

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.916 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

B.K. Rai aged about 49 years son of late Shri K.P. Rai Ex TTE,
N.E. Rly, Lucknow, R/o 374-B Gayetrinagar, P.O. Kuran Ghat,
Distt- Gorakhpur.

..... **Applicant**

By Advocate: Shri Sudama Ram

Versus

1. Union of India through General Manager, North Eastern Railway, H.Q. Gorakhpur.
2. Addl. Divisional Railway Manager, N.E. Railway, DRM's Office, Lucknow.
3. Senior Divisional Commercial Manager, N.E. Railway, DRM's Office, Lucknow.
4. Divisional Commercial Manager, N.E. Railway, Lucknow.
5. Enquiry Officer (Shri R.K. Gupta), Chief Commercial Inspector, N.E. Railwa, DRM' Office Lucknow.

..... **Respondents**

By Advocate: Shri K.P. Singh

ORDER

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

1. The Applicant, appointed on compassionate ground with the approval of the General Manager, was visited with a major penalty charge-sheet for short/late deposit of earning of

EFT receipts, alleging charges of embezzlement, manipulation and temporary misappropriation of Government Revenue vide charge-sheet dated 11.06.2003 (Annexure A-1). The charges reads as under:-

“रेल सेवक (अनुशासन एवं अपील) नियम 1968 के नियम 9 के अंतर्गत अनुशासनिक कार्यवाही हेतु श्री बी.के. राय, टीटीई, लखनऊ जं० के विरुद्ध दीर्घ दण्ड ज्ञापन

रेल सेवक (अनुशासन एवं अपील) नियम 1968 के नियम 9 के अंतर्गत अनुशासनिक कार्यवाही हेतु श्री बी.के. राय, टीटीई, लखनऊ जं० के विरुद्ध दीर्घ दण्ड आरोपों का संक्षिप्त विवरण:-

श्री बी०के० राय टीटीई/ लखनऊ जं० ने माह मई एवं जून 2002 का कैश कमशः माह जून एवं जुलाई/2002 में जमा किया। आपने दिनांक 06.06.2002 को जारी किया गया ईएफटी नं० 386626 से 386642 में रु० 5129/- अर्जित किया परन्तु रु० 5356/- जमा किया अर्थात् रु० 227/- अधिक जता किया। इसी प्रकार आपने दिनांक 26.06.03 की ईएफटी सं० 397940 से 397954 तक में रु० 1321/- अर्जित किया जबकि एम०आर०नं० 840226 के अनुसार रु० 1351/- जमा किया अर्थात् रु० 30/- अधिक जमा किया। दिनांक 27.06.02 की ईएफटी नं० 397955 से 397966 का कुल रकम रु० 1421 अर्जित किया जबकि एम०आर०नं० 840227 दिनांक 20.07.02 के द्वारा मात्र रु० 1391/- जमा किया अर्थात् रु० 30/- कम प्रेषण किया। दिसम्बर 2002 में आपके द्वारा जारी ईएफटी रिटर्न एवं बुकिंग कार्यालय के टीटीई कैश बुक की जाँच करने पर पाया गया कि कुल रोकड़ रु० 1,11,163/- जमा होना चाहिए जबकि आपके द्वारा मात्र 41,723/- रु० जमा किया गया है। इस प्रकार रु० 69,440/- कम जमा किया गया है। इसी प्रकार जनवरी 2003 में आपके द्वारा जारी ईएफटी रिटर्न एवं टीटीई कैश बुक की जाँच करने पर पाया गया कि कुल रोकड़ रु० 42,401/- होना चाहिए जबकि रु० 11,304/- जमा किया गया है, इस प्रकार रु० 31,091/- कम जमा किया गया।

लेखा विभाग के टीटीई उप अनुभाग ईएफटी की आंतरिक जांच में पाया गया कि आपने निम्नलिखित राशि का गबन किया है-

