

Central Administrative Tribunal
Lucknow Bench

OA.397/2003

Lucknow, this the 18th day of September, 2008

Hon'ble Mr.Shanker Raju, Member (J)
Hon'ble Dr.Veena Chhotray, Member (A)

Lala, aged about 46 years,
Officiating Station Master Tala Khajuri,
Son of Shri Bihari Lal, presently working at
Transport Nagar, Lucknow,
resident of Village Rajagarh Purely Lodhan Ka Purwa,
P.O. Gauriganj,
Distt. Chatra Patti Sahu gi Maharaj
Nagar, (Old Sultanpur)Applicant

(By Advocate: Sh.R.C.Singh)

Versus

1. Union of India, through its General Manager, Northern Railway, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow;
3. Additional Divisional Railway Manager,-II Northern Railway, Lucknow;
4. Senior Divisional Operating Manager, Northern Railway, Lucknow; ,
5. Divisional Operating Manager, Northern Railway, Lucknow;Respondents.

(By Advocate: Sh.N.K. Agarwal)

O R D E R

Hon'ble Dr.Veena Chhotray, Member (A)

The applicant, an officiating Station Master under the respondent Ministry of Railway, through this OA seeks to quash the impugned order dated 17-5-2002 by the Disciplinary Authority reverting him to the post of Cabin Man and fixing his pay in the initial stage with

cumulative effect (A-2) and the order dated 9.7.2003 by the Appellate Authority maintaining this punishment and depriving the applicant from dealing with cash in future (A-1).

2. Briefly, the applicant, a substantive holder of the post of Assistant Station Master (ASM) (Rs.5000-8000/-) was officiating as Station Master (SM) (Rs.5500-9000/-) w.e.f. 14.07.1996. While working as the Station Master, Tal Khajuri in respect of an incident on 2/3-05-1999, he was issued a major penalty charge sheet vide memo dated 26.05.1999. The charge pertained to an attempt of misappropriation of Rs.12091/- by manipulating to show a fake dacoity and by misleading the authorities. Besides it was alleged that the applicant had tried to forge signature of the Guard on Cash Safe Register. For these misconducts, the Delinquent Officer (DO) was charge sheeted for violation of Rules 3(1) (i) (ii) (iii) of the Railway Servants (Conduct) Rules 1966. The charge was held to be proved in the inquiry report submitted on 28.01.2002. Vide Disciplinary Authority (DA) order dated 17.05.2002 the applicant has been reverted to the post of Cabin Man in the pay scale of Rs.3050-4590/- with pay fixation at the initial stage with cumulative effect for three years. This has been upheld by the Appellate Authority (AA) vide the impugned order dated 9.07.2003.

3. In support of the OA several grounds, both technical as well as substantive, have been adduced. Of these only the salient ones are being mentioned here. Alleging manifest error of law and jurisdiction it is contended that the charge sheet was initiated by the Divisional Operating Manager (DOM) who was not the competent authority to

initiate and deal with the memo of major penalty as per Schedule of Powers. Further, the same official on his promotion as Senior DOM issued the initial appellate order on 17.3.2003 (A-3), whereas as per the rule it should have been decided by the next higher authority (Para 4.20).

The impugned order of the DA is faulted on account of double penalty. It is stated that by reverting the applicant from ASM grade Rs.5000-8000/- to the lowest of Cabin Man grade Rs.3050-4590 double penalty under Rule 6 of Discipline and Appeal Rule 1968 i.e. No V (reduction to a lower stage in the time scale) and No.VI (reduction to a lower time scale) have been imposed. Besides it is objected that the punishment of banning the applicant from handling cash in future is not as per the list of penalties prescribed in the Rules. The order of the AA has been challenged on the ground of being non-speaking and non-reasoned one without being based on the pleas of the applicant in his appeal.

