

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 214 of 2000.

Dated this Wednesday, the 28th day of January, 2004.

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

Hon'ble Shri S.K. Naik, Member (A).

K. B. Chatur,  
Head TTE/Conductor (COR),  
under Divisional Railway Manager,  
Central Railway, Mumbai Division,  
Mumbai.

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Applicant.

(By Advocate Shri G.K. Masand)

VERSUS

1. Union of India through  
The General Manager,  
Central Railway,  
C.S.T.

2. Division Railway Manager,  
Central Railway,  
Mumbai Division,  
Mumbai.

3. Senior Divisional Personnel  
Officer, Central Railway,  
Mumbai Division,  
Mumbai.

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Respondents.

(By Advocate Shri V. D. Vadhavkar)

O R D E R (ORAL)

PER : Shri Kuldip Singh, Member (J).

The applicant has filed this O.A. challenging the order dated 21.04.1998 passed by the D.C.M. (Cog.), CST, Mumbai, by which applicant was imposed punishment of reduction by 5 stages in the same time scales for two years with cumulative effect. The applicant also challenges the order passed by the D.C.M. who, on his appeal, imposed the punishment of removal from service. The applicant further challenges the order passed by the

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Additional D.R.M. who while allowing the appeal against the Sr. D.C.M. directed the applicant's reinstatement in service but has arbitrarily decided to place the applicant in the lowest grade of Class-III, thereby reverting the applicant by three stages below his present stage.

2. The applicant was proceeded departmentally. He was issued a standard form of Charge-Sheet No. 5 for a major penalty on the allegations that applicant while functioning as a T.T.E. in S/5 and S/6 Coaches of Train No. 3004 DN. Calcutta Mail Ex. Mumbai CST to BSL leaving Mumbai on 16.4.96 had committed serious misconduct as he demanded and collected Rs. 400/- from Shri G.R. Pandey as difference of fare between Sleeper Class and II M/Exp. alongwith higher excess charge but issued EFT No. 075147 for Rs. 200/- and thereby illegally pocketed Rs. 200/- despite protests of Shri G.R. Pandey. There were also allegations as Article-II and Article-III which are reproduced below :

"ARTICLE-II

He recovered difference of fare between sleeper class and II Mail/Express alongwith higher excess charge on M/E tkt.no. 07179198 from Shri G.R. Pandey right upto destination i.e. Allahabad instead of upto the next halt of the train after the detection point. Similarly, he recovered the difference of fare between sleeper class and II mail/exp. alongwith H.E.C. from 22 other passengers in S/6 coach and 15 passengers in S/5 Coach and issued EFTs right upto their destination instead of upto the next halt of the train after the detection point and thereby caused heavy overcrowding in the said sleeper coaches.

ARTICLE-III :

He failed to obtain the signature of the passengers in appropriate column of EFTs nos. 075129 to 075150 dt. 16.4.96.

By his above acts he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a railway servant and thereby contravened the provisions of Rule no. 3.1(1), 3.1(ii), 3.1(iii) of Railway Services (Conduct) Rules, 1966."

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An enquiry was held into these allegations. The applicant was found guilty and resultantly the impugned order was passed by the Disciplinary Authority and then the <sup>appellate</sup> ~~higher~~ <sup>we</sup> ~~appointing~~ authorities.

3. In the grounds to challenge the impugned order, the applicant had alleged that his case has been dealt with in a cavalier manner and with a preconceived notion that he was guilty of the charge and of demanding and collecting the alleged sum of Rs. 400/- and pocketed Rs. 200/- illegally. It is further stated that findings recorded were such as could not have been reached by an ordinary prudent man or no reasonable person could have come to those findings on the basis of the evidence produced before the Enquiry Officer. Thus, it is submitted that the findings are perverse and made at the dictate of the superior authority since the findings are not supported by any evidence. He further stated that the document, including complaint, indicate that Shri G.R. Pandey, Complainant, was travelling on reserved ticket as such question of demanding and collecting extra fare from Shri G.R. Pandey does not arise. It is further stated that the applicant has been held guilty without any material on record or any complaint from reserved passengers or statement of TTE who relieved him at Bhusawal, to substantiate that there was overcrowding and that passengers were put to inconvenience. Thus, it is submitted that the findings arrived at by the Enquiry Officer are absolutely perverse and same are liable to be quashed and set aside.

