

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No.46/2011

Order Reserved on 24.9.2014

Order Pronounced on 28/10/14

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Hridya Nand Singh aged about 46 years son of Late V.D.Singh, resident of Quarter No. T/69-A, Railway Station Colony, District-Gonda, U.P., posted as Monile Booking Clerk at Colonelganj (Karnailganj), North Eastern Railway, Gonda.

Applicant

By Advocate: Sri G.C.Verma

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager (commercial) North Eastern Railway, Ashok Marg, Lucknow.
3. A.C.M. North Eastern Railway, Lucknow.

Respondents

By Advocate : Sri D.K. Mishra

ORDER

By Hon'ble Mr.Navneet Kumar, Member (J)

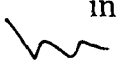
The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- a) quash the impugned orders dated 13/15.9.2009, 2.1.2002, 1.3.2002 and the charge sheet dated 23.11.2001/14.12.2001 issued/passed by the respondents as contained in Annexure No.A-1, A-2, A-3 and A-4 to this O.A.
- b) direct the respondents to repay the amount which has already been recovered from the salary of the applicant along with compound interest.
- c) allow the O.A. with cost.
- d) pass any other order or direction which this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case, in favour of the applicant.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization and was charge sheeted vide charge sheet dated 23.11.2001/14.12.2001 wherein it is indicated

that the charge sheet which is served upon the applicant is a minor penalty charge sheet and the punishment so awarded to the applicant is a major punishment. The learned counsel for the applicant also indicated that he has received a memo dated 5.9.2001 informing him that the trains are cancelled and due to termination of three trains, namely Train No. 4048 Dn., 5064 Dn., and 3020 Dn., the passenger at Gonda stations sought refund of their money towards tickets purchased by them. The Station Superintendent, Gonda issued a memo/ instructions to the Chief Reservation Supervisor and applicant was directed to refund the fare to the passengers without any deductions. In pursuance thereof, he followed the instructions issued by the competent superior officer, as such he cannot be held liable for the loss which is allegedly caused to the Railway. The learned counsel for the applicant has also relied upon the provisions of Railway Passengers (Cancellation of tickets and refund of fare) Rules 1998 and indicated that as per Rule 3 of the aforesaid rules, the Station Master is the competent authority to refund fares.

3. On behalf of the respondents, reply is filed and through reply, it is indicated by the respondents that the refund rules and its procedure are hardly governed by the public address system. For a refund, Indian Railway Act, Manuals, codes and its references can only be relevant. Mere announcement either actual or force cannot override the refund rules and its accounts. The applicant failed to establish the allegations. Not only this, it is also indicated by the respondents that the Station Superintendent is not competent to issue any interim orders or any directives afresh on the refund rules which has already been written and codified by the competent authorities and the applicant deliberately and intentionally disobeyed the directives of his superiors and also deliberately and intentionally ignored all the codified rules and laws with a motive to get benefited in his personal interest.



4. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated and denied the contents made in the counter reply.

5. Not only this, on behalf of the respondents, Supple. Counter Reply is filed and through Supple. Counter reply, the averments made in the counter reply are reiterated and denied the averments made in the rejoinder reply. Apart from this, it is also indicated that during the enquiry, it was found that the applicant while working as Upper Division Clerk, Gonda had refunded the money for a sum of Rs. 14353/- in place of Rs. 1131/- as shown and the applicant also not taken signature of the passengers /ticket holders as such the conduct of the applicant caused pecuniary loss to the Railways. Accordingly, he was served with the charge sheet and punishment was imposed upon the applicant.

6. Heard the learned counsel for the parties and perused the record.

7. The applicant was initially appointed in the respondents organization and was working with the respondent as Commercial Clerk and on account of flood, three trains going toward Gonda were terminated/ cancelled at Gonda junction. The terminated trains were Train No. 4048 Dn, 5064 Dn and 3020 Dn. Due to termination of the aforesaid three trains, there was much rush of the passengers at Gonda Junction and all were seeking refund of tickets purchased by them. Learned counsel for applicant has also relied upon the Annexure A-6 annexed along with O.A. which is a memo which says that the Train No. 4048 Dn., 3020 Dn. and 5064 Dn. are terminated at Gonda Jn. and the refund be made to the passengers without any deduction. This memo was issued on 6.9.2001 at 10.30 am in the morning. In pursuance thereof, the applicant refunded the money but the respondents being not satisfied, issued a minor penalty charge sheet on 23.1.2011/14.12.2001 indicating therein that the applicant refunded the money of Rs. 14353/- and has only shown Rs. 1131/- as such sum of Rs. 13222/- was put to loss to the Railways. It is also to be

indicated that applicant made full refund of the tickets to the passengers under the directions of the Station Superintendent, NER, Gonda Jn. And not at his own will. The reply so submitted by the applicant was also not considered wherein the applicant has taken a ground that he has made full refund to the passengers in compliance of directions given by the Station Superintendent, NER, Gonda Jn. and has also indicated that as per Rule 3 of Railway Passengers (Cancellation of Tickets and refund of Fare) Rules, 1998, the Station Master is the competent authority to refund fares. The relevant reference of Rule 3 of the aforesaid Rules are quoted below:-

“3. Station Master to refund fares----- The definition of Station Master is given under Rule 2 (h) of the aforesaid Rule 1998 which reads as under:-

2 (A) “Station Master means a railway employee, by whatsoever name called having over all of a charge of a railway station and includes any other employee authorized to grant refund of fare at a station.” The Station Superintendent is the officer having over all charge of the railway station.”

