

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 29th day of August 2001.

Original Application no. 170 of 1993

Hon'ble Mr. S.K.I. Naqvi, Judicial Member

Hon'ble Maj Gen K.K. Srivastava, Administrative Member

R.K. Dubey, A/a 37 Years,
S/o B.L. Dubey,
R/o 13 Azad Ganj Sipri Bazar,
Distt. Jhansi.

.... Applicant

C/A Sri R.K. Nigam

Versus

1. Union of India through General Manager,
Central Railway,
Bombay VT.
2. Divisional Railway Manager,
Jhansi.
3. Senior D.C.S. Jhansi.

... Respondents

C/Rs. Sri A.K. Gaur

O R D E R

Hon'ble Maj Gen KK Srivastava, Member-A.

By this OA, filed under section 19 of the
Administrative Tribunals Act, 1985, the applicant has
challenged the punishment order of removal from service
dated 18.4.1985 (Annexure A-1) and appellate order dated
9/1-15.1.1992 (Annexure A-II) rejecting the appeal and

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upholding the punishment of removal and has prayed that the impugned orders at Annexure A-1 and Annexure A-2 be quashed and the applicant be reinstated with all consequential benefits.

2. Briefly the facts of the case are that the applicant has been working as ticket collector in Railways since 1984. Disciplinary proceedings were initiated on 19.4.1985 for ~~carrying~~^{behaving with ADRM in an unwarranted manner} two (2) passengers without ticket and offering bribe of Rs. 200/- to Additional Divisional Railway Manager (O) (in short ADRM). Enquiry was conducted and charges were held as proved. The disciplinary authority vide impugned order dated 18.4.1985 (Annexure A-1) imposed the penalty of removal from service. The applicant appealed against the order of removal on 30.5.1985. Appeal was rejected by order dated 11.7.1985 upholding the punishment. The applicant preferred revision and General Manager, the reviewing authority, also rejected the prayer of the applicant by order dated 1.1.1987. The applicant filed OA no. 254 of 1987. This Tribunal vide its decision dated 2.4.1991 quashed the appellate order dated 11.7.1985 and revisional order dated 1.1.1987 directing the appellate authority to ~~take~~^{take} into account the memo of appeal filed by the applicant and decide the same in accordance with the provisions of law. In compliance of this Tribunal's decision dated 2.4.1991, the appellate authority has passed order dated 9/1-15.1.1992 upholding the punishment of removal. The applicant has filed this OA challenging the punishment order dated 18.4.1985 and the appellate order dated 9/1-15.1.1992 which has been

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contested by the respondents.

3. Heard Sri RK Nigam learned counsel for the applicant and Sri AK Gaur learned counsel for the respondents, Sri Nigam, learned counsel for the applicant submitted that the Enquiry conducted against the applicant is not legally tenable mainly on the ground that Enquiry Officer is much inferior in rank to the main witness i.e. ADRM (O). Enquiry Officer is a class III employee whereas the witness ADRM (O) is senior administrative grade officer. Enquiry officer under the duress of ADRM (O) has held the charges proved without proper appraisal of evidence. The applicant has neither ^{been} given the Enquiry report before imposing the penalty of removal nor was he given an opportunity of personal hearing. The Enquiry officer, Disciplinary authority and appellate authority were working under the influence of ADRM (O) who is their controlling officer, hence the action on the part of each of them is not fair. The learned counsel for the applicant has placed reliance on the decision of Hon'ble Supreme Court in Union of India Vs. Mohd. Ramzan Khan, 1990 (2) SCALE 1094 = JT 1990(4) SC 456. Sri Nigam further submitted that the Revisionary authority i.e. General Manager, while rejecting the petition of the applicant by order dated 1.1.1987 did not apply his mind and took decision after seeking opinion of Railway Rates Tribunal which is unwarranted and against the provision of DA & R.

