

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A.No.: 420 of 1996.

(Patna, this Wednesday, the 31st Day of March, 2004).

C O R A M

HON'BLE MRS SHYAMA DOGRA, MEMBER (JUDICIAL)

HON'BLE MR. MANTRESHWAR JHA MEMBER (ADMINISTRATIVE).

S.K.Dubey, son of Late Rajeshwari Dubey, resident of Gaya, P.S.Gaya Town, District Gaya. He was posted as Assistant Booking Clerk at Gaya Railway Station. APPLICANT.

By Advocate :- N o n e.

Vs.

1. The Union of India through Divisional Railway Manager, Eastern Railway, Mughalsarai (Calcutta).
2. The Divisional Railway Manager, Eastern Railway, Mughalsarai (Calcutta).
3. The Divisional Commercial Manager, Eastern Railway, Mughalsarai (Calcutta).
4. The Divisional Commercial Superintendent, Eastern Railway, Mughalsarai (Calcutta).
5. The Station Superintendent, Gaya.
6. The Station Master, Gaya. RESPONDENTS

By Advocate :- N o n e.

O R D E R
(ORAL)

Shyama Dogra, Member (J) :- It is stated by the vice-counsel for Shri Gautam Bose that Shri Bose is not representing Railways in this case as the brief has been taken away from him by the respondents. None has put appearance on behalf of the applicant.

2. Since the matter is hanging fire for the last eight years for one or the other reason; therefore, the matter is disposed of on the basis of material available on record under Rule 15 of the CAT (Procedure) Rules, 1987.

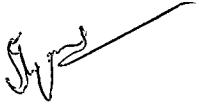
3. This OA has been directed against the order of removal of the applicant vide Annexure-4, dated, the 17th November, 1992, as well as Annexure-3, whereby his appeal has also been rejected vide order dated, the 26th February, 1996, with further prayer for direction to the respondents to re-engage the applicant from the date of his removal alongwith

payment of arrears of salary from the said date till the date of his re-engagement/appointment alongwith other consequential benefits. The applicant has also prayed for direction to the the respondents to not take back/possession of Railway quarters from the applicant in view of the order passed for his removal from the post of Booking Clerk.

4. The facts, in nutshell, as set out in the application are that the applicant was appointed in Class III post on compassionate grounds on 19th November, 1982, and Asstt. thereafter, he was posted as/Booking Clerk at Gaya Railway Station. Some allegations were levelled against him in the month of February, 1987, for mis-appropriation of Rs.16850/- of Government money for his personal gain for the period from January, 1986 to December, 1986 as the applicant had not deposited the said amount pertaining to sale of Railway tickets at relevant point of time. In view of this, memo of chargesheet was issued against the applicant and in pursuance of this, the applicant has submitted his reply with prayer for supplying him the relevant documents to put his defence vide Annexure-2, but without giving him these documents, his order of removal vide Annexure-4 has been passed by the respondents.

5. Feeling aggrieved by that order, the applicant has also preferred an appeal before the Divisional Railway Manager, Eastern Railway, who has upheld/vide his order dated, the 26th February, 1996 (Annexure-A/3).

6. The applicant has challenged these orders mainly on the ground of non-supply of relevant documents on the basis of which this order of punishment has been passed which has caused grave mis-carriage of justice as principles of natural justice has been violated by the respondents. Second point of challenging these orders is



that the said alleged amount of mis-appropriation has also been deducted by the respondents from the salary of the applicant; therefore, awarding of major punishment of removal was not justified. Even in the appeal no reasons have been assigned by the appellate authority while upholding the order of removal passed by the disciplinary authority; therefore, the said impugned order is non-speaking order and passed in violation of the Railway rules applicable in applicant's case. The applicant has also not been given an opportunity of being heard while passing this order by the appellate authority.

7. Moreover, the enquiry officer has not enquired into the factum of cause of alleged absence of the delinquent/applicant for coming to the conclusion that the applicant remained absent from duty and the said enquiry report has been passed ex parte against the applicant which has also caused violation of principles of natural justice. Therefore, these impugned orders are not sustainable. The applicant has also disputed the quantum of punishment which is on a higher side and the said order of removal has been passed without supplying him the requisite documents as prayed for by him vide Annexure 2.

8. The respondents have filed written statement and refuted the claim of the applicant on various counts and supported the impugned orders on the ground that the same have been passed in accordance with law. Since the applicant, who was posted as Assistant Booking Clerk at Gaya Booking Office and a Vigilance team conducted a preventive check on 07.02.1987 when he was on duty at 11 p.m. and since it was found that he has mis-appropriated Government money amounting to Rs.16850/- illegally for his personal gain and the same was also admitted by him as a debit in coaching outstanding list/book of Gaya for the month of December, 1986, and, therefore, the respondents justified the said order of his

removal taking into consideration the gravity of offence being committed by the applicant.

