

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD**

Original application No.63 of ²⁰⁰⁰~~1999~~ *Indp*

Allahabad, this the 26th day of May, 2006.

Hon'ble Mr. Justice Khem Karan, Vice Chairman.
Hon'ble Mr. A. K. Singh, Member (A)

Ram Dularey aged about 52 years son of late Sri Banshi Lal,
R/o 180-C/35-A/1, Rajrooppur, Allahabad.

...Applicant.

(By Advocate : Shri A.P. Srivastava/Sri Vinod
Kumar/Sri M.S. Akhter.

Versus

1. Union of India through the Divisional Railway Manager, Northern Railway, Allahabad.
2. The Divisional Commercial Manager, Northern Railway, Allahabad.
3. Sri Md. Azhar Shams, Divisional Commercial Manager, Northern Railway, Allahabad.

(By Advocate : Shri A.K. Pandey)

ORDER

Hon'ble Mr. A.K. Singh, A.M. :-

OA bearing No.63 of 1999 has been filed by the applicant Ram Dularey (of the address given in the notice) against order bearing no. CPO-3/MISC/150/95 dated 19.11.1999 reducing the pay scale of the applicant from the grade of Rs.4000-6000 to the Grade of Rs.3200-4900 and fixing his pay @ Rs.3200 per month with immediate effect for five years permanently.

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2. The brief facts of the case are that the applicant was initially appointed as Booking Clerk at Delhi Main Railway Station on 20th of December 1976 and was subsequently promoted and posted as Senior Booking Clerk w.e.f. 1.1.1986 at Allahabad. While in service the applicant was suspended by Divisional Commercial Manager, Northern Railway Allahabad as per order dated 26.7.1995 and was subsequently served with a charge sheet dated 12.9.1995. According to applicant he was however, not provided with copies of documents relied upon in framing the charges against him in the aforesaid memorandum of charge sheet, and hence he requested the respondents to provide the same so as to enable him to prepare his defence. On making repeated requests, the respondents provided him copies of the documents relied upon which are enclosed as per Annexure 1,2,3,4 and 5. According to applicant there were certain short comings in the documents supplied. He also required additional documents for his defence and accordingly wrote to Divisional Commercial Manager to supply the same. These documents included -

- (i) Copy of complaint of sri Saheti Ram,
- (ii) E F T no. 647726 of Account and passenger file.
- (iii) Supply of report of Station Superintendent Chunar.
- (iv) Supply of DTC -cum-summary book of the period.
- (v) Relief diary of A. K. Ambasta, Assistant Station Master dated 25.7.95.

3. These documents were not supplied to him despite several request made to the respondents. Ultimately Divisional Commercial Manager, Allahabad appointed Sri M.M.A.Siddiqui, commercial Inspector (west) Allahabad as Inquiry officer to inquire in to the charges framed against him. Even though he had made repeated request to the authorities to supply the aforesaid documents and that they had not done so far but the enquiry officer without taking a note of this fact directed him to attend the enquiry proceedings on 28.7.98. As the above mentioned documents were required for preparation of his defence, he again wrote

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to enquiry officer on 24.10.98 to provide him with a copy of the aforesaid documents. Instead of providing these documents, the inquiry officer brought to his notice that competent authority had directed him to proceed with the inquiry on 24.10.98 on the basis of documents provided to applicant, and if the applicant was not willing to cooperate in the enquiry proceedings, then the inquiry proceedings may be completed ex parte.

4. In response to this direction from respondent No.2 i.e. the Divisional commercial Manager, Allahabad, the inquiry officer proceeded with the aforesaid inquiry and the main witnesses in the case namely P.N. Biswas, Station Superintendent Chunar was examined by the prosecution on 15.3.1999 and was cross examined by the applicant on the date. The other witness namely Shri D.D. Gupta, Head Booking Clerk was examined on 13.4.1999 and was also cross-examined by the applicant on the date. The statement of the applicant was also recorded by the Inquiry Officer on 26.4.99. The applicant was also allowed to submit his defence within a period of 15 days. Accordingly, the applicant submitted his written defence brief to the inquiry officer on 7.5.1999.

