

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1108/94.

Date of Decision: 14/7/99

T.Murugesan

Applicant.

Shri T.D.Ghaisas

Advocate for  
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri S.C.Dhawan

Advocate for  
Respondent(s)

CORAM:

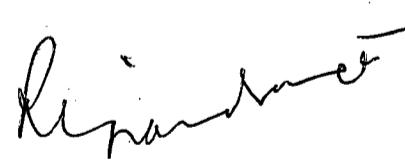
Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri B.N.Bahadur, Member(A).

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  other Benches of the Tribunal?

abp.

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

GULESTAN BLDG. NO. 6, PPESCAT ROAD,

4TH FLOOR, FORT, MUMBAI-400 001.

ORIGINAL APPLICATION NO:1108/94.

DATED THE 14TH DAY OF JULY, 1999.

CORAM: HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.

HON'BLE SHRI B.N.BAHADUR, MEMBER(A).

T.Murugesan,  
Head Booking Clerk, Dadar,  
Central Railway, Bombay V.T.  
Residing at Vishnu Thanekar Wadi,  
Kopri Colony,  
Near Bombay Seema Co-operative  
Housing Society,  
Thane(East),  
Dist.Thane.

... Applicant.

By Advocate Shri T.D.Ghaisas

V/s.

1. Union of India, through  
General Manager,  
Central Railway,  
Bombay V.T.,  
G.P.O. 400 001.

2. Divisional Railway Manager,  
Central Railway,  
Bombay V.T.,  
G.P.O. 400 001.

... Respondents.

By Advocate Shri S.C.Dhawan.

I O R D E R I (ORAL)

I Per Shri R.G.Vaidyanatha, Vice Chairman I

This is an application filed under section-19  
of the Administrative Tribunals Act. Respondents  
have filed reply. We have heard the learned counsels  
appearing on both sides.

2. At the relevant time the applicant was working  
as Head Booking Clerk at Dadar. It appears that there  
was a raid by the vigilance squad on 11/4/91. From the

raided it was noticed that there was a shortage of cash of Rs.69.10ps. It was further noticed that three refund tickets were lying on the table of the applicant and that applicant had granted refund of the tickets without the tickets being endorsed by the Station Superintendent. There was another allegation against the applicant that he has over-charged Rs.12/- in respect of three tickets.

The applicant filed a written statement giving his own explanation as to what happened <sup>on</sup> that day.

3. Then a regular enquiry was held and the Enquiry Officer recorded a finding that charge No.1 is not proved and charge No. 2 and 3 are proved. He submitted his report dated 30/11/92. On the basis of the said charge, the Disciplinary Authority, agreeing with the report of the Enquiry Officer, held that the charges are proved and passed an order dated 8/2/93 by imposing a penalty of reduction of pay by two stages in the same timescale for a period of two years with cumulative effect. Being aggrieved with that order, the applicant preferred an appeal to Appellate Authority who by order dated 17/20-5-93 dismissed the appeal. The applicant preferred a review petition which came to be rejected by Revisional Authority by order dated 9/2/94. Being aggrieved by orders of respective authorities, the applicant has approached this Tribunal.

The applicant's case is that he has not committed any misconduct as alleged in the chargesheet. That he has given proper explanation for the discrepancies noticed on that day and he has even made good the 3/- fwr

shortage of cash. He therefore says that he must be exonerated from the charges. Alternatively he has taken a stand that the major penalty of reduction of pay in two stages for some alleged technical lapse on his part is disproportionate and that this punishment also affects his pensionary benefits.

4. The Respondents in their reply have justified the action taken against the applicant. They have stated that a regular enquiry has been held and the applicant was found guilty of charges 2 and 3 and the orders passed by Disciplinary Authority, Appellate Authority and the Reviewing Authority do not suffer from any infirmity and no case is made out for interfering with the same.

