

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD.**

Original Application No. 738 of 2005

Friday, this the, 7th, day of November, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Upendranath Tiwari, S/o Late Sri Bhrughnath Tiwari, R/o 492, C-
New Metal Colony, Izatnagar, Distt. Bareilly.

Applicant

By Advocate: Sri S.K. Om

Vs.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Commercial Manager, North Eastern Railway, Gorakhpur.
3. Additional Divisional Railway Manager, North Eastern Railway, Izatnagar.
4. Senior Divisional Commercial Manager, North Eastern Railway, Izatnagar.

Respondents

By Advocate: Sri D.S. Shukla

O R D E R

By K.S. Menon, Member (A)

The present has been filed against the order dated 03.06.2003, 05.08.2003 and 05.01.2004 passed by the respondents whereby a minor punishment has been imposed upon the applicant withholding his increment for a period of 35 months. As per the applicant, action of the respondents in passing the punishment order is wholly illegal and is in flagrant violation of principles of natural justice.

2. The facts of the case are that the applicant was working as Traveling Ticket Examiner (A) (TTE for short) in North Eastern

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Railway at Bareilly in 2002. In December 2002 he was served with a charge sheet dated 27.11.2002 alleging therein that on 12/13.11.2002 when ^{the} applicant was performing his duties as TTE in Train No. 3020 Down a surprise inspection was made by Senior DCM/Izatnagar along with Chief Train Ticket Examiner and in S-1 Coach, one U.P. Police Constable was found traveling without ticket and the same was permitted by the applicant ~~to go~~ without regularizing his ticket. It was also observed by the Inspecting Officer that there was shortage of personal money and Railway money. The shortage of Rs.51/- Railway money was made good from personal money. It was also alleged that the applicant had permitted one Sri Tarique to travel from Rampur without ticket and this was regularized at Bareilly when detected by the Inspecting Officer. Copy of the Charge Sheet is a Annexure-1 to Compilation II.

3. The applicant denied all the charges and submitted his reply dated 20.12.2002 (with a request not to treat it as a reply to the charge sheet) in which he sought copies of the document(s) on the basis of which the charge sheet was prepared to enable him to rebut the said charges (annexure No. 2 to Compilation II). The respondent No. 4 without considering the points made in the letter dated 20.12.2002 and without supplying copies of the documents asked for, treated the letter as a reply to the Charge Sheet and passed the Order of punishment of stoppage of increment for a period of 35 months without cumulative effect vide order dated 15.01.2003 (Annexure No. 3 to Compilation II).

4. The applicant filed an appeal against the aforesaid punishment order on 08.03.2003 reiterating his earlier stand and on the grounds that no opportunity of hearing was afforded to him thus violating principles of natural justice.

5. The appeal was allowed by respondent No. 3 on 07.04.2003 (Annexure No. 4 to Compilation No. II) and the case was remanded ~~back~~ to the Disciplinary Authority i.e. respondent No. 4 to consider the case afresh in the light of the applicant's letter dated 20.12.2002. In pursuance of this appellate order the respondents directed the applicant to submit his reply to the Charge Sheet within 10 days, which the applicant complied with on 07.05.2003. In this

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representation the applicant requested the respondent No. 4 that since the matter was very old and the charges leveled against him were *prima facie* frivolous and concocted in as much as no passenger was found traveling without ticket nor the alleged person Md. Tarique was traveling from Rampur and as such the documents requested by him on the basis of which the Charge Sheet dated 27.11.2002 was framed was absolutely necessary for him to rebut the charges. But respondent No. 4 vide his Order dated 08.05.2003 (copy enclosed as annexure-5 to Compilation No. II) rejected the applicant's request to supply the relied upon documents on the ground that the entire incident took place in front of the applicant and applicant had already signed those documents at the time of the incident i.e. on 12/13.11.2002. Therefore, it was not necessary to supply those documents to him.

6. The applicant in reply to the letter dated 08.05.2003 submitted another representation on 13.05.2003 reiterating the same points raised by him earlier, he further submitted that on 12/13.11.2002, he was allotted to supervise two independent coaches of train No. 3020 Down having no vestibule (not connected) and as such from Rampur to Bareilly, he was in the other coach and he came to supervise the S-1 coach only when the train stopped at Bareilly and before that in any case he could not reach the S-1 coach. Moreover at the time of inspection, applicant was pressurized to sign the inspection note without reading the same and applicant was not supplied any document even at that time nor he was permitted to read the same which was violative of principles of natural justice. He also denied that there was a U.P. Police Constable in the compartment as alleged besides even if this is taken as true for argument sake, it would not have been possible for the applicant to permit the Police Constable to leave in the presence of the Inspecting Officer and the CTTI. The applicant made several other averments in his representation (Annexure No. 6 to Compilation No. II) which the respondents allegedly took no notice of and without considering his representation rejected the same and passed the same punishment order on 21.05.2003 signed on 03.06.2003. Against this order the applicant filed a revision petition, which was also rejected by the respondents on 05.01.2004.

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7. A mercy appeal to the President was forwarded to the competent authorities. Respondents refused to forward the same to the President on the grounds that no new facts have been brought on record requiring the President's consideration.

8. The applicant states that all the above actions of the respondents are illegal, arbitrary and have been passed in violation of principles of natural justice and is liable to be quashed. He has therefore filed this O.A.

