

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No.19 OF 2008

Order Reserved on 09.7.2014

Order Pronounced on 04/08/2014

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

Avinash Kumar Shukla aged about 48 years S/o R/OC-1921, Mini LIG, Rajajipura Lucknow.

Applicant

By Advocate Sri Amit Verma for Sri A. Moin.

Versus

1. Union of India through General Manager Northern Railway, Baroda House, New Delhi.
2. Chief Commercial Manager, Northern Railway Baroda House New Delhi.
3. Additional Divisional Railway Manager-II, Northern Railway, Hazratganj Lucknow.
4. Divisional Commercial Manager, Northern Railway Hazratganj Lucknow.

By Advocate Sri B.B. Tripathi.

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) to quash the impugned order dated

10.1.2007 passed by the respondent No. 2 as



contained in Annexure A-1 to the O.A. with consequential benefits.

(b) to quash the order dated 15.12.2005, passed by the respondent No. 3 as contained in Annexure A-2 to the O.A. with consequential benefits.

(c) To quash the Memorandum dated 14.6.2005, issued by the respondent No. 3 as contained in Annexure A-3 to the O.A. with consequential benefits.

(d) To quash the impugned punishment order dated 9.3.2005, passed by the respondent No. 3 as contained in Annexure A-6 to the O.A. with consequential benefits.

(e) To pay the cost of this application.

2. The brief facts of the case are that the applicant was initially appointed in the year 1988 as Booking Clerk. While he was working as Booking Clerk at Barabanki Railway Station, a vigilance check was conducted. Prior to closer his duty hours, as such the applicant was issued a charge sheet and after the inquiry, the punishment of reduction of two stages lowering in the existing time scale of pay for one year with cumulative effect is imposed by which the applicant's pay of Rs. 4900/- in the pay scale of Rs. 4000-6000/- was reduced to Rs. 4700/- for year with cumulative effect. The

W applicant preferred the appeal before the Appellate

Authority and has taken a ground that the provisions of Para 704 and 705 of the Indian Vigilance Manual has not been followed. As such the entire proceedings is vitiated. Not only this, it is also argued by the learned counsel for the applicant that inquiry officer himself in the inquiry report has also agreed that the provisions of Para 704 and 705 has not been followed and not only this, the Appellate Authority has categorically pointed out and, it is seen that the decoy had not been conducted as per the desired procedure as laid down in the manual. The learned counsel for the applicant has also relied upon the decision of the Hyderabad Bench of this Tribunal, and pointed out that the provisions of Rule 25 invoke by the ADRM is illegal.

3. The learned counsel appearing on behalf of the respondents filed their reply as well as the supplementary counter reply and indicated that while applicant was working as Booking Clerk at Barabanki, a vigilance check was conducted and as a result of vigilance check, the applicant was served with a major penalty charge sheet. Through Article of charges, it is mentioned that the applicant demanded excess fare from the decoy passenger which is Rs. 515/- whereas, the actual fare was Rs. 435. Thus he has charged Rs. 80/- excess from the decoy passenger. Accordingly, the punishment was awarded. Since the case was already

investigated by the Vigilance Department hence GM/Vigilance Directed to Divisional Authority to exercise power suo moto under Rule 25 of Discipline and Appeal Rules 1968. Accordingly the ADRM has exercised the provision of Rule 25 and passed the orders. The appeal preferred by the applicant was also rejected by the appellate authority. The learned counsel for the respondents has filed supplementary counter reply and through supplementary counter reply it is indicated that one of the commercial clerk was to act upon as a decoy passenger and another commercial clerk was taken as independent witness. The learned counsel has categorically pointed out that there is no procedural lapses in conducting the inquiry and no provisions of Para 704 and 705 of Vigilance Manual has been violated.

4. On behalf of the applicant, the applicant has filed rejoinder and the supplementary rejoinder affidavit and averments made in the O.A. are reiterated and contents of the counter reply and supplementary counter affidavit are denied.

5. Heard the learned counsel for the parties and perused the records carefully.

6. The applicant was working with the respondents organization and on account of vigilance check, a charge

sheet was served upon him. In the charge sheet, there are two chargers mentioned which reads as under:

“Article (i) Sh. Avnish Kumar Shukla had demanded and accepted excess fare from the decoy passenger i.e. Rs. 515/- against actual fare of Rs. 435/- Thus he charge Rs. 80/ excess from the decoy passenger.

Article (ii) He had created an artificial shortage in government cash to earn illegal money Rs.32/- found short in Government cash during check just after he accepted Rs. 80/-excess from the decoy passenger.”

