IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 539/90

T.A. No:

DATE OF DECISION: _____

U S Rana ---------- PETITIONER.

---------- ADVOCATE FOR THE PETITIONER

VERSUS

U O I & Ors ---------- RESPONDENTS.

---------- ADVOCATE FOR THE RESPONDENTS.

CORAM

The Hon'ble Mr. S Das Gupta, AM

The Hon'ble Mr. T. L Verma JM.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether to be circulated to all other Bench?

SIGNATURE

JAYANTI/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 539 of 1990

U.S.Rana .... Applicants.

Versus

Union of India & ors. .... Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma , Member-J

(By Hon'ble Mr. T.L.Verma, J.M.)

This application has been filed for quashing the order dated 26.2.1990 whereby the applicant was reverted to the lowest grade as Ticket Collector in the scale of pay Rs. 950-1500/- and his pay was fixed as Rs. 950/-.

2. The applicant was Travelling Ticket Examiner in the scale of Rs. 1200-2040/- at the relevant time. He was deputed to work in 3 tier sleeper of 5 coach no. 4835 DN on 24.7.1986. The said sleeper coach was subjected to surprise check between Pooranpur and Pilibhith on 25.7.1986 by a team of Vigilance Inspector. In course of the checking, it is said, it was found that one Shri Khadim Rasul had entered the said sleeper coach at Lucknow without obtaining reservation of a berth. The applicant it is alleged demanded and accepted Rs. 12/- from the said passenger but did not either issue receipt or reservation ticket. It is alleged the applicant retained the said amount dishonestly and with ulterior motive to convert the same to his personal use. A departmental proceeding was ordered to be drawn up and chargesheet dated 4.6.1987 (Annexure A-3) was served upon him. The inquiry officer on a consideration of the evidence adduced

before him found that the charges framed against the applicant had not been substantiated vide report (Annexure A-4). The disciplinary Authority agreed with the finding of the inquiry officer so far as it related to the allegation of accepting bribe but held the applicant guilty of negligence and proposed that a charge-sheet for minor penalty be issued against him vide Annexure A-9. The DRM, however, in exercise of power under rule 25 (1) (v) of the DAR 1968 called for the records of the inquiry and on examination of the material therein has come to the conclusion that the charges have been proved conclusively and that the case-merits imposition of major penalty. Accordingly notice was issued to him to show cause why proposed penalty be not imposed on him. The applicant filed a representation persuant thereto. Thereafter, by order dated 18.2.1989, the applicant was removed from service (Annexure-1). In appeal the penalty of removal from service was set aside and in its place the applicant has been ordered to be reverted to lower grade as ticket collector in the scale of Rs. 950-1500/- and his pay was fixed as Rs. 950/-.

3. The applicant has since retired w.e.f. 28.2.1993. He was drawing pay at Rs. 1470/- in scale of Rs. 1200-2040/- at the time the impugned order was passed. The impugned order has been assailed on the ground that the same is not supported by evidence and that reduction to lower time scale as well as reduction to lower stage in time scale amounts to double jeopardy and as such is illegal and without jurisdiction.

4. We will first examine whether the conclusion of the disciplinary Authority is supported by material on the record

or not. The learned counsel for the applicant submits that the report of the inquiry officer clearly shows that there is no evidence whatsoever as may support the charge of taking bribe or negligence and as such the impugned order/orders cannot be sustained. Finding of fact recorded by an inquiry officer are not final and as such the disciplinary Authority can legitimately differ with the conclusions arrived at by the inquiry officer for reasons to be recorded. The disciplinary Authority has given detailed reasons in order, Annexure A-1 for coming to a conclusion different to that of the inquiry officer. The order (Annexure A-1) when examined with reference to the evidence adduced in course of inquiry does not appear to us to be either perverse or against records. We are therefore of the view that the finding of fact which is based on evidence cannot be legally interfered with.

