

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.267/99

Wednesday this the 2nd day of July, 2003.

CORAM : Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Shri Shankar Prasad, Member (A)

M.H.Nathani,
Conductor (COR),
Divisional Railway Manager,
Central Railway, Mumbai Division,
Mumbai.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the General Manager,
Central Railway, CST.
2. Divisional Railway Manager,
Central Railway,
Mumbai Division,
Mumbai.
3. Senior Divisional Personnel
Officer, Central Railway,
Mumbai Division, Mumbai.

...Respondents

By Advocate Shri R.R.Shetty



..2/-

O R D E R (ORAL)

{Per : Shri Kuldip Singh, Member (J)}

Applicant was proceeded departmentally on the following charges :-

" ARTICLE - I

Shri M.H.Nathani COR did not report for his duty in time at CSTM Station.

ARTICLE - II

Shri M.H.Nathani demanded and accepted Rs.110/- from the passenger while issuing EFT No. 079127 for Rs.20/- of reservation fees without returning the balance amount for allotting berth No.17 in 2nd A/C.

ARTICLE - III

Shri M.H.Nathani did not declare his private cash in the EPT Book while on duty on 25.4.1996."

An enquiry was held into these charges. The Enquiry Officer recorded the findings holding Charge No. I & III could not be established and Charge No.II was established. Hence, the applicant was guilty of Charge No.II alone. Acting on the report of the Enquiry Officer, the disciplinary authority passed an order of removal of the applicant from service. However, the applicant preferred an appeal before the appellate authority who set aside the order of the removal and decided to reinstate the applicant at the lowest of Class III grade with future effect and also ordered that the period from removal to reinstatement will be treated as without pay. The applicant assailed these orders passed by the disciplinary authority as well as appellate authority and also the findings arrived at by the enquiry officer



..3/-

2. In order to assail the same, the applicant pleaded that both the disciplinary authority as well as the appellate authority have dealt with applicant's case in a cavalier manner and with a preconceived notion that applicant has been held guilty of overcharging the passenger. The applicant alleges that the findings recorded by the enquiry officer and the conclusion arrived at by the enquiry officer which was upheld by the disciplinary authority as well as appellate authority are perverse and no prudent man could arrive at such findings.

3. The applicant further alleges that since Charge No.III on which enquiry officer has stated not proved, rather the enquiry officer has held that the Article of Charge No.III mentioned that applicant did not declare his private cash in EFR book of 25.4.96 on verification of EFR during the course of enquiry, it was found that private cash Rs.120/- was declared by the applicant meaning thereby enquiry officer did believe that the applicant was carrying a sum of Rs.120/- at the time of start of his duty which he noted down at the back of EFR record.

4. However, the enquiry officer found at the time of checking the cash with the applicant the sum of Rs.640/- were found and a memorandum to that effect was also prepared out of which Rs.551/- was the Railway cash and Rs.89/- was found in excess of the Railway cash. This Rs.90/- was got delivered back to the complainant Alok Gautam in the presence of Sr.DCM, Jhansi who was also travelling in the same train per chance..



..4/-

5. The applicant has given an explanation that since he was carrying Rs.120/- as private cash at the time of start of journey and when the cash was recovered from him, it amounted Rs.640/-, out of which Rs.551/- was the Railway cash and out of Rs.120/- he had already spent Rs.31/- on himself. So Rs.551/- + Rs.89/- out of Rs.120/- adds to Rs.640/- only which was recovered from the applicant. Thus, in fact, no excess was recovered from the applicant. The only witness examined in this case also confirms that cash memorandum was prepared before the return of the cash to the party meaning thereby the total cash of Rs.640/- was recovered which also included his private cash as observed by the enquiry officer at the conclusion of his enquiry when he held that the Charge No.III was not proved. Thus, Rs.551/- + Rs.89/- the remainder of the private cash of the applicant which he had declared and out of which he has spent Rs.31/- comes to Rs.640/- and there was no excess cash recovered at all from the applicant despite the fact that search was conducted in the presence of Sr.DCS, Jhansi who was also travelling in the same train.

6. There is no explanation as to wherefrom excess of Rs.90/- which was delivered back to the complainant came. In fact, it appears that the complainant was paid back from the private cash of the applicant himself.

7. Though Shri Shetty appearing for the respondents submitted that no Railway employee could have returned the money from his private cash unless he was found an excess of amount or he had in fact received the money and has over charged the passenger.



..5/-

8. We have considered the contentions of the respondents. The explanation given by the learned counsel for the respondents cannot stand to the judicial scrutiny at all, because on the one hand the enquiry officer exonerated the applicant on the charge of not declaring his private cash rather he has confirmed that the applicant has declared that Rs.120/- was his private cash. So if the applicant was carrying only Rs.551/- of the Railway cash and the balance is the over charged amount then probably when he started for his duty from his house then he was not carrying any money at all. In fact, if it is accepted that the applicant had overcharged then where does his private cash of Rs.120/- has gone that is not accounted for in the enquiry report at all. Rather the enquiry report itself stated that immediately after the start of his journey as explained by the applicant, he has spent Rs.31/- out of his private cash and the Railway cash and the private cash exactly tally with the money recovered from him. Thus, it appears that the enquiry officer had not considered this aspect and conveniently ignored that the applicant was carrying private cash and held the applicant guilty of Charge No.II.

9. We may further observe that Charge as contained in Article II and III are co-related because proving of these charges the recovery of cash from the applicant has been considered for the purpose of both the charges and if the Charge No.III held to be not proved, then it has to be believed that applicant has declared his private cash of Rs.120/- at the time of start of his duty. So no excess amount was found on the person of the applicant. Hence, finding recorded Charge No.II would amount to perverse finding recorded by the enquiry officer.

Km

..6/-

10. We are also conscious that while sitting as Court of judicial review, the Court is not supposed to re-appreciate the evidence as accepted by disciplinary authority as well as appellate authority but the fact that by no logic when the enquiry officer has exonerated the applicant of Charge No.III, then Charge No.II could be held to be proved since the amount recovered from the applicant has tallied with the Railway cash as well as private cash declared by the applicant and no excess was found at all and it is only that the senior staff to satisfy the ego of some disgruntled complainant, the whole episode had taken place. Thus, we are of the considered opinion that the findings recorded by the enquiry officer are totally perverse and the same cannot be sustained and are liable to be quashed.

11. Accordingly, we allow the OA. and direct the respondents to restore the status of the applicant to his original post with all the consequential benefits. No order as to costs.



(SHANKAR PRASAD)

MEMBER (A)



(KULDIP SINGH)

MEMBER (J)

mrj.

