

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No. 64 of 2009

Reserved on 17.3.2015

Pronounced on 31/3/15

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

R. N. Singh, aged about 59 years S/o Harbans Singh R/o 551/Gha/263, Kutiawali Gali, Nathkhera Road Alambagh, Lucknow.

Applicant

By Advocate Sri A. Moin

Versus

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

Respondents

By Advocate Sri S.Verma and Sri B.B.Tripathi for Sri M. K. Singh.

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 29.7.2008 passed by the Respondent No. 2 as contained in Annexure A-1 to the O.A. with all consequential benefits

(b) to quash the impugned order dated 5.2.2008j passed by the respondent No. 3 as contained in Annexure A-2 to the O.A.

(c) To quash the impugned order dated 25.9.2007 passed by the respondent No. 4 as contained in

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Annexure No. A-3) to the O.A. with all consequential benefits."

2. The brief facts of the case are that the applicant was initially appointed in 1981 as Store Khallasi and thereafter given further promotions. The applicant was served with a major penalty charge sheet on 20th December, 2005 alleging that while working in the Train on 6.10.2005, committed gross misconduct, misbehavior in as much as he was having Rs.34/- excess in Govt. cash and was carrying eleven irregular without ticket passengers in the coaches manned by him due to his malafide intention for his personal gain who were got regularized /charged and Rs. 979/- was collected as due fare. Apart from this, it is also alleged that the applicant has fraudulently mentioned EFTs for 2 and 14 passengers who had no relation with each other combined and number of EFT mentioned on more number of tickets sharing in same EFT. Earlier, the O.A. was finally heard and disposed of. The respondents challenged the order before the Hon'ble High Court and the Hon'ble High Court remanded back the matter to this Tribunal to be decided a fresh.

3. Learned counsel for applicant has categorically drawn the attention towards the averments made in the O.A. as well as in the enquiry' report through which, it is indicated that the applicant was asked to manage two coaches and on account of rally, on the date of check, the passengers entered into the sleeper coaches which could not be managed by the applicant. Apart from this, it is also alleged by the applicant that there were six doors in each compartment (total twelve doors), as such it was difficult for a single person to manage both coaches. Accordingly, the passengers were shown excess. It is also alleged by the learned counsel for the applicant that Vigilance Inspector has not physically checked private cash carried by the

applicant and also not got general currency notes details and in the said confusion, the applicant forgot to mention Rs. 34/- which was subsequently declared as excess.

4. On behalf of the respondents, reply is filed and has indicated that the applicant while posted as Train Ticket Examiner, a preventive check was conducted by the Vigilance Team in Train No.2053 on 6.10.2005 and the applicant was found responsible of certain lapses. Thereafter, he was placed under suspension w.e.f. 22.11.2005. It is also indicated by the respondents that he was restrained from maintaining Train Link Roaster for a period of about a year. Enquiry Officer was appointed and the enquiry officer submitted the report and found all the charges proved against the applicant. Accordingly, the disciplinary authority imposed punishment upon the applicant. The appeal so preferred by the applicant was also considered and rejected by the authorities and revision petition was also considered and rejected by the revisionary authority. As such, there is no illegality in the same and it does not require any interference by the Tribunal.

5. 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 of the counter reply.

6. On behalf of the respondents, a Supplementary Counter Reply is filed.

7. Heard the learned counsel for the parties and perused the records.

8. The applicant was initially appointed by the respondents and after rendering requisite number of working days, the applicant was granted temporary status. After qualifying the screening test, he was posted as Markman w.e.f. 17.8.1989 and subsequently promoted as Ticket Collector on qualifying the

selection against 33-1/3% promotion quota. This was done after completing P-6 course successfully from Chandausi. The applicant was subsequently promoted as Train Ticket Examiner and further promoted on the post of Head Train Ticket Examiner in the grade of Rs. 5000-8000 vide order dated 1.11.2003. On 6.10.2015, a preventive check was conducted by the Vigilance Team in which the applicant was found responsible of certain lapses as such he was placed under suspension and thereafter a major penalty charge sheet was issued to the applicant on 20th December, 2005. In the charge sheet, there were three charges levelled against the applicant which reads as under:-

“While working on 6.10.2005 in Train No. 2053 committed gross misconduct /misbehavior in as much as that:-

- i) Having Rs. 34.00/- excess in his Govt. cash.
- ii) Carrying 11 irregular/without ticket passengers in his manned coaches due to his malafide intention for his personal gain who were got regularized / charged and Rs.979-00 collected as due fare.
- iii) Fraudulently mentioning EFT number of issued EFT on three tickets and issuing EFT for two passengers.”