5. On conclusion of the inquiry proceedings, the Inquiry Officer submitted his report to the Disciplinary authority i.e. Respondent No.2. The applicant was provided with a copy of the aforesaid inquiry report and was directed to submit his representation/comments on the aforesaid report by Disciplinary Authority namely Divisional commercial Manager, Allahabad (respondent No.2). The applicant submitted his written representation as directed, vide his letter dated 18.6.1999.

6. On going through the records of the case as well as perusal of all necessary evidences on record, the Disciplinary Authority imposed the punishment of reduction

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in the pay scale of the applicant from the Grade of Rs.4000-6000 to the grade of Rs.3200-4900 and fixed his pay @ Rs.3200 per month with immediate effect for five years permanently.

7. Being aggrieved by the aforesaid decision of the Disciplinary Authority the applicant filed an appeal before the competent authority on 4.1.2000, which is still pending for decision before him. As such, the applicant had no other alternative to seek justice except to file the present OA before us on the following important grounds :-

- (i) That the applicant was not provided with copies of documents relied upon in framing charges against him in the Memorandum of chargesheet.
- (ii) The decision of respondents namely the Inquiry Officer as well as of the Disciplinary Authority is vitiated by bias and malafides and is arbitrary in nature.
- (iii) Disciplinary Authority and the Inquiry Officer have not applied their mind impartially and independently to the facts of the case.
- (iv) That the applicant has been denied the opportunity of hearing, which vitiates the inquiry.
- (v) That action of the respondents is violative of articles 14 and 16 of the Constitution.

8. On the basis of the above, the applicant seeks the following relief(s) in the OA :-

- (i) To issue a writ or direction in the nature of certiorari, quashing the impugned order dated 19.11.1999 enclosed as per annexure No.A-1 to compilation No.1.

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- (ii) Issue writ, order or direction which this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances of this case.
- (iii) Award the cost of OA in question in favour of the applicant.

9. Respondents, on their part have contested the OA on the following main grounds:-

- (i) That the complaint dated 5.7.1995, allegedly made by the applicant against Shri R.L. Prasad Assistant Station Master Chunar, as per his averment in para 4.3 of the OA was never received in the office of the respondents.
- (ii) That the documents relied upon in framing charges against him in the relevant memorandum of charges, had already been provided to the applicant on 27.11.1995. Despite this, the applicant again demanded the same documents. The applicant was provided with photocopies of all the documents alongwith the charge sheet and letter No.CPC-3/MISC/150/95 dated 25.3.1996. The letter dated 17.1.1996, purported to have been sent by the applicant, has not been received in their office till date.
- (iii) Applicant through his conduct only intended to unnecessarily delay the inquiry proceedings by not furnishing any reply to the charge sheet.
- (iv) The document No.2 i.e. EFT No.647726 was sent to applicant after verification.
- (v) That the applicant has been consistently making false averments on affidavit in the Original Application. That from the very beginning it can be seen from his conduct that he had decided not to cooperate with the inquiry proceedings.
- (vi) The applicant had fraudulently issued the Ticket for the Senior citizen and charged full amount of

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cost of the ticket but mentioned by mistake the age of passenger as 60 years where as the ticket for the senior citizen is issued on completion of 65 years of age.

(vii) That punishment imposed on the applicant is fully keeping in view the gravity of charges held as proved.

(viii) That punishment in question has been imposed on the applicant after giving him full opportunity to defend his case, despite his non-cooperative attitude and after giving him ample opportunity of hearing.

10. In view of the above, respondents submit that OA in question is devoid of merits and pray for its dismissal.

11. Applicant as well as respondents was also heard in person through their respective counsels on 1.5.2006. In their respective oral submissions, the learned counsels reiterated their respective arguments, in support of their case, as above.

12. We have given our anxious consideration to the submissions made by the learned counsels in support of their case and have also perused the records. We find that as per law enunciated by the Apex Court, the jurisdiction of the Tribunal to interfere with the disciplinary matters of punishment can not be equated with an appellate jurisdiction.

