

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.88/2012

Jodhpur this the 16th day of July, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Bhanwar Lal Purohit s/o Shri Mohan Lal Purohit, aged about 46 years r/o Purohit Sadan, Industrial Area, Rani Bazar, Bikaner, District Bikaner (Presently working as ECRC at Railway Station Balotra, Jodhpur Division, North Western Railway).

.....Applicant

By Advocate: Shri S.P.Singh

Versus

1. The Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jodhpur.
3. Asst. Commercial Manager, North Western Railway, Jodhpur
4. Shri Laxmi Kant Vyas, Divisional Commercial Manager, North Western Railway, Jodhpur.

.....Respondents

By Advocate : Shri Kamal Dave

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The present application has been filed by the applicant against the order of punishment passed by the Disciplinary Authority and the order of the Appellate Authority enhancing the penalty and has prayed for the following reliefs:-

- a. That by writ order or direction the impugned order Memo No.C.G.402-T/Nokha/06 dated 20.10.2011 forwarded by respondent No.2 and impugned order C.G.402T/NOK/06 dated 30.08.2007 may kindly be declared unjust, illegal and deserves to be quashed and set aside.
- b. That the respondents may kindly be directed to release consequential benefits without any delay.
- c. That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- d. That the costs of this application may be awarded to the applicant.

2. Brief facts of the case, as stated by the applicant, are that while the applicant was posted as Enquiry cum Reservation Clerk (ECRC), six tickets were prepared and before handing over to the passengers and collecting the amount, Shri Laxmi Kant Vyas, Divisional Commercial Manager and Commercial Inspector took the ticket by making allegation that these tickets have been made without collecting the amount. The applicant denied the allegations and the respondents initiated disciplinary proceeding. The Inquiry Officer submitted inquiry report leveling charges that the Charged Officer has issued six tickets without collecting the due fare from the passengers. The applicant filed representation against the inquiry report and thereafter the Disciplinary Authority imposed penalty of stoppage of grade increment for a period of six months without cumulative effect vide order Ann.A/6 and order dated 30.8.2007 (Ann.A/2). Thereafter the applicant preferred appeal against the penalty order and the Appellate Authority has enhanced penalty by awarding punishment of reduction to lower stage from pay scale of Rs. 5250/- to lowest pay scale of Rs. 4500/- for a period of three years without cumulative effect. The applicant challenged the appellate order before this Tribunal by filing OA No.91/2009 and this Tribunal vide order dated 26.7.2011 directed that the appeal filed by the

applicant be considered afresh and thereafter the order of rejection of appeal has been conveyed vide order dated 20.10.2011 (Ann.A/1). The applicant has alleged that the punishment order passed by the respondents dated 20.10.2011 and 30.7.2007 are per-se illegal as the same have been passed without application of mind and appreciation of correct factual and legal aspect of the matter in its true spirit. The respondents did not adopt the prescribed procedure for awarding major punishment as the Disciplinary Authority and the Appellate Authority is same in this case. The applicant has also stated that there should always be nexus between the negligence or breach of orders and the loss caused to the Government, but in this case, nothing has been done by the Disciplinary Authority. Therefore, aggrieved of the action of the respondents the applicant has filed this OA praying for the reliefs as extracted above.

3. The respondents by way of reply to the OA have denied the right of the applicant and submitted that the Disciplinary Authority after examining the inquiry report and the representation submitted by the applicant passed the order of punishment awarding punishment of stoppage of grade increment for six months without cumulative effect. According to the respondents, the fact regarding enhancement of punishment has already undergone judicial scrutiny in the OA No.91/2008 which was allowed to the extent that the new Appellate Authority shall pass orders on the appeal and the same has been passed. The respondents have stated that the Inquiry Officer concluded that the charge of issuing six tickets without collecting due fare from the passengers is proved. The applicant was serving as ECRC and failure on his part to issue tickets without collecting the fare invites disciplinary inquiry and punishment. The inquiry was conducted as per rules and the Disciplinary Authority has passed the punishment order which has

been enhanced by the Appellate Authority. Therefore, the applicant is not entitled to any relief.

4. Heard both the parties. Counsel for the applicant contended that in earlier OA no.91/2008, the order of the Disciplinary Authority as well as the Appellate Authority was challenged before the Division Bench of this Tribunal and the Tribunal vide order dated 26.7.2011 quashed the order Ann.A/2 and A/8 and directed the respondents to reconsider the appeal filed by the applicant by the new Appellate Authority and to dispose of the matter within two months after giving opportunity of hearing to the applicant and the OA was allowed to the above extent. The Appellate Authority vide order dated 20.10.2011 rejected the appeal of the applicant, which is unjust, illegal and against the settled principles of law, therefore, the same requires to be quashed and set aside. He further contended that the impugned order dated 30.8.2007 passed by the Disciplinary Authority is also unjust, illegal and against the rules, therefore, it also requires to be set aside. Counsel for the applicant further contended that when the Inquiry Officer in its report Ann.A/5 held that the ulterior motive of the Charged Officer does not prove, therefore, the order Ann.A/6 i.e. the penalty order passed by the Disciplinary Authority is also per-se illegal, and the order passed by the Appellate Authority while enhancing punishment is also against the rules. He further contended that no opportunity of personal hearing was afforded to the applicant before passing the order Ann.A/1.

5. Per contra, counsel for the respondents contended that the order Ann.A/12 i.e. order dated 26.7.2011 passed in OA No.91/2008 was only to the limited extent to decide the appeal by the Appellate Authority because the appeal was decided by the same person as Appellate Authority who had

earlier passed the punishment order as Disciplinary Authority and was later on promoted as Appellate Authority. Therefore, the other grounds raised by the applicant cannot be heard at this stage. He further contended that in Ann.A/1 itself it has been stated that the applicant was personally heard and the Appellate Authority passed the order Ann.A/1. Counsel for the respondents further contended that the order Ann.A/1 is as per rules because the applicant was working in the scale of Rs. 4500-7000 at the basic pay of Rs. 5250/- and it has been specifically ordered that his pay has been reduced to Rs. 4500/- for three years without cumulative effect. The Appellate Authority was within its power to pass such orders. He further contended that even if we consider Ann.A/6, it is a well reasoned and speaking order.

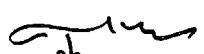
6. We have considered rival contention of both the parties and perused the relevant material available on record. So far as not affording any opportunity of hearing to the applicant is concerned, the order Ann.A/1 itself states that the applicant was heard on appeal dated 10th October, 2011. Further from a bare perusal of order Ann.A/1 and sub-rule (vi) of Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968, it is clear that "reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the railway servant was reduced and his seniority and pay on such restoration to that grade, post of service" can be imposed on a railway servant for good and sufficient reason.

7. In our considered view, when vide Ann.A/12 the OA was allowed to the limited extent, now the applicant is not free to raise the issue regarding illegality of chargesheet, report of the Inquiry Officer or the order of the

Disciplinary Authority. However, looking to Ann.A/6, it is clear that the Disciplinary Authority has taken a different view from what has been reported by the Inquiry Officer that too by a speaking order and it is settle law that the Disciplinary Authority can take a different view than what has been reported in the inquiry report by the Inquiry officer. Therefore, Ann.A/1 or A/2 do not suffer from any illegality, irregularity or any other defect and no interference is required in the matter.

8. Accordingly, the OA being devoid of any merit is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

R/

R/C
JUN 2010

R/C
JUN 2010
2011/12