

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 19th day of AUGUST 2005.

Original Application No. 942 of 1997.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Ravindra Nath Singh Chauhan,
S/o Late Sri P.P. Chauhan,
R/o Railway Station Amiapur,
P.S. Ingua-rampur, Distt: Kanpur Dehat,
Present working as Assistant Station Master,
Amiapur.

.....Applicant

By Adv: Sri K.N. Kathiyar & Sri S.K. Om

V E R S U S

1. Union of India through General Manager,
Northern Railway, Baroda House,
NEW DELHI.
2. Senior Divisional Operating Manager,
Northern Railway,
ALLAHABAD.
3. Divisional Operating Manager,
Northern Railway,
ALLAHABAD.

... Respondents

By Adv: Sri P. Mathur

O R D E R

By K.B.S. Rajan, JM

The applicant, while functioning as Asst.
Station Master at Sirathu station in the year late
eighties, was issued with a charge sheet on 26-02-
1988 the contents of which are as under:-



"DRAFT STAGTEMENT OF ARTICLE OF CHARGES
ON THE BASIS OF WHICH IMPUTATION OF
MISCONDUCT ARE TO BE PROVED AGAINST.
SHRI R.N. SINGH CHAUHAN ASM/SIBATHOO NOW
WORKING AT KHAGA.

That Shri R.N. Singh Chauhan, ASM/Sirathee, while working as such at Birathoo station committed the following serious irregularities and is responsible for this grave misconduct so much so,

That Shri R.N. Singh Chauhan, while working as such in shift of 17.00 to 01.00 hours duty at Sirathoo Station issued fake tickets to the passengers after charging Rs. 50.00 as fare from such passengers, the details of which are as under:-

27.7.1987-16266 to 16270=5 Tkts	IIM/E	ExSirathoo to Delhi
28.7.1987-16275 & 16276=2 Tkts	"	"
29.7.1987-30567 & 30584=2 Tkts	"	"
30.7.1987-305554 & 56263=3 Tkts	"	"

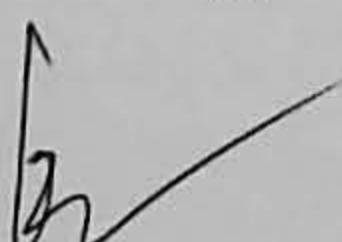
Above tickets were collected and detected at Delhi Junction by 39 UP on 28.7, 29/7, 30/7 & 31.7.87 respectively.

Some of the passengers on examination deposed that they have been issued these tickets by on duty ASM at Sirathoo and they were excessed by Shri S.D. Pathak Hd. TCR/Delhi.

Thus by indulging in scale of fake tickets for monetary gains Shri R.N. Singh Chauhan has cheated the Railway administration as well as the bonafide passengers. Thus Sri R.N. Singh Chauhan ASM/Sirathoo thereby contravened rule No. 3 (i) (ii) (iii) of Railway Service Conduct Rules 1966 by failing to maintain sound integrity and absolute devotion to duty which is also unbecoming of a Railway Servant."

2. The following are the relied upon documents:-

- a. 5 Fake tickets No. 30567, 30554, 305562 & 30563, 7 tickets 16266 to 16270, 16275 to 16276 = 7 tickets
- b. Duty roster of Sirathoo Station.



- c. Photo copy of Hd. TCR/Delhi.
 - d. Statement of Shri Ram Khilawan, the passenger.
 - e. Statement of Shri Jakir Hussain and others-the passengers.
 - f. Statement of showing description of such tickets submitted by the Hd. TCR, Shri S.D. Pathak of Delhi station.
3. The Inquiry Officer appointed for this purpose conducted the inquiry and furnished his report and on scrutiny of the same the disciplinary authority expressed his opinion that the inquiry has not been conducted properly and hence remitted the case back to the Inquiry authority for examining the two remaining prosecution witnesses and resubmit the inquiry report based on evidences available on record. The Disciplinary authority has also directed the inquiry authority that "*the charged employee and his defence helper should be given all reasonable opportunity to cross examine these two witnesses, to give his defence statement and defence note fresh and also to cite defence witness, if any, who should also be examined by you in accordance with the extant instructions.*"
4. The applicant raised certain objections about the two witnesses sought to be examined and requested the disciplinary authority by his letter dated 11th March, 1994 to supply him the relevant documents relating to the said witnesses. However, the Disciplinary authority had as there was no such

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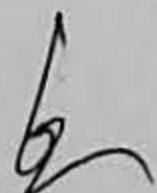
document to be relied upon, over and above the listed documents and necessary opportunity was given to the applicant to cross examine the witnesses, which the applicant availed of.

