

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD BENCH

Original Application No.112 of 2003

Dated: This the 11<sup>th</sup> day of March, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Umesh Chandra Srivastava,  
S/o Late Sri R.C.Srivastava,  
ERC Allahabad Railway Station,  
Northern Railway, Allahabad.

.....Applicant

By Advocate: Shri A.N.Mulla

VERSUS

1. Union of India through General Manager,  
Northern Railway, New Delhi.
2. Additional Divisional Railway Manager,  
Northern Railway, Allahabad.
3. Senior Divisional Commercial Manager,  
Northern Railway, Allahabad.

.....Respondents.

By Advocate : Shri A.K.Gaur

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member(J)

By this O.A. applicant has sought the following  
relief(s):

(a) to issue a writ, order or direction in the  
nature of certiorari quashing the impugned order  
dated 23.11.2001 and order dated 28.8.2002 passed  
by the Respondents. (Annexure No.2 & 3 of compilation  
No.1).

(b) to issue a writ, order or direction in the  
nature of mandamus commanding the Respondents  
not to effect the impugned orders dated 23.11.2001  
as well as order dated 28.8.2002. "

2. It is submitted by the applicant that while he  
was working as ERC, he was charge-sheeted on 05.6.1998 (pg.32  
at 34) on the allegation that he was found responsible

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for showing three computerised tickets, four filled requisition forms and amount of Rs.159 in a locked wooden drawer situated in the office.

3. Applicant denied the charges, accordingly Enquiry Officer was appointed who after seeing the evidence on record, gave his finding holding therein that applicant was not guilty of the charge. (page 40 at 43). The reasoning given was that drawer was in common use of staff and there was no material on record to show that money was kept by applicant. As far as two tickets were concerned one advocate had claimed that these two tickets were lost by him. He had, thus, travelled by purchasing fresh tickets. The Enquiry Officer has, therefore, held that in these circumstances, it cannot be held that tickets were kept by applicant for any douts.

4. These findings were accepted by the disciplinary authority and filed the charge-sheet vide his order dated 06.9.2000 (pg.48). The appellate authority, however, gave cause notice show / on 22.2.2001 for enhancing the punishment (pg21) on the ground that doubt is created because the advocate could have sent his assistant to make enquiries at the counter from where ticket was purchased and why he didn't travel by paying nominal surcharge instead of buying new tickets. He also stated that since records were not available, no cross checking could be done and his earlier letter of 97 is not on record, therefore, he might have been planted by applicant.

5. On these grounds, applicant was called upon to show to cause as/why enhanced penalty of reduction by one stage in the same time scale of pay for period of 3 years without cumulative effect should be imposed on him.

6. Applicant gave his reply and the appellate authority vide his order dated 23.11.2001 enhanced the punishment.

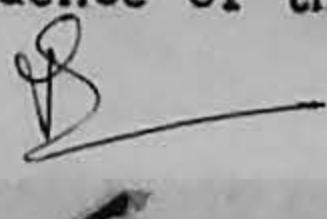


to reduction in the same time scale of pay by one stage for a period of three years without cumulative effect. On reduction his pay was fixed at Rs.5250/-p.m.

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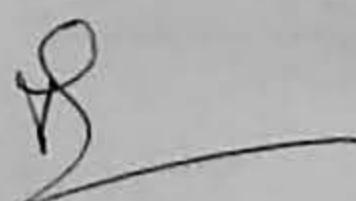
7. Being aggrieved applicant filed an appeal, but that was also rejected on 28.8.2002(pg 28), thus, the O.A. was filed to challenge both these orders.

8. I have heard both the counsel and perused the pleadings as well. Respondents' counsel submitted that so long there is some evidence, Tribunal cannot reappreciate the evidence or interfere with the punishment imposed because Hon'ble Supreme Court has held that Courts should not interfere in disciplinary matters. I am fully aware about the judgments, as referred to above, but in this case it is seen the appellate authority has given the punishment on absolutely surmises and conjectures. He has rejected the letter of advocate without calling him in the enquiry or without putting any question to him. If appellate authority had any doubt, he could have examined the said advocate to find out the truth, but in my considered opinion he could not have used the expression that advocate was planted by the applicant, specially when in the appellate order itself, it has come on record that on cross checking it was confirmed that the name-s of passengers in both set of tickets were same. Once it was proved from Railway's own chart that the same advocate had indeed travelled on the relevant dates by purchasing new tickets, it hardly matters whether the requisition had different handwriting or whether the letter was on letterhead of Advocate / or not. We cannot lose sight of the fact that advocates are respectable professionals who often have to travel to other places to attend to their cases. It is quite possible that loss of ticket was noticed at the last minute. In such circumstances naturally knowing the work load of advocates he would have purchased new tickets. Simply because he did not go back to the counter on the same day it does not mean his statement or letter can be doubted. Moreover appellate authority has also ignored the evidence of their own Prosecution



Witness who has stated categorically that one passenger had asked about the loss of tickets after two days, After all every citizen is not expected to be aware about the procedure in case ticket is lost. Simply because the advocate did not go back to the counter on the same day, it does not mean that his version can be doubted. As I have stated above, Railways should have questioned him if they had any doubt, but simply on the basis of their doubts and surmises and conjectures above, the appellate authority could not have ignored the evidence available on record, that too from a respectable person like an advocate. It is not the case of respondents that the advocate was related to the applicant, therefore, to state that he could have been planted by applicant <sup>is</sup> demeaning the advocates also. Since the authorities have not taken pains to cross check the position with the advocate, I am of the firm opinion that the reasoning given by the authorities for not believing the advocate's letter is absolutely unsustainable in law. Since the reasoning given by the appellate authority is based on only surmises and conjectures, the findings recorded by him are found to be not sustainable. It is correct that in an enquiry, person can be punished on preponderence of probabilities, but preponderence of probabilities does not mean that a person can be punished on surmises and conjectures. After all the advocate had given in writing that he had lost his tickets, if department had any doubt they should have at least verified the facts from him instead of treating him as a fraud and ignoring this important evidence altogether.

9. In view of the above discussions, both the orders dated 22.2.2001 and 23.11.2001 are quashed and set aside. Respondents are directed to refix his pay and pay him the arrears, if due, within a period of three months from



the date of receipt of copy of this order.

10. The C.A. is accordingly allowed with no orders as to costs.



Member J

GIRISH/-