

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01474/2014

Date of CAV: 20.01.2021

Date of Pronouncement: 05.02.2021



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

N. Joseph Babu S/o N.James (Late),
Aged 51 years, working as Sr.TTE,
Dharmavaram Railway Station,
Guntakal Division, Guntakal.

...Applicant

(By Advocate : Mr. Krishna Devan)

Vs.

1.Union of India, Rep by the General Manager,
South Central Railway (Zonal Office),
Rail Nilayam, Secunderabad - 500003.

2.The Senior Deputy General Manager (Vigilance),
South Central Railway (Zonal Office),
Rail Nilayam, Secunderabad - 500003.

3.The Additional Divisional Railway Manager,
South Central Railway, Guntakal Division,
Guntakal, Anantapur District 515001, A.P.

4.The Senior Divisional Commercial Manager,
South Central Railway, Guntakal Division,
A.P. 515801.

5.The Senior Divisional Personnel Officer,
South Central Railway, Guntakal Division,
Guntakal, Anantapur District 515801.

6.The Divisional Railway Manager,
South Central Railway, Guntakal Division,
Guntakal, Anantapur District., A.P., 515801.

....Respondents

(By Advocate: Mr. V. Vinod Kumar, SC for Railways)

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

Through Video Conferencing:

2. The OA is filed questioning the penalty of reduction to the lower post vide order dated 9.12.2014.



3. Brief facts, as narrated by the applicant are that, while working as Sr. TTE in Train No.1028, he was subjected to vigilance check on 6.6.2008 in regard to allowing 2 passengers by allegedly demanding and accepting bribe of Rs.250, to travel in S-2 Sleeper Coach. After the vigilance check, applicant was suspended on 11.6.2008 and a major penalty charge memo dated 24.7.2008 was issued containing 2 articles of charge. Later, the suspension was revoked on 28.10.2008. Applicant sought certain documents and without furnishing the same, Inquiry officer was appointed in violation of Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 (for brevity "**RSDA Rules**"). Inquiry officer has held the charge of demand and acceptance of bribe as not proved and the charge that the applicant allowed the 2 passengers in S-2 coach as proved as well as Article II. Taking cognizance of the IO report, disciplinary authority imposed the penalty of compulsory retirement on 12.3.2010. Challenging the order OA, 272/2010 was filed which was dismissed on 26.10.2010. The matter was then carried to the Hon'ble High Court in WP No. 10527/2010 wherein an interim order to maintain status quo was issued and on filing Contempt petition applicant was taken on duty. The Writ petition was disposed on 10.6.2014 directing the applicant to prefer appeal and till the appeal is disposed respondents were directed to maintain status quo. On appeal the penalty was modified to that of reversion to the post of Typist with grade

pay of Rs.1900 for a period of 8 years with cumulative effect and having adverse effect on future pay and seniority. Aggrieved, the OA is filed. On 19.12.2014, this Tribunal granted an interim order of status quo in respect of the impugned proceedings dt. 09.12.2014.



4. The contentions of the applicant are that the vigilance check was unwarranted as there was no complaint. Rules 304 & 305 of Vigilance Manual were violated and the witnesses were not Gazetted officers. Vigilance witnesses admitted that the antecedents of the 2 persons were not verified. IO found many contradictions in the evidence and since the charge of demanding and accepting bribe has not been held as proved by the I.O, Disciplinary Authority & Appellate Authority, the other allegation of allowing the passengers to travel cannot be, thus, established. The endorsement on the ticket has not been owned by the applicant. The charge sheet and the appointment of the Inquiry officer was at the instance of the vigilance wing and thereby, the disciplinary authority did not have the discretion in proceeding with the disciplinary proceedings. Therefore, charge sheet issued is not maintainable. Charge sheet issued is not definite and precise. The charge of violation of Rule 3(1) (i) (ii) (iii) was included without application of mind. I.O was appointed before receiving the reply against Rule 9 of RSDA Rules. Documents were not supplied and Principles of Natural Justice were not followed. The Inquiry Officer holding that the 2 passengers were allowed to travel is bereft of any legally admissible evidence. Statements made in the preliminary inquiry prior to issue of charge sheet is not admissible evidence. The appellate authority has not considered all the points stated in the appeal. The modified penalty

is disproportionate and severe causing financial loss, adverse effect on seniority and deferment of promotion. Reversion to the post of Typist which is not under the cadre of Ticket Collector and reducing the grade pay amounts to double jeopardy. Applicant cited the verdict of this Tribunal in OA 1218/97 in regard to double jeopardy which was upheld by the Hon'ble High Court when the Tribunal order was challenged. Applicant changed his cadre from Typist to Ticket Collector in 2001 and was promoted as Sr. TTE in 2006 wherein he has rendered 8 years of service. The reversion can be to the post of TC and hence the penalty is non implementable. Applicant has not sought for lesser penalty when the personal hearing was granted by the Appellate Authority. There is colourable exercise of power and the applicant has been victimised. Appeal was not disposed within the time limit prescribed by the Hon'ble High Court vide order dated 10.6.2014