9. So far as taking the exparte decision against the applicant is concerned, the plea of the respondents is that the applicant has not submitted his defence of SF-5 memorandum whereby he was asked to inspect the relied upon documents as per Annexure-3 of the said SF-5 memorandum or to take extract therefrom vide office letters dated, the 19th July, 1989; 17th August, 1989 and 5th September, 1989, but he did not turn up either to inspect the documents or to take the extract therefrom. Even after his transfer from Gaya to Mughalsarai he was given an opportunity of inspection of these confidential documents; therefore, leaving with no other alternative the disciplinary authority has conducted DAR enquiry under Railway Servant (D&A) Rules, 1968.

10. respondents have submitted that otherwise also there is no question of violation of principles of natural justice as the request of the applicant was also taken note of while nominating Shri K.N.Seth, Ex-Office Superintendent to act as his Defence Helper, but on ~~most~~ date the applicant as ~~well~~ the Defence Helper were absent which compelled the Inquiry Officer to take the statement of prosecution witnesses on 22nd April, 1992, and 23rd April, 1992, exparte. The respondents have also given the chronological chart of the dates with regard to absence of the applicant and his Defence Helper.

11. In view of this, the respondents have supported the impugned order on the ground that the applicant has mis-appropriated Government money to the tune of Rs.16850 which he had admitted and thus, it appeared in the outstanding book for the month of December, 1986 as an admitted debit. verifying this fact that he has mis-appropriated Government money knowingly.

12. The respondents have also placed on record



copies of letters issued to the applicant on various dates whereby, he was advised to take extracts of the relied upon documents or to inspect them vide Annexures-R/1 to R/6 and has pleaded that the respondents have acted in accordance and as per procedure envisaged in the Railway Servant (D&A) Rules, 1968.

13. The applicant has also filed rejoinder and reiterated his submissions as made in the OA alongwith further submissions that when the Vigilance team had conducted preventive check on 07.02.97 he was on duty and he had already left the booking office after handing over the complete charge as per roster duty hours. The amount as alleged to have been mis-appropriated was actually not shortage of cash during his duty hours on the said date, but the total outstanding amount shown in the outstanding list in coaching balance sheet for the month of December, 1986 (for the period from 19.11.1982 to December, 1986), which was treated to have been mis-appropriated by the applicant and in fact it was on account of issue of error sheets during his service period at Gaya Railway Station in coaching.

14. The error sheet as per Railway Commercial Manual is issued by the Accounts Department on checking of short collection in fare, freight charging less due to error, omission or commission while on duty due to rush of passengers as well as over crowding at Booking window at the time of departure of train and due to this sometimes the amount returned to the passengers/public in excess to the amount which ought to have been returned actually and thus the Booking Clerk had to meet out the shortages in cash from his own personal pocket. Sometimes less charges in fare and freight is collected due to error and for that after internal check of the relevant documents, Traffic Accounts Branch of the F&CAO office used to issue necessary error sheets against the concerned Booking Clerks for realisation and recovery

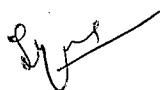
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for the ~~deficiencies~~ in collection of fare and freight.

The error sheet issued is taken into outstanding list of the coaching balance sheet by the concerning Station Master/Superintendent/Manager. Thereafter, the error sheets are disposed of in the manner as prescribed in Indian Railway Commercial Code/Accounts Code and special steps are taken to clear the outstanding debits by deputing Outstanding Inspectors if the debit is admitted whereas in case of objected debit by the staff concerned the clearance of outstanding shown in coaching balance sheet is cleared by holding enquiries and fixing the responsibilities. In support of this contention the ~~.....~~ applicant has referred to Rules 2701 to 2731 of Chapter XVII of the said Indian Railway Commercial Code (Vol. II) alongwith relevant copies thereof. He has further submitted that in view of this procedure as envisaged in the said Code, the said alleged amount of Rs.16850/- was in fact a debit shown through error sheets raised by Traffic Accounts Department lying outstanding in Coaching Balance Sheet of Gaya Railway Station for the month of December, 1986, carried over from month to month upto December, 1986. ~~Final responsibility was yet to be fixed after holding proper enquiry. The applic has also given details of recovery of said amount being recovered from his salary by the respondents.~~

15. With regard to initiation of exparte proceedings and holding exparte enquiry, it is submitted by the applicant that he was off duty due to some mental illness and he was undergoing private treatment at Kanke, Ranchi, which prevented him to join the disciplinary proceedings. In support of this contention, ~~also the~~ ~~the~~ the applicant has also placed on record copy of certificate granted by Dr. B.B.Singh, Psychiatrist, vide Annexure.