4. Before the regular inquiry, there was a fact finding enquiry leading to a joint report dated 3.5.1999. This was the basic document in support of the Charge Memo. The plea of malafide against two Members of this team i.e. Shri S.K. Shukla, RPF Inspector Rai Bareilli and Shri Parvez Ahmed, TI/UCR has been adduced. While in case of the former the malafide is attributed due to registration of a fake case where the applicant is said to have been exonerated; the latter is said to be because of some earlier problems relating to forwarding of overtime bills. Tal Khajuri is said to be beyond the jurisdiction of TI/UCR who is alleged to have made an unauthorized foray of being

involved with this inquiry. The applicant's version is that the first ones to come to the spot were the Station Superintendent, Amethi, and the S.O GRP, Pratap Garh. During their investigation cash as well as the bags containing it had been recovered and needful directions given for deposit of cash. These officials had not found any case for embezzlement or misappropriation. However, during the subsequent inquiry only-as per the applicant 'uncalled for' and 'unauthorized'-attempted misappropriation of funds and other related charges had been levelled. The aforesaid plea of malafide is thus meant to vitiate the basis of the entire disciplinary action in this case.

The averment of denial of reasonable opportunity has also been made. After the expiry of the defence helper, Shri B.L. Verma, the Inquiry Officer is said to have not allowed another defence helper and thereby seriously denied the applicant reasonable opportunity to present his case. (Para 4.25) Besides failure to examine named witnesses and also same critical officials are cited in support of this plea (Paras 4.8 and 4.9 respectively)

It is said to be a case, where no prima facie charge is made out and the punishment is excessive and beyond proportion.

5. The contentions by the applicant have been contested by the respondents. The issue of the Charge Memo as well as the order of the DA are said to be within due competence by the averment that since the applicant was working in the grade of Rs.5000-8000/-, the DOM being senior scale official was empowered in terms of item 5(A) of Schedule (III) of Schedule of Powers. Rebutting the allegation of malafide against the fact-finding team as baseless, it is submitted that

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a case had been registered against the applicant which is still pending before the trial court. The fact finding inquiry is said to be as per direction of the competent authority. Para-8 of the counter reply makes the following submissions:-

"It is further submitted that all the four authorities viz SI/RPF/RBL, SS/AME, CMI/RBL and TI/UCR conducted a fact findings inquiry as per direction of the competent authority. They performed their duty in accordance with the orders of the higher authorities. The previous eventualities has no relevance in the subject matter."

(Emphasis supplied)

The inquiry is said to be conducted as per the rules and prescribed procedure according full opportunity for self-defence to the applicant at all stages. In the matter of defence helper, para 7 of the counter reply states that while two defence helpers nominated by the DO successively were allowed; after the death of the second one-Shri B.L. Verma the applicant had vide letter dated 29.10.2001 intimated the inquiry officer that he would defend the case himself.

6.1 Admittedly, the applicant though substantively an ASM in the pay scale of Rs. 5000-8000/- had been officiating as Station Master in the scale of Rs.5500-9000/-. Rule (3) of the Railway Servants (Discipline and Appeal) Rules, 1968 prescribes "The disciplinary authority in the case of Railway servant officiating in a higher post, shall be determined with reference to the officiating post held by him at the time of taking action." Further as per the Railway Board circular No. E(D&A)76 Rly. 6-49, SC108/77, dated 20.8.1977 - "The appointing authority is to be determined with reference to the officiating post held by an employee when charge sheet is issued or when the

punishment is imposed." The respondents have made the following submission in para-wise comments:-

"However, it is submitted that the applicant while issued a charge sheet SF.5 dated 26.5.99, was working in the grade of Rs.5000-8000 and in this way the DOM being Sr. Scale Officer is fully competent to issue said S.F.5 and imposed upon a punishment of reduction to a lower time scale of pay Grade, post, service on group C &D staff except in grade Rs.1600-2660/- (now replaced by Rs.5500-9000) by Vth Pay Commission and above. Since the applicant was working in the grade of Rs.5000-8000, the DOM being Sr. Scale Officer was fully empowered and competent to do so in terms of item 5 (a) of schedule III of Schedule of Powers. (para14 of the counter reply.

