

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 194 of 1990 (L)

this the _____ day of October, 1994

HON'BLE MR. V.K. SETH, ADMN. MEMBER
HON'BLE MR. D.C. VERMA, JUDICIAL MEMBER

Kailash Nandan Tripathi, aged about 43 years, S/o
of Sri Ram Bujharat Tripathi, R/o 583, A Baulia Railway
Colony, Gorakhpur.

Applicant

By Advocate : Shri B.N. Rastogi

Versus

Union of India through its Secretary, Ministry of
Railways, New Delhi.

2. Divisional Commerical Superintendent, N.E.R. Ashok
Marg, Lucknow.

3. Senior Divisional Commercial Supdt., N.E.R.,
Ashok Marg, Lucknow.

4. Addl. Divisional Railway Manager, N.E.R., Ashok
Marg, Lucknow.

Respondents

By Advocate : None

O R E E E

D.C. VERMA, MEMBER (J)

Kailash Nandan Tripathi, T.T.E., N.E.

Railway, has by this O.A. under section 19 of A.T.
Act ~~xxx~~ challenged (i) order of imposition of penalty
of reduction to the lower stage (vide Annexure-1),
(ii) rejection of appeal (vide Annexure-2) and (iii)
~~order passed on~~
(revision (vide Annexure-3).)

2. The brief facts of the case is that the applicant, on 3rd May of 1988, was on duty on 153 up Vaishali Express from Gorakhpur to Lucknow in IInd class Sleeper Coach No. S-15 (4810). The applicant handed over the charge at Lucknow to Sri S. Sahai, T.T.E. who went further with the coach up to Delhi. Between Aligarh and Ghaziabad the train was checked by Special Squard Vigilance Inspector of the Railway Board, who found that R.A.C. passengers of the coach were not given berth, though available ~~wait~~ listed and new passengers were given berth ~~against~~ [&] ~~ed~~ the rules. The R.A.C. passengers complain^y that in spite of their request the available berth was not given to them. A memo was issued to the applicant ^{was} was called at the Vigilance Wing of the Railway Board and his statement was recorded. Finally a formal chargesheet was issued. Shri H.S. Sokhi was appointed as Enquiry Officer. After completion of the enquiry a punishment order was passed. Against the said order an appeal was preferred and thereafter a revision ^{application} but both were rejected. The original penalty order of reduction to ^{from Rs. 1320/-} lowest stage of Rs. 1200/- in time scale of Rs. 1200-2040 for a period of 3 years with postponing future increments was maintained, hence this O.A.

3. The learned counsel for the applicant has contended that the special s-quard checked the train when the applicant was not holding the charge of the Bogie, the R.A.C. passengers were ~~offer~~ ^{offered} ~~they~~ ^{they} ~~berths~~ ^{berths} but ~~declined~~ ^{reservations} to accept the same by depositing additional ~~amndunts~~ ^{amndunts},

(29)

The applicant was not given proper opportunity to cross-examine witnessess, the statement of defence witnessess were not properly examined, the provision of lower scale of pay-scale does not mean to lowest state to which the punishment has been awarded, and no show-cause notice was served to the applicant, while imposing a major punishment of reduction in pay of as well as stepage/annual increments as held in the case of M.R.Khan reported in 1991 AIR SCC page 471.

4. The learned counsel for the respondents have contested the case on the ground that a detailed and proper enquiry was held, the applicant was given proper opportunity of cross examination, that the applicant produced defence witnessess also, the evidence produced by the parties have been properly marshalled. That the train reached Lucknow at about 4.00 A.M. in the mid night and non R.A.C. passengers had been given berth by the applicant in spite of request made by the R.A.C. passengers, ~~After the train left Gorakhpur~~, ~~lucknow and the passengers who entered the train~~, ~~failed to book~~ that the punishment was awarded to the applicant on 6.10.1989 prior to 20.11.1990, the date of judgment in M.N.Khan's case.

5. Articles of charges framed against the applicant are as below :-

"That the said Sri K.N. Tripathi while working as Sleeper Coach TTE headquartered at GKP, in the month of May, 1988 he committed serious misconduct and failed to maintain absolute integrity, devotion to duty and behaved in the manner of unbecoming of a Servant in that during a Vigilance conducted by 1. Is/Vig./Spl Board in 3 Tier Coac of 04.5.88 b/w

serious irregularities were noticed.

