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RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad: Dated this 26th day of May, 1998

Original Application No. 1357 of 1992

Distt: Siddharth Nagar

CORAM: -

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. S.K. Agrawal, J.M.

Kitabullah Khan, Ex-Signaller,
Son of Late Rahimullah Khan,
R/o Vill Kundra Grant, P.O. Titri Bazar
District Siddharth Nagar

(Sri KS Saxena, Advocate)

. Petitioner

Versus

1. Union of India through General Manager,
N.E. Railway, Gorakhpur.
2. Divisional Railway Manager, N.E. Railway,
Lucknow.
3. Chief Operating Manager, N.E. Railway,
Gorakhpur.

(Sri Jagannath Singh, Advocate)

. Respondents

ORDER

By Hon'ble Mr. SK Agrawal, J.M.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant has prayed to quash the order dated 8-9-1992 reducing the punishment of removal to compulsory retirement and to ^{with all consequential benefits} reinstate the applicant including pension, arrears of salary, gratuity and leave encashment and other benefits.

2. In brief, the facts of the case as stated by the applicant are that the applicant was appointed as Signaller in N.E. Railway on 8-10-1954. While working

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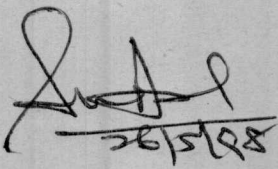
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as Signaller at Bahnan Station of N.E. Railway, the applicant was served with a memo on 27-3-1979 as under:-

"While the petitioner was working as a booking clerk at Bahnan Station on -8-8-1978 he failed to maintain absolute integrity and devotion to duty, in as much as, he allegedly realised Rs.1.05 excess on the sale of a second class printed Card Ticket No.12204 ex-Bahnan to Delhi".

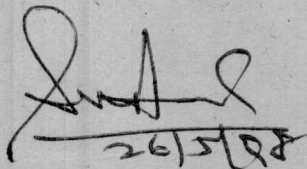
2. In brief the allegation was that the applicant realised Rs.31.00 against the actual fare of Rs. 29.95. It is submitted that on 8-8-1978 at the time of the departure of the train No.47 UP one Chandra Bali, Vigilance Khalasi appeared hurriedly at the booking window and demanded a ticket from Bahnan to Jalandhar, but the same was not available. Thereafter, he asked for the ticket for Delhi. A second class Ticket No.12204 was issued to him with reservation ticket no.21029. The said train was about to leave, the applicant handed over the ticket to the said Chandra Bali and took the money. The applicant found that he had given Rs.31.00 though the fare was only Rs.29.95. The applicant called out the said person Chandra Bali to take back the balance money but he hurriedly left the booking window. The applicant reported the fact about the excess money having been left to the Station Master Sri I.S. Dwivedi immediately. Later it transpired that the said Chandra Bali and Sri Ram Nath both Khalasis of Vigilance Department were being used as a decoy and it appears that a currency note of the value of Rs. 45/- were noted and it was decided to send Chandra Bali, vigilance Khalasi as a decoy followed by one Ram Nath, Vigilance Khalasi to hear and witness the talk and


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transaction at the booking window and ~~the~~ independent witness was neither kept to the purchase of the ticket nor witnessing the transaction.

5. For initiation of departmental proceedings Sri KN Chaturvedi was appointed as the Inquiry Officer. Sri KN Chaturvedi recorded the statement of the witnesses in respect of the allegations made against the applicant. It is submitted that at the time the said Chandra Bali came to the booking window and there were 10-12 persons at the window but none of the passengers who had purchased the tickets on that date for the said train had made any complaint. The applicant was denied the reasonable opportunity to cross-examine Sri R.S. Khanna and Sri K.P. Singh, A.S.M, both witnesses. The applicant was served with a notice on 11-2-1980 of imposition of penalty. By the said notice the applicant had been directed to be removed from service. Aggrieved by the said order the applicant preferred a writ before the Hon'ble High Court, but their Lordships took the view that the applicant should avail the departmental remedy before ^{/Railway} Divisional/Manager Lucknow. Thereafter the applicant preferred an appeal before the Divisional Railway Manager but the applicant was informed that his appeal dated 15-4-1980 was time barred. Thereafter the applicant submitted a representation dated 28-7-1980 to the Opposite Party No.2 pointing out that the time limit for the purpose of filing the appeal may be counted from 10-3-1980, the date when the Hon'ble Court accepted the plea of the learned counsel for the applicant on the ground of alternative remedy of an appeal being available. Thereafter, the applicant


