

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 449 OF 2006[Patna, this , the 30th Day of August, 2012]C O R A M

HON'BLE MR. A.K.JAIN, MEMBER [ADMN.]

HON'BLE MRS. BIDISHA BANERJEE, MEMBER [JUDL.]

.....
 Rajesh Kumar Sah, son of Sri Badri Sah, resident of village-Karanpura,
 PO- Meteha, PS-Kuchai Kot, District-Gopalganj.APPLICANT
By Advocate :- Shri Manoj Kumar.

Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The Chief Commercial Manager, East Central Railway, Chamber Bhavan, 5th Floor Jabe's Court Torad, Patna-1.
3. The Divisional Railway Manager, East Central Railway, Sonapur.
4. The Additional Divisional Railway Manager, East Central Railway, Sonapur.
5. The Divisional Commercial Manager, Sonapur.
6. The Chief Travelling Ticket Inspector [CTTI], Muzaffarpur.

.....RESPONDENTSBy Advocate :- Shri Nirmal Kumar, ASC.O R D E R

Bidisha Banerjee, Member [Judl.] :- Aggrieved by major penalty of dismissal from service inflicted by Divisional Commercial Manager, Sonapur, vide order dated 24/28.03.2003 [Annexure-A/10] which is modified to removal from service vide order dated 19.03.2006 by the Revisional Authority on 19.03.2005 [Annexure-A/13], the applicant Ex-TTE/Muzaffarpur has filed this OA seeking as follows :-

"8.1 That your Lordships may graciously be pleased to quash the whole proceeding as illegal and perverse by quashing the order passed by the respondent no. 2, 4 & 5 Annexures-A/10, A/12 & A/13 and reinstate the applicant with full service and pecuniary benefits.

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8.2 *That any other relief[s] deemed fit and proper may be allowed."*

2. The applicant is charge-sheeted on 08.11.2001 by the Divisional Commercial Manager, Sonapur under Rule 9 of Railway Servants[D&A] Rules, 1968, on the following charges :-

"1. on 25.05.2000 while on duty on Train No. 5205 between Muzaffarpur and Chappra, you charge one passenger by name Shri Rajaram Sah by issuing fake [counterfeit] EFT No.751510.

2. On 05.04.2000 while on duty on Train No.5609 between Katihar and Muzaffarpur, you charged two passengers Rs.340 and Rs.170/- respectively by issuing fake EFT Nos. 751583 and 751584.

3. To cover up your misdeeds in the TTE-12, you showed Train No.5707 instead of 5609 on 05.04.2000. You also gave false and misleading statement to vigilance branch on 16.10.2000 and 06.11.2000."

3. The Enquiry Officer found that the charge No.[1] is not proved, charge No.[2] is proved on the basis of probability and charge no.[3] is proved.

4. The Disciplinary Authority gave a disagreement note and held him responsible for the charges [1] to [3]. The DA imposed the penalty of dismissal from service which was upheld by ADRM, the Appellate Authority.

5. The Revisional Authority modified the penalty to removal from service as contained in Annexure-A/13.

6. The applicant has highlighted the following legal lacunae in conducting the proceedings :-

[i] The complaint dated 25.05.2000 is false and concocted and has not been supported by the statement as witness.

[ii] No opportunity has been given to applicant to cross examine the complainant which is against the principles of natural justice.

[iii] The earlier charge sheet dated 12.04.2001 was withheld and did not found its logical conclusion and further charge sheet for the similar allegation is bad in law.

[iv] The prosecution witnesses Mr. Anand Prakash Singh [Annexure-A/7] who caught the complainant has stated in his cross examination that what has been stated by the complainant regarding the physical attribute of TTE has not been matched with the applicant.

[v] The charge no.2 is also without evidence and indirect liability has been placed against the applicant on the basis of probabilities which is illegal and arbitrary.

[vi] The explanation given by the applicant has been rejected by the respondents illegally inspite of the veracity of statement has been corroborated by the evidence already on records.

[vii] Due to slip of pen 5609 has been written as 5607 for which the punishment of dismissal is very unreasonable and unjustified.

[viii] The respondent no.2 mechanically without applying his

mind upheld the punishment by only changing the punishment of dismissal to punishment of removal whereas respondent no.4 upheld the illegal and perverse order dated 24/28.03.2003 passed by Respondent no.5 illegally relying upon his disagreement note [Annexure-A-4]

[ix] The order passed in initial stage as perverse and illegal contrary to the records of the case as passed by respondent no.5 cannot be continued even if it has been confirmed by the respondents no. 2 & 4 mechanically, arbitrarily and against the law of land.

7. Heard learned counsels of both the sides and perused the documents.

8. It is noticed that the first charge-sheet was issued and at the behest of Vigilance it was not proceeded with but a second charge-sheet dated 12.10.2011 was issued without cancelling or withdrawing the first charge-sheet.

9. It is also noticed that the Appellate Authority has disposed of the appeal without delving into the charges, the conduct of proceedings as required under Rule 22 of RS[D&A] Rules, and without marshaling the facts of the case. He has simply relied upon the disagreement note and passed orders in the following terms :-

"3.....I have also carefully considered the report of the Enquiry Officer. The Enquiry Officer during critical analysis of the statements of the witnesses, documents and evidence on

record missed our certain vital evidence, which have been brought out by the DA in his disagreement note. The disagreement note clearly proves your culpability and also the charges against you.

4. Since the charges proved against you are of very grave and serious nature involving issuing of fake/counterfeit EFTs to defraud the railways, the penalty imposed is appropriate.

However, considering your relative young age and to give you a chance to reform yourself, I have decided to reduce the punishment to one of removal from service."

10. In such view of the matter, the matter is remanded back to the Appellate Authority to delve into the issues raised in the appeal, question of violation of substantive provisions and procedural law and pass orders in accordance with Rule 22 of RS[D&A] Rules within three months from the date of receipt/production of a copy of this order. No costs.


[Bidisha Banerjee]/M[J]


[A.K.Jain]/M[A]

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