

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 05.10.2000

O.A. No. 336/1996

Mool Chand Yadav son of Shri Panna Lal Yadav aged about... years, resident of 32/3 Suthar Khanna Mohalla, Nasirabad (Rajasthan), last employed on the post of Asstt. Booking Clerk Kanor Distt. Chittorgarh (Rajasthan).

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Chief Commercial Manager, Western Railway, Churchgate, Bombay.
3. Additional Divisional Railway Manager, Western Railway, Ajmer.
4. Divisional Commercial Manager, Western Railway, Ajmer.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order at Annexure A/1 dated 29.06.94 (communicated vide order dated 8.7.94) passed by the reviewing authority, enhancing the penalty to one of removal from service by modifying the order of appellate authority dated 26.05.89 (Annexure A/5). He has also challenged the order of 2nd appellate authority (General Manager) dated 22.6.95 vide Annexure A/2.



2. The learned counsel appearing for the applicant submitted that the order of reviewing authority vide Annexure A/1 and the order of 2nd appellate authority vide Annexure A/2 are illegal and without jurisdiction. It is submitted that on the basis of the evidence on record, the charges levelled against the applicant could not be proved. It is also submitted that the punishment of removal from service awarded by the reviewing authority vide Annexure A/1 and confirmed by the 2nd appellate authority vide Annexure A/2, are disproportionate and unconscionable. Therefore, the impugned orders are liable to be set aside. The learned counsel appearing for the respondents supported the orders and contended that so far as the findings of the facts are concerned, they have already been confirmed by this Tribunal in O.A. No. 125/90 vide judgement/order dated 05.01.94 and the order of the reviewing authority passed earlier was quashed on the ground of non-speaking order, giving opportunity to the reviewing authority to consider the case of the applicant on the representation filed by him and, thereafter, the impugned order vide Annexure A/1 has been passed by the reviewing authority and the same has been confirmed by the 2nd appellate authority vide Annexure A/2. It is stated that the the matter was impliedly remanded to the reviewing authority only regarding the quantum of punishment. Therefore, all the contentions raised regarding the assessment of evidence and the documents etc., cannot be considered in this application now. He has submitted that having regard to the nature of charges proved, awarding the punishment of removal from service by modifying the order of the 1st appellate authority is illegal and the order of reviewing authority does not call for any interference of this Tribunal. Accordingly, he prays for dismissal of this O.A.

3. In order to appreciate the rival contentions, we think it appropriate to note the brief history of the case as under:-

4. While the applicant was serving as Booking Clerk at Ajmer Railway Station in May, 1985, a charge sheet was issued and after holding an



RAN

enquiry, the disciplinary authority passed an order of removal from service. Being aggrieved by the said order, the applicant preferred an appeal before the appellate authority and the appellate authority vide order dated 26.05.89, allowed the appeal in part and the punishment of removal from service was modified by imposing a punishment of reduction to the next lower grade for a period of five years with future effect (we are referring to this order as the order of the 1st appellate authority). However, the Chief Commercial Superintendent by issuing a show cause notice under Rule 25 of the Disciplinary Rules, reviewed the order of appellate authority vide order dated 15.02.90 by imposing the penalty of removal from service. That order of the reviewing authority was challenged before this Tribunal in O.A. No. 125/90. This Tribunal after hearing the arguments on both sides, passed an order on 05.01.94 by confirming the findings recorded by both the authorities and quashed the order of reviewing authority dated 15.02.90, by observing that the punishment imposed by the 1st appellate authority, i.e., Additional Divisional Railway Manager, modifying the punishment of reduction to lower grade for five years would stand, subject to the order to be passed by the reviewing authority. However, this Tribunal reserved the liberty of the reviewing authority to consider the representation of the applicant and pass a speaking order. Thereafter, the reviewing authority has passed the impugned order vide Annexure A/1 dated 08.07.94. It appears that the applicant challenged this order by way of an appeal before the General Manager, who dismissed his appeal vide order Annexure A/2 dated 22.06.95 (this order we are referring to as 2nd appellate authority's order for the sake of convenience). Challenging these orders vide Annexures A/1 and A/2, the present application is filed.



5. From the history of the case stated above, it is clear that in an earlier occasion, this Tribunal in O.A. No. 125/90 vide judgement/order dated 05.01.94, considered the contentions of the applicant regarding appreciation of the evidence and non-furnishing of certain documents

[Handwritten signature]

etc. and confirmed those findings. The contention that the enquiry officer was biased, was rejected. A further contention that some documents required by the applicant were not supplied, was also rejected by this Tribunal, stating that such documents were not used by the enquiry officer and they were not part of the records and they were also not available. Accordingly, this Tribunal recorded its findings as under:-

"6. The argument of the learned counsel for the applicant is that the findings are without evidence and that the findings are arbitrary and capricious and defective. We have seen the findings placed at Annexure A/5. The enquiry officer has discussed the evidence in detail and we do not find that the findings are arbitrary or without evidence.