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on 25-11-1980 was served with a copy of the memo dated 18-11-1980 stating that the applicant's appeal dated 28-7-1980 has been rejected by the Opposite Party No.2, and thereafter the writ petition no.5602/1991 pending in the Hon'ble High Court of Judicature of Allahabad, Lucknow Bench, was transferred to the CAT as IA No.866/1987(T).

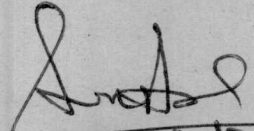
6. This Tribunal after hearing the parties disposed of the case in May 1992 and quashed the order dated 17-7-1980 and directed to dispose of the appeal taking into consideration the plea taking into consideration the fact that the punishment awarded to him is so harsh and excessive. Respondent no.2 in appeal considered keeping in view that the punishment awarded to the applicant is harsh and excessive. The removal order was reduced to compulsory retirement to be effective from the date of his removal i.e. 11-2-1980. Aggrieved with the order of the compulsory retirement, the applicant preferred a revision dated 17-12-1992 before the Chief Operating Manager, N.E.Railway, Gorakhpur by which the same has not been disposed of. Thereafter the applicant filed this application. It is submitted that the trap laid by the Vigilance Inspectors and Vigilance Khalasi had no sanction of statutory rules and hence the entire proceedings based on the trap are void and deserve to be quashed. It has also been submitted that the punishment of compulsory retirement and punishment of removal from service has been substituted but it is also disproportionate. Therefore, by this OA, the applicant has prayed to

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quash the the order dated 8-9-1992 reducing the punishment of compulsory retirement and to reinstate him in service and to pay all consequential benefits including arrears of salary and retirement benefits.

7. Counter affidavit has been filed by the respondents. It is stated in the counter reply that Ticket No. 12204 Ex-Babhan to Delhi on 8-8-1978 was purchased from the applicant on payment of Rs. 31 against the payable amount of Rs. 29.95. The pleas of the applicant that he called out the passenger to return the balance amount of Rs. 1.05 is false in view of the fact that the applicant did not refund the amount even on demand of the passenger as well as of the fact that the decoy passenger Sri Chandra Bali would not have paid Rs. 31/- had the applicant told the fare as Rs. 29.95. It is submitted that there is no procedural lacuna during the course of inquiry. The inquiry is conducted by an impartial and independent Inquiry Officer who submitted his report to be authenticated after careful consideration of the evidence and documents on record and came to the conclusion that the applicant otherwise is guilty of the charge and after considering the explanation submitted by the applicant, the order of the removal from service was passed by the disciplinary authority. It is also submitted that later on this punishment of removal was converted into compulsory retirement as charge was proved against the applicant and after taking lenient view, the punishment of removal was adjusted to compulsory retirement. Therefore, on the basis of the counter reply filed by the respondents


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it was submitted that this OA is not maintainable and the applicant is not entitled to the reliefs sought for.

8. We have heard learned counsel for the applicant and learned counsel for the respondents and perused the record carefully.

9. Learned counsel for the applicant has argued :-

(1) the order passed by the appellate authority is bad in law as it was passed after his retirement.

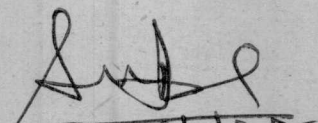
(2) The applicant was denied to the reasonable opportunity of hearing during the course of inquiry.

(3) On the basis of evidence recorded before the Inquiry Officer, no charge levelled against the applicant is proved.

(4) The quantum of punishment is disproportionate to the gravity of charge.