Along with the charge sheet, the list of documents and list of witnesses are mentioned. In the Statement of imputation of misconduct/misbehavior, it is categorically mentioned that one Sri Rajeshwar Vishwakarma would act as decoy passenger, Sri Rishibhushan Singh will act as independent witness and Sri L.D. Bhorla will act as shadow witness. Prior to this, it is mentioned in the said imputation that the Sri Rajeshwar Vishwakarma and the Sri Rishibhushan Singh are the officers of the commercial department. Against the said charge sheet, the applicant submitted the reply and an inquiry was conducted and the inquiry officer given his finding that the charge No. 1 could not be proved by any credible evidence and where as charge No. 2 which is only

shortage of Rs. 32/- in government cash has been proved on the basis of the documentary evidence. The applicant was provided the copy of the inquiry report through letter dated 18.1.2005 and in pursuance to that, he has submitted a representation on 9.2.2005. The Divisional Commercial Manager passed an order dated 9.3.2005 and imposed a penalty of reduction in the existing time scale of pay for a period of one year by which the applicant's pay of Rs. 4900/- in the pay scale of Rs. 4000-6000/- was reduced to Rs. 4700/- . The ADRM issued a notice on 16.6.2005 for enhancing the penalty and in pursuance to the same, the applicant submitted the representation and has categorically pointed out that the provisions of Para 704 and 705 of Indian Vigilance Manual are mandatory in nature and non observance with said mandatory guideline vitiates the trap conducted and the penalty imposed by the disciplinary authority is liable to be set aside. Despite that the ADRM enhanced the penalty of reduction to next lower time scale of pay at the initial pay of grade for 3 years with cumulative effect. The applicant preferred an appeal against the said enhanced penalty and the appeal of the applicant was also rejected by the Appellate Authority. Though the applicant has not taken certain grounds in the appeal, but as per the decision of the this Tribunal passed in the case of **Sain**

Singh Rawat Vs. Union of India and Others reported in 1988(7) A.T.C.-806 that if an objection is not raised at the preliminary stage, it can be raised subsequently. The learned counsel for the applicant has also relied upon another decision passed in **Abdul Hamid Vs. 3rd Addl. District Judge, Mainpuri and Another reported in 2000 (18) LCD 639** wherein, the Hon'ble High Court has pleased to observe that the **"objection of inherent can be raised at an stage if not pleaded in the Court below."** The learned counsel for the applicant has also relied upon the decision of the Hyderabad Bench of this Tribunal which deals with provision of Rule 25 of Railway Servants(Discipline and Appeal) Rules, 1968 and has pointed out that ADRM does not have any power to enhance the penalty.

7. In order to appreciate the contentions, it is sufficient to peruse sub-Rule 4 of Rule 25 of the Railway Servant (Discipline & Appeal) Rules 1968.

8. The bare perusal of Rule 704 and 705 of the Vigilance Manual reads as under:-

"704. Traps____(i)-(iv)

(v) When laying a trap, the following important points have to be kept in view:

(a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.

(b) The transaction should be within the sight and hearing of two independent witnesses.

(c) There should be an opportunity to catch the culprit red-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.

(d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the department or the police and are men of status, considering the status of the accused. It is safer to take witnesses who are Government employees and of other departments.

e) After satisfying the above conditions, the Investigating Officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the S.P., S.P.E., is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the S.P.E. or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

(vi)-(vii) * * * * *

705. Departmental Traps.-For Departmental traps, the following instructions in addition to those contained under paras 704 are to be followed:

(a) The Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilized.

All employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of Branch detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.


(b) The decoy will present the money which he will give to the defaulting officers/employees as bribe money on demand. A memo should be prepared by the Investigating Officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the G.C. notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the Investigating Officer/Inspector. Another memo, for returning the G.D. notes to the decoy will be prepared for making over the G.C. notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and Investigating Officer/Inspector. The independent witnesses will take up position at such a place where from they can see the


transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the Investigating Officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.

(c) -(d) * * *

9. The bare perusal of the entire records and after considering the arguments advanced by the learned counsel for the parties, it is clear that the respondents have violated the provisions of Rule 704 and 705 of the Railway Vigilance Manual, as well as the Rule 25 of the Railway Servants (Discipline & Appeal) rules 1968. As such, it requires interference by this Tribunal. Accordingly, the impugned orders dated 10.1.2007, 15.12.2005 and 14.6.2005 as contained in Annexure A-1, A-2 and A-3 are quashed.

10. Accordingly, the O.A. is allowed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member(J)

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