9. Along with charge sheet , statement of imputation of misbehavior /misconduct was also mentioned and list of documents along with list of witnesses were also mentioned. It is also to be pointed out that in the list of witnesses, two witnesses are mentioned namely Shri Ashwani Kumar Sharma, ex-Chief Vigilance Inspector and second witness mentioned as Conductor of Train No. 2053 between Rai Bareilly and Lucknow dated 6.10.2005. The enquiry officer was appointed and enquiry officer conducted the enquiry and found all the three charges

proved against the applicant. Accordingly, disciplinary authority imposed punishment upon the applicant.

10. Enquiry officer in his report has categorically indicated that Train Ticket Examiner is duty bound to keep his manned coaches totally checked and issue EFTs to regular / unauthorized passengers entering in his coaches while the running time between Allahabad to point of vigilance check was more than 3 hours and he was manning only two coaches. As regards the statement of Ram Shankar, Conductor is concerned, it is mentioned that the Govt. cash cannot mix with the private cash as per rules.

11. The defence so taken by the applicant was not discussed in the enquiry report. However, it is categorically mentioned by the enquiry officer that on the date of checking, there was some rally and all the passengers entered into the sleeper coaches. Apart from this, a question was put to Sri Ashwani Kumar Sharma "whether any complaint was received", it was answered that it was not necessary because the private check was conducted on a source information regarding fraudulently manipulation in which the name of charged officer is specifically mentioned. The answer given by the witness was also not clear.

12. Not only this, statement of Ram Shankar, conductor of Train No. 2053 on 6.10.2005 is also annexed along with the records. It is undisputed fact that the applicant was manning two coaches on the particular date and there was a rally and it is mentioned by the enquiry officer in his report itself that all passengers entered into the sleeper coaches. The disciplinary authority after considering these facts came to the conclusion that the applicant is found guilty of offence. Accordingly imposed punishment and indicated that employee has not maintained absolute integrity in performance of his Railway

duty and it was found that he has Rs. 34/- excess in govt. cash for which he explained that it was pooled money for meals. Apart from this, it is also indicated by the disciplinary authority that he manipulated EFTs.

13. Accordingly, the applicant was punished for reduction to the lower stage from the pay scale Rs. 5000-8000 to Rs. 4000-6000 fixing basic pay at Rs. 4000/- for a period of two years with cumulative effect.

14. The applicant preferred the appeal to the appellate authority in which it is indicated that the disciplinary authority has not gone through the enquiry proceedings, depositions and other supporting documents and report dated 7.10.2005 which was submitted immediately and soon after the check at first possible opportunity wherein it is categorically mentioned that Rs. 34/- was spent on lunch which was call of nature and same cannot be termed as post facto manipulation as inferred by the disciplinary authority. It is also indicated in the appeal that a wrong inference was drawn by the disciplinary authority that he was carrying eleven passengers. Not only this, it is also indicated that the enquiry officer is an ex-Vigilance Inspector and has acted against the applicant. The appellate authority without discussing all these facts rejected the appeal of the charged officer. The applicant thereafter preferred the revision and revisional authority also dismissed the same.

15. It is also to be pointed out that the appellate order is a non-speaking order and points taken in the appeal are not discussed by the Appellate Authority. Not only this, it is also to be indicated that the disciplinary authority failed to appreciate this fact that the applicant was manning two coaches and there was a rally on the date when the check was conducted. As

indicated by the enquiry officer himself that all passengers entered into the sleeper coaches.

16. The Hon'ble High Court in the case of **H.S. Srivastava Vs. Special Land Acquisition Officer reported in 1993(11) LCD 441** pleased to observe that "An order adversely affecting an employee has to be a speaking order."

17. Another ground which is taken by the applicant is that the order passed by the appellate authority is a non-speaking order. The bare reading of the appellate order as well as revisional order, it is clear that the same is not passed after application of mind and the respondents have just passed the orders in a mechanical manner. The bare perusal of Rule 22 (2) of Railway Servants (D&A) Rules, 1968 reads as under:-

"Rule 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 finding 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."**

18. The Hon'ble Apex Court in **Director (Marketing) Indian Oil Corporation Ltd. & another v. Santosh**

Kumar, 2006 (6) SCALE 358 has been pleased to observe that:-

"11. A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh proposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside the direction issued by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The Civil Appeal is disposed of accordingly. No order as to costs."

19. Apart from this, the Hon'ble Apex Court in the case of **Ram Chander Vs. Union of India and others** reported in **1986(2) SLR, 608** also observed that "**Appellate Authority is under obligation to record reasons for its decision**".

20. It is absolutely clear that the order passed by the Disciplinary Authority and appellate authority is a non-speaking order since he has not discussed the points raised in the enquiry proceedings and appeal, as such it requires interference by this Tribunal.

21. Accordingly, the impugned order dated 25.9.2007, 5.2.2008 and 29.7.2008 are quashed. O.A. is allowed. No order as to costs.

J. Chandra
(JAYATI CHANDRA)
MEMBER (A)

HLS/-

Mr. Agarwal
(NAVNEET KUMAR)
MEMBER (J)