

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2531/92

New Delhi this the 29th day of July, 1997.

Hon'ble Dr. A. Vedavalli, Member (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

(5)

Puran Prakash,
Ex-Head Ticket Collector,
Northern Railway, Panipat,
Presently : F/167,
Chand Bagh Colony,
Delhi-110094.Applicant

(By Advocate Shri B.B. Raval)

-Versus-

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisionaly Rly. Manager,
Northern Railway,
State Entry Road,
New Delhi.Respondents

(By Advocate Shri R.L. Dhawan)

1. To be referred to the Reporters or not? Yes
2. Whether it be circulated to other Benches of
the Tribunal? No


(Dr. A. Vedavalli)
Member (J)

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ORDER

Dr. A. Vedavalli, Member (J):

Applicant, Puran Prakash, is aggrieved by the impugned order dated 10.4.91 (Annexure A-1) whereby he was removed from service after enhancement of the earlier penalty and the appellate authority's order dated 6.8.91 (Annexure A-2) rejecting his appeal against the said order of removal.

2. The facts of the case, briefly stated, are as under.

2.1 Applicant while working at the Railway Station Panipat, Northern Railway, as a Head Ticket Collector, was served a chargesheet (Annexure A-3) alleging that on 2.5.89 when he was off duty, he went

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to the office of the Ticket Collector unauthorisedly at 3:15 a.m. and after colluding with Ramesh Kumar, Ticket Collector, extracted Rs.20/- without issuing any receipt from a passenger who was holding a proper ticket from Jullandhar to Delhi. It was also alleged that the applicant had admitted to have demanded the said amount from the passenger and had caused harassment and inconvenience to the passenger with a malafide intention of extracting illegal money. Further it was alleged that the applicant had admitted not having declared his private cash since his posting at Panipat from February, 1989, as required under the rules. By the above acts of omissions and commissions the applicant was charged with contravention of rule 3.1(i), (ii), & (iii) of Railway Servants (Conduct) Rules, 1966 by his failure to maintain absolute integrity, lack of devotion to duty and acting in a manner unbecoming of a Railway servant.

2.2 After conclusion of the disciplinary proceedings against the applicant the disciplinary authority by his order dated 8.11.90 (Annexure A-9) held that the applicant has failed to prove his innocence in the inquiry and he is guilty of all the three charges levelled against him. Accordingly, he imposed on the applicant a penalty of reduction to the lower post/grade viz. from Head Ticket Collector grade (Rs.1400-2300 RPS at Rs 1440) to Senior Ticket Collector grade (Rs.1200-2040 RPS) until found fit by a competent authority for restoration to the higher grade of Head Ticket Collector after a period of two years without postponing his future increments.



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2.3 The applicant submitted an appeal to the appellate authority against the said penalty. The appellate authority, however, found that the gravity of the offence committed by the applicant warrants a more severe form of punishment as the penalty imposed by the disciplinary authority is inadequate. He, therefore, revised the case under Rule 25 of Railway Servants (Discipline & Appeal) Rules, 1968 and provisionally came to the conclusion that the penalty should be enhanced suitably to that of removal from service. The applicant was given an opportunity to make his representation against the proposal by a letter dated 13.3.91 (Annexure A-11). The applicant while claiming that he was forced to sign an acknowledgement before giving a copy of the above letter submitted in his representation dated 1.4.91 (Annexure A-12) that he does not agree with any offence and requested for cancellation of the punishment.

2.4. The appellate authority by the impugned order dated 10.4.91 (Annexure A-1) held, inter alia, that in spite of opportunity given the applicant in the aforesaid representation had not brought any point to prove his innocence and that he cannot be considered to be a fit person to be retained in Railway service further. Accordingly, the applicant was given the penalty of removal from service.



