

Reserved
(On 09.02.2015)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 27th day of March 2015

Hon'ble Mr. Shashi Prakash, Member - A
Hon'ble Dr. Murtaza Ali, Member - J

Original Application No. 342 of 2007

Ghanshyam Singh S/o Late Ram Adhar Singh
R/o Village and Post Bansgaon South, Gorakhpur
Presently working as Booking Clerk
North Eastern Railway, Gorakhpur

..... Applicant

Advocate for Applicant : Shri S.K. Om.

Versus

1. Union of India through the General Manager
Northern Eastern Railway, Gorakhpur.
2. Senior Divisional Commercial Manager, North
Eastern Railway, Gorakhpur.
3. Divisional Commercial Manager, North Eastern
Railway, Varanasi.

..... Respondents

Advocate for Respondents : Shri P.N. Rai

ORDER

By Hon'ble Mr. Shashi Prakash, Member (A)

Heard Shri S.K. Om, learned counsel for the applicant
and Shri P.N. Rai, learned counsel for the respondents.

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2. This O.A has been instituted primarily for seeking quashing of the order dated 07.12.2006 and 12.04.2007 imposing upon the applicant penalty of withholding of increments for the period of six months and the show cause notice dated 27.07.2006 issued to him for recovery of Rs. 44854/-.

3. In a nutshell, the facts of the case are that the applicant who was working as a booking clerk, on account of a disciplinary proceedings his pay was reduced to the lower pay scale of Rs. 4000-6000/- for a period of two years w.e.f. 01.11.2003 and his salary was fixed as Rs. 4900/- per month. On 16.01.2004, the applicant applied for year ending pass for the year 2003 and was issued a first class pass on 17.01.2004. On 22.12.2004 the applicant made a request for issue of pass for the year ending 2004 and he was issued a first class pass on that very day itself. Similar request for year ending pass was made by the applicant on 06.03.2005 and was again issued first class pass.

4. Subsequently, on 27.07.2006, the applicant was issued a minor penalty charge sheet by respondent No. 3 alleging that he had obtained three first class passes for himself and his family whereas at his present pay he was entitled only for a second class pass. On the same day he was also issued a show cause notice on the same charge seeking his reply as to

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why an amount of Rs. 44854/- being the difference between the first class and the second class fare, not be recovered from him. In response to the notice dated 27.07.2006, the applicant submitted a representation dated 05.12.2006. It is alleged in the O.A that without considering the submission made by the applicant in his representation, an order dated 07.12.2006 was passed imposing a penalty of withholding of increment with cumulative effect for a period of six months. At the same time recovery of Rs. 44854/- was also started. The penalty of withholding of increment with cumulative effect was imposed by the Divisional Commercial Manager, Varanasi. Subsequently on the appeal filed by the applicant, the penalty imposed on him was reduced to withholding of increment for a period of six months without cumulative by the Senior Divisional Commercial Manager, Varanasi by order dated 12.04.2007.

5. It is contended in the O.A that as the charge alleged against the applicant did not occur due to his fault or any false declaration, he could not be accused of the same and therefore no penalty on this account can be made to suffer on account of omission and negligence on the part of the respondents.

6. The main thrust of the arguments in the counter reply is that subsequent to the penalty imposed by the applicant

reducing his pay scale from Rs. 5000-8000/- to Rs. 4000-6000/- effective for a period of three years w.e.f. 02.12.2003, the pay of the applicant was fixed at Rs. 4900/-. While the applicant was drawing pay of Rs. 4900/, he applied for to and fro first class pass, dated 17.01.2004 from Howrah to Jammu Tavi for himself and his family. Subsequently he applied for similar set of passes on 22.12.2004 from Barauni to Ahmedabad for himself and his family. Again on 06.03.2005 the applicant applied for similar passes from Dewaria to Ahmedabad. It is contended that the applicant wrongly made an application for first class pass when he knew that his pay had been reduced and fixed at Rs. 4900/-. Accordingly, he violated the provisions of Schedule B (4) of Railway Servant Pass Rules. The applicant, also on expiry of the valid period of the passes did not deposit the same in the office as required. It has been argued that in the application made by him instead of just filling up the forms, the applicant deliberately made an entry stating that "इसके पूर्व मुझे प्रथम श्रेणी का पास मिलता रहा है" This remark in the application form for the pass was deliberately inserted by the applicant with a view to mislead the authorities.

