

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 375/2004

This the 27th day of August, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member(A)

N.L. Vishwakarma, Aged about 57 years, S/o late Indrajeet Vishwakarma, at present working as Travelling Ticket Examiner, N.E.R., Gonda

.....Applicant

By Advocate: Sri Surendran P.

Versus

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. G.M., N.E.R., Gorakhpur.
3. DRM, N.E.R., Lucknow.
4. Additional DRM, N.E.R., Lucknow.
5. Divisional Commercial Manager, N.E.R., Lucknow.

.....Respondents

By Advocate: Sri S. Verma

ORDER

By Dr. A.K. Mishra, Member-A

The applicant has challenged the penalty imposed by the disciplinary authority in his order dated 4.9.2003, the notice of enhancement of penalty dated 19.11.2003 and the order of enhanced penalty dated 15.4.2004 of the revising authority. He has prayed for quashing of these orders and restoration of his original pay at Rs. 5300/- alongwith other benefits.

2. The applicant was working as Travelling Ticket Examiner (TTE) and while performing his duties on 23.8.2001 in 5708 Dn. Amritsar-Katihar Express, he faced a surprise vigilance check in which it was detected that seven passengers were travelling without tickets. A chargesheet was issued to him on 7.4.2002 alleging his involvement in tickets-less travel of passengers, which resulted in loss of Rs. 1009/- to the Railways. The applicant denied the charge. A retired officer of the Railways was appointed as the Inquiring authority. The charges were

proved against him. He made a representation against the findings of the Inquiry Officer. But the disciplinary authority imposed a penalty of stoppage of one increment for a period of six months. The applicant did not file any appeal against this order, which was put into effect and its tenure was over after lapse of six months. However, the respondent no.4 issued a notice on 19.11.2003 to show cause why the penalty should not be enhanced. After considering his reply, filed on 5.12.2003, the penalty was enhanced and his pay was reduced to the lowest stage of Rs. 4000/- in the time scale of Rs. 4000-6000/-; hence this application.

3. The grounds taken by the applicant are as follows:

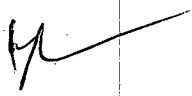
that the respondent no.4, not being the DRM, did not have the competence to revise the order of the Disciplinary Authority and enhance the penalty under Rule 25 of Railway Servants (Discipline & Appeal) Rules 1968; that the Inquiry Officer had not followed the provisions of rules while conducting the inquiry, thus, disabling the applicant to defend himself effectively; that there was deficiency in the prosecution case in not examining the 5th signatory of the vigilance report, which was ignored by the Inquiry Officer; that certain documents required by him for the purposes of cross-examination and proper defence, were not supplied before prosecution case was closed resulting in denial of reasonable opportunity; that no Presenting Officer had been appointed by the disciplinary authority, as a result of which, the Inquiry Officer was almost acting as a representative of the prosecution; that a retired employee was engaged to act as an Inquiry Officer, which was not legal.

4. The respondents have contended that the applicant had not disputed the allegation that seven passengers were travelling in that coach without tickets and that such a fact was detected at the time of surprise check of the vigilance squad. It is seen that he has admitted at paragraph 4.12 of the application that even in spite of best efforts made by the vigilance squad and the applicant himself, full real value of the tickets could not be realized from some of the ticket-less passengers who happened to be police personnel.

5. He himself has also stated that the penalty imposed by the disciplinary authority had already come into effect and run its course of six months before the notice for enhancement of penalty was issued by the respondent no.4. Since the penalty of the disciplinary authority had been accepted by the applicant and no appeal was filed by him, it was urged on behalf of the respondents that the applicant is estopped from challenging the inquiry proceedings and findings of the Inquiry Officer at a later date.

6. Now, coming to the competence of respondent no.4, the learned counsel for the respondents submits that Rule 25(i)(v) permits any other authority, not below the rank of Deputy Head of the Department, to revise the order of the disciplinary authority. The Head of the Division is DRM and the Additional DRM, the respondent no.4, is next to him in hierarchy in the Division. Further, he is senior to the appellate authority namely Sr. Divisional Commercial Manager. Therefore, he had full competence in exercising the powers under Rule 25(1)(v) of the Railway Servants (Discipline and Appeal) Rules, 1968 and there was no infirmity on this count. According to the learned counsel for respondents, Rule 25 (1)(iv) refers to an appellate authority who is not below the rank of D.R.M. It is the Sr. Commercial Divisional Manager, not the DRM, who is the appellate authority for the applicant. Therefore, Rule (1) (iv) of the Rules is not applicable in his case as alleged.