माह/वर्ष	संग्रहित धनराशि	वास्तविक जमा कि गई राशि	मनी रसीद में हेराफेरे करके दर्शायी गई राशि	गबन की गई राशि
जुलाई-2002	133344/-	66643/-	133674/-	66701/-
अगस्त 2002	65908/-	45908/-	65908/-	20000/-
सितम्बर 2002	116805/-	37830/-	116805/-	78975/-
अक्टूबर 2002	55612/-	42612/-	55612/-	13000/-
नवम्बर 2002	78191/-	71220/-	78191/-	6971/-
कुल	449860/-	264213/-	450190/-	185547/-

रेल राजस्व को विलम्ब से जमा करना, रेल राजस्व का अधिक एवं कम प्रेषण करना, अभिलेख में हेराफेरे करना एवं गबन किया जाना आपके आचरण को संदिग्ध बनाता है एवं आपकी कार्य के प्रति उदासीनता को

स्पष्ट करता है। अतः आपने रेल सेवक (आचरण) नियमावली-1966 के नियम 3.1 के उपनियम (i) (ii) व (iii) का घोर उल्लंघन किया है जिसके लिए आप उत्तरदायी हैं।

हवो/अस्पष्ट

(आर.सी.श्रीवास्वत)
मंडल वाणिज्य प्रबंधक
लखनऊ

2. The applicant denied the charges and gave in writing his reply on 19.06.2003. On 13.06.2003, the AO (Coaching) Northern Eastern Railway, Gorakhpur raised an issue the worksheet of station deceits, as such difference of EFT receipts and gave the show cause notice as to why the same be not recovered from the salary of the Applicant as per provisions contained in Para 1002 of Indian Railway Code for Traffic. The amounts as raised by the AO (Coaching) tallied with the amount indicated in the charge-sheet. In other words, both are based on same set of facts. Action was also taken for the recovery of the amount as contained in the show cause notice.

3. The Applicant was also kept under suspension during the relevant period.

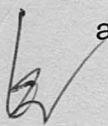
4. Inquiry was conducted and the Applicant was visited with a penalty of removal from service by the Divisional Commercial Manager (DCM) vide order dated 23.12.2003 (Annexure A-3).

5. Appeal preferred by the Applicant was dismissed vide Annexure A-4 order dated 23.06.2004 and Revision Petition also was dismissed vide Annexure A-5 order dated 15.03.2005. The Applicant has challenged the aforesaid Penalty Order, Appellate Order and the order of the Revisional Authority on various grounds. The main grounds are as under:-

(a) Simultaneous action for recovery under Para 1002 of Indian Railway Code of Traffic (Commercial Department) and issue of charge sheet on the same set of facts is impermissible. In such circumstances, where such recovery under the aforesaid Para 1002, had taken place for even huge amounts, more often than not, on such recovery, no penalty proceedings are initiated. At best, as per the instructions, such individuals are not to be kept on such duties having cash dealings. (Ground (a) of the OA refers).

(b) The Respondents have also referred the case for criminal prosecution to the CBI on the same set of charges. In that event, disciplinary proceedings should not have been initiated.

(c) Initiation of Criminal Proceedings on the one hand, commencement of disciplinary proceedings on the other and in addition, recovery under Para 1002 of the Code of



Indian Railway Traffic simultaneously are not permissible under the Rules.

(d) Inquiry proceedings have been conducted disregard of the entire procedure (Rule 9(15) to Rule 9(24)).

(e) The inquiry conducted was a farce. The Inquiry Officer deprived the Applicant of reasonable opportunity of cross examination of witnesses. He has also misunderstood the so called admission of guilt.

(f) The Disciplinary Authority has passed the order without taking into account the representation preferred by the Applicant and statement made in the course of personal hearing.

(g) In any event, the Divisional Commercial Manager is not the Competent Authority to pass the impugned order of penalty as he was not the authority who had appointed the Applicant. The decision of this Tribunal in Ram Bahadur v. Union of India in TA No.1807 of 1987 decided on 17.03.1992 supports the case of the Applicant in regard to the incompetency of DCM, who passed the penalty order.

(h) The revisional order is cryptic and does not reflect any reasoning on the basis of which the decision has been

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arrived at and thus the same exhibits lack of application of mind by the Revisional authority.