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2.5. The applicant submitted a further appeal under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968 to the Additional Divisional Railway Manager, NDLS. The said appeal was rejected by the second impugned order dated 6.8.91 (Annexure A-2) holding, inter alia, that the charged officer himself admitted before the S.S. and Ticket Collector Sh. Rishi Prakash on 4.7.89 that he had accepted Rs.20/- from the passenger and that the charges against him have been proved to the hilt and he is fully responsible for the charges mentioned in the chargesheet.

3. The applicant sought the following reliefs in this O.A:

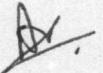
"8.1 That this hon'ble Tribunal may be pleased to allow this application and quash the impugned order.

8.2 That this Hon'ble Tribunal may be further pleased to reinstate the applicant in service with all consequential benefits including back wages.

8.3 That any other or further orders which this hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case may also be granted in favour of the applicant.

8.4 That the costs of the proceedings may also be awarded in favour of the applicant."

4. The O.A. is contested by the respondents, who have filed their counter and the rejoinder to the said counter has been filed by the applicant.



5. When the matter came up for hearing, learned counsel for the respondents pressed the objection regarding limitation. However, both the counsel argued on merits also. Subject to adjudication on the question of limitation they were heard. We have also perused the pleadings and all the material documents placed on record.

6. The applicant's main grounds for the reliefs sought by him are:

- i) there was no evidence to support the charges levelled against him;
- ii) the complainant was not summoned; and
- iii) enhancement of the penalty by the appellate authority is bad in law.

7. Learned counsel for the applicant argued vehemently and made elaborate submissions regarding the above grounds and has placed strong reliance on the decision of the Hon'ble Supreme Court in the Committee of Management vs. Shambu Sharan Pandey and Others (1995 (1) SCSLJ 156) wherein it was held, inter alia, that the procedure followed by the enquiry officer in that case was violative of the principles of natural justice.

8. Learned counsel for the respondents countered various submissions made by the learned counsel for the applicant and relied heavily on the

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decision of the Hon'ble Apex Court in Union of India vs. Upendra Singh (JT 1994 (1) SC 658). It was held by the Hon'ble Apex Court in the said judgement, inter alia, that the Tribunal has no jurisdiction to go into the correctness or the truth of the charges and that judicial review cannot extend to the examination of the correctness or reasonableness of a decision and further, judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

9. Re the question of limitation, learned counsel for the respondents submitted that the OA is barred under Section 21 of the Administrative Tribunals Act, 1985 as the impugned order of the appellate authority in second appeal was communicated to the applicant by a letter dated 6.8.91 (Annexure A-2) and as per the applicant's own averment in para 4.36 of the application, he received the same on or about 20.8.91. The period of one year prescribed under the aforesaid provisions of the Administrative Tribunals Act, 1985 for filing the OA under the circumstances expired on 19.8.92. While so, the O.A. was filed on 25.9.92. Learned counsel for the respondents contended that the OA is, therefore, clearly barred by limitation.

10. Learned counsel for the applicant in reply to the above contention of the learned counsel for the respondents regarding limitation submitted that the OA is not barred by time, as it can be filed only after exhausting the departmental remedies and

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the applicant had filed a review application to respondent No.1 (G.M. Northern Railway), a copy of which is placed at Annexure A-14 to the OA.

11. We have considered the question of limitation involved in this case very carefully. It is noticed that the original major penalty of reduction of lower post/grade was imposed upon the applicant by the Divisional Commerical Superintendent by his order dated 8.11.90 under Rule 6 (vi) of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as the "Rules"). It is stated in the said order that the appeal against the penalty lies under Rule 18 of the said Rules to the Senior Divisional Commercial Superintendent subject to the conditions specified therein (Annexure A-9). The Senior Divisional Commercial Superintendent revised the case under Rule 25 of the said Rules and gave a notice to the applicant regarding the proposed enhancement of the original penalty by his letter dated 13.3.91 (Annexure A-11). After considering the representation of the applicant dated 1.4.91 (Annexure A-12) against the said proposal the Revisional authority by the impugned order dated 10.4.91 (Annexure A-1) enhanced the penalty to that of removal from service. It is also stated in the said order that an appeal against the aforesaid order lies to the Additional Divisional Railway Manager under Rule 18 of the said Rules, subject to the conditions specified therein.

