have decided the issue independently. The charges pertain to corrupt means adopted in booking Railway tickets by the applicant and shortage of personal and Railway cash. Corruption is a grave misconduct. It is not the quantum of amount involved but the corrupt intent that has to be taken seriously. The applicant is reported to be habituated to collect excess fare from the passengers. Respondents claim that the decoy check has brought out this fact. Even the excess declaration of cash by the applicant is claimed to have been done, to cover up the excess cash applicant collects from the passengers while issuing tickets. However, while proceeding on disciplinary grounds the respondents are duty bound to follow the procedure prescribed as per rules and law. Respondents did submit that the applicant has not submitted a

review petition under Rule 25 of RS (D&A) Rules 1968 to the Additional General Manager/ Secunderabad. Therefore, we find it appropriate, to direct the applicant to submit a review petition to the competent authority, within a period of 2 weeks from the date of receipt of this order and the reviewing authority shall review the disciplinary case as per rules and law and take a decision in the matter as deemed fit, within a period of 3 months from the date of receipt of such review petition from the applicant.



With the above direction, the OA is disposed of, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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