6. Respondents have contested the O.A.. According to them, the simultaneous proceedings in the criminal court and departmental proceedings are permissible. Similarly provision exists for recovery of the admitted amounts as per Para 1002 of the Indian Railways Code for Traffic (Commercial Department) , the applicant had refused to present himself as a witness and as such he cannot find fault with the inquiry proceedings.

7. The applicant has filed Rejoinder Affidavit reiterating all the contentions as contained in the Original Application. He has annexed in the Rejoinder Affidavit a Master Circular of Compassionate Appointment and also copy of his application to the Revisional Authority.

8. Counsel for the applicant placed his argument at the time of hearing and pleadings. In addition, he has submitted written arguments and in addition, has referred to the following decision:-

(i) **1999 (1) ATJ (CAT) Madras Bench T. Narayanan v. Deputy Chief Mechanical engineer (Carriage & Wagon), Madras & ors.**

(ii) **2002 (1) ATJ 434 (CAT/Bangalore) K. Bhasker v. The C.O. H.Q. Training Command (Unit) Air Force, Bangalore & Ors.**

(iii) **2011 (10 SLJ (CAT/PB/New Delhi) Ramesh Chand Chanchal v. Delhi Development Authority & Anr.**



- (iv) **Roop Singh Negi v. Punjab National Bank (2009) SCC (L&S) 398**
- (v) **State of Punjab v. Harbhajan Singh Greasy: 1996 Supreme Court Cases (L&S) 1248**
- (vi) **P.K. Surdhakaran v. Union of India & Ors ; 2002 (3) ATJ 81.**
- (vii) **Moni Shankar v. Union of India & Ors: 2008 (1) SCC 819**
- (viii) **Man Singh v. State of Haryana 2009 (1) SCC (L&S) 170**

9. Counsel for the respondents relied upon the details given in the Counter Affidavit.

10. Arguments were heard and the documents as well as written argument perused.


11. As to the appointing authority competent to initiate Disciplinary Proceedings, the contention of the applicant is that the authority for Compassionate Appointment being General Manager, it is the General Manager alone who shall be competent to initiate the proceeding. This contention on behalf of the applicant has to be disregard in view of the decision of the Hon'ble High Court of Kerala in **Union of India vs R. Harindrakumar (:WP© No. 28090 of 2006 (S)** decided on **18th January, 2008**, wherein the High Court has held as under:-

"The explanation offered by the Railways for their pleadings in the reply taking that sanction alone is given by the General Manager and appointment made by the Chief Personnel Officer has to be accepted. Further we notice that Annexure 22 relied to relied on by the applicant will clinch the issue. The appointment authority for the purpose of imposing penalty as per

Annexure A-22 is the authority competent to make appointment to the post held by the delinquent at the time of imposition of penalty. It is the common case that the Chief Personnel Officer is the competent authority for the present post held by him when the penalty was imposed. So, the said officer is competent to impose the penalty of compulsory retirement. In view of the above position we hold that the Chief Personnel Officer is competent the penalty of compulsory retirement from service on the respondent. He does not dispute that the persons in his cadre who came through other channel can be dismissed or removed or imposed a penalty of compulsory retirement by the chief Personnel Officer. The applicant cannot claim any special privilege on the ground that he was appointed in the Sports quota."

12. As regards simultaneous proceedings on criminal and departmental proceedings, law is settled by the decision in the case of Capt. **Paul Anthony vs Bharat Gold Mines Ltd (1999) 3 SCC 679** and **G.M. Tank vs State of Gujarat (2006) 5 SCC 446** and subsequent cases that there is no absolute bar and except when the case involves complicated questions of facts and law, simultaneous proceedings are permissible.