The learned counsel for the applicant contended that even on admitted facts, the charges 2 and 3 are not proved. His further submission is that it affects the pensionary benefits of the applicant. The learned counsel for respondents refuted both the contentions.

5. We have already seen that charge No.1 has been held as not proved by Enquiry Officer and hence we need not go into that question at all.

As far as charge No.2 is concerned, the allegation is shortage of Rs.69.10ps. The shortage is admitted. The applicant in his explanation said that the shortage occurred due to wrong calculation of fares which had been introduced recently about 10 days back. Whatever, it is, the shortage is admitted.

It is also an admitted fact that the

shortage was made good by the applicant at the same time by borrowing money from one of his colleagues. Even rule-710 of the Indian Railway Commercial Manual Volume-I provides that shortage of cash should be made good at once. The applicant has complied with this rule.

6. The learned counsel for applicant states that once the shortage has been made good, it will not amount to a misconduct. We cannot accept this extreme contention, whether in a given case a shortage of cash amounts to misconduct or not depends upon the facts and circumstances of the case.

It is well settled that <sup>in</sup> judicial review we cannot re-appreciate the evidence and take a different view even if another view is possible. Now the administration has taken a view that in view of the shortage of cash, it amounts to misconduct. Even the Revisional Authority has made clear in his order that even though the shortage of cash has been made good, it will not exonerate the applicant. Therefore it was a negligence or misconduct on the part of the applicant when the cash was found short on that date. The <sup>gravity</sup> may be minimal if we take into consideration that the total cash on that day was Rs.23,000/- and the shortage was only Rs.69.10ps. This may have a bearing on the question of penalty but not on the question of misconduct.

7. As far as the other charge is concerned, the allegation is that three tickets were found <sup>on</sup> the table of the applicant and he had given <sup>refund</sup> /

though there was no signature or endorsement by the Station Superintendent. No doubt the Station Superintendent in his statement has stated that while he was on the platform, the concerned passenger came to him and asked for refund and then since he was busy, he directed him to approach the commercial counter and take the refund and that he would sign the tickets later.

If one is to go strictly according to rules, the applicant could not have refunded the amount unless there was an endorsement or signature of the Station Superintendent and then the applicant should have cancelled the tickets. If we go by the explanation of the Station Superintendent, the gravity of the misconduct will be very minimal. As already stated we cannot re-appreciate the facts and take a different view even if another view is possible.

From the above discussion we find that the finding of the disciplinary authority against the applicant cannot be said to be a case of no evidence. Though, the gravity of misconduct is either negligible or very minimal.

8. The next question is about the quantum of penalty. For this minor or negligible misconduct, the disciplinary authority has imposed a major penalty of reduction in pay by two stages and for two years with cumulative effect.

In the circumstances of the case and having

regard to the admitted facts and explanation given by the applicant and his conduct of making good the cash immediately, we feel that the major penalty imposed by reduction of pay by two stages with cumulative effect for two years appears to be dis-proportionate to the misconduct.

We may also notice that at one stage we thought of remanding the matter to disciplinary authority to give appropriate penalty. But it has now come to our notice that the applicant has since retired from service on 31/7/97 and in order to avoid further delay we feel that the nature of penalty should be modified to make the reduction of pay as non-cumulative, subject to further condition that the applicant will not be entitled to get any arrears of monetary benefits but this modification will help only in fixing pension and to get pensionary benefits.

9. In the result, the OA is partly allowed. The quantum of penalty is modified by substituting the words "reduction of pay without cumulative effect" with a further condition that the applicant will not get any arrears or monetary benefit prior to date of superannuation but this order will only help the applicant to get the notional fixation of pay and corresponding fixation of proper pension and retirement benefits from the date of his superannuation. In the circumstances of the case, there will be no order as to costs.

The Competent Authority to implement this order within a period of 4 months from the date of receipt of copy of this order.

B.N.BAHADUR  
(B.N.BAHADUR)  
M(A)

*Remainder*  
(R.G.VAIDYANATHA)  
V.C