

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A.NO.391 of 1996

Date of order 28-3-2001

N.K. Ojha, Travelling Ticket Examiner, Jamalpur, son of
Ram Bachan Ojha, At & PO Deokuli, District Buxar.

.. Applicant

-versus-

1. The Union of India, through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta-1.
2. The Divisional Railway Manager, Eastern Railway, Maldah, W.B.
3. The Additional Divisional Railway Manager, Eastern Railway, Maldah, W.B.
4. The Divisional Commercial Manager, Eastern Railway, Maldah, W.B.

.. Respondents

Counsel for the applicant .. Shri M.M.P.Sinha.
Counsel for the respondents .. Shri Gautam Bose

C O R A M : Hon'ble Mr. Justice S.Narayan, Vice-Chairman
Hon'ble Mr. L.R.K.Prasad, Member (A)

ORDER

L.R.K.Prasad, Member (A):-

On the grounds as stated at para 5, the applicant has challenged the order dated 7.3.1994 (Annexure-A-1) of the Disciplinary Authority whereby the pay of the applicant was reduced from Rs.1350/- to one lower stage to Rs.1320/- in the scale of Rs.1200-2040 for a period of two years which will operate to postpone future increment. He has also challenged the order of the appellate authority dated 21st May 1996 (Annexure-A-2), whereby his appeal representation was rejected. He has prayed for quashing the aforesaid orders.

2. We have heard the learned counsel for the parties and perused the materials on record.

3. The applicant was Travelling Ticket Examiner (TTE) at the relevant time based at Jamalpur under the administrative control of the DCM, Eastern Railway, Maldah. On 9.7. 1991, the applicant was on duty in 3-tier sleeper Coach No-1 (Bogie No.10037) of 3071 UP Howrah Jamalpur Express. When he took charge of the coach, he noticed a large number of unauthorised passengers inside the bogie. When his persuasion failed, he is stated to have immediately rushed to the nearest point from where he could send a message (Annexure-A-3) to the nearest stopping station Bardawan for assistance. The applicant has stated that when the train reached Bardawan, on the relevant date, Vigilance Inspectors (Anti Fraud Squad) entered into his coach. It is the claim of the applicant that the said Anti Fraud Squad appeared only in response to his message (Annexure-A-3). It is alleged by the applicant that instead of helping him, the Anti Fraud Squad charged him for dereliction of duty. He was served with a memorandum of charges, which are at Annexure-A-4. The Article of charges are reproduced below:-

"Article-I

That Sri N.K. Ojha, TTE/Jamalpur while working by 3-tier Coach no.S-1 (bogie No.10037) of 3071 UP Ex.Howrah on 09.7.91 to Jamalpur failed to charge three passengers travelling without ticket by the said coach Ex.Howrah to Jamalpur.

Sri N.K. Ojha, TTE/JMP while working as such failed to realise berth reservation charges from 5 passengers.

Thus Sri N.K. Ojha, TTE/JMP exposed his lack of integrity, absolute devotion in duty and acted in a manner unbecoming of Railway servant in violation of rule 3.(i), (ii) & (iii) of Rly. Service Conduct Rules, 1966."

The applicant was directed to submit a written statement of defence. For replying to the charges, he

wanted certain information, as per his letter as at Annexure-A-5. Instead of supplying the information, he was asked by the respondents to go to concerned office to inspect the documents. Further the allegation of the applicant is that before he could send his reply, one Shri N.C. Das was already appointed as Inquiry Officer, thereby stating that the respondents had already made up their mind to conduct the inquiry.

4. On completion of inquiry, the applicant is said to have submitted a written statement pointing out the defects, delays and omissions in the inquiry proceeding, specially with regard to message (Annexure-A-3) which he had sent. On receipt of inquiry report, the applicant had submitted his comments (Annexure-A-11) to respondent no.4. According to the applicant, both the Disciplinary Authority as well as Appellate Authority had passed the impugned orders (Annexures-A-1 and A-2) without application of mind and without considering the points which had been raised by him through his comments on inquiry report as well as his appeal representation. In view of the above position, the applicant has prayed for quashing the orders of the Disciplinary Authority, as at Annexure-A-1 and the orders of the Appellate Authority, as at Annexure-A-2.

