

Reserved

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

....

ORIGINAL APPLICATION NO. 1693 of 1993.

this the 26th day of April 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)
HON'BLE MR. S. BISWAS, MEMBER (A)

Sukhdeo Singh, Pal, S/o Sri Mool Chand Pal, Ticket Collector,
Northern Railway, Kanpur.

Applicant.

By Advocate : C.P. Gupta proxy counsel for Sri Anand Kumar.

Versus.

Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.

2. Area Manager, Northern Railway, Kanpur.
3. Chief Commercial Supdt. N.R., Baroda House,
New Delhi.
4. Sri R.M. Thakker, Vigilance Inspector, C/o
CVO/NR, Baroda House, New Delhi.

Respondents.

By Advocate : Sri P. Mathur.

O R D E R

Mr. S. BISWAS, MEMBER (A)

By this application under section 19 of the
Administrative Tribunals Act, 1985, the applicant has sought
the following reliefs.:

(1) quashing of the impugned original order of
punishment of dismissal dated 15.2.89 and the second appellate
order dated 15.4.93 by which the appellate authority further
reduced the penalty of compulsory retirement to the lowest
stage in the scale of Rs. 950/- with immediate effect and
consequential reliefs. The last mentioned order dated
15.4.93 is a sequel to the order of CAT in O.A. no.
123/93.

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2. The applicant's case is that he was dismissed from service by the impugned order dated 15.2.1989, when he was working as a Ticket Collector being posted in Kanpur Central Railway Station w.e.f. 28.12.83. That on 29.9.86 between 7.00 to 8.00 hours when the applicant was statedly on duty at gate no. 16/17 alongwith one Sri R.S. Tripathi, the latter ~~when~~ went-out and returned with Vigilance Inspector Sri R.M. Thakkar. The said Sri Thakkar searched his pocket and recovered four unnipped ticket and an un-accounted for sum of Rs.127.50/-. He was booked for a vigilance case on the allegation of reselling of unnipped tickets on a followup and possessing un-accounted for money.

On the receipt of the report of the Vigilance Inspector, a charge memorandum dated 19.3.87 (Annexure-4) was served on the applicant on 24.3.87. The applicant submitted his reply to the said chargesheet on 3.5.87 (Annexure-6). One Mr. D.D. Misra of the Vigilance Department was appointed as the E.O. (Annexure-5). During the protracted enquiry, one Sri Suresh Balur statedly gave an affidavit in favour of the charged officer (C.O.). The statement of Sri R.S. Tripathi was allegedly obtained at the back of the applicant. The applicant disputed the factual basis of the charges before the E.O. The applicant statedly mentioned before the Vigilance Inspector that the money recovered from the C.O. was actually brought and given to the C.O. by his wife, who happened to arrive there and request him to purchase certain grocery items. The Vigilance Inspector in his disposition before the E.O. gave a different statement, though he admitted the presence of his wife, but she never mentioned to have had given any money to the C.O. Besides the applicant was further indicted by the Vigilance Inspector that the said applicant did not account for the amount in the cash declaration register as required to be done by Ticket collectors. The Vigilance Inspector further alleged that the unnipped tickets (4) were recovered from the applicant's pocket, while on duty. The applicant pointed out that ~~the~~ ^{from} the record of cross-examination enquiry dated 11.11.87

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 but ~~and~~ ^{from}
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it would be clear that no case was made against him (Annexure-10).

3. The Disciplinary authority vide his order dated 15.2.89 which has been impugned by the applicant, the latter was dismissed from service (Annexure-11). Though the D.A. was critical on the enquiry report on lack of marshalling of adequate facts, all the same, the said D.A. dismissed the applicant. The C.O. was pointed-out that the D.A. ^{was} prejudiced ~~the issue~~ in his dissenting note to E.O.'s report.

4. The applicant further pointed-out that the D.A. did not appreciate that the E.O.'s conclusion was as follows :

"(i) Charge no. 1 is technically proved that evidence regarding ill-collection of (against) the ticket from the passenger has been led in the enquiry.

(ii) charge no.2 is proved in regard to extract page 4 to page 6 as preponderance ^{or} probability."

5. In disposing of applicant's appeal dated 29.4.89 under rule 18 of Railway Servants (Discipline & Appeal) Rules 1968 statedly beyond 45 days (Annexure-12) the penalty of dismissal was reduced to compulsory retirement vide appellate order dated 1.9.89 (Annexure-13). However, the applicant further alleged that the appellate authority did not grant him personal hearing under rule 24(1) of the Railway Servants (Discipline & Appela) Rules 1968. The applicant filed a revision petition dated 14.9.89 (Annexure-15) which was kept pending for two years. The revision petition, according to the applicant, was finally disposed of on 26.11.91 by A.G.M. who is not the proper authority. Only the G.M. could hear the revision petition, not A.G.M. The A.G.M., however, agreed with the appellate authority's order.

