

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1152 of 1995

Allahabad this the 24th day of April, 2002

Hon'ble Mr.C.S. Chadha, Member (A)
Hon'ble Mr.A.K. Bhatnagar, Member (J)

Panna Lal Kashyap, S/o Shri Mithai Lal, aged about 40 years, Travelling Ticket Examiner, Northern Railway, Kanpur Central. Address for all communications - C/o Shri Surya Bali(P.A.), Head Post Office, Mirzapur(U.P.)

Applicant

By Advocate Shri W. Alam

Versus

1. Union of India - ~~owning~~ and representing Northern Railway, Notice to be served upon the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Commercial Superintendent, Northern Railway, Baroda House, New Delhi. (Appellate Authority).
3. The Chief Area Manager, Northern Railway, Kanpur Central. (Disciplinary/Punishing Authority).

Respondents

By Advocate Shri A.V. Srivastava

O R D E R (oral)

By Hon'ble Mr.C.S. Chadha, Member (A)

By filing this O.A. the applicant has challenged the appellate order passed in appeal filed by him against the punishment of dismissal from service passed against him vide order at annexure A-1 dated 18.11.1992. ~~x~~The appellate ..pg.2/-

Chadha

order is dated 27.10.1994. In the appeal, the appellate authority namely Chief Area Manager, Northern Railway, Kanpur found several defects in the order. We quote the same as follows;

- "1. Very few prosecution witnesses appeared for the enquiry. In fact out of six passengers none appeared. Out of three VIs only two appeared.
- 2. Defence Witness was not examined.
- 3. Piece-meal cross examination in the case of V.I.Sh.U.N.Singh has been carried out.
- 4. The evidence of the conductor and RPF constable is weak."

2. The appellate authority further goes on to add that despite the shortcoming mentioned it was established that Shri P.L. Kashyap was carrying ~~Rs.68~~Rs.68/ extra with him, which he over-charged from the passengers. It has been further observed by the appellate authority that "His contention that he was yet to return this amount back to the passengers cannot be rejected outright without proper evidence." Therefore, keeping in view the weakness in the inquiry report and in view of the extreme punishment of dismissal, the appellate authority reduced the punishment to that of reversion to a lower grade at the initial stage for a period of 5 years with cumulative effect.

3. We are unable to appreciate the logic of the appellate authority. By stating that the inquiry reports suffer from several weakness and further the defence put forward by the delinquent cannot be rejected outright, indirectly the appellate -..pg.3/-

Chattree

authority has accepted the defence of the delinquent official. It is well established that the guilt of official must be proved beyond doubt, and it is the responsibility of the department to prove the ~~the~~ ^{the} guilt. The applicant does not have to prove his innocence. In view of doubts expressed by the appellate authority himself, the so called reduced punishment is also extremely heavy. He was punished with reduction to the lowest of the lower scale with cumulative effect for 5 years. We are unable to sustain this heavy punishment for a misdemeanour not fully proved in terms of averments of the appellate authority himself. We cannot, therefore, sustain the order of the appellate authority.

4. Learned counsel for the respondents states that the Supreme Court has held that in such cases it is difficult to get the passengers to appear as witnesses to prove the case for prosecution. However, we feel that the proof by independent witnesses is not at all required when the appellate authority himself feels not only serious defects are there in the inquiry report, but also the defence cannot be brushed aside.

5. In view of the above, the order of punishment dated 18.11.92 handed over to the applicant on 23.11.1992, and the appellate order dated 27.10.94 both are quashed. The applicant shall be entitled

Staus

...pg.4/-

:: 4 ::

to all the consequential benefits as these two orders were never passed. The order shall be complied with within 3 months from the date of communication of this order. No order as to costs.

Dr
Member (J)

Colenée
Member (A)

|M.M. |