

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. 528/2006

This, the ²²~~22~~ day of December, 2008

Hon'ble Mr. M. Kanthaiah, Member (J)

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

Atul Dixit aged about 46 years son of Sri Y.K. Dixit r/o 85, Railway Colony, Balaganj, Lucknow.

Applicant.

By Advocate : Sri Saket Mishra.

Versus

1. Union of India through General Manager (Operating) North Eastern Railway, Gorakhpur.
2. Chief Operating Manager, North Eastern Railway, Gorakhpur.
3. Additional Divisional Railway, Manager, North Eastern Railway, Lucknow.
4. Senior Divisional Operating Manager, North Eastern Railway, Lucknow.

Respondents.

By Advocate : Sri Azmal Khan

ORDER

By Hon'ble Mr. M. Kanthaiah, Member (J)

The applicant has filed this O.A. with a prayer to quash the impugned punishment order dated 20th January, 2004 (Ann. A-3) and Appellate order dated 16.12.2005 (Ann.A-2) and revisional authority order dated 6.7.2006 (Ann. A-1) passed by the respondents No. 4,3 and 2 respectively and for release of arrears of pay, increment and other allowances resulting as imposition of punishment with interest thereof on the ground that the charges leveled against him was not proved in the enquiry and the disagreement note issued by the respondent No. 4 and also punishment order passed by him is illegal, arbitrary and un-reasoned.

2. The respondents have filed counter reply denying the claim of the applicant stating that the authorities have passed the orders as per rules and there are no irregularities for intervention of this Tribunal.

3. The applicant has filed the rejoinder denying the stand taken by the respondents and also reiterated the pleas taken in this O.A.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as claimed for.

6. The admitted facts of the case are that the applicant while working as Guard on duty on 21.8.2001 on Train No. 176 Dn., there was a vigilance check upon which a charge memorandum dated 29.4.2002 (Ann. A-4) for major penalty was served upon him alleging that while working as Guard on 21.8.2001 on 176 Dn., he failed to declare his private cash and on getting the introduction of vigilance team, he tried to part undeclared amount of Rs. 72/- to another employee Sri Rizvi and thereby tried to destroy the evidence and misguided the vigilance team which is contravention of Rule 3.1(I) 3.1 (II) and 3.1(III) of Railway Servants (Conduct) Rules, 1966.

7. The applicant also submitted his reply to the charge memorandum on 15.5.2002 (Ann. A-5). Thereafter, the enquiry officer was appointed who conducted the full-fledged enquiry against the applicant on the charge memorandum dated 29.4.2002 and thereafter, he submitted his enquiry report (Ann. A-6) dated 21.2.2003 with a findings that the charge No.1 is not proved whereas the charge No. 2 is disapproved and fully exonerated the applicant from the above two charges. But the respondent No. 4 who is disciplinary authority was not satisfied with the findings of the enquiry report and he issued disagreement note dated 16.10.2003 (Ann. A-7) and asked the applicant to submit his reply, upon which the applicant submitted his reply (Ann. A-8) to the disagreement note but the respondent No. 4 was not satisfied with the same and imposed penalty of reduction to lower stage at Rs. 5500/- from the stage of Rs. 7600/- in the time scale of pay Rs. 5500-9000 for two years and postponed future increments (Ann. A-3).

Aggrieved by such punishment order, the applicant preferred appeal before the respondent No. 3 who rejected the same and passed the order on 16.12.2005 (Ann. A-2) with modification reducing the punishment i.e. penalty of reduction to lower stage at Rs. 5500/- from the stage of Rs. 7600/- in the time scale of pay of Rs. 5500-9000 may be imposed for a period of one year with cumulative effect. Thereafter, the applicant also preferred revision before the respondent No. 2 who

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passed the order dismissing the revision on 6.7.2006 (Ann.A-1) and thus the penalty imposed by the appellate authority was confirmed. Aggrieved with the punishment imposed by the revisional authority, appellate authority and disciplinary authority, the applicant filed this O.A.

8. It is the case of the applicant that in-spite of exonerating him by the enquiry officer from the charges 1 and 2, the disciplinary authority issued disagreement note with an intention to punish him. He further stated that the respondent No. 4 passed impugned order dated 20.1.2004 traveling beyond the article of charges on presumptions and also not relied upon the documents. It is also the case of the applicant that circular dated 20.8.1997 (Ann. A-13) in respect of declaration of private cash by the guard was never circulated in the Department and thus the same was not in the knowledge of the applicant.

9. The applicant also challenged the appellate order dated 16.2.2005 (Ann.A-2) and revisional authority order dated 6.7.2006 (Ann. A-1) on the ground that they are not reasoned and non-speaking and also silent in respect of the misconduct of the applicant.

10. Admittedly, after exonerating the applicant in the departmental inquiry by the Inquiry Officer in the charge No. 1 and 2 levelled against the applicant, the disciplinary authority issued disagreement note (A-7) stating that he is not satisfied with the findings of the inquiry officer and also stated that the charges levelled against him are proved. After receiving the same, the applicant submitted his reply (Ann.A-8) to the disagreement note of disciplinary authority stating that none of the charges has been proved before the inquiry authority and further there was inordinate delay in issuing such disagreement note on the inquiry report. After considering the said reply, the disciplinary authority (Respondent No.4) who was not satisfied with such reply passed order imposing the penalty of reduction of lower stage at Rs. 5500/- from Rs. 7600/- in the time scale of Rs. 5500-9000 for a period of 2 years. Under Rule 10(3) of Railway Servants (Disciplinary and Appeal) Rules, 1968, such powers are conferred on the disciplinary authority, if he disagreed with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record his findings on such charges, if the evidence on

record is sufficient for the purpose. But it is the contention of the applicant in respect of charge No. 1, that the applicant failed to declare his personal money as per rules while performing his duty as Guard in Train No. 176 on 21.8.2001, the circular dated 22.8.97 (Ann. A-13) was not circulated among the officers more particularly guards and as such the same was not within his knowledge and the findings of the inquiry officer also reveals that there is no material on record to show that such circular was circulated among the Guards by the concerned authority, and in such circumstances, the disciplinary authority issued disagreement note against such findings of the inquiry officer which is not at all sustainable.