5. While strongly opposing this application, the respondents have stated that the instant O.A. is not maintainable on the grounds as stated in their written statement. While stating that the message sent by the applicant, as at Annexure-A-3, is a fabricated document, the respondents have stated that as the alleged forcible occupation in the relevant coach occurred at Howrah, the applicant should have taken necessary steps at that Station to get the unauthorised passengers vacated from his compartment. It is not clear from the message (Annexure-A-3) as to which office it was submitted or which office

received the same. The stamp of signing authority is "Howrah/Eastern Railway" without designation. The Anti Fraud Squad (under control of Chief Commercial Manager Eastern Railway, Howrah) inspected the coach of the applicant, on their own, and not in response to the message sent by the applicant. It was a surprise check and the applicant was caught red-handed. Accordingly, a major penalty charge memo dated 11.2.1992 (Annexure-A-4) was issued to him. It is asserted by the respondents that documents, as mentioned in the charge memo, were shown to the applicant on 16.6.1992 in the presence of ACM/Catg./MLDT. While the applicant filed defence note on 24.4.1993, the DAR inquiry commenced from 28.6.1993, after allowing the applicant to inspect the relevant documents on 10.6.1992. On his request, he was again asked to inspect the relevant documents along with his Defence Helper on 24.8.1992 but he failed to avail the opportunity and stated that he is not interested to inspect the documents. Therefore, full opportunity was given to the applicant to put up his defence. The DAR proceeding was completed after hearing on 28.6.1993, 9.1.1993, 16.8.1993 and 2.9.1993. The applicant was allowed to submit a defence brief before the Inquiry Officer. On 25.11.1993, the Inquiry Officer submitted his DAR report, a copy of which was sent to the applicant on 21.1.1994 for his comments. On receipt of his comments on the inquiry report and after careful consideration of the entire matter, the Disciplinary Authority passed his orders on 7.3.1994, which is at Annexure-A-1. The applicant filed an appeal against the order of Disciplinary Authority which, after due consideration, was rejected by the Appellate Authority through his self-contained order dated 21.5.1996 (Annexure-A-2). The applicant has not so far filed any review petition against the order of the Appellate Authority.

6. In brief, the fact of the case is that on 9.7.1991, the applicant was on duty in 3-tier sleeper Coach No.1 (Bogie No.10037) of 3071 UP Howrah Jamalpur Express. When he entered the coach, he noticed a large number of unauthorised passengers. It is his claim that he persuaded them to vacate the compartment. When his persuasion failed, he sent a message (Annexure-A-3) about it to various Stations. It appears from the said message that it is addressed to BWN, BHP, RPH, BHW, SBG, but it is not clear from the said message as to where it was booked and where the same was received. The respondents have stated that this is a fabricated document and no such message was received at any place. While it is the claim of the applicant that the Anti Fraud Squad consisting of vigilance Inspector entered into his compartment, in response to his message at Bardawan, while rebutting the aforesaid stand of the applicant, the respondents have stated that the said Squad entered into the compartment as a measure of surprise check independently. The inspection by the Squad was not in response to any message from the applicant. the Inspecting Squad found some passengers travelling without ticket and some without paying the reservation charges. After due inspection, they submitted inspection report which showed dereliction ^{of duty} on the part of the applicant. Accordingly, a charge memo was issued to him on 11.2.1994 which is at Annexure-A-4. Instead of sending immediate reply to the charge memo, the applicant wanted certain documents. The charge memo had made it very clear that if the applicant so desires, he can inspect and take extract from the documents mentioned in the charge memo at any time, during office hour within 10 days of receipt of the said memo, failing which the necessary inquiry may be held ex parte. It appears that the applicant was allowed inspection

of the relevant documents on 10.6.1992 and the defence note has been filed by the applicant on 24.4.1993. The DAR inquiry commenced from 28.6.1993, which is after submission of the defence note by the applicant.

