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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.256/2005

Date of decision: 24.3.2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

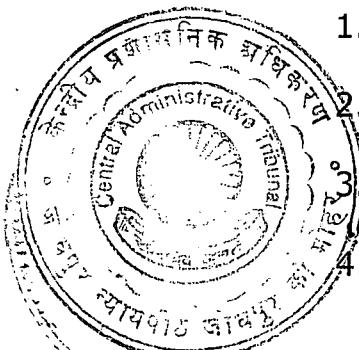
Hon'ble Dr. K.S.Sugathan, Administrative Member.

Madan Lal Sharma, s/o Shri Mamraj Sharma, retired Booking Supervisor, North West Railway, Raisingh nagar resident Near Masjid, Raising Nagar, District Sri Ganganagar (Rajasthan).

: applicant.

Rep. By Mr. Trilok Joshi : Counsel for the applicant.

VERSUS



1. Union of India through General Manager, North West Railway, Headquarter (old Loco Area) Jaipur (Rajasthan).
2. Additional Divisional Railway Manager North West Railway, Divisional Officer, Bikaner (Rajasthan)
3. Senior Divisional personnel officer, North West Railway, Divisional officer, Bikaner (Rajasthan)
4. Divisional Commercial Manager, north West Railway, Divisional Office, Bikaner (Rajasthan).

: Respondents.

Rep. By Mr. S. Raisingh Nagar
proxy counsel for Mr. Manoj Bhandari,: Counsel for the respondents.

ORDER

Per Dr. K.S. Sugathan, Administrative Member.

Applicant is a retired railway employee. He joined railways on 15.04.1964 and retired on 31.05.2003. On 15.02.2001, he was issued a charge sheet containing the following charges:



1. He refused to issue the tickets for MTJ despite many requests from the decoy passenger and issued the tickets for SGNR instead of MTJ.
2. Rs. 279/-, were recovered from a register which was got deposited in Govt. cash vide MR No. 787818, dated 19.10.2000. Thus it is clear that this amount was earned by him illegally for his personal gain.
3. He adopted a non-cooperation attitude as much as he refused to prepare the cash details of Rs. 279/- which were recovered from the register in the presence of SS/RSNR.

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4. He was also found responsible for creating artificial shortage of Rs. 16/- in his Govt. cash."

2. On conclusion of the inquiry, the first three charges were held as proved and the fourth charge was proved to the extent that shortage of Rs.1/- in the Govt. cash. On the basis of the report of the inquiry officer, the Disciplinary Authority i.e. the Divisional Commercial Manager, by an order dated 04-09-2002 (Ann. A/3) imposed the penalty of reduction to the lower pay scale of Rs. 5500-9000 for a period of one year or till retirement whichever is earlier with postponing of future increments. Subsequently, vide order dated 23.09.2002 (ann. A/2), the penalty was modified as reduction to a lower time scale of pay of Rs. 5500-9000 till retirement with cumulative effect. One day later i.e. on 24.09.2002, taking note of the penalty orders dated 04.09.2002 and 23.09.2002, the Senior Divisional Personnel Officer, Bikaner, issued an order by which the basic pay of the applicant was fixed at Rs. 7250/- in the lower pay scale till the date of his retirement (A/4). The applicant submitted an appeal on 01-11-2002, against the said penalty. That appeal was dismissed as time barred vide order dated 02.06.2003. The applicant preferred O.A. No.163/2003 before this Bench of the Tribunal. This Tribunal vide its order dated 18-02-2005, allowed the O.A in part and directed the Appellate Authority to decide the appeal afresh on merits. Thereafter the Appellate Authority issued an order dated 30.5-2005 (Ann. A/1) rejecting the appeal. The decision of the appellate Authority, namely, the Additional Divisional Railway Manager (R/2) was communicated and signed by Divisional



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Commercial Manager(R/4). The applicant has challenged the penalty imposed on him.

