CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 168 OF 1996

Present : Hon'ble Mrs. Lakshmi Swaminathan, Vice-Chairman

Hon'ble Mr. S. Biswas, Member (A)

Ayodhya Prasad Yadav,
Sr. Commercial Clerk,
E.Rly. Budge Budge,
R/o Budge Budge Rly. Qtr.
No. L77/A, P.O. Budge Budge.

VS

1. Union of India through
General Manager, E.Rly.
Calcutta-1

2. The Div. Rly. Manager,
E. Rly. Sealdah

3. Sr. Vigilance Officer,
E. Rly. Calcutta-1

4. Sr. Commercial Manager,
E. Rly. Sealdah

5. The Station Manager,
E.Rly. Budge Budge

.... respondents

For the applicant : Mr. B.C.Sinha, Counsel

For the respondents : Mr. R.M.Roychowdhury, Counsel

Heard on : 15.1.03 : Order on : 20.1.03

O R D E R

S.Biswas, A.M.:

Through this OA, the applicant has essentially challenged the order dated 8.7.94 (Annexure-A13) passed by the disciplinary authaority and the order dated 8.8.95 (Annexure-A16) passed by the appellate authority. He has prayed for quashing of the aforesaid orders and to consider his case for promotion from 1.9.93, the date when his junior was promoted with all consequential benefits.

2. At the material time the applicant was working as Sr. Commerecial Clerk at Budge Budge railway station under the Sealdah Division of Eastern Railway. On 18.6.90, when he was working in the booking counter, he issued a ticket to a watcher-cum-passenger standing in the que for SPC ticket for Varanasi and it is alleged that he accepted extra amount of Rs. 2/-. Accordingly, the vigilance

team, which was conducting a test check, raided his counter and detected shortage of fund to the tune of Rs. 13.95p. A charge-sheet under Rule 9 was issued to the applicant on 22.11.90 containing two articles of charge of indulging in corrupt practice by charging extra amount of Rs. 2/- for a II class ticket to a passenger-cum-watcher of Vigilance Branch. An enquiry was held in which the applicant participated along with his defence helper. After the enquiry, the enquiry officer submitted his report on 2.3.94 holding that the charges under articles 1 and 2 and the imputation of misconduct under Art. I against the applicant were established. The applicant submitted a representation against the enquiry report raising various objections. The disciplinary authority on consideration of the enquiry report and the representation of the applicant, passed an order withholding the next increment of the applicant for a period of five years which was ordered not to be operated to postpone his future increments on the expiry of the punishment. The applicant preferred an appeal and the appellate authority by its order dt. 8.8.95 reduced the punishment of withholding of increment to four years instead of five years. Against this order, the applicnt preferred a revision petition, which was forwarded on 27.11.95.

2. The applicant contends that the enquiry was not conducted properly and that the disciplinary authority and the appellate authority passed the impugned order with close mind. He has also contended that he was denied proper opportunity in the enquiry inasmuch as vital witness was not produced and as such natural justice was violated. Thus, the entire enquiry proceeding was vitiated and as such the punishment order should be quashed. He has also contended that due to pendency of this proceeding he was denied promotion and hence the respondentes be directed to consider his case for promotion from the date when his next junior was so promoted.

3. The respondents have filed a reply in which the allegations raised by the applicant have been denied. It is submitted that the main witness, on the basis of whose report, the proceeding was started

S: A

was present and the applicant got full opportunity to cross examine him. There was, therefore, no violation of the principle of natural justice. The disciplinary authority on consideration of the enquiry report as also the representation of the applicant passed the impugned order of penalty. The appellate authority has also considered the appeal and reduced the penalty period. Hence, there is no question of non-application of mind.

4. In his rejoinder, the applicant has contended that the points raised by him in his representation as also in his appeal were not at all considered and that the enquiry was vitiated as the key witness was not made available for cross examination which is also admitted by the enquiry officer in his report. Thus the principle of natural justice was violated.

5. We have heard the ld. counsel for the parties and have gone through the documents produced. Ld. counsel for the respondents has alsos produced the relevant DA file for our perusal.

6. We find that the charge-sheet was issued to the applicant under rule 9 of the RS (DA) Rules, 1968, which is for major penalty. The main allegeation against the applicant is that he charged Rs. 2/extra to a decoy passenger of the vigilance team while selling a ticket. Accordingly, the vigilance team on examination found excess cash of Rs. 13.95 from the applicant's counter. 3 documents were listed by which the charge was sought to be proved. Similarly, names of 4 witnesses were mentioned by whom the charge was sought to be established. The enquiry was conducted in which the applicant has participated along with his defence helper. Finally, the enquiry officer submitted his report with the following finding :-

> " Taking into consideration the documents relied upon the enquiry, evidences given by PWI, PWII and PW-4, Defence advanced by the defence side to refute the charges and finally obseervations made hereinabaove under item No. 1 to 9 above, I find in the result of enquiry that the charge under article 1 and 2 annexure-I and imputation of misconduct under Art.-I in annexure-II against Sri Ayodhya Prasad Yadav Sr. BC/BGB is established."

