

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 400 of 2005

Allahabad this the, 27th day of March, 2014

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. B. Bhamathi, Member (A)**

Kishan Lal, S/o Late Sri Chhedi Lal, R/o Sarai Labariya Sarai)
Bagichi, Aligarh.

Applicant

**By Advocates: Sri A.B. Singhal
Sri S.M.A. Abdy**

Versus

1. Union of India through General Manager, North Central Railway Allahabad.
2. Divisional Commercial Manager, North Central Railway, Allahabad.
3. Senior Divisional Commercial Manager, North Central Railway, Allahabad.

Respondents

By Advocate: Sri K.P. Singh

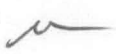
Reserved on 27th January, 2014

ORDER

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD

Instant O.A. has been filed by the applicant under
Section 19 of the Administrative Tribunals Act, 1985 for the
following relief(s): -

“(i) to issue a writ, order or direction in the nature of certiorari
quashing the orders dated 27.2.2004 and 4.6.2004.



(ii) to issue a writ, order or direction in the nature of mandamus to allow the applicant to continue in service and to pay him salary and other consequential benefits as and when they fall due.


(iii) to issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstance of the present case.

(iv) Award costs of the petition to the petitioner."

2. The brief facts of the O.A. are as follows: -

The applicant while working as Head T.T.E., Northern Railway (now North Central Railway) at Tundla was given a charge sheet on 16.02.2001 wherein he was charged that during the years 1998, 1999 and 2000 on different dates it was detected that he had committed serious misconducts/ gross irregularities willfully making fraudulent transactions and pocketed the amount to the tune of Rs.2,80,500/- out of the railway revenue which he had collected from the railway passengers. It was specifically stated in the charge sheet that he has remitted short amount in the Booking Office at Tundla (TDL), Kanpur (CNB) and Mughalsarai (MSG) which was realized by him from the passengers through Excess Fare Tickets (EFTs) during the period from 31.08.1998 to 26.11.2000. An inquiry was conducted by the Inquiry Officer but the original money receipts in which alterations were sought to have been made, were not produced in spite of repeated requests by the applicant. If

the documents were brought on record and shown then the same would have been proved that no alteration/over writing and cutting have been done by the applicant. The contention of respondents that the documents were shown to the applicant, as disclosed in the order sheet dated 30.10.2003 and 31.10.2003, is incorrect as the original records of money receipts which were produced by the respondents was totally false. On 10.12.2002, the Accounts Officer, Northern Railway has also written to the Divisional Commercial Manager, Northern Railway, Allahabad to the extent that the original records of the money receipts pertaining to the allegations against the applicant are not available. It is further submitted that the applicant has not been provided proper opportunity to call for defence witnesses in the DAR inquiry though he had moved an application but the same was rejected. The entire inquiry was conducted in a very hush up manner in violation of principle of natural justice. The Chief Inspector of Tickets (CIT) made inspection and sent it to Allahabad and after being satisfied it was sent to the Accounts department and the Accounts department also cleared it. It was only after 2 ½ years that the present allegations were made against the applicant. The applicant was placed under suspension vide order dated 01.01.2001, however, after some time he was reinstated. Certain amount of




money has also been deducted from the salary of the applicant to the tune of Rs.2500/- per month from 01.01.2002 to 01.01.2004 before the applicant had been removed from service. The matter was handed over to the C.B.I. for investigation and an F.I.R. was lodged against the applicant on 24.09.2003 under Sections 409, 420, 467, 468, 471 IPC and Section 13 (2) read with 13 (1) (2) of the Prevention of Corruption Act, 1988. A charge sheet was filed in the case on 04.11.2004 under the aforesaid Sections for allegedly misappropriating an amount of Rs.1,30,480/- out of 31 transactions and the matter is pending in the Court of Special Judge, C.B.I. (Anti Corruption Act) U.P. East, Ghaziabad before the C.B.I. It has been admitted in a statement given by the Section Officer in the Office of Deputy Chief Accounts Officer (Traffic), North Central Railway, Allahabad to the C.B.I. that some of the records have been spoiled by rains. The Disciplinary Authority passed the impugned order dated 27.02.2004 and removed the applicant from service without any rhyme or reason, against which he preferred the Appeal which was also rejected on 04.06.2004.


3. The applicant preferred the present O.A. mainly on the ground that during the inquiry, original money receipts in which alterations have been made, have not been

produced in spite of repeated requests of the applicant. The averment of the respondents regarding production of certain original records of money receipts in order dated 30.10.2003 and 31.10.2003 is false as nothing was shown nor the same was available with the Accounts department. The Accounts Officer himself has admitted that the original records of money receipts relating to the allegations, in question, are not available. The defence witnesses requested to be summoned on the application of applicant have also not been summoned. The entire inquiry was conducted in a very hush up manner and haste in violation of the principles of natural justice as papers on which the alleged interpolations were made, were not made available to the applicant. The charge sheet, filed by the C.B.I., against the applicant under the aforesaid Sections is only regarding misappropriation of an amount of Rs.1,30,480/- out of 31 transactions.