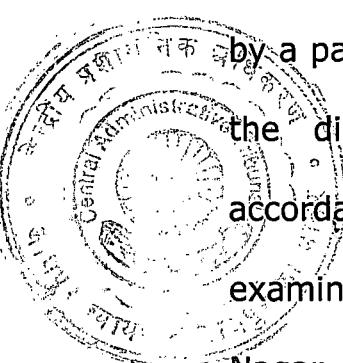
3. It is contended by the applicant that decoy check conducted by the vigilance squad was unsuccessful, as the applicant did not collect excess fare from the decoy passenger. This has been clearly proved in the inquiry. The applicant did not have sufficient time to issue paper ticket for Mathura Junction (MTJ) since the train was about to arrive and no printed ticket for Mathura Junction was available and therefore he had issued ticket upto Sri Ganganagar (SGNR). The inquiry officer has not considered the circumstances under which the applicant was forced to issue ticket for Sri Ganganagar instead of Mathura Junction. The amount of Rs. 279/- was not recovered from the possession of the applicant. It was allegedly taken from a register lying in the room, but that register had not been produced during the inquiry. During the inquiry proceedings, the Station Superintendent himself has testified that the amount of Rs. 279/- was in the hands of Vigilance Inspector. There are material contradictions in the deposition of prosecution witnesses. The order dated 24.09.2002 issued by the Sr. Divisional Personnel Manager, Bikaner is illegal in so far as he is neither a disciplinary authority nor an appellate authority. The punishment order and the appellate authority's order are non-speaking order as they do not disclose reasons for rejecting the contentions raised by the applicant in his appeal. As per para 1322 of Indian Railway Establishment Code (IREC for short)- Vol .II the authority which can order the reduction



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to a lower pay scale can only fix the pay that would be drawn by the employee in the lower pay scale. Therefore the order issued by the Sr. Divisional Personnel Manager is unlawful and without jurisdiction.

4. The respondents have filed a reply contesting the case. It is stated in the reply that the time available for issue of paper ticket is not relevant. It was the duty of the applicant to issue ticket for Mathura Junction as demanded by the decoy passenger. The argument that there was shortage of time cannot be accepted. The applicant is expected to know the correct fare for the station asked by a passenger. The applicant has been given full opportunity during the disciplinary proceedings. The inquiry was conducted in accordance with rules and in an impartial manner. During the cross examination Shri Harbhajan Dass, Station superintendent Raisingh Nagar, had deviated from the original statement given by him regarding the discovery of Rs. 279/- from the register with a view to favour the applicant who is his colleague. The Appellate Authority has applied his mind and considered the contentions of the applicant and rejected the appeal. The order issued by the Sr. Divisional Personnel Manager, is not illegal and it was only a clarificatory order. The applicant had refused to cooperate for preparing the details of Rs. 279/- found from the register.



5. We have heard Mr. Trilok Joshi, learned counsel for the applicant and Mr. Raisingh Nagar, for Mr. Manoj Bhandari counsel for



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the respondents. We have also perused the documents on record carefully. The learned counsel for the respondents have relied on the following citations: (i) **Union of India and others vs. Upendra Singh** [(1994) 3 SCC 357]; (ii) **Govt. of Tamil Nadu and anr. Vs. A. Rajapandian** [(1995) 1 SCC 216]; **U.P. State Road Transport Corporation vs. Basudeo Chaudhary and another** [(1997) 11 SCC 370].

6. Following the decisions of the Apex Court in the case of **B.C. Chaturvedi vs. UOI and ors.** [1996 SCC (L&S)80] and **High Court of Judicature at Bombay vs. Shashikant S. Patil and anr.** [2000 SCC (L&S) 144] the grounds for judicial review in disciplinary proceedings are

now restricted to the examination of

- a) whether there has been a violation of the principles of natural justice; or
- b) whether the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry or
- c) whether the decision is vitiated by extraneous considerations to the evidence and
- d) whether the conclusion is ex-facie arbitrary or unreasonable.