5. Respondents, in their reply statement, state that consequent to vigilance check conducted while working in Train No.1028 on 6/7.06.2008 charge sheet was issued and after due inquiry, penalty of compulsory retirement was imposed and when the same was challenged in OA 272/2010 it got dismissed on 26.03.2010. Thereafter, WP 10527 of 2010 was filed by the applicant, which was dismissed on 10.06.2014 directing applicant to prefer an appeal and till the appeal is disposed, to maintain status quo obtaining as on that date. Appeal was disposed on 09.12.2014 by modifying the penalty to reduction to the lower post of Typist to which he was initially appointed with Grade Pay of Rs.1900 for a period of 8 years with cumulative effect and having adverse affect on future increase in pay and seniority. Applicant did not file revision petition and without taking the



order absented himself from duties since 17.12.2014 by reporting sick and thereafter, filed the instant OA and obtained status quo on 19.12.2014. The penalty imposed is according to RSDA Rules & Para 1322 of IREM Vol. II. The penalty imposed is not double jeopardy and the verdict of the Tribunal in OA 1218/97, which was upheld by the Hon'ble High Court is being challenged in the Hon'ble Supreme Court by filing an SLP. On granting the personal hearing appellate authority has recorded that the applicant pleaded for lesser penalty in view of children education and their marriages. Applicant did not submit his pleas made during the personal hearing in writing. The applicant was initially appointed as Typist and hence reversion to the said post is justified. Enquiry was conducted and opportunity was granted to the applicant to defend himself. Strict rules of evidence act do not apply to domestic inquiry. Appeal dated 7.10.2014 was disposed on 9.12.2014 by issue of a comprehensive order covering all the points raised. Applicant committed misconduct by allowing the decoy and witness to travel in sleeper coach. Appellate authority has been lenient in reducing the penalty. Hon'ble Principal Bench of this Tribunal has held that exhausting the remedy of revision petition for Group C & D employees is mandatory and not optional, vide its order in OA 87/2010 dated 28.3.2011.

Applicant filed a rejoinder stating that the appellate authority's order was passed after 7 days of the time limit fixed by the Hon'ble High Court. Revision is not a mandatory alternative as observed by the Hon'ble Apex Court. There is no provision in the RSDA Rules to reduce a Railway servant to a lower post. Applicant was not allowed to be assisted by a defence assistant during personal hearing by the appellate authority as per



Rule 24 and the said provision was upheld by the Hon'ble Supreme Court in Ramchander v. Union of India. After changing the cadre, applicant cannot be reduced to a post, which does not belong to the cadre in which he is working. The appointment of I.O even before the reply was furnished is against the observations of the Hon'ble High Court of Andhra Pradesh in WP No.15962/2001 dated 7.10.2005. In regard to interference of the vigilance applicant cited the remarks of the Hon'ble Lucknow Bench of this Tribunal in OA No. 642/1995 [Raja Ram Verma v Union of India] vide order dt. 10.01.2003. Applicant contends that there is no evidence to hold the applicant as guilty.

Respondents filed an additional reply claiming that as per Rule 6 of RSDA Rules, penalty to reduction to lower post of Typist, the initial post he held, is permissible. Applicant has not sought permission to seek the assistance of defence assistant during the personal hearing granted by the appellate authority. Applicant was granted all the opportunities required and Principles of Natural Justice were followed. Respondents cited the judgment of the Hon'ble Apex Court in **2003 SCC (L&S) 363 - RM/KSRTC v Motilal** to drive home the point that when integrity is suspect, then the matter has to be dealt with an iron hand.