7. It has also been brought out in the counter that prior to making deduction of Rs. 44854/- towards difference of fare in between first and second class fare, the applicant was given an opportunity to give his reply by letter dated 27.07.2004. It

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has been further stated that in the pass applied for the year 23.08.2005, the applicant in the application form made the following additional remarks:

“पूर्व में प्रथम श्रेणी का पास मिलता था, नियमानुसार मुझे पास जारी किया जाये।”

Whereupon the station master sought clarification from Divisional Personnel Officer who clarified that the applicant is entitled to only second class pass due to his pay scale being Rs. 4900/-. Accordingly, the applicant drew first class pass instead of a second class which was his entitlement knowing fully well that he was entitled only to a second class pass.

8. In regard to the notice issued dated 27.07.2006 for recovering an amount of Rs. 44854/-, it has been stated in the counter that initially an order was made for recovery of Rs. 2991/- per month, however, subsequently, it was decided for effecting recovery of Rs. 1500/- per month. Thereafter, in compliance of the order dated 04.04.2007 of this Tribunal, the recovery was stopped w.e.f. 24.04.2007. For the reasons as brought out in the counter, it has been urged that the applicant is not entitled to any relief from this Court as the respondents have acted in accordance with the relevant rules applicable in the matter.

9. The counsel for the applicant argued that the punishment of imposition of reduction of pay for a period of six months with cumulative effect was in a nature of the

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major penalty under Rule 11 and as such the order passed against the applicant is wholly illegal. Furthermore, he argued that two punishments have been imposed upon the applicant. In the first place, a sum of Rs. 44854/- has been sought to be recovered from him and secondly the penalty of withholding the increment with cumulative effect has also been imposed. He stated that this would amount to double jeopardy and is barred under service jurisprudence. The learned counsel submitted that the first class passes were issued to the applicant due to the fault of the department as he had clearly mentioned his pay scale in his application form for issuing passes. For the negligence of his immediate superior, the applicant cannot be penalized. Concluding his arguments he said both the punishment orders against the applicant are arbitrary and illegal and therefore liable to be set aside.

10. Shri P.N. Rai, learned counsel for the respondents reiterated the facts and arguments contained in the counter and stated that while submitting the application for issuance of passes during the relevant years, the applicant had deliberately tried to mislead the respondents by stating that on earlier occasion he was being issued first class pass. He argued that when a railway servant for his irregular act causes loss to the railway, the loss, so caused is assessed and has to be recovered from the concerned employee. Hence, the respondents sought to recover the difference between the fare

of first and second class relating to the passes issued to the applicant and accordingly a show cause notice was served to him on 27.07.2006 as per rules. Therefore the argument of the applicant that no show cause notice was issued before recovery was affected is incorrect. He submitted that the action of the respondents was in accordance with the well laid down rules in the matter and therefore, do not call for any intervention by the Tribunal.

11. Heard counsel for both the parties. Before we proceed to take a view in the matter, it would be desirable to briefly recapitulate that facts of the O.A. From the proceedings, it is seen that the applicant had applied for pass for himself and his family from Barauni to Ahmedabad dated 22.12.2004 in the prescribed form and stating his basic pay as Rs. 4900/-. While he duly filled up the details in each of the column, he also made an additional remark in the application form to the effect that earlier he was being issued first class passes. Similarly, in another application which is not in the prescribed form but provides the required details including his pay scale, the applicant again made an additional entry to the effect that his pay scale was Rs. 5900/- but due to punishment it has become Rs. 4900/- for a period of two years and that on earlier occasion he was being issued first class pass. He stated that the pass may be issued to him as per the rules. On this entry, the station master observed that

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according to the rules, the applicant was entitled to a second class pass though earlier he had availed first class pass. He further stated that according to DPO, pay scale of the applicant has to be treated after taking into account the impact of the punishment of reduction of the pay scale of the applicant. Earlier issue of first class pass had happened due to the fault of the applicant. He further wrote that the applicant is eligible only for a second class pass and if he wishes to take a first class pass then he should do it at his own responsibility. It appears that thereafter the applicant was issued a first class pass.