5. After a comprehensive discussion, the Inquiry Authority had rendered the following finding:

"The undersigned after careful consideration of the material on record, statements of PWS, C.O. Their examinations and cross examinations without being biased/prejudice came to the conclusion that all the charges framed by the disciplinary authority vide no. CC-6/irregularity/87/29 dt. 26.2.88 against Sri R.N. Singh Chauhan ASM/SRO now at KGA are proved. Thus Sri R.N. Singh Chauhan, ASM is responsible for all the above charges and controverted rule no. 3 (I), (ii), (iii) of Railway Service Conduct of Rule 1966."

6. As per the rules, a copy of the inquiry report was made available to the applicant and the applicant had furnished his representation.

7. The Disciplinary Authority on the basis of the Inquiry Report and the representation against ultimately came to the conclusion that the applicant is guilty of the misconduct for which the charge sheet was issued and imposed the penalty of reduction from the Grade of Rs 1,400 - 2300 to the grade of Rs 1,200 - 2040 and fixed the pay on such reduction at its minimum i.e. Rs 1,200/-. Order dated 27-03-1996 (Annexure 11) refers.



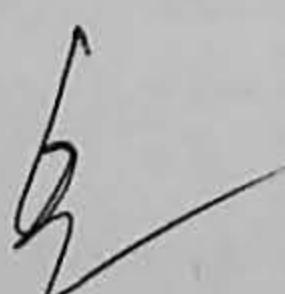
8. The applicant had preferred an appeal against the aforesaid order, which however did not find any fruitful result and the appellate authority had by its order dated 08-07-1997 had confirmed the penalty and dismissed the appeal preferred by the applicant.

9. The applicant had filed the OA challenging the afore said order of penalty and the appellate authority's order.

10. The respondents have contested the O.A. by filing necessary counter. This was followed by the requisite rejoinder from the Applicant.

11. Arguments were heard and the documents were perused; and, we have given our anxious consideration.

12. The learned counsel for the applicant argued that no document relating to the two witnesses were made available and the Disciplinary Authority has no power to order for fresh inquiry. He has also invited our attention to the news paper reports and his own submission in the rejoinder about the prevalence of fake ticket seller's racket in the Lucknow Allahabad sector.

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13. The counsel for the applicant had relied upon the following two judgments

a) **Pepsu Road Transport Corpn. v. Lachhman Dass Gupta, (2001) 9 SCC 523,** wherein it has been held

3. We have examined the judgment of the lower appellate court as well as the impugned judgment of the High Court. In view of the conclusion of the lower appellate court, that even the documents relied upon by the department in establishing the charge have not been given to the delinquent, the conclusion is irresistible that the delinquent had been denied a reasonable opportunity to defend himself in the proceeding and, therefore, the lower appellate court as well as the High Court are fully justified in setting aside the order of termination passed by the competent authority. We, therefore, do not find any ground to interfere with the impugned judgment of the High Court passed in the second appeal. The appeal fails and is accordingly dismissed

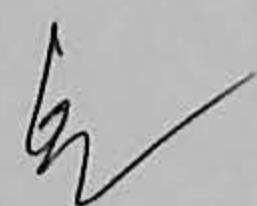
(b) **State Bank of India v. D.C. Aggarwal, (1993) 1 SCC 13, at page 16:**

The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional

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Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. May be that the disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority.

14. The I.O. has in his comprehensive discussion had brought out all the points as well as objections of the applicant and held that it is evident that the tickets were issued at the counter (as the stamps in question as contained in the tickets were identical with those found in the genuine tickets) and that at the particular time

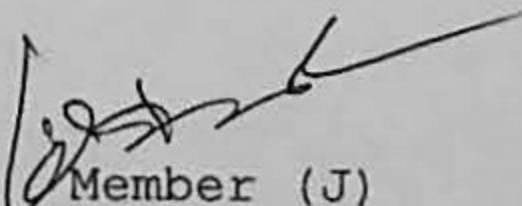


when the tickets were issued, the applicant was performing the duties of booking clerk, in addition to the function as Asst. Station Master and arrived at a just finding. The fact that at the time as reflected in the tickets the applicant was on duty as A.S.M. and was also to perform the duties of booking clerk.

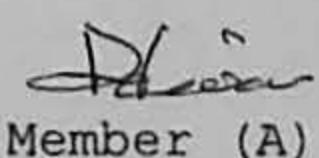
15. In so far as the contention that no documents were supplied relating to the two witnesses who were subsequently examined, in fact, no such documents were relied upon copies of which were not made available to the applicant. Hence, the two case laws cited by the applicant are of least assistance to the case of the applicant.

16. We thus find that there has been no flaw in the decision making process nor the orders were perverse. The orders passed by the Disciplinary authority as well as of the Appellate authority are just and legally sustainable and do not call for any judicial interference.

17. In view of the above the OA fails and is therefore, dismissed and under the circumstances, there would be no order as to cost.



Member (J)



Member (A)