Applicant filed an additional rejoinder claiming that once the tainted money was not recovered, the question of suspecting the integrity would not arise. Other Contentions are more or less same as contended in the OA and the rejoinder filed. Applicant submitted citations of the different Benches of this Tribunal and that of the Hon'ble Supreme Court in support of his contentions.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the imposition of penalty of reduction to a lower post with allied conditions, upon the applicant. The applicant's defence that the vigilance check is unwarranted, lacks logic, since the applicant is a Railway servant and his conduct can always be checked in order that the working environment in the respondents organisation is not polluted by misconduct. It not necessary that for a vigilance check, a complaint against the employee is a must. Even as a general routine, vigilance checks can be made to ensure the environmental discipline is maintained and activities detrimental to the interests of the organisation are kept under check . Vigilance checks are also done as a preventive measure to keep the irregular and illegal activities under check. It was further contended that even during the vigilance check, Rules 304 and 305 have been violated, which were hitherto numbered as 704/705 provisions of the vigilance manual. In this regard, the provision 704 relating to witness reads as under:

The Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilised.

II. Arrangement of gazetted officers as independent witnesses is only to the extent possible and it is not mandatory. The mute point is as to whether the witnesses enacted their responsibility independently and from the depositions of the witnesses we find some of their depositions have been in favour of the applicant and therefore, the charge of demanding and accepting bribe was not proved. Respondents followed the elaborate procedure prescribed in conducting the check and the inadequacies found



have been effectively dealt in the inquiry, as is required under law in arriving at the findings. The inquiry officer has held that the charge of allowing the 2 passengers to travel as proved, based on evidence. Applicant is seeking re-appreciation of the evidence tendered in the inquiry by pointing out certain depositions made during the inquiry. The Tribunal cannot undertake a journey into the re-appreciation of evidence as observed



by the Hon'ble Apex Court in ***The State of Bihar vs Phulpari Kumari on 6 December, 2019 Civil Appeal No. 8782 of 2019 (Arising out of SLP (C) No.21197 of 2019)*** as under:

6. The criminal trial against the Respondent is still pending consideration by a competent criminal Court. The order of dismissal from service of the Respondent was pursuant to a departmental inquiry held against her. The Inquiry Officer examined the evidence and concluded that the charge of demand and acceptance of illegal gratification by the Respondent was proved. The learned Single Judge and the Division Bench of the High Court committed an error in re-appreciating the evidence and coming to a conclusion that the evidence on record was not sufficient to point to the guilt of the Respondent.

It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of 'no evidence'. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge. The High Court ought not to have interfered with the order of dismissal of the Respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the Inquiry Officer.

*Besides, it was contended that the charge sheet and the appointment of the inquiry officer was at the instance of the vigilance wing of the respondents organisation. The vigilance wing performs an advisory role and it is up to the disciplinary authority to agree with the advise or take a different view. The applicant has not furnished any concrete evidence to affirm that the disciplinary authority has not acted independently. The averments made are only deductions made without any documentary evidence to confirm them. Therefore, in view of the facts of the instant case, the verdict of the Hon'ble Lucknow Bench in *Rajaram Verma V Union of India* cited by the applicant would not come to his rescue. As per Railway Board instructions in vigilance cases, list of inquiry officers who are available for inquiry is sent to the disciplinary to choose any one from the list. The choice is left to the disciplinary authority and hence it cannot be said that the inquiry officer is appointed at the behest of the vigilance wing. The inquiry officers, circulated by the vigilance wing, are*

trained so that they can act as independent adjudicator and in the instant case the I.O has held that the charge of demand and acceptance of bribe as not proved, which goes to prove that there was no bias in conducting the inquiry.



III. Further, the applicant contends that the Inquiry officer has been appointed before the reply to the charge memo was given and hence violative of Rule 9 of RSDA Rules. The applicant after serving the charge sheet, replied to the disciplinary authority to furnish certain documents and the disciplinary authority felt it not necessary to provide the same and went ahead with appointment of the Inquiry officer. Therefore, it is not the case of the applicant that he did not submit his response to the charge sheet. When the charge sheet is served, the applicant has to either admit the charges or deny them and supply of documents is a part of the inquiry process. Therefore, it cannot be said that Rule 9 of RSDA Rules has been violated or the decision of the Hon'ble High Court in WP No.15962/2001 relied upon by the applicant, in this regard, has been disregarded.