12. From the above facts, it is apparent that the applicant had been issued first class pass despite the fact that his pay scale was only Rs. 4900/- which made him entitled only for a second class pass. Though, this mistake to a large extent is attributable to the respondents due to the fact that before issue of the pass to the applicant they should have properly verified the application and kept in mind the basic pay as mentioned by the applicant in the application. A proper scrutiny of the application should have been carried out by the respondents before issue of pass to the applicant. However, it appears that in this regard they were misled by the remark made by the applicant on both of his applications that on previous occasions he had been drawing first class pass. This is understandable to some extent. But with regard

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to the second application dated 23.08.2005 the remarks of the applicant were examined by the station master, Bhatni who came to a clear conclusion that the applicant was entitled to only second class pass but if he wished to avail of the first class pass he can do it at his own responsibility. Again, first class passes were issued to him. It is quite evident that the respondents while issuing the pass appear to have been misled by the remarks made by the applicant on his application forms that on previous occasions he was being given first class pass. In this regard it is felt that the applicant by entering the remarks in the application forms to the effect that on previous occasions he had been issued first class passes created a certain element of confusion in the minds of the respondents who appeared to have issued him the first class pass based upon the past precedent. Although in the case of second application as to why the first class pass was issued despite observations of the station master is difficult to understand.

13. The remark relating to the fact made by the applicant in the application forms to the effect that on previous occasions he was drawing first class pass was not a requirement of the form and was an additional entry which was wholly unnecessary. Though one can blame the respondents for having been misled by these remarks based upon which they issued the first class pass to the applicant, the applicant also

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cannot be fully absolved of his role in causing to create a situation of confusion. Hence to say that the applicant was totally innocent in the matter and the issue of the first class pass was issued to him solely on account of mistake of the respondents needs to be discounted.

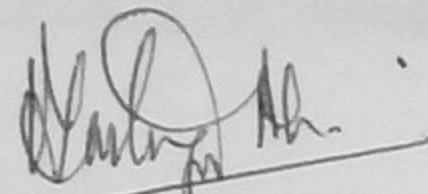
14. As pointed out by the learned counsel for the applicant that for the same charge a person cannot be visited with two punishments. In the instant case, it is seen that apart from issue of order for recovering an amount of Rs. 44854/- being the difference in fare of first and second class, the applicant has also been imposed a penalty of withholding of increment for a period of six months without cumulative effect. It is a fact that by issue of the first class pass to the applicant as against second class pass to which he was entitled, the railway have suffered a loss as mentioned above. We feel that this is a legitimate loss caused to the railways and therefore needs to be recovered. It is also seen that prior to the recovery of this amount, a notice had also been served on the applicant on 27.07.2006. Therefore, it can not be said that no opportunity was given to him in this matter. In view of this fact it is ordered that the respondents can proceed ahead and effect recovery against the applicant but mindful of the overall circumstances of the case, the respondents are allowed to recover the loss amount as assessed by them to the extent of 25% of the total assessed amount in the easy installments.

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The stay order granted in this regard earlier is hereby vacated subject to the above mentioned direction.

15. As the penalty of recovery is already being effected against the applicant, we feel that the order dated 07.12.2006 imposing the penalty of withholding of increment for six months cannot be sustained as it will amount to awarding of the second punishment to the applicant for the same charge and is therefore hit by the doctrine of double jeopardy. Accordingly, the order dated 07.12.2006 is set aside. Any increment if withheld consequent to the order dated 12.04.2007 should be restored.

16. In view of the above, the O.A is partly allowed. No cost.



Member (J)



Member (A)

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