6. The applicant filed an O.A. no. 123/92 in this Tribunal. The said O.A. was finally disposed of on 17.8.92 with direction to the appellate authority to dispose of the

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appeal afresh within 6 weeks after giving the applicant an opportunity to be personally heard. The appellate authority was further directed to pass a speaking order.

7. The present O.A. is, therefore, a sequel to the above order of Tribunal (Division Bench) in O.A. no. 123/92 dated 17.8.1992. The applicant has agitated all the points afresh from the original order of removal dated 15.2.1989 to the appellate order dated 15.4.93 and has reiterated the same facts as he had done at the original, appeal, re-appeal stages in O.A. no. 123/92.

8. The respondents have disputed the present O.A. stating that no fresh grounds have been made before the Tribunal, which was not disposed of the O.A. no. 123/92. By ~~going~~ going through the O.A. no. 123/92, the Tribunal gave a specific direction in respect of the only loophole apparent in the procedure. The Tribunal found that the appellate authority in passing the appellate order against the appeal prayer dated 29.4.89 did not give personal hearing as asked for. Therefore, the case was remanded vide order dated 17.8.92 with the direction to pass a speaking order after giving personal hearing. Since a speaking order has been passed by the appellate authority after giving personal hearing, nothing survives of the entire disciplinary proceedings for agitating the otiose facts and law points in the case.

9. Heard both sides and gone through the case records including law points.

10. The applicant was proceeded against with a major penalty chargesheet dated 17.3.87. The articles of charges are:

(1) He was having un-accounted private cash of Rs. 127.50/- (on duty).

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(11) He concealed following unnipped tickets in his coat pocket in order to resell them IInd M/E Card Ticket no.2 3102 Ex. Howrah to CNB, 19198 EX. Alld to AIJN 79331 EX MGS to ETW and 01232 EX LDW to BSB.

11. The disciplinary authority decided the case after going through the enquiry report and dismissed the applicant from service vide order dated 15.2.1989. The applicant filed an appeal against the said dismissal order on 8.3.1989. The applicant specifically asked for personal hearing in the appeal. The said prayer was rejected in his letter dated 29.4.1989 addressed to the appellate authority (Chief Commercial Supdt.). The appellate authority vide its order in appeal dated 1.9.89 reduced the penalty of dismissal to compulsory retirement. The review authority found no merits in the review petition of the applicant dated 14.9.89 and agreed with the appellate authority vide order dated 26.11.91. The applicant pointed-out that the review petition was disposed of by the A.G.M., whereas the reviewing authority was G.M. not A.G.M. and simultaneously filed O.A. no. 123/92 before this Tribunal. In passing a final order in O.A. no. 123/92 on 17.8.92, the Tribunal (Bench) held that the appellate authority in disposing of the appeal on 1.9.89 reduced the penalty to compulsory retirement, but did not give personal hearing in violation of the principles of natural justice. Hence the case was remanded for fresh hearing on the appeal after giving personal hearing. It was further directed that the appellate order should be speaking order. The impugned appellate order dated 15.4.93 was passed as a follow-up to the order of Tribunal dated 17.8.92. The ingredient of natural justice, namely according personal hearing, was fulfilled and the penalty was further reduced to reduction in the lowest stage in the same time scale of pay of Rs. 950/- with cumulative effect for a period of three years.

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12. The applicant has filed this O.A. by impugning this order dated 15.4.93 on the ground that no case was made-out against him in the original order stage itself and he has challenged the order dated 15.2.89 and the appellate order dated 15.4.93 afresh.

13. In the second appellate order dated 15.4.93 re-heard and decided by passing an exhaustive speaking order the penalty has been further reduced. The disciplinary authority found the applicant guilty after enquiry to the extent the applicant held unknipped but used tickets in his pocket for which no explanation was forthcoming. As per a regulatory procedure adopted by the railway authorities to control and maintain check on personnel attending on the sensitive duties like collection of used tickets from the passengers at gate, they have laudably ^{adopted} a system of declaration of cash in pocket or person by ^{SM by making it obligatory to} entering ⁵³ the same in a register before hand, which every such personnel including the applicant is required to follow in token of declaration of cash in person before going to attend the sensitive duty at the gate/collection of tickets. The recovery of Rs. 127.50/- in excess of such declared amount from his pocket is a simple technical violation of a sensitive procedural guidelines for which the applicant had no answer, ⁵³ ~~nor~~ the recovery was proved while on duty, He could have no such money in his pocket which was not accounted for in the cash declaration register. Even by going into the facts of the case, we find that the original and appellate authority in deciding the second appeal has only decided the penalty on this technical violation after complying with the order in O.A. no. 123/92. In the aftermath ⁵³ of the order of Tribunal dated 17.8.92, no factual or legal lapse survives to ~~the~~ be taken cognizance of in this

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order at this stage though we have gone through the submissions at length and have come to the conclusion that there are no reasons for us to interfere with the order dated 15.4.93. The O.A. is dismissed on merits. No costs.

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MEMBER (A)
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Dar-Uddin
MEMBER (J)