13. In the case of Shri Parma Nanda Vs. State of Haryana and others [1989 (2) SCC 177] the Apex Court held that Tribunal could exercise only such powers which the civil courts or the High Court could have exercised by way of judicial review. The Apex Court also held that Tribunal cannot interfere with the findings of the Inquiry Officer or the competent authority where they are not arbitrary or

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utterly perverse. The adequacy of penalty, unless it is malafide, is certainly not a matter for the Tribunal to concern itself with. The Tribunal cannot interfere with the penalty also if the conclusion of the inquiry officer or the competent authority is based on evidence even if same of it is found to be irrelevant or extraneous to the matter. In the case of State Bank of India Vs. Samarendra Kishore Endow [reported in 1994 (1) SLR 516] Hon'ble Supreme Court held that a High Court or Tribunal has no power to substitute its own discretion for that of the authority.

14. However, in the case of Union Bank of India Vs. Tulsi ram Patel, AIR 1985 SC 1416, the Apex Court however, held that the court can interfere where penalty imposed is arbitrary or grossly excessive or out of all proportions to the offence committed or not warranted by the facts and circumstances of the case, or the requirements of that particular government service.

15. The fundamental principles of conducting a departmental inquiry under the CCS (CCA) Rules, 1965 and the Salient principles enunciated by the Apex Court in this regard, can be reproduced as under :

- (i) The inquiry in question, is quasi-judicial in nature. It is manifest from the very nature of the enquiry that the approach to the material placed before the enquiring body should be judicial [Jugannath Prasad Sharma Vs, State of UP, (1962) 1 SCR 151].
- (ii) Principles of natural justice shall be followed in letter and ^{spirit} ~~spirit~~. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the right of Individual against the arbitrary procedure that may be adopted by a judicial,

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quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to protect such authority from doing injustice. [Canara Bank Vs. Debasis Das (2003) 4 SCC 557 at page 570].

- (iii) ".....In the Departmental proceedings the standard of proof is one of preponderance of probabilities" [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1999) 3 SCC 679].
- (iv) The Inquiry Authority shall not take into consideration any extraneous matters (not relevant to the proceedings) in arriving at the findings.
- (v) Punishment imposed is neither grossly excessive or shockingly disproportionate to the gravity of charges held as proved.

16. If we apply these principles to the facts and circumstances of this case, we find that none of the objections raised by the applicant against either the inquiry proceedings or against the order of punishment passed by the Disciplinary Authority, stand the test of Judicial Scrutiny.

17. The first, as well as the main objection raised by the applicant in the OA is against the inquiry proceedings conducted in the case. Applicant has alleged that he was not provided with copies of documents relied upon in framing charges against him in the memorandum of charges and this has seriously prejudiced his defence.

18. The say of the applicant has been contradicted by the respondents as 'bundle of lies in paras 10, 11, 17 and 19 of their counter affidavit dated 24.7.2000. In para 10, of their counter affidavit the respondents have affirmed as under:

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"It is, however, stated that the averment of the applicant in respect of letter dated 12.1.1996 is denied. The relied upon document No.5 had already been given to the applicant on 27.11.95. They further submit in the aforesaid para that ".....alongwith the chargesheet the photocopies of all relied upon documents were also given to the applicant. But when the applicant demanded the same documents, once again, the applicant was supplied Photocopies of all the documents along with the chargesheet.....The so called letter dated 17.1.996 sent by the applicant has not been received in the office (Respondent's office) till date". In para 13, respondents submit that ".....in another letter dated 17.4.97 (of the applicant), which has been received by the respondents the applicant has acknowledged the receipt of the documents sent by the respondents".

19. In para 17, respondents further affirm "from the preceding averments it is clear that the applicant has already been supplied with the relied upon documents demanded by him but despite this he was continuously demanding the same time and again with malafide intention. However, on 16.6.98, the applicant was again supplied all the documents once again when he appeared in the office on that day". Respondents have also produced a photocopy of the acknowledgment dated 16.6.1998 which has been filed as Annexure CA-III to their counter affidavit.

20. It may, however, be mentioned that respondents were under no legal obligation to supply any additional documents which were either extraneous or not relevant to the proceedings. It was also for the applicant to have satisfied the Inquiry Officer or the Disciplinary Authority regarding the relevance of the aforesaid proceedings and how non-supply of the same would prejudice his defence.