S. A

7. Against this finding, the applicant made a representation raising various contentions. The disciplinary authority considered the matter and passed the impugned order of penalty dated 8.7.94 withholding the next increment of the applicant for a period of five years. It was also ordered that the period of punishment for five years shall not operate to postpone future increments on the expiry of the punishment. The detailed speaking order passed by the Disciplinary authority is enclosed with the impugned order. It is relevant to quote the same in full :-

> " I have read between the lines of the findings of EO and Sri A.P.Yadav's representation furnished in this behalf in great length and I partially echo to the findings of EO. Since the Articles of charges levelled against Sri Yadav as per rule 10 of the Rly. Servant (D&A) Rule 1968 were not established fully due to absence of PW/3 Sri A.Biswas, who held to be the main pereson to witness the transaction made btween the charged official and the watcher-cum-passengere (PW/2) as well as framing of the check memo of Rs. 96/- at Sealdah without having any independent witness which is spart and parcel off Rule 704 of Vigilance Manual under item A./BKD to establish the charges, have not been followed in the case. However, consequent upon the other loopholes, as found to have been involved by Sri A.P.Yadav Sr. CC/BGB in token of partial acceptance of the findings of EO, I am of the view of inflicting upon punishment ffor stosppage of increment (NC) for 5 (five) years when due next."

8. Thus it is quite clear that although a major penalty charge memo was issued and although the enquiry offficer held the charges levelled against the applicant to have been established, taking into consideration the objections of the applicant, the disciplinary authority held that the charges have not been established. However, considering other irregularity committed by the applicant as brought out in the enquiry report, he decided to impose a mainor penalty of stoppage of increment for 5 years without cumulative efffect vide rule 6(iv) of RS(DA) Rules. Thus the major penalty proceeding ended into imposition of minor penalty.

9. It will be obvious that the main objections of the applicant were duly taken into consideration by the disciplinary authority and he differed with the findings of the enquiry offficer that the charges were established as according to the disciplinary authority the

charges were not established. However, considering other irregularities he imposed only a minor penalty. In such circumstances, the contention of the applicant that the enquiry was vitiated as he was not given proper opportunity to cross examine vital witness having been accepted by the disciplinary authority, it cannot be held that the order passed by the disciplinary authority was arbitrary or without application of mind.

10. For imposition of minor penalty ordinarily no enquiry is required. But in the instant case an enquiry was already held since the charge sheet was for imposition of major penalty. However, the disciplinary authority held that the charges were not established. But he imposed minor penalty in partial agreement with the finding of the enquiry officer. The applicant has contended that ~~the~~ when the charge has not been established, the disciplinary authority cannot impose any penalty. He has also contended that the disciplinary authority has observed that there were certain loopholes which were found by the enquiry officer without indicating those irregularities. Therefore, the imposition of even minor penalty is bad and should be quashed. He also raised this point in his appeal dt. 13.8.94 in para 4.

11. It is true that the disciplinary authority has not elaborated the alleged loopholes while imposing the minor penalty. The appellate authority while passing the appellate order has stated that-

> " The gravity of case does not justify reduction of punishment. However, purely on himanitarian ground and with a view to improve your conduct, the punishment is reduced to stoppage of increment from five years to four years (N.C)."

12. Rule 22 of the DA Rules clearly specifies the procedure to be adopted by the appellate authority while dealing with appeal. It is provided there that the ~~the~~ appellate authority should consider whether procedure laid down has been complied with, whether the finding of the disciplinary authority is warranted by evidence on record and whether the punishment was adequate, inadequate or severe.

13. The appellate authority reduced the punishment period and as

such it can be said that he thought it to be excessive. But there is no finding of the appellate authority in regard to other two ingredients of Rule 22 i.e. to say whether the finding of the disciplinary authority is based on evidence. The applicant has particularly raised the point that while imposing minor penalty, no reason was assigned by the disciplinary authority. He simply stated that there were other loopholes without indicating what were they. The appellate authority should have considered this point. In that respect, we find the appellate order lacking.

14. Besides, the applicant made a revision petition. From the departmental file we find that the same was not considered being time barred. We, however, find that the said revision petition was forwarded by the Station Manager on 27.11.95 under his seal, but the same was received in the DRM's office on 29.11.95 (15.3.96) vide page 130 of the DA file. Rule 25(5) of the RS(DA) Rules provides for the time limit for revision/review. Since in this case, the revision petition has been filed within six months, it is not understood as to how the said petition was not considered by the appropriate authority and rejected as time barred.

15. In view of the above, as we find some justification in the contention of the applicant regarding non-recording of reason by the disciplinary authority while imposing minor penalty as also by the appellate authority in not following the provisions of Rule 22, we consider it fit to direct the revisional authority to consider the revision petition of the applicant (Annexure-A17) dt. 27.11.95 and to pass a speaking and reasoned order within two months from the date of receipt of a copy of this order. Be it noted that we have not gone into the merit of the contentions raised by the applicant in this case.

16. The other prayer of the applicant is against his non-promotion. Since promotion and DA proceedings are different and distinct issues, both the prayer cannot be raised in one application.