4. Sri Nigam finally submitted that the applicant as per direction of this Tribunal in OA 254 of 1987

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preferred supplementary representation to the appellate authority on 9.12.1991 alongwith appeal which should have been decided by the appellate authority keeping in mind the observations of the Hon'ble Supreme Court in Mohd. Ramzan Khans' case (supra). Appellate authority has taken past record of the applicant while deciding appeal and upholding the punishment which is not correct in the eyes of law. The learned counsel for the applicant summed up praying for due appreciation of the facts and circumstances with reference to quantum of punishment.

5. Sri AK Gaur learned counsel for the respondents submitted that DA & R Enquiry has been conducted in accordance with prescribed rules and full opportunity has been afforded to the petitioner to defend himself. He further submitted that decision in Mohd Ramzan Khan's (supra) rendered on 29.11.1990 has to be given effect to prospectively as decided by Hon'ble Supreme Court in SP Vishwanthan (I) Vs Union of India & others 1991 Suppl (2) SCC 269 and therefore the argument of learned counsel for the applicant does not hold good as the punishment order is dated 18.4.1985.

6. We have carefully considered the submissions of the learned counsel for the parties and perused the records. The punishment of removal from service has been imposed on the applicant on three charges firstly that the applicant carried two passengers without ticket with heavy unbooked luggage in AC Chair Car, secondly he behaved with ADRM (O) in an unwarranted manner and thirdly he offered two (2) Hundred Rupee notes to ADRM (O) as bribe. The chargesheet was issued on the basis of

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note of ADRM (O) dated 10.2.1984. During the enquiry it has been established that the applicant remained with ADRM (O) in Chair Car till late night. The applicant during enquiry has stated that the due charge from 2 passengers works to Rs. 176/-. One passenger paid Rs. 170/- while the other paid Rs. 06/- to make the total to Rs. 176/- . It has been confirmed during the enquiry by Sri Dwarka Prasad peon travelling with ADRM (O) that one of the passengers paid Rs.06/- to the applicant. In our opinion this transaction would have been regarding collection of charges from 2 persons travelling without ticket. However, the applicant cannot be totally absolved from the charge that he carried 2 passengers without ticket because he should have issued the receipt immediately after he collected the money from the passengers without ticket.

7. In para 4.6 of the OA the applicant has averred that Enquiry Officer has exceeded the limits of terms of reference of enquiry as he has given finding of misappropriation of govt. funds which was not a charge. This has not been controverted by the respondents in their counter reply. Therefore, there is not doubt that enquiry suffers from error of law.

8. We also do not believe that the applicant would have tried to bribe ^{the} ADRM (O), that too in a public place with a paltry sum of Rs. 200/- . It seems that there has been some communication gap and we believe in the version of the applicant that he took out Rs. 200/- from his pocket and showed to ADRM (O) that the money ^{included in} ~~inclined~~ an amount of Rs. 1760/- collected as fare charged

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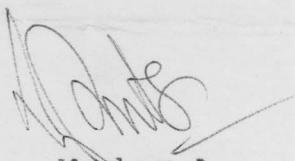
from those passengers travelling without ticket. No person of common prudence would believe that a class III employee, which the applicant is, will ever dare to offer a sum of Rs. 200/- as bribe to such a senior officer as ADRM (O) in a public place.

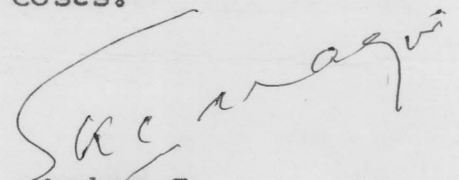
9. As regards charge that the applicant behaved with ADRM (O) in a unwarranted manner, we have no reason to disbelieve the version of ADRM (O).

10. We are of the opinion that in overall context the punishment of removal from service is too harsh. The applicant has already suffered for over 16 years which is enough punishment in the present facts and circumstances.

11. Keeping in view the facts and circumstances we remand the matter to Disciplinary Authority to reconsider the case on quantum of punishment and pass order within eight weeks in light of observations made above.

12. There will be no order as to costs.


Member-A


Member-J

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