8. On the other hand learned lawyer for the respondents objected to the arguments as submitted by the learned lawyer for the applicant and argued that the applicant himself had submitted that he had charged Rs.31 in place of Rs.29/05. There is no denial of reasonable opportunity to the applicant and the punishment awarded to the applicant cannot be said to be disproportionate in view of the judgement of the Apex Court reported in AIR 1997 (SC) Vol 84 Pt. 1001, P.1030 - Indian Oil Corporation Vs. Ashok Kumar, AFOra.

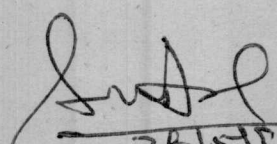
9. We have given our thoughtful consideration to the rival contentions of the parties and perused the record carefully.


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10. As regards the first contention of the learned lawyer for the applicant is concerned, the learned lawyer for the applicant could not convince this Bench that the order of the appellate authority after the retirement of the applicant is bad in law. This contention cannot be substantiated by any authority of law. Therefore, we are unable to hold that the order passed by the appellate authority is bad in law as it was passed after his retirement.

11. As regard second contention of the counsel for the applicant is concerned, we feel that the reasonable opportunity of hearing was provided to the applicant during the course of inquiry and by any stretch of imagination it cannot be said that the applicant was denied the reasonable opportunity of hearing during the course of inquiry. It is submitted by learned lawyer for the applicant that the two witnesses sought by the departmental authority have not been produced in evidence and this amounts to denial of reasonable opportunity of hearing but we are not inclined to accept the arguments as submitted by the learned lawyer for the applicant. The applicant failed to establish the fact that what prejudice has been caused in not examining those two witnesses by the departmental authorities. If so, the applicant should have produced those witnesses in advance but this was not done so. Therefore, we are of the considered opinion that this cannot be a ground that by not examining these two witnesses the applicant was denied the reasonable opportunity of hearing during the course of inquiry, in view of the fact that the applicant has admitted to have accepted Rs.31/-.


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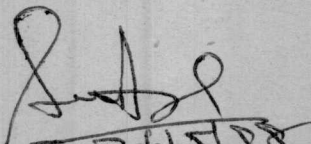
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12. It is also argued on behalf of the applicant that no charge levelled against the applicant is proved on the basis of evidence recorded by the Inquiry Officer. This argument was objected to by the learned lawyer for the respondents on the ground that this Tribunal is not an appellate authority and, therefore, has no power to reassess the evidence. We have given our thoughtful consideration to the rival contentions of both the parties.

13. In Indian Oil Corporation Ltd. & Anr Vs. Ashok Kumar Arora, AIR 1997 SSC 1030, it was held that the High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee.

14. In the instant case the Inquiry Officer held that the charge against the applicant has been fully proved and this Tribunal cannot appreciate/re-appreciate the evidence deduced before the Inquiry Officer. Therefore, we are not able to hold that on the basis of evidence recorded before the Inquiry Officer, no charge levelled against the applicant is proved.

15. As regards the quantum of punishment is concerned, it is argued by the learned lawyer for the applicant that the punishment is disproportionate to the gravity of the charge. It is noted that the original punishment of removal was passed in this matter but on reconsideration the punishment was converted into compulsory retirement.


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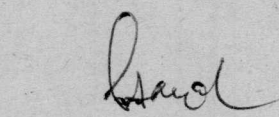
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The charge against the applicant is that on 8-8-1979 he was working at Bahnan Station Booking Office, realised Rs.31/- in place of Rs.29/95, thereby failed to maintain absolute integrity and devotion to duty and this was noticed while conducting a raid against the applicant in this matter and the appellate authority has already taken a lenient view by reducing the punishment of removal to compulsory retirement vide its order dated 8-9-1992. We, therefore, find no ground to interfere in the matter on the ground that the punishment awarded to the applicant is disproportionate to the gravity of the charge.

16. On the basis of above, we are of the considered opinion that the applicant has failed to prove his case for seeking the relief and, therefore, this OA is liable to be dismissed.

17. We, therefore, dismiss this OA with no orders as to costs.


Member (J)


Member (A)

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