

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THIS THE 26th DAY OF FEBRUARY, 1999

Coram : Hon'ble Mr. S. L. Jain JM
Hon'ble Mr. G. Ramakrishnan AM

ORIGINAL APPLICATION NO. 1308/93

Ayodhya Prasad son of Kalloo Ram
resident of Pulia no. 9-House No. 28,
Idgah, Jhansi. - - - - - Petitioner

C/A Sri Rakesh Kumar

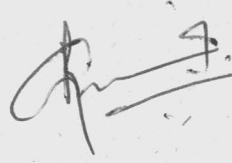
Versus

1. Union of India through General Manager,
Central Railway, Bombay. V.T.
2. The Divisional Railway Manager (P),
Central Railway, Jhansi
3. The Divisional Commercial Supdt (G),
Central Railway, Jhansi. - - - - - Respondents

C/R Shri A.K. Gaur

Order

By Hon'ble Mr. G. Ramakrishnan AM



This is an application under section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 21.6.1993 passed by respondent no. 3 imposing major punishment of reversion to the post of Parcel Porter grade Rs. 775-1025 from the post of Ticket Collector grade Rs. 950-1500. The applicant has prayed for the following reliefs through this O.A.

- (i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 21.6.1993 passed by the respondent no.3 reverting the petitioner from the post of Ticket Collector to that of Parcel Porter.
- (ii) To issue a writ, order or direction in the nature of mandamus, directing the respondent no.2 to restore the petitioner to the post of Ticket Collector in the pay scale of Rs.950-1500 with all consequential benefits alongwith difference of salary as if no such reversion would have been passed.
- (iii) To issue a writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit.
- (iv) To award cost of the petition.

2. The facts which are not disputed are that the petitioner was initially appointed as Khalasi in the Engineering department at Jhansi w.e.f.5.5.1973 in the grade of Rs.750-940 and in 1979 applicant was sent from Engineering department to Commercial deptt. on the same post in which since then he had been continuing.

3. The applicant stated in the O.A. that he was promoted to the post of first class Coach attendant in the pay scale of Rs.775-1125 with effect from 29.12.86 by the respondent no.2 and thereafter again promoted to the post of Ticket Collector in the pay scale of Rs.950-1500 after selection w.e.f. 18.3.1989.




The applicant stated that he was issued with a charge-sheet by the respondent no.3 vide memorandum dated 1.5.1992 with the following charges.

" That the said Ayodhya Prasad ⁴⁶~~Shri Sr.~~ T.C.Jhansi while working as TTE, Jhansi during the period from June,1990 to March,1991 had misappropriated railway revenue amounting to Rs.7517/- by non/partial remittance of amount collected for EFR issued by Ayodhya Prasad. Thus he failed to maintain absolute integrity and devotion to duty and thereby contravened provision of rule 3-1(i)(ii) and (iii) of Railway Servants Conduct Rules,1966."

3.1 The applicant stated in the O.A. that there was no misappropriation of railway revenue on his part and that it was only a calculation mistake due to oversight. The applicant could not remit the amount and as and when the aforesaid mistake came to his knowledge, he immediately deposited the amount. He further stated that short remittance was pointed out to him by Shri Anil Kumar Misra Head Travelling Ticket Examiner, Jhansi in the month of July/August, 1991 and he deposited the amount in the Booking office on different dates as follows :-

i/ Rs.6,442/-	on 29.6.1991
ii/ Rs. 150/-	on 16.11.1991
iii/ Rs. 725/-	on 28.11.1991
and iv/ Rs. 350/-	on 8.12.1991

The applicant further stated that he was completely innocent and denied the charges levelled against him vide letter dated 7.7.1992 addressed to the respondent no.3. Thereafter an Enquiry Officer was appoint-

ed by respondent no.3 and based on the Enquiry report, respondent no.3 passed the impugned order dated 21.6.1993 (annexure A-1) reverting the applicant from the post of Ticket Collector to the post of Parcel Porter (grade Rs.775-1025).

3.2 The applicant challenged the imposition of penalty on the following grounds :

(i) Lack of competency on the part of respondent no.3 to punish the applicant as the disciplinary/ appointing authority of the ^{applicant} ~~petitioner~~ was respondent no.2 only.