11. Admittedly, the charge No. 1 levelled against the applicant is that he did not declare his personal money while performing his duty as Guard on the fateful date of 21.8.2001 when vigilance team inspected him. In reply of the applicant dated 15.5.2002 to the charge sheet (Ann. A-5), it is not the case of the applicant that he was not aware of such Rules and also there was no comment on such for declaration of his personal money before taking responsibility of Guard on the train. It is not the stand taken by the applicant in his reply that there he was not aware of such rule or its circulation disputed but during the course of inquiry, he has taken such plea and also examined some office witnesses who stated that the circular dated 22.8.97 (Ann. A-13) was not circulated among the Guards by the concerned Branch.

12. Without taking any such plea in the reply, it is not open to the applicant to take such a plea in respect of non-existence of any rule and circulation of such circular before the enquiry and findings on such aspect. The recital of the applicant filed in his reply (Ann. A-8) also shows that such non-declaration of personal money is not a cognizable offence and at the most it can be considered as carelessness or mistake because of non-awareness of the rules and thus it will not come within the definition of the misconduct as charged against him.

13. The charge No. 1 was very limited that the applicant did not declare his personal money before taking the responsibility of the job of Guard on that particular date which the applicant did not deny and the Inquiry on such charge and finding also require only to that extent. Basing on such view, the disciplinary authority disagreed with the findings of the inquiry officer that ignorance of law or

circular is not at all excusable and on that ground he gave his findings of disagreement on that charge with the finding of inquiry officer. In such circumstances, the arguments of the applicant questioning the correctness of the disagreement memo issued by the disciplinary authority on charge no.1 that the finding of the inquiry officer is not at all sustainable for interference of this Tribunal.

14. In respect of findings of charge No.2 that on introduction with the vigilance team, the applicant tried to part that money of Rs. 72/- and tried to destroy the evidence. In respect of this charge, the inquiry officer discussed in detail and found that in view of the discrepancies prevailed in the statement of witnesses more particularly Vigilance Inspection, he came to the conclusion that such charge is disproved but the disciplinary authority did not agree with the such findings of the inquiry officer and stated that the evidence on record reveals that the said charge has been proved against the applicant.

15. On perusal of the disagreement note in respect of charge No. 2, it is clear that disciplinary authority has not given detailed reason for his disagreement on the findings of the inquiry officer by discussing each of the witnesses and without all those details, mere disagreement is not at all valid and on that ground the applicant is justified in questioning the disagreement note of the disciplinary authority on the findings of the inquiry officer on charge no. 2.

16. Though this Tribunal decline to accept the disagreement note of the disciplinary authority on the findings of the inquiry officer on the charge No. 2, admittedly the charge No.1 is proved against the applicant which the disciplinary authority has taken into consideration in his disagreement note and imposed penalty. In such circumstances, the applicant is not justified for questioning the validity of the punishment imposed by the disciplinary authority in its order dated 20th January, 2004 (Ann. A-3) after considering reply of the applicant. Thus the argument of the applicant that the penalty imposed by the disciplinary authority against the applicant is not at all justified and reasonable and as such interference of this Tribunal on such finding of the disciplinary authority is not required.

17. In respect of quantum of punishment of penalty, the scope of the Tribunal for its interference is very limited and only in extra ordinary circumstances, when such

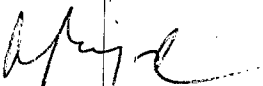
penalty is dis-proportionate to the proved charges against the delinquent officer but in the instant case, no such circumstances are there and as such we are not inclined to interfere with the quantum of penalty imposed by the disciplinary authority.

18. The applicant has challenged the impugned orders passed by the Appellate Authority dated 16.12.2005 (Ann. A-2) and also revisional order dated 6.7.2006 (Ann. A-1) on the ground that they are not speaking order.

19 On perusal of the orders of the Appellate authority Annexure A.2 dated 16.12.2005 and revisional authority order dated 6.7.2006 (Ann. A-1), it shows that they have considered the point raised by the applicant in his appeal and revision and thereafter, only the appellate authority has reduced the penalty of reduction for a period of two years to one year and thus there are no justified ground to say that they are non-speaking order. Further, the scope of consideration of appeal and revision are very limited i.e whether the procedure laid down in these rules have been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. But in the instant case, there is no violation of such procedure and also nothing is there to say that any failure of justice has been caused to the applicant while passing orders either by the appellate authority or by the revisional authority. Thus, there is no justification in challenging the orders passed by the said authorities.

20 In view of the above circumstances, there are no justifiable ground for interference of this Tribunal and also for setting aside the impugned order passed by the revisional authority order dated 6.7.2006 (Ann. A-1), Appellate order dated 16.12.2005 (Ann. A-2) and disciplinary authority dated 20th January 2004 (Ann. A-3) passed by respondents No. 2,3 and 4 respectively and as such O.A. is liable for dismissal.

21 In the result, O.A. is dismissed. No costs.


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

HLS/-


(M. Kanthaiah)
Member (J)

22.01.09