6.1 In terms of provisions of Rule 7(3), the disciplinary authority in the case of Railway servant officiating in a higher post, shall be determined with reference to the officiating post held by him, which in this case was Rs.5500-9000/-. Rule 7 specifies the disciplinary authority and under sub rule (2) different authorities have been specified as per the Schedule (I) (II) and (III). Schedule (II) which deals with non-gazetted staff of Zonal Railways, prescribes the competent authority as Senior Scale Officers and Assistant Officers (Junior Scale Group 'B' holding independent charge) for group 'D' and group 'C' staff in the pay scales of upto and including Rs.5500-9000. This is applicable in case of both the penalties prescribed in the instant case i.e. reduction to a lower stage in the Time Scale of pay for a period exceeding three years or with cumulative effect as well as reduction to a lower Time Scale of pay, grade, post or service. The DA in this case was a Divisional Operational Manager.

The contention of the respondents that he was a Senior Scale Officer has to be accepted at its face value and thus the argument regarding lack of jurisdiction of the DA is not found to be tenable.

6.2 The related plea of the same official who had issued the Charge Memo, on his promotion as Senior DOM also issuing Appellate order dated 17.03.2003 is also not borne out as true on perusal of records. We find that while the Charge Memo was issued by one Shri Sanjay Vajpayee as the DOM, the DA order was issued by Sh. Imtiaz Ahmed, DOM. It is also true that further order dated 17.03.2003 issued by the appellate authority was cancelled a direction of the DRM and subsequently the appellate order dated 9.7.2003 was passed by the ADRM.

6.3 As regards the plea of 'double jeopardy', it is noted that as per provisions of relevant Rule 6 there is no such bar on imposition of more than one penalty. The following clarification on the issue of 'double jeopardy' is extracted:-

" Double jeopardy- When the authorities in the Railways impose penalty of reduction in lower post and scale fixing the pay at the minimum of the scale with loss of seniority, it is alleged by the employees that this was a double jeopardy. It maybe noted that Rule 6 dealing with the penalties starts with the phrase 'the following penalties may for good and sufficient reasons, and as hereinafter provided, be imposed on a Railway servant, namely...' 'The rule does not say that only one of the or any of the penalties only maybe imposed. If the intention of the rule making authority was that only one of the penalties only maybe imposed, appropriate expression conveying this intention would have been employed. Thus it cannot amount to a double jeopardy."

(Emphasis supplied)

(The Railway Servant (Discipline & Appeal) Rules 1968 BAHRI'S Volume Page 118. Similarly, the decision to ban the C.O. from

handling cash has not even been included in the exemplary clauses covered under Explanation to Rule 6).

6.4 It is contended by the applicant that the Appellate Authority's order is non-speaking. Before the Appellate Authority's order dated 9.7.2003 the DO had submitted an appeal to the ADRM dated 10.4.2003 and 9.5.2003 (A5 and A6 respectively). The order of the Appellate Authority (AA), however, does not refer to the contentions made by the DO in his appeals. It is just content to say that the AA has considered written as well as oral statements made by the DO and has not found any difference between the two. However, there are no specific point wise contentions made in the appeal and considered responses thereto. Thus the AA order tends to be incomplete.

6.5 It is also the contention of the applicant that in course of the inquiry his right for reasonable opportunity for self-defence against the charge was adversely affected. On the point of defence helper, the allegation in Para 4.25 of the OA that after the death of Shri B.L.Verma he was not allowed assistance of another and thereby leading to a violation of Rule 9 (13) (C) is sought to be rebutted by the respondents. Para 10 of the counter reply states that this was because the charged officiate himself had vide letter dated 28.10.2001 intimated the inquiry officer about his defending the case himself after the expiry of Shri Verma. However, a perusal of the records produced shows that while the Inquiry Report does not contain such a mention; the appeals dated 18.5.2002 to the Sr.DOM vide para 22 (A-4) and dated 10.4.2003 vide para 15 (A-5) do reiterate the above grievance of the applicant.