[Signature]

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12. The applicant submitted an appeal dated 21.6.91 (Annexure A-13) to the Additional Divisional Railway Manager. The said authority on consideration of the appeal rejected the same, as communicated by the said impugned order dated 6.8.91 under Rule 22 (2) of the Rules (Annexure A-2). There is no mention about any further appeal under any rule in the said order. That apart, the applicant has not spelt out categorically in his OA as to the specific relevant provisions of the Rules under which he has filed a review application to respondent No.1 (G.M. Northern Railway) against the impugned order of the ADRM (Annexure A-2) dated 6.8.91 passed under Rule 22 (2) of the Rules. The application which is stated to be a review application placed at Annexure A-14 (page 48 to 49 of the paperbook) is captioned as a "Mercy Petition" to the General Manager, Northern Railway, with copy to the Hon'ble Minister for Railways with a request to consider his appeal on humanitarian grounds and the subject is mentioned as an "Appeal". There is no indication as to the statutory provisions under which the said petition was submitted. It is also noticed that the aforesaid petition does not bear any date, neither does the index of the document to the OA mention any date, nor is there any proof brought on record by the applicant as to the receipt of the aforesaid petition by respondent No.1. In the peculiar facts and circumstances of the case we are not in a position to take any cognizance of the said petition and the same, therefore, is not capable of being considered as a valid document to be taken on record by us for adjudication of this OA.

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13. In view of the above position we find that the applicant has not been able to establish with supporting material as to the existence of any further statutory remedy available to him under the rules against the second impugned order of ADRM dated 6.8.91 against the second impugned order of ADRM dated 6.8.91 (Annexure A-2). Even if any such remedy does exist he has failed to prove that he has availed the same by submitting a valid application/petition which is duly received by the concerned authority and is still pending/disposed of. In the circumstances, we are of the considered view that the second impugned order of the ADRM dated 6.8.91 (Annexure A-2) only can be deemed to be the "Final Order" for the purposes of computation of limitation under Section 21 of the Administrative Tribunals Act, 1985 in the peculiar facts of this case.

14. As the applicant himself has admitted in para 4.36 of the OA, the said order dated 6.8.91 was communicated to him on or about 20.8.91, limitation, would start running from 20.8.91. While so, the OA was filed on 25.9.92, i.e., after the expiry of one year prescribed under Section 21 (1) (a) of the Administrative Tribunals Act, 1985. Section 21(i)(b) of the said Act in our view will not be applicable to the present case in the peculiar facts and circumstances involved, as already discussed supra. The applicant has also not filed any application for condonation of delay. It is well settled that when there is no application for condonation of delay there is no question of

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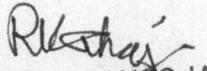
considering the condonation of delay. The question of condoning the delay, therefore, would not arise for consideration in the absence of such application. Moreover, in a recent judgement of the Hon'ble Supreme Court in L. Chandra Kumar vs. Union of India (JT 1997 (3) SC 589) at para 16 it was held by the Hon'ble Supreme Court regarding Section 21 of the Administrative Tribunals Act, 1985, thus:-

"Section 21 specifies strict limitation periods and does not vest the Tribunals under the Act with the power to condone delay."

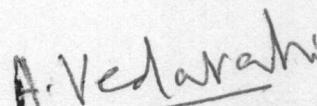
We are bound by the said decision.

15. In view of the above discussion, we are of the opinion that the O.A. is clearly hit by limitation and we do not think it is necessary to go into the merits of the application.

16. The O.A. is, therefore, dismissed on the ground of limitation. No costs.


(R.K. AHOOJA)
MEMBER (A)

'Sanju'


(DR. A. VEDAVALI)
MEMBER (J)