8. Rule 14 of the aforesaid Rules provides discontinuation of journey due to dislocation of train services. For ready reference Rule 14 of the aforesaid rules reads as under:-

“14. Discontinuation of journey due to dislocation of train services:-

(1) When a train journey is dislocation enroute due to unforeseen circumstances, such as accidents, breaches and floods, full fare for the entire booked journey without any deduction for the travelled portion and without levy of cancellation charge shall be refunded at the station at which the journey is terminated under the following circumstances:-

(a) When the railway is unable to carry the passenger to the destination station within a reasonable time by arranging transshipment or diversion of otherwise; or

(b) When the passenger is involved in a railway accident and / or injured in the accident and does not continue his journey; or

(c) In the case of death or injury to a passenger in a railway accident, the kith and kin of the passenger have to terminate the journey.”

9. The learned counsel for the applicant also relied upon Rule 6 of Railway Servants (Disciplinary and Appeal) Rules, 1968 which provides Penalties and disciplinary authorities and has also indicated that not only the applicant but 13 employees were issued notice and all of them submitted their objections but the respondent No. 3 illegally and arbitrarily passed an order whereby the applicant has been reduced in rank of pay scale from Rs. 3700/- to Rs. 3200/- per month for a period of 30 months without cumulative effect. The applicant also filed the departmental appeal against the order dated 1.3.2002 but without deciding the appeal, the respondents started making recovery from his salary. As such, applicant filed O.A.NO. 147/2002 before this Tribunal and the respondents were directed not to make any recovery from the applicant. The said O.A. was finally disposed of and set aside the recovery order with a direction to the respondents to decide the appeal of the applicant and accordingly, the appellate authority decided the appeal of the applicant and rejected the same. The learned counsel for applicant has also relied upon the Rule 22 (2) of Railway Servants (D&A) Rules, 1968 which provides as under:-

22. Consideration of appeal

(1)

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-

(a) whether the procedure laid down in these rules has 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;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:

Provided that –

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii)

(iii)

(iv) subject to the provisions of Rule 14, the appellate authority shall –

(a)

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v)

3.

10. It is also indicated by the applicant that the respondents set aside the order of some similarly situated persons but the case of the applicant was not considered and the applicant has been reduced in rank of pay scale from Rs. 3700/- to Rs.3200/- per month for a period of 30 months without cumulative effect and amount is also directed to be recovered from the applicant. The action of the respondents is in gross violation of Articles 14 and 311 of the Constitution of India, since no opportunity of hearing was given to the applicant.

11. Learned counsel for applicant has also relied upon Rule 6 of Railway Servants (D&A) Rules, 1968 and also indicated that the reduction to a lower stage in the time scale of pay for a specified period, is a major penalty whereas the charge sheet issued to the applicant is SF-11 which is a minor penalty. Rule 6 of Railway Servants (D&A) Rules, 1968 reads as under:-

“6. **Penalties:** (1) The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:-

Minor Penalties -

(i) Censure;

(ii) Withholding of his promotion for a specified period;

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

(iii-a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;

(iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay;

Major Penalties -

(v) Save as provided for in clause (iii-b) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) 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 or service;

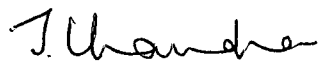
(vii) Compulsory retirement;

(viii) Removal from service

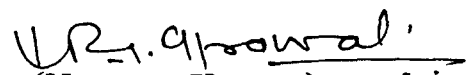
(ix) Dismissal from service.....”

12. The bare perusal of the charge sheet shows that charge sheet issued to the applicant is minor penalty whereas the punishment so awarded to the applicant is a major punishment. Not only this, the respondents decided the appeal which is not in accordance with Rule 22 (2) of the Railway Servants (D&A) Rules, 1968 as directed by this Tribunal. As such it requires interference by this Tribunal. Accordingly, the O.A. is allowed.

13. The impugned orders dated 13/15.9.2009, 2.1.2002, 1.3.2002 and the charge sheet dated 23.11.2001/14.12.2001 issued/passed by the respondents as contained in Annexure No.A-1,A-2, A-3 and A-4 to this O.A. are quashed. No order as to costs.



(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-