4. The respondents have filed the Counter Reply to the O.A. alleging that the applicant-Kishan Lal while working as Head T.T.E. during his duty hours in the years 1998, 1999 and 2000 collected the money from the passengers through EFTs but remitted lesser amount with the Chief Booking Supervisor, Tundla Kanpur and Mughalsarai in Railway account and at the time of submitting EFT Return



on the money receipts issued from the Booking Office, Tundla, Kanpur and Mughalsarai, committing forgery and deception, changed the amount for which he was placed under suspension by the Divisional Transport Manager, Tundla on 01.01.2001. On a detailed inquiry, it was found that the applicant had realized an amount of Rs.3,96,604/- from the passengers but deposited only Rs.1,16,104/- with an intention to deceive the department. All available documents were shown to the Inquiry Officer as well as to the applicant. The applicant has come with contrary pleadings as at one place he submitted that the money receipts were not shown whereas subsequently he submitted that the money receipts shown to him were false. As regards the summoning of defence witnesses, it is averred by the respondents that the defence witnesses proposed by the applicant were not relevant for the purpose of this case as they had neither been on duty with him nor they were present at the time of depositing the cash. The documents submitted by the applicant have been sent to the Accounts Office by the CIT, Tundla. No scrutiny or inspection is done by CIT. Total work of scrutiny or inspection is done in Account Office only. During the inquiry, sufficient time and opportunity was given to the applicant to put his case and to cross examine the witnesses and to refund the amount. It is also incorrect to




say that ₹65,000/- has been realized from the salary of applicant by the department rather only ₹25,000/- has been recovered from the applicant during the period December, 2002 to February, 2004. The applicant has got no case and the O.A. deserves to be dismissed.

5. Rejoinder Affidavit has also been filed by the applicant mainly reiterating the earlier stands taken in the O.A. again emphasizing the fact that the original money receipts were not shown to the applicant and certain statement of witnesses examined in the criminal case against the applicant have also been filed by the applicant.

6. In addition to pleadings, the applicant has placed reliance on documentary evidence also which is annexure A-1 to A-13 on record. On the other hand, the respondents have placed reliance on some documentary evidence which is annexure-1 and annexure-2.

7. We have heard the learned counsel for the parties and perused the papers on record.

8. The main argument advanced by learned counsel for the applicant is that the original money receipts and documents relied upon by the respondents have not been produced before the Inquiry Officer nor shown to the applicant. It is also submitted that the inquiry was



conducted in hurry by the Inquiry Officer and lastly it has been submitted that the defence witnesses proposed by the applicant have also not been summoned by the Inquiry Officer.


9. As regards the first submission of applicant, the impugned order is relevant which reveals that between 21.08.1998 to 24.11.2000 the applicant as Head TTE had remitted total Government cash of ₹1,16,104/- only in different Booking Offices vide money receipts Nos. 250927, 253075, 253404, 255905, 256191, 257390 and so on, details of which have been specifically mentioned in the impugned order approximately 72 in number. Similarly on the basis of EFTs prepared (Ex. P-4) and TTE's foil of MRs submitted by the applicant in the Office of CIT/TDL, his earning statement was prepared which comes to the tune of ₹3,96,604/-. It is also apparent from the record that during collection of evidence in the inquiry, one Mohd. Aiyaz Khan, TTE while making the entries of amount deposited by the applicant from perusal of MRs, he suspected some foul play. The matter was referred to one Shafi Mohd., CIT line and it was got tallied by Mohd. Aiyaz Khan, TTE/TDL from the Booking Office by comparing it from the record foil of MRs. A specific evidence is available on record in this regard collected by the Inquiry Officer. It

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was also submitted that on submission of TTE Foil of some MRs in the Office of CIT/TDL for preparation of return, it was found that the applicant has tampered with the factual amount remitted in the Booking Office and altered it to a total to the tune of ₹3,96,604/- which shows that he has misappropriated the Govt. cash of ₹2,80,500/-. Our attention has also been drawn by the respondents' counsel towards annexure-2 in which specific details of EFT Nos., amount of EFT in rupees, particulars of amount deposited in Booking Office along with MR Nos., station, date, amount in rupees, name of applicant-Kishan Lal, Head TTE who had produced altered MR for rupees and lastly difference short remittance of amount in rupees has been mentioned. We may quote some examples from the same: -


“Through EFT No. 620191/200 amount of ₹11,078/- was realized by the applicant but through MR No. 250927/CNB on 09.01.2000 he deposited only ₹1078/- and produced altered MR for ₹11,078/-. Thus, he defrauded ₹10,000/- from this transaction only.

Similarly, through EFT No. 175610/17, amount of ₹4787/- was realized from the passengers but through MR No.253075 CNB on 19.01.2000 only ₹1787/- was deposited and altered MR for ₹4787/- was produced. Thus, in this transaction, he embezzled ₹3000/-.



