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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.606 OF 2006

ALLAHABAD THIS THE 13TH DAY OF MAY, 2008

HON'BLE MR. N. D. DAYAL, MEMBER-A
HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

Anil Kumar Tewari,
Son of Late Ram Murti Tewari,
Resident of Village & Post Bhitaura,
District-Allahabad (U.P.)

.Applicant

By Advocate : Sri A. K. Srivastava & Sri M. K.
Srivastava

Versus

1. Union of India, through General Manager,
Central Railway, Mumbai.
2. Chief Commercial Manager (P.S.)
Central Railway, CSTM, Mumbai.
3. Divisional Railway Manager,
Central Railway, Nagpur Division, Nagpur.
4. Additional Divisional Railway Manager,
Central Railway, Nagpur Division, Nagpur.
5. Senior Divisional Commercial Manager,
Central Railway, Nagpur Division, Nagpur.
6. Divisional Commercial Manager,
Central Railway, Nagpur Division,
Nagpur.

.Respondents

By Advocate : Shri P. Mathur

O R D E R

HON'BLE MR. N. D. DAYAL, MEMBER-A

This is a case where the applicant who was a
Commercial Clerk has been imposed a penalty of removal
from service. The Disciplinary Authority has imposed
punishment of removal from service which was modified

on appeal to reduction to initial stage in the same time scale for a period of three years with cumulative effect. Subsequently the next higher authority the Additional Divisional Manager, Nagpur gave a show cause notice and enhanced the penalty after considering the applicant's representation once again to removal from service.

2. A perusal of the charge memo shows that the Articles of Charge against the applicant were as under:

"That the said Shri A. K. Tiwari while working as booking clerk on window No.2 for 8 to 16 hrs. shift duty at BETUL station on 27.07.2001 committed misconduct in that-

ARTICLE-I

He overcharged the decoy passenger for Rs.1-00 on issue of II M/E ticket ex Betul to Chandrapur.

ARTICLE-II

He was found having Rs.25-00 (Rs. Twenty Five) excess in his railway cash.

Thus by the above acts of omission and commission jointly as well as each one of them, he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a railway servant, thus contravened the provision of rule No.3.1 (i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966."

3. It is striking to note that the applicant was charged in the first instance for over charging of Rs.1.00 and for having Rs.25 in excess in Railway cash. Perusal of the enquiry report shows that in fact the correct calculation of the excess cash showed only Rs.18. The learned counsel for the applicant has filed Annexure RA-III, filed with the rejoinder to OA,

which is an office order dated 27.06.2000 issued by Northern Railway Headquarter, Baroda House on the subject of shortage of coins and small currency notes and due to this the staff being saddled with a small shortage of excess cash on hand, for which they are penalized. The order was, therefore regarding permitting a small amount with the staff and it was decided on a limit of Rs.30 in shortage/excess of cash on hand for which the staff would not be taken up unless there were compelling reasons to believe irregular working of staff. Instructions have also been given to deposit the excess cash at the close of the day's work. In this background the learned counsel points out that the respondents have overlooked the existence of these instructions and held him responsible for holding the excess amount of Rs.18 only for which dishonest intentions have been attributed to him and he has been removed from service. On the other hand this was an amount that remained excess in the normal course as envisaged by the Railways themselves by their instructions dated 27.06.2000.

4. The learned counsel for the applicant further submits that in fact the ticket purchased by the decoy passenger was of Rs.89 and when he gave a Rs.100 note, Rs.11 was returned but one of the members of the Trap team, a constable, has alleged that the applicant returned only Rs.10 and kept Rs.1 for himself. The documents on record as well as the orders of

punishment, appeal as well as upward revision of punishment are conspicuously silent with regard to the office order dated 27.06.2000. It is not the case of the respondents that this office order has since been cancelled. Further the order of the next higher authority which finally awarded the punishment of removal from service which is at page 55 and 56 recounts the disciplinary action and charge against the applicant and states that no new evidence has been produced. However, there is no consideration of the office order mentioned above which is self explanatory as above.

5. Learned counsel for the respondents has pointed out that the office order is of Northern Railway and, therefore, would not apply ipso facto with all the Railways in the country under the Railway Board. The learned counsel for the applicant reiterates that this order has also been published and codified but he is not readily able to place the same. It is unlikely that such orders issued as far back as the year 2000 to control possibility of malpractice in a public service would not have been adopted by other Railways or ignored by the Board and not circulated to others as well by now.

6. Having considered the charges leveled against the applicant and the penalty of removal from service imposed upon him for the same and keeping in view the office order issued by the Northern Railway on a

policy matter as well as our observations above, we are of the view that the punishment awarded is shockingly dis-proportionate and we are therefore unable to uphold the same in the facts and circumstances of the case. The impugned orders are, therefore, set aside and the matter is remanded back to the disciplinary authority for reconsideration of the quantum of penalty awarded, in the light of the Northern Railway office order dated 27.06.2000 and its applicability to other Railways as well as the nature of the charge against the applicant which in addition to excess of Rs.25/- indicates an arguable and relatively insignificant charge ^{which amounts to} of having willfully retained an excess of Rs.1/- only from the Rs.100/- tendered by the decoy passenger without any protest from the latter. The Disciplinary Authority shall pass appropriate orders in accordance with law within a period of three months from the date of receipt of a copy of this order. No Costs.



Member-J



Member-A

/ns/