We have examined this case on the basis of the aforesaid principles laid down by the Hon'ble Apex Court. It is not in dispute that the applicant had been given proper opportunity to put forward his case before the inquiry officer. There is, therefore, no violation of principles of natural justice. It is also seen from the proceedings that there is no violation of any statutory rules or regulations. That leaves us with two other grounds which are discussed in the following paragraphs.

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7. Admittedly, there was a decoy check on the applicant and it was found that during the decoy check he did not collect any excess amount from the decoy passenger. The charge that has been held as proved against the applicant is that he issued ticket for Sriganagar i.e. instead of Mathura Junction as requested by the decoy passenger. The applicant's defence was that he did not have printed ticket for Mathura and there was no time to prepare paper ticket which also involved calculation of fare, as the train was about to arrive. In reply to the above contention the respondents have argued that train was about 8 to 10 minutes late and therefore there was sufficient time. The inquiry officer has accepted the version of the prosecution.

8. The second and third charges are connected. They relate to the recovery of Rs. 279/- from a Register in the booking office. The inquiry officer held the second charge as proved on the basis of deposition given by the vigilance inspector who stated that when he entered the booking office, he saw that the applicant was hiding something in the register. The following extract from the report of the inquiry officer in respect of Art. (ii) and (iii) of the charge sheet is relevant:

"Article No. ii and iii: (from p.39-40 of Ann. A/8.)

Art. No. ii and iii are inter related so they are discussed in the same para.

Ex. 1-4 is the each details of Rs. 279/- prepared by Shri Harbhajan Dass SS/ RSNR. Perusal of this document revealed this amount was recovered from the register kept in the booking office in his presence. It is also indicate that this amount was recovered in the duty of the CO who refused to prepare cash detail of this amount and also to issue the MR. This amount was subsequently deposited in the govt. cash and MR was issued vide Ex.P-3 & P-4. He deposed that this amount was not recovered in his

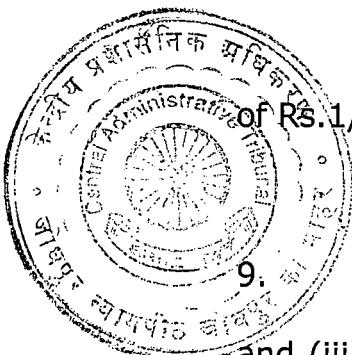
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presence. Regarding reason for refusal by the CO to record the cash details of Rs. 279/- He deposed that since vig. Team did not give any thing in writing he refused. In his statement vide P-6 CO had stated regarding his refusal to prepare cash detail of Rs. 279/- that it did not pertain to him so he refused to prepare the cash details.

From the above discussion it is observed that CO did not deny refusal to prepare the cash details. In P-4 the reason for not preparing the cash details that it did not pertain to him , but during enquiry defence contended that the vig. Team did not give any thing in writing so he refused to prepare the cash details. The plea of defence is not accepted because CO should had record the cash details first and there after he should have recorded his plea. As such the refusal of the CO is treated as non-cooperation.

Sh Niaze Ahmed. VI as PW when asked deposed that while vig. Team was entering in the bkg office, CO was found hiding some thing in the register. Under these circumstances the cash which was unaccounted is treated as pertained to the CO and in the absence of any justification it is treated as illegally earned by the CO, hence article note ii and iii are stand proved."



The fourth charge was proved only to the extent of shortage of Rs.1/- as against Rs. 16/- mentioned in the charge sheet.

9. It would be seen from the above extract that the charge (ii) and (iii) have been held to be proved on the basis of the deposition of the vigilance inspector who was part of the vigilance team. There is no other independent or supporting evidence to show that the amount of Rs. 279/- was illegally obtained by the applicant from passengers.