5. It was next argued that the appellate Authority while modifying the punishment order has observed that "since the charges against the employees were not fully established the ends of justice will be met if the charged employee is reverted to the next lower grade as Ticket Collector in scale 950-1500/- and his pay is fixed at Rs. 950/-", which shows that the appellate Authority also did not find material in support of the charges framed against the applicant and that the punishment has been passed without any evidence on the record. From the perusal of the order of the disciplinary Authority, Annexure, A -9 it would appear that he has come to the conclusion that the applicant was found guilty of negligence inasmuch as he alloued an irregular passenger to remain in the 3 tier sleeper coach in

question. This finding of the disciplinary Authority and the order of the Rivisional Authority will be deemed to have merged in the impugned order, Annexure A-2. The discrepancy point out in the order of the appellate Authority, Annexure A-2 by the learned counsel for the applicant, it would thus appear, refers to the charge of bribe and that the punishment passed relates to the charge of negilgence in allowing an irregular passenger in the 3 tier coach.

6. It was stated by the learned counsel for the applicant that according to the order of the disciplinery Authority a fresh chargesheet for minor punishment should have been issued as directed in the said orde r and that since this was not done, it was submitted, the impugned order could not have been passed. We are unable to agree with this contention of the learned counsel for the reason that the Revisional Authority disagreed with the finding of the Disciplinary Authority and issued notice to the applicant to show cause why he should not be removed from service and thereafter removed him from service by order dated 18.2.89. The notice having been issued for removal from service, the penalty such as reverson or reduction in rank could have been imposed without issuing fresh chargesheet/notice. That being so we are satisfied that the Appellate Authority was competent to pass the order reverting the applicant to a lower time scale as punishment.

7. In view of the foregoing conclusions the second question that arises for consideration is weather reduction to lower scale and fixing pay

at the lowest level of that scale amounts to double jeopardy or not. The learned counsel for the applicant has relied upon the decision of the Central Administrative Tribunal, Hyderabad Bench reported in All India Service Law Journal (V)-1989(2) page 132 in support of his argument that reduction to lower grade and fixing the pay at the minimum of that grade amounts to double jeopardy. The Hyderabad Bench of the Central Administrative Tribunal have held that penalties of reduction to lower time scales and fixing pay at the minimum of the scale cannot be imposed together. In that case the applicant was working in the scale 550-750/- at the time the impugned order whereby he was reverted to scale of pay 425-700/- was passed and his pay was fixed at Rs. 500/-. The Tribunal after hearing the rival contention has held;

> "It would therefore be clear that the rules do not contemplate imposing two penalties at a time. But there is no bar to effecting recovery for loss caused to the Government along with anyother penalty. From a reading of the order of the impugned authority, it is clear that the intention is not to impose two penalties. Further, no rule orinstruction contemplates awarding of two punishments for the same offence. Hence, on this ground, we would hold that fixing the pay of the applicant at Rs. 500/- in the lower time scale has to be set aside. The applicant would be entitled to such pay in the lower post time scale as he would have drawn if he had continued in such a scale."

The learned counsel for the respondents has not brought to our notice any decision of this Bench of the Tribunal or the Supreme Court contrary to the principle enunciated in the judgement of the Hydrabad Bench of the Central Administrative Tribunal referred to above. Regard being had to the decision of the Tribunal referred to above, we find that the appellate

authority could not have fixed the pay of the applicant at Rs. 950/- after reverting him to lower scale of pay. In the result, we allow this application in part, and hold that the applicant will be entitled to such pay as he would have drawn in the scale of Rs. 950-1500/- had he not been promoted to scale 1200-2040/-. The ~~order~~ order of the appellate Authority imposing upon the applicant the punishment of reverting him to the scale of Rs. 950-1500/- upheld, however the further order fixing his pay at Rs. 950/- in the lower grade is set aside. The applicant will be entitled to such pay as he would have drawn in scale Rs. 950-1500/- had he not been promoted to the scale 1200-2040/-. There will be no order as to cost.

Member-J

Member-A

Allahabad Dated: 4.4.94

/jw/