

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH.

OA No.779 of 2005

Cuttack, this the 12th day of November, 2009

K.S.Sarma Applicant

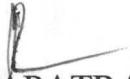
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not?

2) Whether it be sent to the P.B.,CAT, or not?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH.

OA No.779 of 2005

Cuttack, this the 12th day of November, 2009

CORAM:

**HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER**

Sri K.S.Sarma, aged about 41 years, son of Sri Surya Sankaram,
Sr.Travelling Ticket Examiner under Sr.Divisional Commercial
Manager, Waltair, at present residing at Quarter No.T/39C, Type II,
Railway Colony, P.O.Koraput, Dist. Koraput, Orissa

..... Applicant

Advocate for applicant - Mr.Achintya Das

Vrs.

1. Union of India service through General Manager, E.Co.Railway, Chandrasekharpur, Bhubaneswar, PIN 751023
2. Divisional Railway Manager, E.Co.Railway, Waltair Division, Dondaparthy, Visakhapatnam, PIN 530004
3. Sr.Divisional Commercial Manager,E.Co.Railway, Waltair Division, Dondaparthy, Visakhapatnam, PIN 530 004
4. Divisional Commercial Manager, E.Co.Railway, Waltair Division, Dondaparthy, Visakhapatnam, PIN 530 004

..... Respondents

Advocate for Respondents - Mr.R.Ch.Rath.

ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicant challenges the order of punishment dated

1.12.2004 (Annexure A/7) issued by the Divisional Commercial

Manager, East Coast Railway, Waltair Division, and the appellate order dated 26.7.2005 (Annexure A/11) issued by the Senior Divisional Commercial Manager, East Coast Railway, Waltair Division. By the first order the applicant has been ordered to be liable for major penalty of reduction to lower stage of pay for a period of three years with cumulative effect. By the 2nd order, i.e., the appellate order passed by the Senior Divisional Commercial Manager, the applicant has been ordered to be compulsorily retired from service.

2. The brief facts of the case are that the applicant was working as Senior Train Ticket Examiner during 2001. On 2.9.2001 while he was working as such in Express Train No.2807 a trap was led by the Vigilance Wing of the Railways. It was found that the applicant demanded and accepted an amount of Rs.50/- extra, as illegal gratification for allotting a berth to Ticket No. 03187 from Mahasamund to Delhi, from the decoy who posed himself as a reservation seeking passenger in the above train. It was further found that though the applicant had initially declared an excess amount of Rs.2/- with him, at the time of detection of the misconduct an amount of Rs.1760/- was recovered from the applicant as unaccounted money. Further it was found that the applicant was not in proper uniform at the time of vigilance check.

On the above allegations, a charge memo was issued to the applicant and an enquiry was conducted. On the basis of the enquiry report dated 9.7.2003, the applicant was found not guilty of the first and second charges, but was found guilty of the third charge as the third charge alone was found proved. However, on going through the enquiry report, the disciplinary authority disagreed from the findings arrived at by the Inquiry Officer. On issuing notice for further explanation by the applicant and on considering the applicant's explanation to the notice issued, the disciplinary authority found that the second and third charges were proved properly by evidence and accordingly imposed the penalty as aforesaid. Against that the applicant filed an appeal before the appellate authority. However, on issuing further notice to the applicant, the appellate authority enhanced the punishment imposed by the disciplinary authority to that of compulsory retirement from service. Aggrieved by the above orders, the present O.A. has been filed by the applicant praying for quashing of both the punishment order as well as the appellate order.

3. The O.A. has been admitted by this Tribunal and notices ordered to the Respondents. On receipt of the notices issued from this Tribunal, a counter has been filed for and on behalf of the Respondents justifying the orders passed by the disciplinary

authority as well as the appellate authority. It is stated in the counter that none of the grounds urged in the O.A. is tenable as there has been no violation of rules of enquiry and principles of natural justice either by the Inquiry Officer or by the disciplinary authority.

4. We have heard Shri Achintya Das, the learned counsel for the applicant and Shri R.C.Rath, the learned counsel for the Respondents and have also perused the records.

5. Shri Achintya Das, the learned counsel for the applicant assails the orders passed by the disciplinary authority as well as the appellate authority mainly on three grounds. Firstly, the learned counsel submits that once the Inquiry Officer found that the charges framed against the applicant were not proved, it was not proper on the part of the Disciplinary Authority to disagree with the findings entered by the Inquiry Officer. Further, even if it was not found feasible to accept the enquiry report, the Disciplinary Authority should have given reasons for disagreement with the findings entered by the Inquiry Officer and communicated the same to the applicant by way of a notice. But the notice issued to the applicant by the disciplinary authority for not agreeing with the findings entered by the Inquiry Officer did not contain any reason. Secondly, the learned counsel submits that appreciation of the

12

evidence by the Disciplinary Authority is beyond its power in as much as the evidence has already been appreciated by the Inquiry Officer who had got the chances to see the witnesses examined for and on behalf of the Department as well as the defence. The learned counsel for the applicant submits that the defence witnesses, who were examined by the applicant, clearly stated that the excess amount found in possession of the applicant was given to the applicant by one D.Rama Rao, Commercial Inspector, for the purpose of purchasing certain articles for him on his way back to the station. On the basis of evidence adduced during the enquiry, the Inquiry Officer found that the charge relating to unaccounted money of Rs.1760/- was not proved. If at all the Disciplinary Authority differed with this finding entered by the Inquiry Officer, he ought not to have acted on it because if two views were possible by appreciating the evidence, the view favourable to the applicant should have been accepted. The third ground urged by the learned counsel for the applicant is that the Appellate Authority enhanced the punishment as awarded by the Disciplinary Authority without any reason and only by stating that the gravity of the misconduct proved against the applicant was so serious and hence he should be awarded the major penalty of compulsory retirement from service. This punishment, according to the learned counsel for the

(B) applicant, is unwarranted as the first and second charges against the applicant that he demanded and accepted bribe from the decoy and that the excess amount of Rs.1760/- found in possession of the applicant was collected by the applicant by way of bribe, have not been found proved either by the Inquiry Officer or by the Disciplinary Authority. In the above circumstances, it would have been proper for the Appellate Authority to hold that the explanation given by the applicant for possession of the unaccounted money of Rs.1760/- was acceptable though possession of money was against the instructions to be followed by the applicant.