The applicant has raised an objection to the extent that while he submitted his defence note on 24.4.1993, the Inquiry Officer was appointed on 13.3.1992. In this regard, it may be stated that the Inquiry Officer was appointed almost after a month from issue of charge memo. Even if the Inquiry Officer was appointed before submission of defence note by the applicant, we do not find that this has caused any prejudice.

7. On the one hand, the applicant has alleged that he was not supplied relevant documents so as to enable him to defend his case properly. Regarding non-supply of relevant documents, the learned counsel for the applicant placed reliance on the orders of the Hon'ble Supreme Court passed on 30.7.1998 in Civil Appeal No.2469/82 (reported in 1999 vol.1 SLJ page 213). The placitum portion of the order is reproduced below:-

"disciplinary Enquiry, Inspection of Documents, Supply of Copies of Statements, Natural Justice, opportunity, Preliminary Enquiry-Documents cited with charge-sheet not supplied-plea that he could have inspected them-was never told to inspect-Held it was denial of reasonable opportunity-Asked for copies of statements recorded in preliminary enquiry-Not given--Held such enquiry is done behind his back, so he must be given copies of such statements if so requested by him-Appeal rejected."

P-200
On the other hand, the respondents have clearly stated that the applicant was allowed to inspect the relevant documents on 10.6.1992. On his request, he was advised to inspect the documents again on 24.8.1992 along

with his Defence Helper. Instead of availing the aforesaid opportunity, the applicant informed the respondents that he is not interested to inspect the documents.

It is observed that while the applicant has insisted that he was not supplied the relevant documents, the respondents have clearly stated that he was allowed to inspect the relevant documents. The respondents have also explained the reasons as to why it took sometime to allow the applicant to inspect the documents. He was also given due opportunity to present his case before the Inquiring Authority. Therefore, it appears to us that the applicant was given due opportunity to inspect the relevant documents so that he can present his case before the Inquiry Officer.

8. Now, coming back to the date of occurrence at Howrah Station, ^{Burdwan} it is not clear to us as to why no action was taken by the applicant ^{at Howrah} to get the unauthorised passengers vacated from the compartment. He has not been able to give satisfactory answer on this point. Moreover, from the pleadings, we get an ^{impression} that the Anti Fraud Squad made surprise check of the concerned compartment as per their programme and not in response to any message received from the applicant. Moreover, the Anti Fraud Squad is under the administrative control of the Chief Commercial Manager, Eastern Railway, Howrah. The preventive check was conducted by Eastern Railway, Vigilance Team in association with Anti Fraud Squad/CCS/ER/KG in 3-tier sleeper coach of 3071 UP leaving Howrah on 9.7.1991 in between ~~BEN~~ and Bolpur on 9/10.7.1991. The findings of the Inquiry Officer are reproduced below:-

"Thus under the facts and circumstances narrated above, it is evident that Sri N.K. Ojha, TTE/JMP not only failed to realise Rly. dues from the ticketless passengers/irregular passengers and thereby caused loss of Rly. revenue but also violated the instructions of VI/CCC by not depositing the train working

about in the CIT's office/JMP. Had there been no vigilance check Railway dues as realised during the vigilance check, would not have been realised."

"After carefully considering the oral and documentary evidences adduced during the course of enquiry proceeding and keeping in view the assessment of evidences and clarifications contained in the foregoing paragraph nos.4.1 to 4.5 I find Sri N.K.Ojha, TTE/JMP under the then DCS/ER presently under DCM/ER/MLDT, guilty of the charges as mentioned in the Annexure-I of the major penalty Memorandum issued to Sri N.K.Ojha."

It is admitted fact that a copy of the inquiry report had been sent to the applicant for his comments. Only after receiving his comments, the disciplinary Authority passed his orders on 7.3.1994, which is reproduced below:-

"After careful consideration of the findings of D&A enquiry report in respect of major penalty charge-sheet No.Com/vig/JMP/3/92 dated 11.2.92, I find that you are guilty in this case as you failed to charge three passengers travelling without ticket by 3-tier coach No.S-1 of 3071 UP Ex.HWH to Jamalpur on 9.7.91.