(ii) Order of reduction was non-speaking.

(iii) Order of reversion is illegal as the applicant has been reduced 2 grades below on a post he had never held.

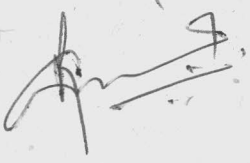
(iv) Charge of misappropriation has not been proved in the enquiry report .

(v) ~~The findings of the Enquiry Officer had been non-speaking.~~
The mistake was committed due to calculation mistake.

(vi) the mistake was committed due to calculation mistake due to oversight and

(vii) as the petitioner had remitted the full amount in cash, therefore, such punishment should not have been imposed on him.

4. The respondent in their counter affidavit stated that punishment notice was dated 29.6.1993 and not 21.6.1993. It was stated that the applicant was appointed as first class Coach Attendant by respondent no.2 and that he was later promoted as Ticket Collector, the order of which was issued under the signature of the Assistant Personnel Officer



They have disputed the claim of the applicant that he was appointed by respondent no.2 They asserted that the disciplinary authority of the applicant was respondent no.3 and not respondent no.2 as claimed by the applicant. They explained that all the appointments in the Commercial department in group 'D' are made by the Commercial Officers, but office orders of promotion are issued by the Personnel Officer, therefore, they could not be termed as disciplinary authority ^{as the commercial staff were to} working under the Commercial Officer and, therefore, they were only the disciplinary authority and as the applicant was a commercial staff at the time of imposing of punishment being a Ticket Collector at that time, respondent no.3 was the disciplinary authority. Respondents asserted that the applicant was guilty of misappropriation of public money as he know that whenever money was collected from the public, it should be deposited by him immediately with the railway administration and by keeping the money with the intention of not depositing the same, the applicant was guilty of misappropriation and that he had been taken up correctly under Discipline and Appeal Rules. They stated that normally such misappropriation called for criminal action but he had been given a simple punishment of reversion to his substantive post of Parcel Porter and that even though he was advised that he may prefer appeal to Sr.D.C.S., he did not prefer the same. They asserted that the charge sheet was issued by the competent authority and denied the contrary allegations. They stated that the enquiry against the applicant was conducted as per rules and the applicant was found guilty of the



charge in the enquiry and, therefore, punishment was correctly awarded. They denied that the applicant was continuing as Ticket Collector. They stated that the applicant had accepted his guilt vide his application which was forwarded by the Chief Ticket Inspector on 29.3.1993. Respondents prayed for dismissal of the O.A. as the same was not sustainable in the eyes of law.

5. No rejoinder affidavit was filed by the applicant.

6. We heard the learned counsels for the parties and also have given careful consideration to the pleadings made and records annexed thereto and perused the records.

7. First we propose to examine as to whether the respondent no.3 is competent to issue a major penalty charge sheet and a punishment notice for imposition of a major penalty on the applicant.

7.1 The Railway Servants Discipline and Appeal Rules 1968 (DA & A Rules for short) gives the definition of Disciplinary Authority under Rule 2(c) as follows :

(i) in relation to the imposition of penalty on a railway servant, the authority competent under these to impose on him that penalty :

(ii) in relation to rule 9 and Clauses (a) and (b) rule (1) of Rule 11 in the case of any Gazetted Railway Servant and authority competent to impose any of the penalties specified in rule 6.

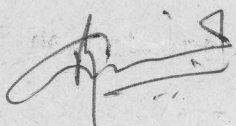
(iii) in relation to rule 9 in the case of any non gazetted railway servant, any authority competent to impose any of the major penalties specified in rule 6

(iv) in relation to Clauses (a) & (b) of sub-rule (i) of Rule 11 in the case of a non-gazetted Railway Servant, the authority competent to impose any of the penalties specified in rule 6.