5. To the above arguments, Shri R.C.Rath, the learned counsel appearing for the Respondents, submitted that as pr the instructions/rules of the Railways, every Ticket Examiner of the Railways shall declare any excess amount or private money held by him at the time of starting the journey. As per the declaration given by the applicant, he had got only Rs.2/- as excess or unaccounted money at the beginning of the journey. As the applicant has failed to properly explain the unaccounted money of Rs.1760/-, the finding entered by the Disciplinary Authority that the first and second charges were proved against the applicant requires no interference by the Tribunal at all.

14

6. On our anxious consideration of the facts as well as the evidence in this case, the questions to be decided are: (i) whether the explanation given by the applicant for possession of an amount of Rs.1760/- can be acceptable or not; (ii) whether the charges were proved against the applicant beyond preponderance of probability; and (iii) whether the punishment as imposed by the Disciplinary Authority or by the Appellate Authority is to be upheld.

7. The charges framed against the applicant would clearly indicate that the applicant while working as Senior Ticket Examiner on 2.9.2001 in 2807 Express Train, was found in possession of Rs.1760/- as unaccounted money when the check was conducted by the Vigilance Wing of the Railways. With regard to the second charge, the Disciplinary Authority disagreed with the Inquiry Officer. To come to a different finding, the Disciplinary Authority relied on the evidence of witnesses including the decoy witness. He found that the possession of unaccounted money has been proved and the explanation given by the applicant that the said amount was given to him by Rama Rao enroute has not been found acceptable. If so the contention of the learned counsel for the applicant that the second charge has not been proved on the basis of evidence is not tenable and we are of the view that if the

applicant had given an explanation in support of possession of the unaccounted money of Rs.1760/-, his explanation that he had received that amount from Rama Rao is not acceptable as such receipt of money by the applicant is against the rules and instructions issued by the Railways. Hence the contention of the applicant that the charge of possession of unaccounted money being untenable is liable to be rejected. Though both the Inquiry Officer and the Disciplinary Authority have accepted the evidence and found that the said charge is proved, the main thrust of argument advanced by the learned counsel for the applicant to discard the evidence of the prosecution is that the finding that the applicant was found in possession of the unaccounted money is the outcome of non-appreciation of evidence of defence witnesses. Even if this contention is accepted, it could be seen that as per the rules and instructions, a Senior Ticket Examiner like the applicant should not have acted on the request of such defence witness and held the unaccounted money.

8. The next question to be considered is whether the disagreement by the Disciplinary Authority with the finding of the Inquiry Officer is based on any reason or not. Paragraph 4 of the order passed by the Disciplinary Authority would show that the

16

disagreement was on the basis of the instructions. In the said paragraph it is stated as follows:

"The discrepancies and the inconsistencies as observed above are the matters of concern, pointing towards the guilt of Sri K.S.Sharma, who in the circumstances extracted illegitimate amount from the passengers in the court of his duty by unfair means and tried to cover up the excess by advancing the argument that Sri Rama Rao, CI gave him the amount to purchase Rice & Dal from Raipur. Sri Sharma acted in gross violation of standing instructions while on duty as proved by the oral and documentary evidence on record. Therefore, the arguments advanced by Sri Sharma cannot be relied upon. He was restricted from accepting any amount from anybody as per standing instructions and guidelines.

When caught during the vigilance check the C.O. came out with some afterthoughts. The statement that it is general practice prevailing on the Railways to receive the extra amount from anybody for marketing purpose etc. is in violation of existing Rules and cannot be given cognizance. The charges vide Article II & III of the charge memorandum are found to be established and proved."

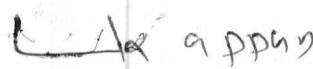
A reading of the above would show that the Disciplinary Authority is justified in disagreeing with the findings entered by the Inquiry Officer.

9. The other question to be considered is whether the Appellate Authority is justified in enhancing the punishment as imposed by the Disciplinary Authority to that of compulsory retirement from service. We have carefully considered the contentions of the learned counsel for the applicant. It is seen that the Appellate Authority only considered the possession of unaccounted money by the applicant. But we are of the view that since the first charge of demanding and accepting illegal

gratification by the applicant has not been proved, the possession of an amount of Rs.1670/- by the applicant, though not in accordance with rules or instructions, cannot be considered a grave misconduct so as to attract the penalty of compulsory retirement from service.

10. In the above circumstances, we are of the view that the order passed by the Appellate Authority has to be set aside and at the same time, the order passed by the Disciplinary Authority has to be upheld. Accordingly, the O.A. is allowed in part by setting aside the Appellate Authority's order to the extent it is applicable to the enhancement of the punishment. We further order that the applicant be reinstated by the Respondents within one month from the date of receipt of copy of this order. It is also made clear that the applicant is not entitled for any back wages during the intervening period which, however, will be taken into account for other service benefits. No costs.


 (C.R.MOHAPATRA)
 ADMINISTRATIVE MEMBER


 (K.THANKAPPAN)
 JUDICIAL MEMBER