4. Respondents filed the written statement. Respondents pleaded that one passenger, Shri G.R. Pandey, complained that the applicant had demanded Rs. 400/- as a fine for two extra passengers who were travelling without reservations alongwith the

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complainant. It is also alleged that the applicant threatened to throw down the passengers from the train and put in lock up at Kasara Station. So on this count enquiries were held and since in the enquiry the allegation of accepting illegal gratification has been proved, the Enquiry Officer held the applicant guilty. It is also submitted that while conducting the enquiry a fare <sup>opportunity for</sup> ~~chart~~ was made available to the applicant to defend himself and he has been given even personal hearing at the appellate stage also. The impugned order passed by the Appellate Authority has been passed keeping in view the relevant rules and principles of natural justice so no interference is required.

5. The Learned Counsel for the applicant submitted that according to the charge-sheet itself the incident is of 16.04.1996 whereas the charge-sheet has been issued on 27.02.1997, after a period of about 10 months. It is only because the complainant had stated that he is known to some Sr. Officer in the Railways and it is at his behest this charge-sheet has been issued, whereas a preliminary enquiry was conducted in which the applicant was exonerated. So this enquiry is motivated by a Senior Officer who kept himself in the background and got issued this charge-sheet in order to see that the ego of his <sup>in his</sup> ~~relationship with~~ Shri G.R. Pandey is vindicted. Learned Counsel for the applicant also submitted that when this incident had taken place it was vacation/holiday period and since no special trains were run, there was a huge rush so unreserved passengers boarded the reserved coaches and the applicant had to charge extra fare as per rules from all those passengers and also to get them disembarked from the reserved coaches at the next halt so that those unreserved passengers may go to other coaches which were meant for unreserved passengers and since the complainant was also having alongwith him two passengers who were travelling on unreserved tickets, the applicant had only charged an extra

fare of Rs. 200/- for which a valid receipt had been issued. But the said passenger, Shri Pandey, who happened to be a relative of some Sr. Officer of the Railways, got annoyed that he had to pay extra fare and had lodged this complaint. The Learned Counsel for the applicant then submitted that the penalty awarded by the Appellate Authority was that of removal from service, against which a revision was filed, which had to be heard as an appeal because it was an order of enhanced penalty by the Appellate Authority so the Revisional-cum-Appellate authority should have given an opportunity of personal hearing to the applicant and since this has not been done so, the order passed by the Revisional-cum-Appellate Authority is vitiated.

6. Learned Counsel for the applicant also contended that since there was a huge rush so the applicant had not misconducted himself. He has done his duty only to charge extra fare from the passengers so he should not have been held guilty.

7. As against this, Shri V. D. Vadhavkar, Learned Counsel for the respondents submitted that the revision-cum-appeal filed by the applicant against the order passed by the Appellate Authority has been heard as an appeal itself. The applicant had also been given an opportunity of personal hearing and in order to support their contention, the respondents had also produced the records on which we find that an opportunity of personal hearing had been given to the applicant and it is only after finding that the punishment awarded by the Appellate Authority was too harsh, the Revisional-cum-Appellate Authority had reduced the punishment and modified the order of punishment when the applicant has been ordered to be reinstated in service and has been placed in the lowest grade of Class-III. Thus, Shri Vadhavkar submitted that the Revisional-cum-Appellate Authority has examined the case from all angles and even considered the

quantum of punishment after affording an opportunity of hearing to the applicant, so the applicant cannot have a grievance that principles of natural justice have not been complied with or it is in violation of Railway Servants (Discipline & Appeal) Rules, 1968.

8. In our view, the contentions raised by the applicant regarding the fact that he had been exonerated when the preliminary enquiry was conducted, has no relevance because the charge-sheet in Standard Form No. 5 was issued by the department after applying their mind fully and after going into the complaint made by the complainant. The Authority initiating the enquiry had differed with the officer who had conducted the preliminary enquiry that is within the right of the Disciplinary Authority and merely on this ground the applicant cannot say that the initiation of enquiry is bad in itself.

9. As regard the procedure followed during the enquiry is concerned, we find from the record that the applicant had been given fair opportunity, the complainant had also been examined and in the grounds to challenge the impugned order there is no pleading to the fact that there was any violation to the Railway Servants (Discipline & Appeal) Rules, 1968.

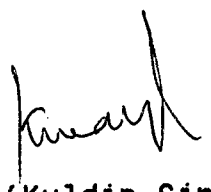
10. The contentions raised by the Learned Counsel for applicant that a personal hearing was not given by the Revisional-cum-Appellate Authority also does not get any support from the record as it has been clearly recorded that the applicant has been given a personal hearing by the Revisional-

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cum-Appellate Authority. Thus, we find that there is no ground which calls for our interference. Hence, the O.A. fails and is hereby dismissed.

11. No order as to costs.

  
(S.K. Naik)  
Member (A)

  
(Kuldip Singh)  
Member (J).

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