

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

Allahabad this the 11th day of September, 2002

Original Application No.993 of 2002

Hon'ble Mr. Justice R.R.K.Trivedi, Vice Chairman

Hon'ble Mr. S.Dayal, Member (A)

Krishaa Kumar Ojha, age 48 years

Son of ShriLate R.N.Ojha

Posted as Senior Railway Commercial Clerk. In the
Office of Divisional Commercial Manager, ER Mughalsarai
R/O Quarter No. 1122/AB Gaya Colony
Mughalsarai.

.....Applicant

Counsel for the applicant: shri Sudhir Agarwal

Versus

- 1- Union of India through the General Manager
Eastern Railway, Calcutta
- 2- The Chief Commercial Manager, Eastern Railway
Calcutta.
- 3- Additional Railway Manager, Eastern Railway
Mughalsarai
- 4- Additional Railway Manager, Eastern Railway
Mughalsarai
- 5- The Senior Divisional Commercial Manager,
Eastern Railway Mughalsarai.

.....Respondents.

counsel for the respondents: Shri K.P.Singh

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(By Hon'ble Mr. Justice R.R.K.Trivedi, Vice Chairman)

By means of this application under section 19 of Administrative
Tribunals Act, 1985, applicant has challenged the order of
appointment dated 28-3-2001 by which disciplinary authority, on
conclusion of the disciplinary proceedings against the applicant,
passed the order of ~~appointment~~ ^{punishment} reverting the applicant from the



post of Commercial Clerk to the post of Leverman in the pay scale of Rs. 2650-4000 for a period of 3 years with cumulative effect. This order was challenged in appeal. Appeal was ~~dismissed~~ ^{selected} by order dated 25-7-2001, ^{and} The punishment was modified and the applicant was given punishment of reduction in pay in the time scale of 3200-4900 at the lowest for a period of 3 years with cumulative effect. ~~Now~~ ^{then} the aforesaid orders were challenged in the ^{re}revision. However, the order of Appellate Authority was maintained and the revision was dismissed by order dated 22-1-2001.

2. The facts of the case are that applicant was serving as Commercial Clerk in July 1997 while granting refund of certain amount of tickets. He paid amount in excess to the tune of Rs. 2128/-. For this mis-conduct applicant was served a memo of charge dated 16-7-1997. The Enquiry Officer ^{was} appointed. Applicant submitted his reply. Enquiry Report was submitted, a copy of which has been filed as Annexure-16. The disciplinary authority ^{is} ~~aggravated~~ ^{agreed} with the findings, passed the aforesaid order of punishment which was modified by the appellate authority and confirmed by the Revisional Authority.

3. Shri Sudhir Agarwal, counsel for the applicant has submitted that Enquiry Officer, in his report, though found that the applicant is guilty of excess refund, he has not recorded any finding that applicant had mis-appropriated the amount or that it was done with any fraudulent intention. He has placed before us the conclusion drawn by the Enquiry Officer on basis of the evidence on record. The finding recorded by Enquiry Officer is being reproduced below:-

".... As such, keeping in view of the above discussion. I have come to the final conclusion without prejudicial mind that the charged official Shri K.K.Ojha RCC/MGS is found responsible in this case."

4. From the aforesaid order it is clear that the charge

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of mis-appropriation and ^{or} fraudulent^{or} action, was not found by the Enquiry Officer. However, the disciplinary authority while passing order dated 28-3-2001 in speaking part of the order, has said that ~~during refund~~ while working as Commercial Clerk in Mugalsarai he mis-appropriated the Government cash to the tune of Rs. 2128/- by fraudulent means. The short submission made by the counsel for applicant is that ^{observations of} the disciplinary authority played a major role in deciding the quantum of punishment though this finding does not find support from the report of the Enquiry Officer. Shri K.P.Singh, learned counsel for the respondent, on the other hand, submitted that disciplinary could record finding while passing order of punishment on basis of material on record. There is no dispute about the power of the disciplinary authority to record finding, ^{or} However, ^{or} he was inclined to recorded finding contrary to the finding recorded by the Enquiry Officer, ^{or} Under rules, he was required to give a note of disagreement to the applicant before recording such findings. After considering ^{or} the ^{or} submissions of counsel for parties, we are of the opinion that orders of the disciplinary authority and the appellate authority cannot be sustained as they are based on the finding which runs ^{or} contrary to the findings recorded by the Enquiry Officer. The matter requires reconsideration by disciplinary authority.

5. For the reasons stated above, this O.A is allowed in part. The orders dated 28-3-01 (Annexure-I), 25-7-01 (Annexure)- II) and 22-1-02 (Annexure-III) are quashed. The disciplinary authority shall reconsider the matter in the light of the observations made in this order and pass a fresh order in accordance with law after hearing the applicant. No order as to costs.

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Member (A)


Vice Chairman