7. We, therefore, hold that the enquiry has been properly conducted and the findings are warranted by the evidence on record. We also have gone through the appeal placed at Annexure A/6 by which the Additional Divisional Railway Manager has reduced the punishment from removal to that of reduction to next lower grade for the period of five years with future effect."

From the above findings, it is clear that similar contentions urged by the applicant now have already been considered and rejected by this Tribunal vide judgement/order dated 05.01.94. Therefore, the applicant cannot raise any contention regarding appreciation of evidence, since those findings recorded by the Tribunal has become final.

6. This Tribunal in O.A. No. 125/90, after holding that the show cause notice issued by the reviewing authority was within time, found fault with the order of the reviewing authority only on the ground that it was a non-speaking order. Accordingly, the order of reviewing authority was quashed by maintaining the order of appellate authority with a liberty to the reviewing authority to consider the case of the applicant afresh on the representation filed by him. From this, it follows that the question of quantum of punishment was only the thing that was kept open to be considered by the reviewing authority. Now the reviewing authority has passed the impugned order vide Annexure A/1.

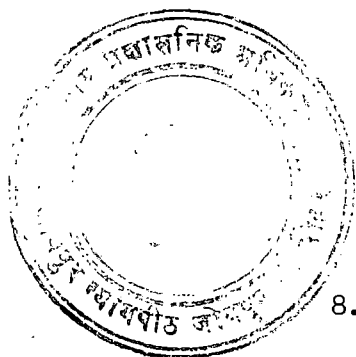
7. From reading of the impugned order of the reviewing authority now



passed vide Annexure A/1, we find that all the contentions raised by the applicant in a parawise representation were considered by the authorities. The reviewing authority, regarding the quantum of punishment, observed as under:-

".... The issue of EFTs/BPTs against handicapped persons concession as stipulated in IRCA Coaching Tariff is mandatory so as to safeguard against any misuse/manipulation. Shri Yadav did not follow these rules and the handicapped persons categorically stated in the enquiry that they did not travel to the destination as indicated in the concession. In all this, malafide intention to misappropriate the difference in amount of fare is very clear and the penalty of removal from service imposed by the DCS/AII on Shri Yadav was deserved. The award of lower penalty of appeal by ADRM was an error of judgement which has been corrected by the issue of of this show cause notice. Shri Yadav has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant. Therefore, under the powers vested in me by the Railway Service Disciplinary Action Rules of 1968 and the authority to review the case conferred under Rule 25, it is considered necessary to enhance the penalty of reduction awarded by ADRM to that of removal from service.

I, therefore, decide that the penalty to be imposed upon Shri Yadav will be removal from service with immediate effect for the charges levelled against him."



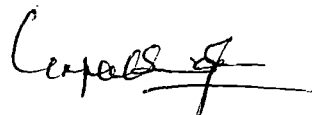
8. From the above observations of the reviewing authority, it is clear that by issuing of EFTs/BPTs against handicapped persons concession as stipulated in IRCA Coaching Tariff is mandatory so as to safeguard against any misuse/manipulation, and the applicant had not followed this procedure with a malafide intention to misappropriate the difference of amount in fare, since such handicapped persons have categorically stated that they did not travel at the destinations as indicated in the concession. The reviewing authority, accordingly, opined that the applicant deserved the penalty of removal from service and the 1st appellate authority was in error in passing his judgement and the same was required to be corrected. Reviewing authority also observed that the applicant failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant. Accordingly, by exercising his power under Rule 25 of the Railway Service Disciplinary Action Rules, 1968, the reviewing authority imposed the punishment of removal from service on the applicant by passing the impugned order at Annexure A/1. It is doubtful, whether against this



order any appeal lies to the General Manager. At any rate, even the General Manager considered the appeal filed by the applicant and confirmed the order of the reviewing authority. Therefore, we do not see any illegality in the impugned order at Annexure A/1 passed by the reviewing authority. In this case, even the disciplinary authority awarded the penalty of removal from service, being of the opinion that the charges proved warranted the punishment of dismissal only. Having regard to these circumstances, we do not find any error in the punishment awarded by the reviewing authority and such quantum of punishment cannot be said to be unconscionable or disproportionate to the charges proved in the case. Accordingly, we do not find any merits in this application.

9. For the above reasons, we pass the order as under:-

"Application is dismissed. But in the circumstances, without costs."


 (GOPAL SINGH)
 Adm. Member


 (B.S. RAIKOTE)
 Vice Chairman

cvr.