13. In so far as recovery of admitted amount under provisions of Para 1002 and simultaneous disciplinary proceedings are concerned, here again, there is no absolute bar. Seen from the nature of the provisions, normally, there should be no bar for initiations of such proceedings. Provision of Para 1002 is meant to enable the Railway to recover certain casual loss, caused by any employee due to certain omission or inadvertence. The same cannot be a substitute for disciplinary proceedings which is resorted to when such an act is branded as a misconduct. The term 'misconduct' has been explained in the

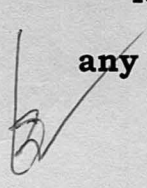


case of **State of Punjab v. Ex-Constable Ram Singh, (1992) 4**

SCC 54 wherein the Apex Court has held::

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

14. In the instant case, the amount involved is stupendous Rs.1.86 Lakhs plus and the deficit has been found due to non deposit of full amounts collected from the public/passengers. As such, there should not be any bar for initiating action under departmental proceedings. The applicant shall be given full opportunity to vindicate his stand and prove his innocence. However, what is to be seen in such cases is whether identical yardstick is followed by the Railways in recovering on the one hand the amount in terms of Para 1002 of the Indian Railways Code for Traffic as well as initiation of proceedings. **The applicant contends vide Ground-A that in case S/Shri Ajay Kumar Srivastava, Om Prakash and Majibul Haq, in identical circumstances. They were not visited with any penalty of removal.** The respondents have not met with



this specific ground in Para 27 of the Counter Affidavit wherein they have simply stated that contents of Para 5 of the O.A. are misconceived and hence denied.

15. Thus, the respondents are first required to verify from the records whether uniform procedure is followed in identical cases and similar treatment has been meted to the applicant. If not, it is to be shown that there is justifiable reason to distinguish the case of the applicant from the rest with whom the applicant has made the comparison. We make it clear at this juncture that we do not for a moment advocate that in all such cases there shall be no proceedings. Cases where the amount has been collected but there was deliberate failure to deposit the amount cannot normally come within the ambit of para 1002 alone without dealing with such erring individuals under the penalty proceedings. For, in such cases, the retention of the amount, more often than not, amounts to misappropriation with motive, either temporarily or otherwise. The Apex Court in a recent case of State Bank of India vs S.N. Goyal (2008) 8 SCC 92 has stated '*The employees of the bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the bank. Any misappropriation, even temporary, of the funds of the bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment.*' What applies to the employees of bank should equally apply to Railway employees when they deal with the public money.

16. If in other cases cited by the applicant vide Ground A, the transaction involved is identical to that of applicant's case, then only a comparison is warranted.

17. The applicant has claimed that the Disciplinary Authority had not followed the Rules/Provisions. The applicant did not enter into witness box even as per averments of the respondents. Vide Paragraph 4.14, the applicant contended that the prosecution witnesses were not examined by the Inquiry Officer and also opportunity of cross examine the prosecution witnesses was deprived to the applicant. The respondents, with regard to the said paragraph, have stated that the applicant has in Para 4 of clarification dated 15.07.2003 accepted before the Inquiry Officer the charges imposed upon him by stating that he knew that the witnesses cited were neither custodian to the records shown in Annexure A-2 and yet the charges/allegations were based on documents which could not be denied. Annexure R.A.-III read with reply vide Para-16 of the C.A. refers. The so called admission reads as under:-

“महोदय उपर्युक्त परिस्थितियों के आलोक में प्रार्थना है कि मैं रेल के प्रति जिस भी धनराशि के लिये उत्तरायी हूँ उसे मैं स्वीकार करता हूँ पर यह उत्तरदायित्व कैसे मेरे कंधों पर घटित हुआ इसका उल्लेख ऊपर कर चुका हूँ। मैं एक अल्प वेतन भोगी कर्मचारी होने के कारण सविनय निवेदन करता हूँ कि सारी धनराशि सामानय किस्तों में मेरे वेतन से काट लिया जाये तथा मेरी स्थिति पर सहानुभूति पूर्वक विचार करतें हुये निर्णय लेने की कृपा की जाये।

मैं इसके लियें आजीवन आभारी रहूँगा।

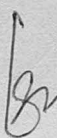
सम्मान सहित ”

18. The applicant in his communication vide Annexure A-13 dated 21-08-2003 had stated as under:-

I, therefore, submitted to the Enquiry officer, that on receipt of the subsequent letter No. C/442/TTR/LJN/CS/2001 dated 13-06-03 in which a debit to the tune of Rs 1,85,647/- has been raised against me, I have admitted the same and urged my Disciplinary Authority to start deduction in easy installments. As such, at this stage, it is not proper to face the DAR Enquiry (i.e. cross examine P/witnesses). I also mentioned in the same breath that I shall submit the said circumstances which led to the accrual of the Heavy Shortages. And, sir, I submitted the same to the Enquiry Officer on 31-07-03.

