

RESERVED**CENTRAL ADMINISTRATIVE TRIBUNAL**
ALLAHABAD BENCH : ALLAHABAD

Original Application No.972 of 1999.

Allahabad, this the 16th day of November, 2007.**Hon'ble Dr. K.B.S. Rajan, Member-J**
Hon'ble Mr. K.S. Menon, Member-A

N.R. Khotey, aged about 51 years,
Son of Baldeo, Resident of Behind
Sindhi Dharamshala, House No.148
Govind Nagar City Kanpur.

....Applicant.

(By Advocate :Shri R.K. Pandey)

Versus

1. Union of India, through General Manager, Central Railway, Jhansi.
2. Senior Divisional Operating Manager, Jhansi.
3. Divisional Operating Manager, Jhansi.
4. Additional Divisional Railways Manager, Jhansi.

...Respondents.

(By Advocate : Shri A. Sthalekar)

ORDER**By Dr. K.B.S. Rajan, Member-J :**

The applicant was functioning as Guard when an incident took place on 3-5-1998 in that when the applicant was performing his duties as Guard in Train No. 1528 Up, the checking authorities had found some passengers travelling on guard certificate issued by the applicant between GOY station to BZM and it was alleged that from the passengers money was collected by the applicant. The applicant replied to the Charge Sheet stating that the train being the last train for that day, certain passengers who could not procure tickets, requested the applicant to accommodate them and with an understanding that in the next station, the tickets would be purchased, the applicant had entertained them and collected due money, lest the passengers get down without buying the

tickets. G.C. was given to the passengers on the understanding that the same would be surrendered to the Station Master when tickets are purchased. However, when the checking took place, the authorities did not collect the GC which remained in tack in the GC Book and on the other hand instructed the applicant to return the money and the passengers were treated as unauthorized passengers. The Disc. Authority had not accepted the plea of the applicant and stating that the applicant had no authority to receive any money from any person, and thus, imposed penalty of reducing the pay of the petitioner to the minimum of his grade for 3 years. Annexure A-1 refers. An appeal was preferred by the applicant, vide Annexure A-6 but the same was rejected on 20-11-1998 by Annexure A-II order. Revision filed by the applicant had also been rejected vide Annexure A-III. The applicant has challenged the A-1 to A III.

2. Respondents have contested the OA. They have stated that as per the Indian Railway Commercial Association Coaching Manual, the guard of the train cannot accept Rail fare from the passengers. Only Guard's certificate will be prepared to verify the station from where the passenger boarded the train. On the basis of the General Certificate issued by the Guard, the SM/TTE will collect Railway fare from the passengers and will issue journey ticket without charging any excess charge or penalty. And this facility has not been extended for those stations where platform tickets are issued. As regards non holding of inquiry, the respondents have contended that there was no request from the applicant for holding inquiry.

3. The applicant has filed his rejoinder, reiterating his contentions in the OA.

4. The case has been considered. Counsel for the applicant was present. The explanation given by the applicant that due to non availability of train upto 15.30 hours, the 11 passengers requested the applicant to accommodate them in the train, appears logical and acceptable. The issue of Guard's certificate also goes along with the Rules. However, if the Railway Rules prohibit collection of fares by the Guard, the applicant had collected the same. The explanation given by him that the same was done lest the passengers should flee away, does not appear logical. For, there were in all 11 passengers, including females and children. As such, it cannot be that all would have fled. Here exactly is the blunder committed by the applicant. His collection of money, which is violative of the Rules, does create great suspicion about the bonafide reason for collection. It is this aspect that made the Disciplinary authority to hold that the applicant has committed the misconduct and the Disciplinary authority imposed the penalty.

5. The grounds that the order is non speaking, the appellate authority and revisional authority have not applied their mind etc., are untenable, for, in this minor penalty proceedings, the records are verified and decision taken. The Revisional Authority has clearly stated that "I have gone through the entire case file and appeal of DE." The appellate authority has also stated, "I have gone through the case." The applicant has not asked for a regular

inquiry. As such, no legal flaw could be discerned in the conduct of the proceedings.

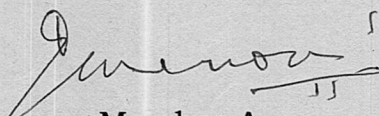
6. The applicant has also contended that the penalty results telescopically a stupendous loss of Ra 1,60,000/- and the same is excessive. What is to be seen is that when minor penalty proceedings were initiated and penalty imposed, whether the penalty falls within one of the minor penalties. If yes, the consequence need not be gone into. Tribunal cannot go into this aspect, save when the quantum of penalty is shocking to the conscience. It has been held in the case of **Coimbatore District Central Coop. Bank v. Employees Assn.,(2007) 4 SCC 669**

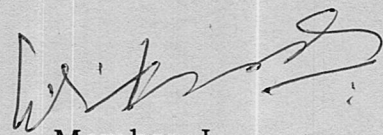
"The Division Bench rightly noted that it is settled law that the question of choice and quantum of punishment is within the discretion of the Management. But, the sentence has to suit the offence and the offender. If it is unduly harsh or vindictive, disproportionate or shocks the conscience of the Court, it can be interfered with by the Court."

Such a situation of unduly harshness or vindictiveness or disproportion or shocking the conscience is not present in the present case.

7. Hence, the applicant not having made out any case, the OA is dismissed.

No cost.


Member-A


Member-J

RKM/