

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This The 20th Day Of May 2011)

Hon'ble Dr. K. B. S. Rajan, Member (J)
Hon'ble Mr. D. C. Lakha, Member (A)

Original Application No. 375 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Kunwar Narendra Singh S/o Late Amar Raj Singh R/o Village &
P.O. Ahmadpur, District Jaunpur (U.P.)

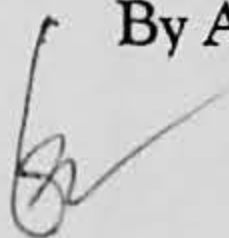
..... Applicant

By Advocates: Shri R.M. Singh
Shri H.S.N. Tripathi
Shri P.S. Tripathi
Shir P. Tripathi
Versus

1. Union of India through G.M. N. Rly, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazaratganj, Lucknow.
3. Additional Divisional Railway Manager, Northern Railway, Hazaratganj, Lucknow.
4. Senior Divisional Operating Manager, Northern Railway, Lucknow.

..... Respondents

By Advocate: Shri D.P. Singh



ORDER

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J))

1. The applicant while functioning as Senior Station Superintendent was issued with a major penalty proceedings and the charges are as under:-

"Article of Charges framed against Shri K.N. Singh, Station Supdt., Jaunpur City, Northern Railway

The said Shri K.N. Singh while functioning as Station Supdt., at Jaunpur City station of Northern Railway during the running period of his stay he has committed the following act of commission and fix commission.

That Shri K.N. Singh misused and is misusing his official position obtains cash earning of his station fro month together without caring its importance and regularity. The mode or remitting the cash of this station is to send on cash bags and is to be dropped in cash safes which run by 1/SJV, which carried cash safes on 23 occasion after 9th Sept, 92 but on all these occasions Shri K.N. Singh failed to deposit his stations cash in the case safes. This goes to establish his regular default. Despite he was booked off and briefed in this office but no improvement has taken in his working so far as remittance of his station cash is concerned.

Record shows that the cash of JNU City has come to C.C.P.M. Office till 9th Sep. 92 only, it has become a regular feature of Shri K.N. Singh to obtain the cash of one month being around 4 lacs of rupees. After 11/2 month it is sent on one day through the cash safe.

The outstanding position of the division is becoming bed to worst and Jaunpur City station is major defaulter on the division regarding this aspect.

The plea taken by Shri K.N. Singh that due to shortage of cash bags it is not sent regularly to D.C.P.M./LKO was also looked into and 10 cash bags were sent to him through

C.M.I. to regularities the remittance but even after this the position has not improved.

By his above acts, the said Shri K.N. Singh failed to maintain absolute devotion to his duty exhibited his conduct as unbecoming of railway Service conduct Rules, 1966. ”

2. On the applicant's denying the charge, regular inquiry was conducted and the inquiry officer found the charge proved. Notice having been given, the applicant has filed his representation and on consideration of the Inquiry Report as well as the representation, the disciplinary authority has imposed the penalty of removal from service vide order dated 09-10-1993. Appeal filed by the applicant was unsuccessful; vide appellate order dated 10-11-2004. It is against the above two orders that the applicant has filed this OA seeking the following relief(s):

“(i) To issue an order, direction in the nature of certiorari quashing the removal order dated 09.10.1993 (annexure No.1) with (Compilation-I) passed by the respondent No.4, Senior Divisional Operating Manager, Northern Railway, Lucknow and the order dated 10.11.2004 (Annexure No.2) with Compilation-I) passed by and on behalf of divisional Railway Manage Northern Railway, Lucknow.

(ii) To issue suitable direction directing opposite parties to fix and pay salary with other emoluments w.e.f. 04.01.1993 till date retirement i.e. 14.01.2002 with interest and tax the pension and other retrial benefits on aforesaid pay scale of station superintendent as permissible under rule and pay the same regularly. ”

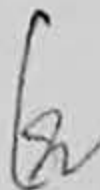
3. Respondents have contested the OA and justified the penalty imposed.

4. Applicant has filed his rejoinder, reiterating the contentions made in the OA.

5. Arguments were advanced by the counsel for the applicant, while the counsel for the respondents was permitted to file written argument. Accordingly the same had been filed.

6. The main argument of the applicant is that the IO's report is based on assumptions and self improved knowledge and not on record. He himself has stated that his findings are 'assumed'. Again, the evidence of Shri K.K. Chaterjee and others in his findings were not on records during the course of inquiry and as such, the same cannot be relied upon. Request for change of I.O. had not been considered but rejected without valid reason. Further, fact finding inquiry was conducted by an officer superior to the I.O. and as such, the same is against the principles of justice.

7. Counsel for the respondents in his written argument submitted that the applicant holding the post of Senior Station Superintendent was involved in containing the earning of the Railway cash to the tune of Rs.11,00,000/- approximately for months together. In this connection an F.I.R. dated 03.09.1993 against the applicant was also lodged under Section 409, I.P.C.. He was also charge sheeted for major penalty proceedings for dereliction his duty and the Railway Servants Conduct Ruls 3(i) (ii) and (iii) for misappropriation of Government money. Request for change of Inquiry Officer was duly considered and rejected by



the competent authority. The charges were held proved on the basis of oral documentary and substantial evidences. Due opportunity was given and the penalty imposed was commensurate with the gravity of misconduct. The applicant, in his appeal, requested for personal hearing but, despite the same having been given, he had chosen not to avail of the same. The Appellate Authority had passed a well reasoned order confirming the decision of the Disciplinary Authority. The fraudulent intention of the applicant for misappropriation of government money was proved and hence the imposition of penalty was fully justified.

8. Arguments were heard and documents perused. The fact finding authority may be above the Inquiry Officer. This does not in any way influence the inquiry officer to conduct the inquiry. Inquiry Officer stands as a quasi judicial authority and dispassionately arrives at a conclusion in influenced by the conclusion by the fact finding Authority. Hence, this objection or contention of the Applicant has to be rejected.

9. Counsel for the Applicant has strenuously argued that extraneous as well as self improved knowledge of the Inquiry Officer was a part of inquiry report which had an impact upon the finding and the same has thoroughly vitiated the proceedings. For example, he has referred to evidence of Shri K.K.Chatterji and stated that these are not borne of proceedings. It is observed from Para 2.4 of the inquiry report that the prosecution was examined and cross examined and the Charged Officer and his defence helper did cross examine the prosecution witnesses to their entire

satisfaction. The inquiry officer has referred to the evidence of Shri K.K. Chatterji in Para 3.2 and stated that " the evidence brought on record shows that the CO was sent a memo at his residence by ShriK.K. Chatterji, ACM Lucknow to open his Office and Almirah and produce the entire cash but he refused to accept the memo and went towards city." There is no material to prove that the IO's finding is based on any material not brought to the knowledge of the Applicant. The main charge in this case is failure on the part of the Applicant in remitting the Government cash in accordance with the procedure, despite the fact that many occasions were available for regularly depositing the money. The applicant failed to fulfill his responsibility.

10. This part has been proved beyond reasonable doubt.

11. Considering the fact that the Applicant holding a responsible post of Senior Station Superintendent was expected to act as a model for other employee and evidences having been there that the government money had been retained by the Applicant for months together without being deposited even when adequate opportunities were available to him (as many as 18 times), the decision of the disciplinary authority and the rejection of appeal by the Appellate Authority do not suffer from any legal lacuna in respect of the decision making process. As such the application lacks of merits and is accordingly dismissed.


Member - A


Member -J