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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH
ALLAHABAD

DATED: THIS THE 24th DAY OF APRIL 1996
O.A. NO. 212/87

Hon'ble Dr. R.K. Saxena J.M.
QUORUM: Hon'ble Mr. D.S. Baweja A.M.

P. K. Tewari s/o late P.N. Tewari,
r/o 56 Bahadurgunj, Allahabad - - - - - Applicant

C/A Sri Arvind Kumar.

VERSUS

1. Divisional Commercial Supdt.,
Norther Railway, Allahabad.
2. Sr. Divisional Commercial Supdt.
Northern Railway, Allahabad.
3. Union of India through General Manager
Northern Railway, Baroda House, New Delhi.

C/R Sri Prashant Mathur - - - - - Respondents

ORDER

By Hon'ble Dr. R. K. Saxena J.M.

This O.A. has been brought to challenge the impugned order annexure 4 dated 3.9.1985 passed by the Disciplinary authority for stoppage of increments for 2 years. The order annexure 6 passed in appeal on 7.1.1986 has also been challenged.

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2. The facts of the case are that the applicant was performing ^{duties &} as Travelling Ticket Examiner under the respondents. He was served with a charge-sheet annexure-1 dated 27.6.1986 with the imputation annexure 2 that he had given low income. The applicant submitted his explanation annexure-3, but the same was rejected vide annexure-4 dated 3.9.1985; and the penalty of stoppage of increments for 2 years was imposed. The applicant appealed against vide annexure-5 on 19.10.85, but the same was rejected vide annexure-6 on 7.1.1986. Hence this O.A. with the relief that the order of punishment be quashed.

3. The respondents contested the O.A. by filing counter-reply through Sri H.N.Srivastava, A.C.S. The grounds taken are that Union of India having not been made party, the O.A. is liable to be rejected, that every year target for T.T.Es used to be fixed, and in this case also target ^{by 2} for Division was fixed to give two penalty cases per working day and earning of Rs.1,000/- per month. It is contended that most of the T.T.Es who work ^{successfully} ^{with 2} and devotion, fulfilled the fixed target but those who ^{were} ^{are} not sincere and ^{were} ^{are} careless, they failed to achieve the target. It is also pleaded that the orders passed by various authorities namely Disciplinary authority and the Appellate authority, are quite legal and valid.

4. The applicant has filed rejoinder, reiterating the facts as were given in the O. A.

5. We have heard the learned counsels for the parties and perused records.

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6. It is an unique case, in which the punishment has been given because of non-achieving the target, was deemed as misconduct. The facts as are set out in the pleadings of the parties reveal that a quota was fixed for every T.T.E. to give 2 cases of penalty and an income of Rs.1,000/- per month arising out of the penalty imposed by him. This fact has been admitted by the respondents. It is indicative of the assumption of a fact that generally people travel without tickets. Had it been not so, fixation of such a target would not have been in existence. In our opinion, such assumption is not correct and non-observance of such target cannot be included in the definition of misconduct.

7. In this case, the learned counsel for the applicant contents that the applicant was given Sleeper-Coach in which passengers travel after getting their reservation done before-hand. It is also averred that the train in which the applicant was given duty and was charged for misconduct runs from Allahabad to Delhi. The direction of the Divisional Railway Manager ^{was} for not to allow any passenger to board specified trains during night hours as given in a circular annexure-7 dated 7.9.1980.

8. Sections, which are deemed dangerous for the journey in night, are Allahabad-Ferozabad, Phaphund-Ghaziabad, Etawah-Aligarh, Ghaziabad-Kanpur and Kanpur-Tundla. Learned counsel for the applicant, therefore, claims that the target had been fixed without keeping these things in view. According to this submission, most of the passengers travel after getting reservation done before-hand, and secondly the passengers according to the circular annexure -7 are not allowed to board the Sleeper Coaches almost in all the trains during night hours on the dangerous zones. In

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such a situation, it was not possible for any T.T.E. to catch hold of the persons for travelling without tickets and to give earning. Annexure-2, which is attached to the charge-sheet speaks ^{that} all the performance done by the applicant during the period October, 1984 to March 1985. Except March 1985 in which the applicant could give 14 cases and amount of Rs.197/- and in December 1984 in which 78 cases and an amount of Rs.731/- were given, Cases in other months were ² above the said target. Respondents no where mentioned or given any data that whenever any other T.T.E. went on the same route or in the same train, the earning was higher. In such a situation, it would not be proper to discard the explanation given by the applicant.

9. The procedure adopted by the Disciplinary Authority is that of minor penalty. On the consideration of the explanation, what has been written by the Disciplinary authority is that the statement was not acceptable. It does not give ² any reason. It is not speaking one either. It clearly shows arbitrariness in reaching the conclusion. It should have been pointed out by the Disciplinary authority as to why the explanation offered by the applicant was not acceptable. The Disciplinary authority was under the obligation first to point out as to how particular act amounted to misconduct; and secondly, how and why the explanation offered was not acceptable. The respondents also failed to bring out these reasons in their counter-reply.

10. From the consideration of these facts and circumstances, we are of the view that the respondents have failed to establish misconduct against the applicant. Also no speaking order for rejection of the ^{explanation} application could be passed. Thus the impugned order passed by the

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Disciplinary Authority and upheld by the Appellate
Authority, are not sustainable in law. The O.A., is
therefore, allowed. No order as to cost.

A. M.
A.M.

J. M.
J.M.

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