Hence your pay is reduced from Rs.1350/- to the one lower stage in Rs.1320/- in scale of Rs.1200-2040/- for a period of two years which will operate to postpone future increment."

9. Being aggrieved by the orders of the Disciplinary Authority, the applicant submitted an appeal before the Appellate Authority. The order of the appellate authority dated 21st May 1996 is at Annexure-A-2.

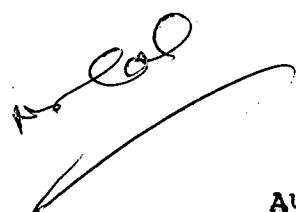
10. It is well settled principle of law that there should be least interference in the matter of disciplinary proceeding, which is quasi-judicial process. However, there is a scope for interference with disciplinary proceeding if it is proved that the said proceeding was not conducted in accordance with law or the same is tainted with mala fide. In the instant case, we do not find any such thing. It may also be stated that as per law, the Disciplinary Authority is fully competent to pass appropriate orders on the basis of the findings of the Inquiry Officer taking into consideration

all the relevant factors of the case and as per his wisdom. In the instant case, the applicant had submitted his comments on 9.2.1994 on the inquiry report.

The disciplinary Authority passed his orders on 7.3.1994, which is after submission of the comments of the applicant on the inquiry report, even though in his order he has not specifically mentioned about the comments of the applicant on the inquiry report.

14. In order to ensure that justice is done to a delinquent employee, there is a system of filing appeal against the order of the disciplinary Authority. In the instant case, the applicant had filed memo of appeal against the order of the disciplinary Authority. The role of the Appellate Authority in disposing of the appeal has been explained in Rule 22 of Railway Servants (D&A) Rules, 1968. While disposing of the appeal, the Appellate Authority is required to consider the following points:-

- (i) whether the procedure laid down in prescribed rule has been complied with, and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of India or in the failure of justice;
- (ii) whether the findings of the disciplinary Authority are warranted by the evidence on record; and
- (iii) whether the penalty imposed on the applicant by the disciplinary Authority is adequate, inadequate or severe.

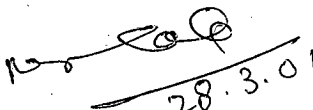
 After considering the above points, the Appellate Authority is required to pass orders confirming, enhancing, reducing or setting aside the penalty or remit the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in

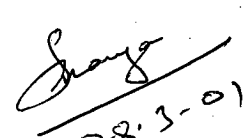
the circumstances of the case. In the instant case, we find that the Appellate Authority has passed self-contained order and confirmed the punishment imposed on the applicant by the Disciplinary Authority. During the course of hearing, we were apprised of the order of the Hon'ble Supreme Court dated 24.10.1994 passed in Civil Appeal No.6964 of 1994 (reported in AIR 1995 SC 561). In the aforesaid case, the Hon'ble Supreme Court held that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the Disciplinary Authority has accepted and which material reasonably support the conclusion reached by the Disciplinary Authority, it is not the function of the Administrative Tribunal to review the same and reach different findings than that of the Disciplinary Authority.

12. In view of the above facts and circumstances of the case, we find that the disciplinary proceedings in the instant case have been conducted in accordance with law. There was no mala fide on the part of the respondents in initiating the disciplinary proceeding against the applicant. Moreover, the applicant was given due opportunity to present his defence before the Inquiry Officer. The Disciplinary Authority has passed his orders as per his wisdom keeping in view the findings of the Inquiry Officer. The applicant had filed an appeal against the orders of the Disciplinary Authority which was duly considered by the Appellate Authority, who rejected the appeal on the grounds as stated in his order 21.5.1996 (Annexure-A-2). There has been application of mind at the appellate stage. In view of

msd

the position explained above, we do not find any scope to interfere with the orders already passed by the disciplinary Authority/Appellate Authority. In that view of the matter, we find that the instant O.A. has no force and the same is, accordingly, dismissed with no order as to the costs.


28.3.01
(L.R.K. Prasad)
Member (A)


28.3.01
(S. Narayan)
Vice-Chairman

Mahto