

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 2nd day of May 2002

Original Application No. 397 of 2001.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Anwar Ahmad, S/o Sri Sadullah,
R/o vill Nagla, Ubbharwala,
Post Office Jalalabad,
Bijnaur.

... Applicant

By Adv : Shri T.S. Pandey

Versus

1. Union of India through its General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager, Northern Railway,
Moradabad.
3. Senior Divisional Operating Manager,
Northern Railway, Moradabad.
4. Divisional Operating Manager, Northern Railway,
Moradabad.

... Respondents

By Adv : Sri A. Tripathi

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed under section 19 of the A.T.,
Act, 1985, the applicant has challenged punishment order
dated 10.4.2000 (Ann 1) imposing the penalty of removal,
appellate order dated 30.5.2000 (Ann 2) rejecting the

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appeal and order dated 23.10.2000 (Ann A3) of Revisionary Authority modifying the punishment of removal from service to that of compulsory retirement and has prayed that the same be quashed with all consequential benefits.

2. The facts in short, giving rise to this OA are that the applicant, while working as Assistant Station Master (in short ASM) Bundki Railway Station, ^{he} was served with major penalty charge sheet dated 16.2.1999 on two charges :

i. that the applicant interpolated the date in fit memo by changing the date 10.9.1998 to 19.9.1998

ii. that there was shortage of Rs. 1836/- in the sale of Railway tickets during July 1998 and August 1998. Inquiry officer (in short IO) was appointed by order dated 2.6.1999. D & AR enquiry was conducted and the charges against him were established. A notice was served upon the applicant on 20.12.1999 and the applicant submitted his reply on 14.3.2000. The disciplinary authority, respondent no. 4, i.e. Divisional Operating Manager (in short DOM) imposed the punishment of removal from service by order dated 10.4.2000. Applicant preferred appeal against the punishment order to ^{Mr} _{Sr} Senior Divisional operating manager (in short /DOM), respdt no.3 which was rejected vide impugned order dated 30.5.2000. The applicant filed revision petition to Revisionary Authority i.e. ADRM Moradabad who reduced the punishment of removal from service to compulsory retirement. The applicant has challenged the above ^{Mr} _{Mr} orders which has been contested by the respondents by filing counter reply.

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3. Heard Sri T.S. Pandey, learned counsel for the applicant and Sri Avi Tripathi learned counsel for the respondents and perused records.

4. Sri T.S. Pandey, learned counsel for the applicant submitted that the applicant was not given full opportunity to defend himself. The applicant requested the disciplinary authority on 23.3.1999 for inspection of sick fit certificate no. 222785 and also the alleged shortage alleged in the charge sheet but the respondents only allowed the applicant to inspect sick fit certificate and he was not allowed to inspect the alleged shortage of amount as indicated in the document. Besides the applicant in the memo of appeal pointed out that the relevant witness Sri R.K. Sharma ASM who was handed over the leave application and sick fit certificate was not examined during enquiry but the appellate authority ^{also} did not give any ^{weightage} to this. Such action of the respondents is violative of principles of natural justice. Therefore, the punishment order, appellate order and revisionary authority order suffer from error of law and are liable to be quashed. The learned counsel submitted that Hon'ble Supreme Court in number of cases has laid down that the charged official has to be given full and proper opportunity to ^{defend} himself.

5. The learned counsel for the applicant submitted that the IO has incorrectly held charge no. 2 pertaining to shortage in cash in sale of Railway tickets ^{as proved} despite the positive answer of Sri R.B. Saxena that the shortage in tickets sale occurs usually which is made good by the concerned official. Thus the IO has arrived at the

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conclusion mechanically that both the charges stand proved without applying mind. Therefore, the enquiry report dated 18.12.1999 is vitiated in the eyes of law.

6. Sri T.S. Pandey learned counsel for the applicant finally submitted that the appellate order dated 30.5.2000 and the revisional order dated 23.10.2000 ~~are~~ ^{are} non-speaking and these have been passed without application of mind.

7. Contesting the case, Sri A. Tripathi, the learned counsel for the ~~ap~~ respondents submitted that the applicant was given full opportunity to defend himself during the disciplinary proceedings. The various authorities applied their mind while passing the orders and that is why the Revisionary authority taking sympathetic view reduced the punishment.