16. In order to dispose of the present matter in hand and in the interest of justice while going through



the various provisions of above referred rules it is found that Railway Board has issued one circular vide letter no. E(D&A)/62-RG/6-26, dated, the 17th May, 1962 (ER 4902), wherein it has been clarified that in a case of loss of station earnings caused as a result of negligence and carelessness on the part of official, it would be open to the competent authority to inflict in addition to the penalty of recovery from [REDACTED] pay of the loss caused to the Government by negligence or breach of orders any of the penalties specified in Clause (i), (ii), (iii)(a), (iv), (v) & (vi) of Rule 6 of the Railway Servant (D&A) Rules, 1968, by way of one and the same order.

17. After perusal of Rule 6 alongwith aforesaid sub-rules, it is found that the punishment for removal does not come within the purview of these clauses as the said punishment has been incorporated in said Rule in clause (viii) of the said Rule, meaning thereby, that the respondents have come to wrong conclusion when imposing this punishment of removal i.e., after holding exparte enquiry against the delinquent as after recovery of money from salary of the applicant, punishment under aforesaid clauses (i to vi of Rule 6) could only have been passed.

18. After perusal of Annexure-1, which is a memorandum of chargesheet under Rule 9, it is found that no documents whatsoever have been annexed therewith to facilitate the delinquent to make his defence on the basis of said documents as well as list of documents which is certainly in violation of the Rules which clearly prescribe that these documents are to be furnished alongwith the memorandum of chargesheet, to enable the delinquent to prepare his defence on the basis of those documents.

19. Even after careful perusal of the impugned order of punishment issued by the disciplinary authority, it is found that the said order is not supported with the reason given by the disciplinary authority and he has simply found

[Signature]

the delinquent guilty of the charges on the basis of the enquiry report and findings of the inquiry officer. Therefore, the same is held to be non-speaking order. Moreover, even in the orders passed on the appeal of the applicant dated, the 10th January, 1993, alongwith appeal sent by his wife, dated, the 5th December, 1995, it is found that the same has been passed in contravention of procedure being laid down in the aforesaid rules as no reason whatsoever has been given for rejection of explanation, if any, given by the delinquent in his memo of appeal. Rule 19(22) prescribes the procedure to be followed for consideration of the appeal of the delinquent as under :

Rule 19 (22) (2) :

"(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 findings 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 deem fit in the circumstances of the case.

20.

After careful consideration of the matter and contents of the impugned order on applicant's appeal, it is found that his appeal has not been considered in the light of these instructions while passing order on the appeal and



as no findings to this effect are found to have been recorded by appellate authority and it has certainly resulted into grave mis-carriage of justice. Even no reason has been assigned while upholding the penalty of removal as given by the disciplinary authority. It also appears from the contents of the said impugned order on appeal that the applicant has not been given an opportunity of being heard in person inspite of the fact that the order of punishment or disciplinary proceedings have been held exparte against the applicant which has also caused breach of principles of natural justice.

21. It has been held by the Hon'ble Apex Court in catena of decisions that even the officials who are performing their duty in quasi-judicial capacity are supposed to perform them in a judicial way while following the due principles of natural justice. In State of Orissa Vs. Dr. Beena Pani Dei's case (AIR 1967 SC 1269), extracts of para-9 runs as under :

"..... But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applied alike to judicial Tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental



rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added."

22. So far as the documents submitted by the applicant in his rejoinder are concerned, the same is required to be re-examined by the authorities concerned as some disputed question of facts are involved which cannot be dealt with by this Court.

23. In view of the discussions and observations made hereinabove, we are of the considered opinion that the impugned orders vide Annexure-4, dated 17.11.1992 and Annexure-1 dated 26.02.1996 are not sustainable being not supported with reasons and the same are hereby held to be non-speaking orders and passed in violation of the principles of natural justice and the matter requires to be re-examined by the appellate authority. Further, in view of the above quoted Railway Board's Circular the punishment of removal being imposed on the applicant appears to be on higher side as in such like eventuality, like the present one, and as per provisions of said circular, punishment of removal from service has not been prescribed to be imposed on the delinquent, if recovery is made from his salary.

24. Having said so, the impugned orders dated, the 17th November, 1992 (Annexure-4), and 26th February, 1996 (Annexure-2), are hereby quashed and set-aside with directions to the respondent no.2 to re-examine the matter afresh in the light of observations as made hereinabove and thereafter pass appropriate reasoned and speaking orders in accordance with law and rules on the subject after giving an opportunity of being heard to the applicant after due intimation to him in this regard as per procedure as laid down in the aforesaid rule for the proper service of the delinquent. Needful be done within

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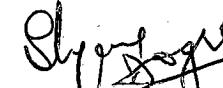
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a period of three months from the date of receipt/production of a copy of this order.

25. This O.A. stands, accordingly, disposed of in terms of directions, as above, with no order as to costs.


(Mantralay Jha)
Member (A)

skj


(Shyam Dogra)
Member (J)
31.3.04