9. The respondents have denied all the points raised by the applicant in the O.A. They allege that a U.P. Police Constable was traveling without ticket in Coach S-1 and when the Inspecting Officer directed him to regularize the passenger, the applicant allowed him to go without issuing him an EFT. In the case of Shri Tariq he was found traveling without a ticket when detected by the Inspecting Officer at Bareilly station. The applicant's version was that Sri Tariq was traveling from Bareilly however Sri Tariq on questioning, mentioned he had been traveling from Rampur. The passenger was regularized by issue of an EFT after he was detected by the Inspecting Officer. At the time the surprise inspection was carried out Railway money was found to be short by Rs.51/- which was off course made up from the private money.

10. The respondents' main stand is that for the above mentioned acts of misconduct the applicant was issued a charge sheet. Instead of giving reply to the same the applicant asked for relied upon documents, which was not listed in the Charge Sheet. Respondents submit that in minor penalty cases there is no such list of document as required and given to the charged official as in major penalty cases. Notwithstanding the above the respondents submit that the charges are based on facts which came up during the surprise check. A joint note with regard to these facts was prepared at the spot itself which was signed by the applicant also. However the applicant instead of putting forth his defence kept insisting on supply of the joint note on one hand and on the other he took the plea that he was pressurized to sign the joint note without reading the same. This only implies that the applicant wants to deny the contents of the joint note. It is also clear that he was aware of the facts of this document

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but was merely causing delay in giving a reply on the pretext of asking for the said documents. Besides it is difficult to believe that a signature could be obtained forcibly on the joint note from an employee like him, as alleged by the applicant. Respondents aver that the Order of the Appellate Authority was reasoned and speaking and contains sufficient reasons for upholding the decision of the Disciplinary Authority. Similarly is the case with the order of the Revisionary Authority. They also maintain that since the applicant had not brought out any new fact in his mercy appeal it was not considered fit by the Competent Authority to forward it to the President of India. They maintain that the O.A. is frivolous, vexatious, devoid of merit and force, and deserves to be dismissed with cost to the respondents.

11. Heard Sri S.K. Om, learned counsel for the applicant and Sri D.S. Shukla, learned counsel for the respondents and perused the pleadings on record.

12. There is no dispute that a surprise check was carried out by the Senior DCM, N.E. Railway, Izzat Nagar and the Chief TTE at the Bareilly Junction Railway Station on 12/13-11-2002. In the course of the surprise check certain lapses on the part of the applicant was observed. All the lapses noticed during the said surprise inspection were incorporated in a joint note signed by the Inspecting Officer and the applicant. The charges were proved as the applicant was unable to controvert the same duly supported by substantive evidence. The applicant's appeal against the punishment order was allowed and the case was remanded to the disciplinary authority to reconsider the case in the light of the applicant's letter dated 20.12.2002 which as requested by him was not to be taken as the reply to the Charge Sheet. The applicant's representation in pursuance of the Appellate Authority's order dated 07.04.2003 is a very detailed one, wherein the applicant has given his explanation against each charge (Annexure-6 to Compilation II). In response to this the respondents have passed the same punishment vide order dated 03.06.2003 (Annexure-7 to Compilation I). There is no harm in passing the same punishment order, if so warranted. However the directions given by the Appellate Authority vide his order dated 07.04.2003, appears to have been completely ignored as no reference to it has been made in

the new punishment order and the points raised by the applicant in his letter dated 20.12.2002 or his new representation dated 13.05.2003 do not appear to have been dealt with point wise and is a mere reiteration of the charges against the applicant. The punishment meted out is no doubt a minor penalty nevertheless if the points raised by the applicant against each of the charges is not rebutted and conclusions arrived at, then the punishment order is not a reasoned and speaking order.

13. The applicant had appealed on 21.07.2003 against this new punishment order dated 03.06.2003. This representation was also detailed one. This representation/appeal has also has been disposed of by the appellate authority order dated 04/05-08-2003, a bare reading of which will show that it is a non-speaking order and the applicant has every right to feel aggrieved as principles of natural justice have been violated.

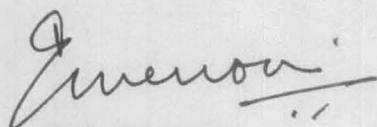
14. I would like to observe that there may have been lapses on the part of the applicant noticed during surprise inspection which warrants a penalty to be imposed on him. However there is no doubt whatsoever that it must be imposed in a transparent manner, in accordance with rules and the law. The respondents stand that the applicant though given sufficient opportunities to defend himself did not do so but merely raised technical points which did not help his cause is not acceptable. The applicant in his representation/appeal to various competent authorities besides asking for a copy of the Joint Note has also given explanations for the various alleged lapses. None of these explanations have been replied to individually or orders passed on each charge by the respondents while disposing of the said representation/appeals.

15. In conclusion it is observed that the consequences of minor penalties are not always minimal in nature as far as its impact is concerned and could have far reaching consequences for the employee concerned. Respondents must show due consideration before awarding a minor penalty. In the instant case the awarding of penalty and disposal of the applicant's appeal and revision petition indicates that no such consideration was shown.

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16. In view of the above the O.A. is allowed and the impugned orders dated 03.06.2003, 04/05.08.2003 and 05.01.2004 passed by the respondents are set aside. The applicant is entitled to all consequential benefits as per rules. Liberty is however given to the respondents to initiate fresh action against the applicant if deemed fit, in the light of the above observations of this Court and in accordance with rules and the law.

17. No order as to costs.


(K.S. Menon)
Member 'A'

/M.M/