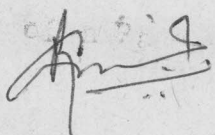
7.2 Reducation to a lower time scale of pay, grade, post or service with or without further directions regarding conditions of restoration to the grade post or service, from which the Railway servant was reduced is listed as a major penalty under rule 6(vi) of the R & A.Rules. As per Rule 7 (2) the authority specified in Schedule I, II and III may impose any of the penalties specified in Rule 6 on a Railway Servant. Relevant schedule applicable to the applicant who was a group 'C' employee is schedule II. According to this Schedule, punishment of reduction to a lower post or to a lower time scale can be imposed on group 'C' employees who are in grade lower than Rs.500-750 by a Senior Scale officer (column 3 under item 5(a) of Schedule II). It has also been stated in the same Schedule II that punishments of Compulsory Retirement, Removal from service or Dismissal from service can be imposed by the appointing authority or an authority equivalent rank or any higher authority. Therefore, even if it is accepted that the appointing authority of the applicant is respondent no.2. i.e. D.R.M, Central Railway, Jhansi, as respondent no.3 who is a Senior Scale Officer of the Commercial department is competent to issue the major penalty charge sheet and the punishment notice for imposition of the penalty of reduction to lower time scale. In the light of provisions of D & A.Rules, we hold that respondent no.3 is competent to impose the punishment of reduction on the applicant. Thus the ground taken by the applicant of reduction on this account is not tenable.

8. The applicant, in the O.A stated that he had joined the Commercial department from Engineering department on the same post in 1979. In the Engineering



the applicant was a Kha

department, the applicant was a Khalasi. Respondents admitted that the applicant was appointed as a First class Coach attendant in 1986. Therefore, the applicant was in the Commercial department in a post equivalent to that of a Khalasi from 1979 to 1986. Respondents have stated in the Counter affidavit that the substantive post of the applicant was that of a Parcel Porter. It is also noted from annexure A-II that the applicant was promoted as Ticket Collector while working as First class Coach attendant in grade Rs. 775-1025. Learned counsel for the applicant referred to the decision of Hon'ble Supreme court of India in writ petition no. 952/89 Ram Prakash Agnihotri versus District Judge, U.P. and others reported in 1991 (17) ATC 268. We find that this case is not applicable in the facts and circumstances of the present case. In that case, the petitioner was appointed as a Stenographer grade II and while working as Stenographer grade I, he was taken up under the departmental enquiry and was found guilty and was reduced in rank as Clerk-cum-Stenotypist which was outside the hierarchy. In this case, the fact is that the applicant had come from the post of Khalasi in the Engineering department to the Commercial department and was a substantive holder of a post of Parcel Porter and subsequently promoted as a First Class Coach Attendant and then was selected as Ticket Collector. Further even though he was reduced as a Parcel Porter, he was given the same grade as that of the First Class Coach Attendant (annexure A-1) and not two grades below that of the Ticket Collector as stated by the applicant. Therefore, we are of the opinion that there is nothing illegal or against the rules on his being reduced to the post



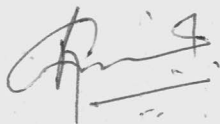
of a Parcel Porter from which he had progressed to the post of Ticket Collector, as a measure punishment.

9. Regarding the grounds taken under para 5(b) of the O.A. (stated under (ii) of para 2 above we find that in the punishment notice enclosed as annexure A-1, it is stated that the applicant was being held guilty for the reasons stated in the attached note. The applicant had not stated as to how this order is non-speaking. He had also not specifically stated in the O.A. that the attached note had not been enclosed with the punishment notice. In this view of the matter, this ground can not be accepted.

10. From annexure A-VII of the O.A., it is noticed that the Enquiry Officer had recorded the reasons for the findings. Applicant has not brought out as to how the Enquiry Officer's report is non-speaking. In the circumstances, we are unable to accept this ground- stated under 5(e) of the O.A. listed under (v) of para 2.

11. The grounds under (d), (f) and (g) of para 5 of the O.A. (listed under (iv), (vi) and (vii) of para 5) call for evaluation of evidence recorded during the enquiry. We are of the opinion that the evaluation of the evidence on record can not be best done by the Tribunal. More-over the complete enquiry proceedings are not placed before us and the case is not of a case of 'No Evidence'.


12. The learned counsel for the applicant argued that the punishment awarded does not bear

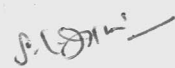


any proportion to the act done by the applicant. Question of punishment is entirely within the dominion of the Departmental Authorities and we do not find any illegality in the punishment awarded.

13. In the result O.A. is liable to be dismissed and is dismissed accordingly.

14. No order as to costs.


Member (A.)


Member (J.)

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