IV. In addition, applicant has contended that the appellate authority has not applied his mind while reducing the penalty. The order of the appellate authority is a speaking order and if he were not to apply his mind there would not have been any reduction of the penalty. The respondents contend that the appellate authority has taken a lenient view in modifying the penalty. Hence the contention made by the applicant is not in the realm of reason. The minutes of the personal hearing granted to the applicant by the appellate authority was not reduced to writing by either of the parties appropriately and hence, contentions made by both the parties in regard to the deliberations during the personal hearing leave little scope to come to a view on the same. Hence the citation of the Hon'ble Apex Court in



Ramchander v U.O.I relied upon by the applicant would not be of much assistance to the applicant. Moreover, any decision of the respondents, be the decision of the appellate authority or the charge of violation of Rule 3(1) (i) (ii) (iii) which is not favourable to the applicant, cannot be termed as lack of application of mind. There are lakhs of employees working in the respondents organization. The respondents would go only after those who are found to indulge in activities prohibited under the rules and it is their bounden responsibility to do so in public interest. Decisions taken by the respondents in the process of discharging the assigned responsibility cannot be branded casually as lack of application of mind. In the instant case, applicant was charged for misconduct by citing the relevant rule and the Inquiry officer has held the charge of allowing passengers in the sleeper coach against rules as proved. Applicant amended the OA to drive home the lapse that the appellate authority has delayed the disposal of the appeal by 7 days as per the orders of the Hon'ble High Court. For this, the Ld. Counsel for the respondents has submitted that the appeal was sent by post and that there was no intentional delay in disposing the appeal.

V. Another contention made by the applicant is that the Principles of Natural Justice have not been followed. An elaborate inquiry was conducted wherein applicant was given opportunity to present his case as is provided under the rules effectively. Additionally, he furthered his point of view before the disciplinary authority and the appellate authority in writing as well as in person, which led to the modification of the penalty. Hence, the contention that the Principles of Natural Justice have been violated, is not correct.



VI. In regard to the order of the Tribunal in OA 1218/97 which was upheld by the Hon'ble High Court, in regard to imposition of penalty upon a similarly situated employee being held as double jeopardy is being challenged before the Hon'ble Supreme Court, as contended in the reply statement and forcefully reaffirmed by the Ld. Counsel for the respondents during the submissions. Applicant contended that the modified penalty is severe than the original than the original penalty of compulsory retirement. Respondents Counsel negated the contention by claiming that the incident in which the applicant is involved reflects lack of integrity and hence has to be dealt with an iron hand as observed by the Hon'ble Supreme Court in ***RM/KSRTC v Motilal [2003 SCC (L&S) 363]***. The modified penalty of reduction to the lower post of Typist was challenged by the applicant on the ground that he was appointed as Typist and thereafter he has changed his cadre to that of the Ticket collector. Therefore applicant contends that he can, at the most, be reduced to the post of Ticket Collector and not to the post of Typist. The applicant also contends that the RSDA rules do not provide for reduction to a lower post which is incorrect. In fact, Rule 6 of the RSDA Rules provides for reduction to the lower post, which is extracted hereunder:

6. Penalties : The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:-

xxxxx

Major Penalties –

(v) xxx

(vi) Reduction to a lower time scale of pay, grade, post, or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;



VII. Therefore, the respondents are empowered to impose the penalty of reduction to the lower post and the question is to which post, in the instant case. Respondents claim that the applicant was initially appointed to the Typist post and therefore, he can be reduced to the said post. However, when he has changed his cadre to that of TC it is a moot point to be examined as to whether he can be reduced to post which does not exist in the cadre as contended by the applicant. It is this aspect, which needs a closer look by the respondents considering the admitted fact that the applicant has changed his cadre from Typist to that of Ticket Collector. For this, the remedy of preferring a Revision Petition is available to the applicant which he has not exercised. Albeit, the remedy of revision petition is not mandatory, as contended by the applicant based on the Hon'ble Supreme Court judgment cited supra, it cannot be denied that it is directory in nature. Further, it is well settled in law that decision as to the quantum of penalty is the domain of the respondents. Hence, in the fitness of things, it would be proper to remit the case to the respondents by directing the applicant to file a revision petition stating the facts, relevant rules and the legal principles which support his case, within a period of 30 days from the date of receipt of this order, to the competent authority. On receipt of the revision petition, the competent authority shall dispose of the same within a period of 3 months from the date of receipt, by taking into consideration all the contentions made in the OA, rejoinder, judgments, revision petition, etc submitted by the applicant, by issuing a speaking and well reasoned order based on rules and law.

VIII. We have gone through the judgments submitted by the applicant on the day of final hearing and we are of the view that the apt decision at the present juncture of time is to allow the revision petition authority to review the case as per the rules and law including the judgments submitted during the hearing.



IX. With the above direction, the OA is disposed of with no order as to costs. Interim order granted by this Tribunal stands vacated.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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