8. Sri A. Tripathi submitted that the appellate authority before passing the order allowed personal hearing of the applicant on 26.5.2000. After careful perusal of the evidence available on record and oral ^{submissions of the applicant} the appellate authority considered the grounds taken in appeal and then passed the order on 30.5.2000.

9. Sri Tripathi learned counsel for the respondents submitted that the enquiry was conducted by the IO in accordance with the disciplinary and appeal rules. The applicant was given full opportunity to defend himself. The orders passed by the respondents are legal, valid and in accordance with rules.

10. The learned counsel for the respondents finally

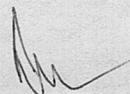
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submitted that the name of Sri R.K. Sharma, ASM, who was working at Bundki Station, was not included in the list of prosecution witnesses and was also not given by the applicant as his defence witness. The applicant was informed in writing on 2.9.1999 that if he wanted to produce anyone in his defence, he had to intimate ^{within} one week but the applicant never raised the point that Sri R.K. Sharma was a relevant witness during enquiry and therefore his plea to this effect raised subsequently at the time of preferring appeal has no force.

11. We have carefully considered the submissions of learned counsel for the parties and have closely examined the records. The main points ^{raised} by the applicant are that he was not afforded full and proper opportunity to defend himself by not examining Sri R.K. Sharma, ASM, and not allowing the applicant to inspect the alleged shortage of amount as indicated in the document, Respondents have vioated the principles of natural justice and have not applied their mind while passing orders.

12. From the perusal of records we are convinced that the applicant was afforded full opportunity to defend himself. If the applicant considered that examination of Sri R.K. Sharma, ASM, Bundki was relevant, he should have raised the issue at the enquiry stage itself. Nothing prevented him to name Sri R.K. Sharma as defence witness. We find force in the argument of the learned ~~counsel~~ for the respondents that raising this point subsequently has no relevance.

13. We have noticed that the applicant has built up his entire case only on the ground that Sri R.K. Sharma, whom the applicant handed over fitness certificate was not examined which means that the applicant has been talking about charge no. 1



In m is regarding interpolation of date on fitness certificate. He has not tried to defend charge no. 2 which is regarding shortage of Rs. 1836/- in the sale of Railway ticket during July 1998 and August 1998. The only defence the applicant has advanced is that the shortage in tickets sale occurs usually which is made good by the concerned official which has also been confirmed by one of the witnesses Sri R.B. Saxena during enquiry. We do not agree with this premise. The very fact that the applicant made good the shortage goes to prove that there was shortage. It has been averred by the respondents in Para 19 of counter affidavit that the charges of shortage in booking was framed on the basis of report dated 8.10.1998 of Station Superintendent Bundki. The record of shortage in Booking is kept in the office of Station Supdt. which could be inspected by the applicant any time. Therefore we reject the plea of the applicant that he was not allowed to see the document pertaining to shortage in booking. Perusal of Enquiry report reveals that Sri R.B. Saxena, Traffic Inspector Moradabad who was the prosecution witness no. 2 in the course of cross examination on 2.9.1999 *In stated in* stated that shortage of booking was a routine matter in applicant's duty hours. Even in the appellate order appellate authority after *In stated in* personal hearing has remarked that the applicant is used to committing temporary misappropriation of Railway revenue. In our opinion such official is not fit to be retained in service. Even the revisionary authority gave personal hearing to the applicant. However, purely on humanitarian ground and sympathetic consideration the Revisionary authority reduced the punishment from removal to compulsory retirement.

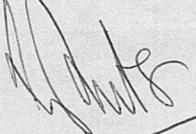
14. From the above it is clear that full and proper opportunity was afforded to the applicant and at no stage there has been violation of natural justice. The orders of

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the respondents ie punishment order dated 10.4.2000 (Ann 1) appellate order dated 30.5.2000 (Ann 2) and Revision order dated 23.10.2000 (Ann 3) do not suffer from any error of law. We find no ground to interfere. The O.A. is devoid of merit and is liable to be dismissed. The OA is accordingly dismissed.

15. There shall be no order as to costs.


Member (J)


Member (A)

/PC/

Dated 2/05/2002