19. In the said same letter vide para 12, the applicant had requested the Disciplinary Authority to direct the Enquiry Officer to act as per the norms of DAR Rules and he be allowed to be examined under Rule 9(21) by the Inquiry Officer and he be also allowed to submit his last Defence Brief under rule 9(22). A copy of the said request addressed to the Disciplinary authority had also been endorsed to the Inquiry Officer. In his inquiry report, there does not appear to be any reference to the above communication dated 23-08-2003.

20. The Inquiry Officer in his last enquiry date i.e. on 15-07-2003 had only stated, आज की जाँच कार्यवाही यहीं पर समाप्त की जाती है। The above means that the inquiry is over for that day and it cannot be construed to mean that the enquiry is closed as the applicant has accepted the guilt. Again, once the applicant's request as stated above was received by the Inquiry Officer, the I.O ought to have once again called the applicant and got the things clarified even if according to him, the statement made by the applicant amounts to admission within the meaning of DAR Rules. The admission of the applicant of the **debit** recoverable under Para 1002 of the Indian Railways Code for Traffic is



different from admitting the **alleged misconduct**. Unless there is an unqualified admission in unequivocal term, inquiry officer cannot close the inquiry. He has to conduct the inquiry and render his findings whether the prosecution could prove the guilt of the applicant. In the case of **Central Bank of India Ltd. v. Karunamoy Banerjee, (1968) 1 SCR 251** the Apex court has held as under:-

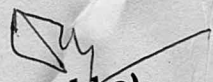
If the allegations are denied by the workman, it is needless to state that the burden of proving the truth of those allegations will be on the management; and the witnesses called by the management, must be allowed to be cross-examined by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose in support of his plea. But, if the workman admits his guilt to insist upon the management to let in evidence about the allegations, will, in our opinion, only be an empty formality. In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose.

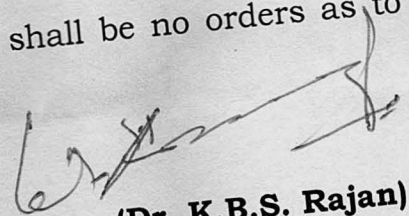
21. The nature of admission in the instant case cannot be considered as that kind of unqualified admission to enable the I.O. to close the inquiry without giving an opportunity to the applicant. Thus, closing of the inquiry by the Inquiry Officer and his report dated 29-08-2003, of the applicant is, therefore, not legally permissible. The applicant has thus, made out a case to hold that the decision by the inquiry officer and decision by disciplinary authority based on the inquiry report are all thoroughly vitiated.

22. In view of the above, **the inquiry report dated 29-08-2003 is declared as vitiated and the same is therefore, quashed and set aside.** Consequently, the decision of the Disciplinary Authority, vide order dated 23-12-2003 based on the inquiry report also has to be held as vitiated and thus, the same too is quashed and set aside. Similarly, the order of the appellate authority as well as revisional authority are all set aside. **However, the Charge Sheet remains intact and the applicant shall face the charges from the stage of examination/cross examination of witness of the prosecution and thereafter.**

23 **The O.A. is, therefore allowed to the extent** that save the charge sheet all the other orders impugned in this OA are quashed and set aside. The disciplinary authority may proceed further with the inquiry by giving opportunity to the applicant. The interregnum period from the date of removal from service till the date of reinstatement shall be regulated in accordance with law. The inquiry proceedings shall be completed within a period of six months from the date of communication of this order. The applicant shall fully cooperate in this regard.

24. Under the circumstances, there shall be no orders as to costs.



(D.C. Lakha)
Member-A
Sushil

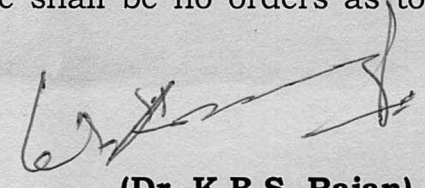

(Dr. K.B.S. Rajan)
Member-J

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