10. The applicant has challenged the order dated 24-09-2002 (Ann. A/4) issued by the Sr. Divisional Personnel Manager, Bikaner by the applicant on the ground that the latter had no competence to issue that order. The reply given by the respondents is that the said order is only a clarificatory order. We are not convinced about the correctness of the stand taken by the respondents in this regard. In

our view it is not a clarificatory order. The Senior Divisional Personnel officer has actually determined the quantum of reduction in pay by this order. The applicant was drawing Rs. 7900/- in the pay scale of Rs. 6500-10500 at the time of punishment. It was reduced to Rs. 7,250/- in the pay scale of Rs. 5500-9000 by the Sr. Divisional Personnel officer, who is neither the disciplinary authority nor the appellate authority. What has been done by this order is to actually quantify the loss to be suffered by the applicant. In our considered view such an order could not have been passed by the Senior Divisional Personnel officer. It could have been passed only by the competent authority who can impose the penalty, as laid down in

IREC. Para 1322 of IREC Vol II reads as follows:

1322 (FR 28) Pay on reduction to lower post:-

The authority which orders the reduction of railway servant as a penalty from a higher to a lower post or time scale, may allow him to draw any pay, not exceeding the maximum of the lower post, or time scale which it may think proper

Provided that the pay allowed to be drawn by a Railway servant under this Rule shall not exceed the pay which he would have drawn by the operation of Rule 1313 (F.R.22) read with Clause (b) or Clause (c) as the case may be, of Rule 1320 (F.R. 26)

11. It is clear from the aforesaid provision of para 1322 of IREC Vol. II that it is for the authority who ordered the reduction to a lower pay scale to fix the pay in the lower scale. In that view of the matter we have no hesitation in coming to the conclusion that the order dated 24.09.2002 passed by the Sr. Divisional Personnel officer, Bikaner is illegal and has to be set aside.

12. We now come to the issue of quantum of punishment. As per Railway Servants Discipline and Appeal Rules, 1968, reduction to a lower scale of pay is a major punishment. The applicant was holding the post in the pay scale of Rs. 6500-10500 and was drawing Rs. 7900/- as basic pay. The scale of pay was reduced to Rs. 5500-9000 and his basic pay was reduced from Rs.7900/- to Rs.7250/-. We are conscious of the rulings of the Apex Court on the issue ^{of} interference with the quantum of punishment. The Apex Court in the case of **Ranjit Thakur vs. Union of India** [1988 SCC (L&S) 1] laid down the principle that Court /Tribunal should not normally interfere with the punishment imposed by the disciplinary authority in normal circumstances, except in appropriate cases by considering the factors like nature of charges proved against and the past conduct. It has also been held by the Apex Court that although the choice and quantum of punishment is within the jurisdiction and discretion of the authorities, yet it must suit the offence and " it should not be vindictive or unduly harsh" nor "so disproportionate to the offence so as to shock the conscience and amount in itself to conclusive evidence of bias".

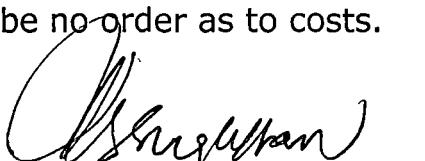
13. We have looked at the gravity of the charges and also the past conduct of the applicant. The charges no. (i) and (iv) are of a less serious nature to warrant a major punishment. Charge no. (ii) and (iii) rest on weak foundation. The fact remains that the applicant did not over charge the decoy passenger. There is also nothing to indicate any past misconduct proved against the applicant or any

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penalty imposed. Looked at from all such angles, the penalty of reduction to a lower pay scale with cumulative effect is a harsh punishment and disproportionate to the charges proved. At best the applicant could have been imposed the penalty of stoppage of one increment without cumulative effect or if no increment was due till the date of his retirement, a reduction to the next stage in the existing pay scale without cumulative effect could have been justified.

14. For the reasons stated above, the O.A is partly allowed. The penalty order dated 04-09-2002, 23-09-2002 and 24-09-2002 are hereby quashed and set aside. The respondents are at liberty to reconsider the quantum of punishment afresh by taking into account the observations made in this order and pass fresh penalty orders if they wish to. In the facts and circumstances of this case there will be no order as to costs.



{Dr. K.S. Sugathan}
Administrative Member.
JSV



{ Justice S.M.M. Alam }
Judicial Member.

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दिनांक 12/13 के आदेशानुसार
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