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21. In Chandrama Tewari Vs. Union of India [reported in 1988 (2) SLJ 41 (SC)], the Apex Court in para 5.2 of their judgment have held that where the documents are not mentioned in the memo of charge nor referred or relied upon by the authorities nor are necessary for cross-examination, non supply of such documents would not vitiate the proceeding and there would be no violation of the principles of natural justice.

22. In the case of State of Tamilnadu Vs. Thiru K.V. Perumel and others, 1996 (3) SLJ 43 SC., the Apex Court held that the point to be considered in cases of non supply of documents is whether the non supply of the same has prejudiced the case of the delinquent employee in any manner. The Apex Court also held that it was the duty of the delinquent employee to point out how each and every document was relevant to the charges. This has obviously not been done by the applicant in this case.

23. On the basis of the above, we find that the objections raised by the applicant against the enquiry proceedings do not stand the test of judicial scrutiny.

- (ii) As regard the second allegation levelled by the applicant that he has been denied the opportunity of hearing during the proceedings, respondents have rebutted the claim of the applicant in paras 22, 23 and 25 of their counter affidavit in the following words-

"Para-22 The applicant never cooperated with the Enquiry Officer and always abstained from the enquiry proceeding as a result of which the enquiry proceedings had to be initiated by the Enquiry Officer. Such attitude of the applicant can not be allowed in view of the catena of decision of the Apex Court on the point."

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"Para-23.....due to non cooperation of the applicant and because of vehement arrogant, and un co-operative modus operandi adopted by the applicant, the Enquiry Officer had to proceed further with the enquiry."

"Para 25.....All possible efforts were made to give to the applicant ample time and opportunity but no cooperation was advanced on behalf of the applicant in the conduct of enquiry.....".

In view of the conduct of the applicant as aforesaid, he cannot now raise the objection that he was denied the opportunity of personal hearing during the inquiry proceedings.

24. In the case of State Bank of Patiala and others Vs. S.K. Sharma [Reported in J.T 1996 (3) SC 722] the Apex Court observed "Justice means justice between both the parties. The interests of justice equally demand that he guilty should be punished and the technicalities and irregularities which do not occasion failure of justice are not allowed to defect the ends of justice Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise".

(Para 10.10)

Hence, the objection raised by the applicant, even on this point, does not hold water.

25. As regards, the objections relating to non application of mind on the part of respondents, namely the Inquiry Officer and the Disciplinary Authority, we find that the same are farthest from truth. We have perused the inquiry report as well as the order of punishment dated 19.11.99. Both the authorities, on appreciation of evidences have

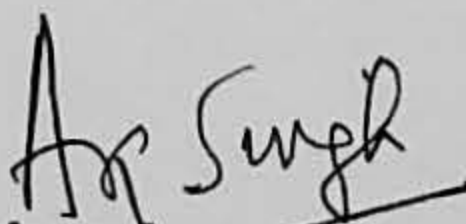
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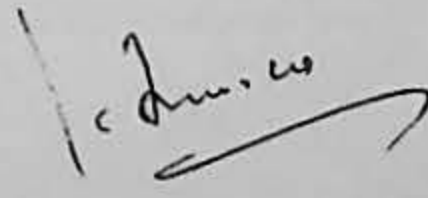
recorded their independent and impartial findings in this case. The applicant has not produced any convincing reason or evidence in support of his allegation that the impugned decision/order of the respondents is hit by any bias, prejudice or malafides. The allegations made by the applicant in this regard can safely be dismissed as mere empty allegation.

26. Moreover, despite such grave misconduct on his part, he has only been awarded the punishment of reduction in pay scale i.e. from the grade of Rs.4000-6000 to the grade of Rs.3200-4900 for three years permanently, which is not at all disproportionate to the gravity of charges held as proved. The applicant, as per chargesheet, had fraudulently issued the ticket for the senior citizen and charged full amount of the cost of ticket but mentioned, by mistake, the age of passenger as 60 years whereas the ticket for senior citizen is issued only after one attains the age of 65 years. This subsequently brought into light his misconduct of defrauding the Government of its legitimate revenue. In fact while the Inquiry Officer has been dispassionate, the Disciplinary Authority has been compassionate in imposing the aforesaid punishment, on the applicant.

27. O.A. in question, thus devoid of any merit and hence deserves to be dismissed. Accordingly, we dismiss the same.

No costs.


Member-A


Vice-Chairman

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