7. The applicant was provided full opportunity to defend himself. Copies of the documents, which were relied on by the prosecution, were supplied to him. Some of the additional documents, as per his requisition, considered relevant, were supplied to him. The facts, as alleged in the chargesheet, have been borne out in the inquiry. The applicant himself has taken the ground that the situation was beyond his control as some of the tickets-less travellers happened to be police personnel. In spite of that the vigilance squad detected the unauthorized presence of some travellers and collected a sum of Rs. 1009/- from them, a fact, which is reflected in the chargesheet.



8. The learned counsel for the applicant relies on the case of **Ravi Malik Vs. National Firm Development Corporation Limited and Others reported at 2004 (13) SCC 427**. This decision of the Hon'ble Supreme Court was in the context of Special Service Rules of the respondent-corporation. In the case of **H.V. Nirmala Vs. Karnataka Financial Corporation and Others (2008) 7 SCC 639** the Hon'ble Supreme Court has held that if no prejudice has been caused to an employee by the fact that a retired officer was engaged as Inquiry Officer and if he did not oppose such engagement at the time of inquiry or before the Disciplinary Authority/Appellate Authority, he would be estopped from taking such a plea later on. The issue was also examined by a Full Bench of the Tribunal at Principal Bench in the case **Satish Kumar Kukreja Vs. Additional Secretary, Ministry of HRD and Others** in O.A. no. 1699 of 2008 and it was held in its order dated 1st April, 2009, that the inquiry finding of a retired officer would be valid in law. We find that the applicant had acquiesced in with the findings contained in inquiry report and the penalty imposed on that basis by the disciplinary authority; therefore, it not open to him to make an issue on that score again.

9. The learned counsel for the applicant submits that the notice issued by the respondent no.4 did not contain the reasons for enhancement of the penalty; therefore, the applicant did not have sufficient opportunity to make a representation against the show cause notice. The impugned notice at Annexure-2 clearly states that the respondent-authority did not find the penalty imposed by the disciplinary authority as sufficient keeping in view the gravity of the offence. The only ground on which enhancement was proposed was that the penalty was not proportionate to the seriousness of the offence of permitting tickets-less travel in a sleeper coach. Therefore, we do not find any infirmity in this notice.

10. As regards the quantum of punishment, the Hon'ble Supreme Court in the case of **B.C. Chaturvedi Vs. Union of India & Others (1996 SCC {L&S} 80)** has held that the higher judicial authority should not substitute its own views about the

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penalty, unless it is so shocking as to disturb the judicial conscience.


11. It is the settled law that the scope of judicial review of disciplinary proceedings is limited in nature. The Tribunal is not supposed to look into the assessment of the evidence like an appellate authority. It would not interfere, unless it is established that there was denial of natural justice, incompetence on the part of the authority imposing penalty, infraction of statutory rules. It is not the case of the applicant that the penalty has been imposed on the basis of no evidence.

12. We find that the applicant has not taken advantage of the statutory remedy available to him under the Rules to file an appeal against the enhancement of penalty. The impugned order is an appealable one as set out in Rule 18 of the aforesaid Rules and he could file an appeal under Rule 19(1)(i) to the next higher authority to which the respondent no.4 is subordinate. It is the appellate authority which can reassess the evidence and the quantum of punishment awarded. Under the circumstances, we feel that justice will be done if the applicant is given a liberty to file an appeal against the order of respondent no.4.

13. In the result, this application is dismissed with a direction to the respondent-appellate authority viz. DRM to consider the appeal, on merits, if it is filed by the applicant within a period of 30 days from the date of passing of this order. No costs.


(Dr. A.K. Mishra)
Member-A

27/08/09


(Ms. Sadhna Srivastava)
Member-J