

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.D.A.967/1996

Date of order : 1/4/03 5 Buis
28/2/03

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. A. Sathath Khan, Judicial Member

HEMANTA BHATTACHARJEE, HEAD
PARCEL CLERK, SON OF LATE
JAINESWAR BHATTACHARJEE, WORKING
UNDER DIVISIONAL COMMERCIAL MANAGER(L)
HOWRAH, EASTERN RAILWAY, RESIDING
AT B/3, BALLY, DANGAPARA RAILWAY
COLONY, P.O. BALLY, DISTRICT-HOWRAH
.....APPLICANT

-VS-

1. UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER,
EASTERN RAILWAY, 17, NETAJI SUBHAS
ROAD, CALCUTTA-700001.
2. ^{S.} ADDITIONAL DIVISIONAL RAILWAY
MANAGER(G), EASTERN RAILWAY,
HOWRAH
3. CHIEF PERSONNEL OFFICER, EASTERN
RAILWAY, CALCUTTA, 17, NETAJI
SUBHAS ROAD, CALCUTTA-700001.
4. SR. DIVISIONAL COMMERCIAL MANAGER,
EASTERN RAILWAY, HOWRAH
5. DIVISIONAL COMMERCIAL MANAGER(L),
EASTERN RAILWAY, HOWRAH.

.....RESPONDENTS

For the applicant : Mr. A.K. Banerjee, counsel
For the respondents : Mr. P.K. Arora, counsel

ORDER

Hon'ble Mr. A. Sathath Khan, J.M.

This O.A. is directed against the chargesheet dated
27.5.93, order dated 13.9.95 of 5th respondent imposing a
penalty of withholding the increment for one year without

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cumulative effect, order dated 24.1.96 of the 4th respondent rejecting the appeal and the order dated 20.6.96 of the 2nd respondent enhancing the penalty by withholding the increment for one year with cumulative effect.

2. The brief facts of the case are that a chargesheet dated 27.5.93 was issued to the applicant alleging that a sum of Rs.47/- was found in excess in his counter. Enquiry report was submitted on 13.7.94 holding that the charge against the applicant was proved, that the 5th respondent by the order dated 13.9.95 imposed the penalty of withholding the increment for one year without cumulative effect, that the 4th respondent rejected the appeal by order dated 24.1.96 and that the second respondent enhanced the penalty by withholding the increment for one year with cumulative effect. The contentions of the applicant are that the excess cash of Rs.47/- was found in the joint counter manned by him and one A.B. Bharati, that the said excess amount of Rs.47/- was immediately deposited to Railway accounts as per the rules on the same date viz., 28.1.93, that the finding of the Enquiry Officer is perverse, that the Disciplinary Authority and the Appellate Authority have not applied their mind before passing their orders, that the penalty imposed by the Disciplinary Authority is illegal, that the rejection of the appeal by the Appellate Authority by a cryptic order is also illegal and that the enhancement of penalty by the Revisional Authority suo moto without stating any reason is also illegal. Under the circumstances, the

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applicant prays for quashing of the penalty imposed on him.

3. The contentions of the respondents are that the charge against the applicant was proved in the enquiry, that the Disciplinary Authority has rightly imposed the penalty which was confirmed by the Appellate Authority, that the Revisional Authority enhanced the penalty because it was a grave misconduct and that there are no merits in the case. Under these circumstances, the respondents pray for dismissal of the D.A.

4. Heard the learned counsel of both sides and considered all the pleadings and the relevant records of the case.

5. The learned counsel for the applicant, Shri A.K. Banerjee contended that the charge against the applicant is ^{not} sustainable and the orders passed by the respondents are vitiated due to non-application of mind. On the contrary, learned counsel for the respondents, Shri P.K. Arora vehemently contended that the applicant has contravened the provisions of IRCM 2429. Learned counsel for the applicant submitted that it is true that a sum of Rs.47/- was found in excess in the joint counter manned by the applicant and one A.B. Bharati but the same was immediately remitted to the Railway account, as required by IRCM 2429(a). We have gone through the IRCM 2429 which reads as under:-

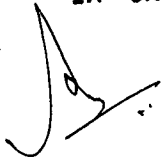
"2429. Keeping of private cash in station safe, etc., forbidden.-(a) Private cash should not be kept in the railway cash chest, drawers, ticket tubes, cash safes etc. If any such amount or extra cash, whether stated to be private or otherwise, is found by the supervisory staff or inspecting official, it should be remitted to the cash office."


As per clause (a) of IRCM 2429, private cash should not be kept in the Railway cash chest, drawers etc. and if any such amount is found by the supervisory staff or the inspecting staff the same should be remitted to the cash office. In the present case, the excess amount of Rs.47/- was admittedly deposited in the railway account by the applicant on the same day, as required by the IRCM and hence this cannot be considered as contravention of clause (a) of IRCM. The charge against the applicant is based on contravention of IRCM 2429(a). But unfortunately, neither the enquiry officer nor the disciplinary authority had applied their mind to the provisions contained in IRCM(a). The Appellate Authority has also rejected the appeal by a cryptic order which runs as follows:-

"Since the appeal has no new point, it is regretted. Punishment imposed should stand."

The Revisional Authority has also not considered the relevant provisions applicable to the case and has enhanced the penalty without giving any reason at all. Under the circumstances, we hold that the applicant cannot be considered to have contravened the provisions of IRCM 2429 and hence the charge against the applicant is not sustainable. Consequently, the order dated 13.9.95 of 5th respondent imposing the penalty, the order dated 24.1.96 of the 4th respondent rejecting the appeal and the order dated 20.6.96 of the 2nd respondent enhancing the penalty are hereby quashed with all consequential benefits.

6. In the result, the O.A. is allowed with no order as to costs.


(A. Sathath Khan)
MEMBER (J)


(S. Biswas)
MEMBER (A)