

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 398 of 2009

This, the 4th day of September, 2014.

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

O.P. Srivastava aged about 57 years s/o Late Sant Bux Lal Srivastava R/o 76/1, Geeta Palli, Alambagh Lucknow.



Applicant

By Advocate Sri A. Moin.

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Commercial Manager, North Eastern Railway, Gorakhpur.
3. Additional Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.
4. Senior Divisional Commercial Manager, North Eastern Railway Ashok Marg Lucknow.
5. Divisional Commercial Manager, North Eastern Railway Ashok Marg, Lucknow.

Respondents

By Advocate Sri Narnedra Nath.

ORDER (ORAL)

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 punishment order dated 8.5.2008 passed by Respondent No. 3 as contained in Annexure A-6 to the O.A. with all consequential benefits.



(b) To quash the order dated 22.8.2007 passed by Respondent No. 4 as contained in Annexure A-5 to the O.A. with all consequential benefits.

(c) To quash the impugned punishment order dated 3.5.2007 passed by Respondent No. 5 as contained in Annexure A-4 to the O.A. with all consequential benefits.

(d) To direct the respondents to pay the cost of this application.

(e) Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization and was working as Divisional Travelling Inspector and when he was manning Coach No. A-1, A-2 and H-1 on Train No. 2554 on 13.8.2005 from Delhi to Lucknow. During the course of journey, a check was conducted by the vigilance department and the applicant was subsequently charge sheeted vide charge sheet dated 23.2.2006. Against the said charge sheet, inquiry was conducted and the inquiry officer submitted the report and mentioned in the said report that the charges levelled against the applicant are proved. The respondents imposed the punishment upon the applicant of reduction to the lower stage at Rs. 7250/- in the time scale of pay of Rs. 5500-9000/- for a period of one year. The applicant thereafter preferred an appeal. The appeal so submitted by the applicant was rejected by the authorities. Thereafter, the

✓ applicant submitted the revision and the revision was also rejected by the revisional authority. It is also indicated by the applicant that he has preferred a Review Petition under Rule 25 (A) of Railway Servants (Discipline & Appeal) Rules, 1968 on 18.9.2009 and the said appeal is still pending for final adjudication. The learned counsel for the applicant has made an innocuous prayer to the effect that a direction be issued to the respondents to consider and decide the applicant's review petition dated 18.9.200 as contained in Annexure A-1 to the O.A.

3. Shri Narendra Nath, learned counsel appearing on behalf of the respondents has put in appearance and submitted that after the order passed by the disciplinary authority, the mandatory appeal so submitted by the applicant was also considered and decided by the authorities and there is no requirement of filing any review petition, and the same is not statutory review. The learned counsel for the respondents has also indicated that as per the office record the said review petition is pending for final adjudication rather it is not available on records.

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

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

✓ record.

- ✓ 6. Admittedly, the applicant is working with the respondents organization and while he was manning Coach No. A-1, A-2 and H-1 on Train No. 2554 on 13.8.2005 a vigilance check was conducted and accordingly, a charge sheet was issued and as per the said charge sheet, it is indicted that the applicant is responsible for his failure in regularizing one irregular passenger travelling in his manned coach A-1 berth No. 42 within his jurisdiction without paying the difference of fare till vigilance check for same was done. This was done by the applicant for his personal gains. After issuance of the charge sheet, the inquiry was conducted and inquiry officer has submitted his report and indicated therein that the charges so leveled against the applicant stands proved. The matter was placed before the disciplinary authority and the disciplinary authority passed an order of reduction to the lower stage at Rs. 7075/- in the time scale of Rs. 5500-9000 for a period of one year. Accordingly, the applicant's pay was reduced from the stage of Rs. 7250/- to the stage of Rs. 6725/- in the Pay scale of Rs. 5500-9000. The appeal so submitted by the applicant was also considered by the appellate authority and the appellate authority upheld the order of the disciplinary authority. Thereafter the applicant has preferred the representation which was decided by the appellate authority. The learned counsel appearing on behalf of the applicant has also indicated this fact that he has preferred Review under Rule 25-A of the Railway Servants
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- ✓ (Discipline & Appeal) Rules, 1968. As per the said Rules, the Review is permissible . For ready reference, Rule 25-A of Railway Servants (Discipline & Appeal) Rules, is as under:-

“ The President may at any time either on his own motion or otherwise review any order passed under these rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice.

Provided that no order imposing any penalty shall be made by the President unless the Railway servant concerned has been given an reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 6 or to enhance the minor penalty imposed by the order sought to be reviewed to any of major penalties and if an inquiry under Rule 9 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down Rule 9, subject to the provisions of Rule 14 and except after consultation with the Commission where such consultation is necessary.”

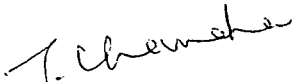
7. That the review petition is filed along with the O.A and the copy of the O.A. was duly received by the respondents in the year 2009 itself as such, the respondents would have taken a decision and pass an order in this respect. But the respondents kept silent and at this stage, this objection is raised that no review is available in the office records filed by the applicant under Rule 25-A of Railway Servant (D&A) Rules, 1968.

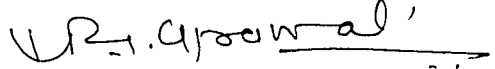
8. Prayer so sought for by the applicant does not appear to be unjustified. As such, without entering into the merits of the case, we deem it appropriate to issue a direction upon the respondents to consider and decide the applicant's Review

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- * Petition under Rule 25 (A) of the Railway Servants(D&A) Rules 1968 as contained in Annexure A-1 to the O.A. within a period of 6 months from the date of receipt of certified copy of order is produced and the decision so taken, be communicated to the applicant.

9. With the above observation, O.A. stands disposed of. No order as to costs.


(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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