

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

APR

C. C. A. / Review / M. A. No. /

In

O. A. No. / T. A. No. 1194/87

Date of decision 12/12/2003

Vijai Singh Applicant(s)

Sri G. S. D. Misra Counsel for the
applicant(s)

Versus

Union of India & ors. Respondent/Upp.
Party

Sri A. V. Srivastava Counsel for the
Respondents/Upp.
Party

CURAM

Hon'ble Mr. Justice S. R. Singh V. C. / Member ()

Hon'ble Mr. D. R. Tiwari Member (A)

1. whether Reporters of local papers may be
allowed to see the judgment ? m
2. To be referred to the Reporters or not ? yes
3. whether their Lordship wise to see the fair
copy of the judgment ? yes
4. whether to be circulated to all Benches ? no

Regd
(signature)

/ M. M. /

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

....

Original Application No. 1194 of 1997.

this the 12th day of December 2003.

HON'BLE MR. JUSTICE S.R. SINGH, V.C.
HON'BLE MR. D.R. TIWARI, MEMBER(A)

Vijai Singh, S/o Sri Mukandey Singh, Asstt. Station Master,
North Eastern Railway Station Bareilly City.

Applicant.

By Advocate : Sri G.S.D. Misra.

Versus.

1. Union of India through Chief Operator Manager, N.E.R., Gorakhpur.
2. D.R.M., N.E.R., Izatnagar, Bareilly.
3. Addl. D.R.M. N.E.R., Izatnagar, Bareilly.
4. Divisional Operation Manager, N.E.R., Izatnagar, D.R.M. Office, N.E.R Izatnagar.
5. Inquiry Inspector, C/o Chief Vigilance Officer, G.M. office, N.E.R., Gorakhpur.

Respondents.

By Advocate : Sri A.V. Srivastava.

ORDER

PER JUSTICE S.R. SINGH, V.C.

Impugned herein are the orders of punishment dated 19.6.1995, 27.6.1996, 29.9.1996, 27.3.1997 and 11.9.1997. By order dated 19.6.1995 passed by the disciplinary authority, increment of the applicant was withheld for three years with non-cumulative effect. Rest of the impugned orders were passed by the appellate authority thereby enhancing the punishment imposed by the disciplinary authority.

2. It appears that while the applicant was working as Asstt. Station Master at Railway station Majhola Pakariya

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came at the station at 14.00 hours on 20.2.1992 on the plea of helping his colleague starting issuing tickets and handling cash even though he was under rest (having already performed earlier night duty), and while he was performing the said work, he was apprehended by the Vigilance department for charging excess fare by issuing two tickets from Majhola Pakariya to Siwan Jn. with reservation upto Lu-cknow. He was alleged to have charged Rs. 268/-, whereas the actual fare with reservation charges was Rs. 230/- and in this way, it was alleged, he charged Rs. 38/- in excess of the prescribed charges.

3. An enquiry was held in which the Enquiry Officer found that the applicant had demanded and charged Rs. 38/- in excess of the prescribed fare for his personal gain and on consideration of evidence, the Enquiry Officer arrived at the conclusion that the applicant was guilty of violating the provisions of Rule 3(i) and 3(i) & (ii) of Railway Service (Conduct) Rules, 1966. The disciplinary authority, however, came to the conclusion that the charge of deceiving the administration and that issuing Excess Fare Tickets was not established and it was rather a clerical mistake. yet the disciplinary authority found the applicant guilty of misconduct within the meaning of Rule 3 (i) & (ii) and exonerated of the charges of having violated the provisions of Rule 3 (i) & (ii) of the Conduct Rules and on that finding, the increment of the applicant was withheld for a period of three years with non-cumulative effect by order dated 19.6. 1995. The order reads as under :

"उपरोक्त बिन्दुओं से कर्मचारी को प्रशासन को धोखा देने या निजी स्वार्थ के उद्देश्य से ड,एफ टो बनाने में अनियमितता सिद्ध नहीं की जा सकती इसे एक लिपिकीय भूल माना जा सकता है। इन परिस्थितियों में कर्मचारी को आचार संहिता के 3818818 के लिए दोषी नहीं पाया जाता है। लेकिन 3818818 के अन्तर्गत इनकी ड्यूटी के प्रति उदासीनता सिद्ध हो जाती है। इस स्थिति में इनको दोषी ठहराते हुये इनकी वेतन वृद्धि अवधि प्रभावसे 3 वर्ष के लिए रोक दी जाती है।"

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4. Aggrieved against the said order, the applicant preferred an appeal on 27.7.95. The appellate authority considered the penalty awarded by the disciplinary authority as "inadequate looking to the charges" and accordingly called-upon the applicant, vide notice dated 21.11.1995, to show-cause why the penalty should not be enhanced. The applicant submitted his reply to the show-cause notice vide representation dated 28.11.1995 stating therein that the show-cause notice did not disclose any reason for enhancing the penalty. The applicant accordingly requested for supply of grounds/reasons, if any, so as to enable him to submit an affective reply to the show-cause notice. The appellate authority by its order annexed as Annexure A-13 held that the applicant could not tell any thing new which may warrant downward revision of penalty and at the same time the appellate authority held that the punishment imposed by the disciplinary authority was not matching with the gravity of the case and accordingly enhanced the punishment as under :

"Reduction in basic pay from Rs.1800/to Rs.1600/ in scale Rs.1400-2300 for a period of one year. On expiry of this period, the reduction will not have the effect of postponing the future increment of his pay."