Similarly through EFT No. 175618/23, amount of ₹3322/- was realized but through MR No. 253404 CNB dated 23.01.2000 only ₹1322/- was deposited and altered MR for ₹3322/- was prepared. Thus, he pocketed ₹2000/- in this transaction.

A detailed chart of '62' instances have been given in which the amount realized by the applicant through EFT from the passengers was not deposited in the Accounts Section of the respondents rather he produced forged documents and pocketed a huge sum out of it. The applicant willfully made the above stated fraudulent transactions on different dates and pocketed the amount to the tune of ₹2,80,500/-. The contention of applicant that the original money receipts and relied upon documents were not produced before the Inquiry Officer or not shown to the applicant, has got no force in the light of above facts where specific details of EFT No., amount of EFT in rupees, particular of amount deposited in Booking Office along with MR No., station, date, amount in rupees, name of applicant-Kishan Lal, Head TTE who had produced altered MR for rupees and lastly difference short remittance of amount in rupees has been mentioned. In the absence of documentary evidence, it was not possible to mention these specific numbers and amount. Moreover, there is evidence to the effect that certain documents in original were



produced, some documents have been spoiled in rain but, only because all the documents were not produced in original, in the peculiar circumstances of this case, it cannot be said that the relied upon documents have not been produced before the Inquiry Officer. In this regard the applicant's counsel has placed reliance on following case laws: -

"(i) *Dattatraya B. Dabhade Vs. Pr. Chief Post Master General Maharashtra Circle & Ors.* 2012 (3) (CAT) 267;

(ii) *State of Uttar Pradesh and others Vs. Saroj Kumar Sinha* (2010) 1 Supreme Court Cases (L&S) 675;

(iii) *State of Uttaranchal and others Vs. Kharak Singh* (2008) 8 SCC 236;

(iv) *Vinod Kumar Vs. Bank of India and others* 2013 (8) ADJ 375 (DB) (LB);

(v) *D.P. Singh Vs. Union of India and others* O.A. No. 1414 of 2002 CAT Allahabad Bench decided on 12.10.2012."

We have gone through the above case laws but considering the facts of this case it is apparent that these case laws are not applicable in the present case.

10. As regards the contention of applicant that the inquiry was conducted in a hush up manner and in haste, it is not borne out from the records. On the other hand, it appears from a perusal of annexure-9, filed by the applicant himself, that the inquiry was held on 31.05.2003,

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10.06.2003, 09.07.2003, 10.07.2003, 26.07.2003, 16.08.2003, 03.09.2003, 22.09.2003, 13.10.2003, 29.10.2003, 30.10.2003, 31.10.2003, 04.11.2003, 10.11.2003, 14.11.2003, 15.11.2003, 21.11.2003 and 22.11.2003. Considering these various dates on which the inquiry were held, it cannot be said that the inquiry was concluded in haste. Copies of statement of witnesses recorded during the inquiry proceedings by the Inquiry Officer have also been annexed by the applicant himself.

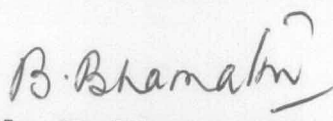
11. The last contention of applicant is that the defence witnesses were not summoned which prejudice the case of applicant. In this connection, it has been submitted by the applicant's counsel that one Bangali Babu Ex CIT/TDL and Shri Bhoopendra Singh, Head TTE/TDL were requested to summon as defence witnesses by the applicant but they were not summoned. It is apparent from the record and also submitted by the respondents' counsel, that this request of the applicant for summoning these witnesses as defence witnesses was rejected by the Inquiry Officer mainly on the ground that these witnesses were never posted with the applicant nor they were posted at the relevant place when the amount realized by the applicant deposited in the Accounts department of the respondents. Moreover, if the applicant was at all interested in producing

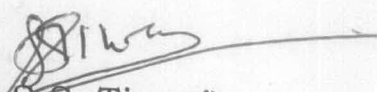
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these witnesses as defence witnesses, he could have produce on his own and if they were refused by the Inquiry Officer then he would have been in a position to say that his defence opportunity was denied.

12. In view of the above facts and circumstances, considering the peculiar nature of the case, in which specific number of EFTs, original money receipts and altered money receipts and even the money realized and the amount misappropriated by the applicant has been mentioned. The case of applicant does not get any benefit even if the entire documents in original could not be produced before the Inquiry Officer in the circumstances mentioned in the evidence of witnesses. Sufficient time was given to the applicant along with Helper to cross examine the witnesses and to contest the case. The applicant cannot get any benefit of the technicalities in this case. O.A. is devoid of merit. It deserves to be dismissed.

13. Accordingly, O.A. stands dismissed. No order as to costs.


(Ms. B. Bhamathi)
Member-A


{Justice S.S. Tiwari}
Member-J