However, the other pleas in this regard about the CO not being given opportunity to cross-examine key witnesses and some critical officials (para 4.23 and 5.9 of the OA respectively) do not stand similar scrutiny. The Inquiry Report in course of the CONCLUSIONS, para 7 states:-

"It is to be mentioned that defence was given the opportunity to produce defence witnesses but defence did not desire to produce witnesses vide letter placed at Si. NO. 41 as explained above in conclusion item No. III -V"

Thus on the ground of denial of reasonable opportunity the plea of not being allowed assistance of a defence helper after the death of Shri B.L. Verma is found to be a grey area.

6.6 We are not inclined to accept the plea of malafide against two members of the fact finding team in view of the respondents' submissions mentioned at length in para-5 above. We would also respectfully refer to the dicta of the Hon'ble Apex Court in **A.V. Thimmaiah vs. UPSC, 2008 (1) SSC (L&S) 409**, wherein it was held that allegations of malafide in any decision making process may be out of a vested interest and judicial reviews are not to draw any conclusion till such allegations are substantiated beyond doubt.

6.7. Since the cash in question of Rs.12091/- had actually been recovered, there was no case of misappropriation of government money. The charge framed alleged a deliberate attempt on the part of the applicant of trying to hook up a chain of events with an advance planning to first not send the cash for proper deposit in the Cash Safe Register and then project a fictitious story of an attempted dacoity to mislead the authorities. It is contended in the OA that this was in fact

a case of no evidence and the conclusion arrived at in course of the inquiry report, on which eventually the DA and AA's orders rested, were based on surmises and conjectures.

The joint report of the fact finding team had built up a case of forging of the guard's signature.

However, as the OA contends (Para 4.23) this was not got confirmed by an handwriting expert. Again, the sole eye witness, the Porter Babu Lal's statement about there not being any dacoity is contended to be made under pressure, in support of which an affidavit at A-15 has been annexed. Likewise, one of the key prosecution witnesses, Shri Mangroo Ram, Station Superintendent, Amethi who had along with the S.O. GRP, Pratapgarh reached the spot and made the preliminary investigations and subsequently was one of the four member fact-finding team denied signing the Joint Note (para 4 from conclusions of I.R.) This OA in para 4.24 also avers that several important witnesses had also by their affidavit (A-15 to A-19) affirmed about being pressurized to make their earlier statement.

It is trite that in judicial review the courts are not supposed to function as appellate authorities and substitute their findings for those of administrative officials. Further the standard of proof required in disciplinary proceedings is that of preponderance of probability and not proof beyond reasonable doubts as in case of criminal trial. However it has to be a reasonable inference from proof facts or otherwise it can be characterized as perverse or unsupported by any relevant material. It is also settled law the punishment in disciplinary proceedings can not be on the basis of surmises and conjectures.

Without going into a detailed exercise, the broad impression one gathers is of an important role of surmises and conjectures in the entire process of building up the charged misconduct against the applicant.

6.8 To conclude, we find that of all the contentions raised two merit consideration (1), findings in the inquiry report and thereby the orders of punishment being based on surmises and conjectures (2) the appellate orders being non speaking and not making point wise reference to the appeals by the applicant and respondents thereto. On these two grounds we find the impugned orders by the DA as well as AA having been vitiated. Even on the point of denial of reasonable opportunity there is a gray area with regard to the CO not being allowed the support of defence helper after the death of Shri B.L Verma. For the forgoing reasons the OA is allowed and impugned orders quashed and set aside, the respondents are directed to reinstate the applicant as per law with all consequential benefits within a period of two months from the receipt of a copy of this order. No order as to costs.

Chhotray
(Veena Chhotray)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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