5. Aggrieved by the same, the applicant further appealed vide memo dated 31.1.1996. The D.R.M., Izatnagar, considered the penalty awarded to the applicant as "inadequate looking to the charges", decided to enhance the punishment and for that purpose, he gave a notice dated 11.5.1996 (Annexure A-15) calling upon the applicant to show-cause why the penalty be not enhanced. The applicant again submitted his reply, but the D.R.M. by his order dated 11.6.1996 (communicated to the applicant vide letter dated 27.6.1996 (Annexure A-16-A), reverted the applicant in the lower scale of Rs. 1200-2040/- and fixed his pay at Rs.1680/- for a period of two years with the rider that the reversion would have no further effect. The order dated 11.6.1996 reads as under :

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"I have gone through the appeal of the employee and have reviewed the case. I am in agreement with the findings of the enquiry officer and consider that the employee has been judiciously held responsible for the charges imposed on him. Considering the gravity of offence, the punishment imposed is modified as under:

The employee is reverted to lower time scale of Rs.1200-2040/- and fixed at Rs.1680/- for a period of two years. The reversion will not have any cumulative effect. These orders will be effective with immediate effect."

6. The applicant again submitted an appeal to the Chief Operating Manager, Gorakhpur, who being of the view that the penalty imposed vide order aforementioned was "inadequate looking to the charges" decided provisionally to enhance the penalty and accordingly called upon the applicant to show-cause why the penalty should not be enhanced. The applicant submitted a representation, but the authority concerned by its order dated 27.3.1997 (communicated to the applicant vide letter dated 11.9.1997) imposed the following punishment :

"Reduction to lower category in scale of Rs.775-1025/- with basic pay Rs. 1025/- permanently."

All these orders are the subject matters of impugnement in the present O.A.

7. We have heard Sri G.S.D. Misra, learned counsel for the applicant and Sri A.V. Srivastava learned standing counsel representing the Railway administration and perused the pleadings on record.

8. The counsel for the respondents has raised a preliminary objection that the applicant had not availed of the departmental remedies available to him under the service rules for redressal of his grievance and, therefore, the original application should not be entertained. True, Section 20 of the Administrative Tribunals Act, 1985, provides that the Tribunal shall not "ordinarily" admit an application, unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance. But having regard to the fact

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that the O.A. has already been admitted long back in the year 1997, it would not be proper to dismiss the O.A. now at the stage of final hearing on the ground that the applicant had not filed the statutory appeal against the appellate order dated 29.9.1997. In the circumstances, therefore, the preliminary objection raised by the respondents' counsel is rejected.

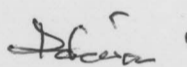
9. It has been submitted by the learned counsel appearing for the applicant that each time the applicant preferred an appeal, the appellate authority enhanced the punishment without affording him a reasonable opportunity of showing the cause. The show-cause notices, submitted ~~by~~^{by} the counsel, did not afford a reasonable opportunity to the applicant inasmuch as the grounds for enhancing the punishment already imposed were not indicated in the show-cause notices. The expression, the penalty was inadequate looking to the charges was the conclusion and ^{not} the grounds/reasons as to why was the penalty inadequate. Clause (v) of sub-rule (2) of Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968, clearly provides that no order imposing an enhanced penalty shall be made "unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty." The expression, "the penalty imposed upon you is inadequate looking to the charges", occurring in the show-cause notice issued to the applicant by the appellate authority, in our opinion, does not satisfy the test of giving reasonable opportunity. Since the appellate authority each time enhanced the punishment without affording him a reasonable opportunity by disclosing the grounds for enhancement of the penalty, the applicant was seriously prejudiced in his reply to the show-cause notice. The expression 'reasonable' occurring in clause (v) of sub-rule 2 of Rule 22 of the Railway Servants (Discipline & Appeal)

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Rules, 1968, in our opinion, requires the grounds to be supplied for enhancing the penalty already imposed. In that view of the matter, the appellate orders impugned herein cannot be sustained in law and are accordingly quashed.

10. So far as the order passed by the disciplinary authority is concerned, we are of the view that the applicant has failed to make-out any ground for interference with the punishment imposed by the disciplinary authority.

11. In view of the above discussion, the O.A. succeeds and is allowed in part. The impugned appellate orders dated 27.6.96, 29.9.1996, 27.3.97 and 11.9.97 are quashed. The impugned order dated 19.6.1995 passed by the disciplinary authority is, however, maintained. parties are directed to bear their own costs.


MEMBER (A)


VICE CHAIRMAN

GIRISH/-