Article-1

He deliberately allotted berth No. 62 and 56 to passengers with Tkt. No. 68543/91006 (W/L No. 17) and with Tkt. No. 16345/55971 (II M/ Exp. Tkt.) ex-GKP to NDLS out of turn overlooking legitimate turn of RAC passengers kept on B. No. 15 & 23 with improper motive as detailed in the statement of imputation.

Article-2

He also intentionally falsified the reservation chart of Coach No. 4810 by passing a remark against RAC 15-23 "Berths not required" only to cover up his malpractice as detailed in the statement of imputations.

Thus he violated Rule No. 3(1) (i), (ii) and (iii) of the Railway Service (Conduct) Rules, 1966."

6. The RAC passenger of berth No. 15 were Ramesh ^{Sahai} Sharma and Abdul Aziz and on RAC berth No. 23 V.K. ^{Soni}

The statements were recorded in the presence of T.T.E., S. Sahai, who was managing the coach between Lucknow Junction to Delhi Junction. The R.A.C. passengers complaint that in spite of their request and demand, the berth was not given to them. The complaint by the passengers are in writing with their signatures.

The passengers who were given berths were wait listed and even out of list. Against the names of the applicants noted on the reservation chart "berth not required". The enquiry officer recorded the statement of S. Sahai, T.T.E. who was managing the coach between Lucknow to Delhi, & of Vigilance Inspector N.V. Prasad Sharma who checked the Bogi. who

The applicant also examined S. Sahai, T.T.E. was produced earlier as a prosecution witness and also produced R.P. Gupta and M.N. Sharma two other witnesses. Besides the above, the applicant also produced undated statement of Abdul Aziz that he did not require the sleeper berth. This undated written statement has ~~not~~ been accepted by the enquiry officer on the ground that the same was obtained subsequently. The enquiry officer has given sound reason.

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ing for his conclusion. A reading of evidence recorded by the enquiry officer shows that he ^{has} ~~was~~ considered all the points raised on behalf of the applicant and has properly assessed the evidence. The contention of the learned counsel for the applicant that the proper opportunity was not given to him for cross-examination, or that the evidence of defence witnesses has not been properly assessed, has no basis. Non-examination of one prosecution witnessess namely R.P. Singh is also not very material as another witness on the same point was examined earlier. We are, therefore, unable to agree with the contention of the learned counsel for the applicant, that the findings ^{against} ~~the~~ applicant against the ~~is~~ is based on no evidence.

7. The other contention of the learned counsel for the applicant that the applicant was not given copy of enquiry report as has been held in M.R. Khan's case is also not correct. M.R. Khan's case was decided on 20.11.1990. The decision is not retrospective and is only prospective as has been held by the Hon'ble Supreme Court in the case of Managing Director ECIL Hyderabad Vs. B. Karunakar & others 1993 SCC (L&S) page 1184.

8. The last point of argument of the learned counsel for the applicant is that imposing of punishment

by awarding to lowest stage of the pay-scale is not within the strict interpretation of the term. There is no limit to which the punishment of reduction in pay can be awarded. Lower stage includes lowest stage. Besides it, this Bench hearing the case under section 19 of A.T. Act cannot interfere with the quantum of punishment. In State Bank of India & others Vs. Samarendra Kishore Endow and another reported in 1994 SCC page 687 the Hon'ble Supreme Court has held as Below :-

"Imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it but not to the High Court or to the Administrative Tribunal ~~and~~ for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under article 226. The power under article 226 is one of the judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court".

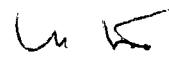
9. The quantum of punishment awarded has been and upheld by the appellate authority ~~also on revision~~, so we are not inclined to interfere with it.

10. In view of the discussions made above, we

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find no ground to interfere with the order of punishment awarded to the applicant. The O.A. is liable to be dismissed and is dismissed. No costs.


MEMBER (J)


MEMBER (A)

LUCKNOW: DATED: 18-10-94

GIRISH/-