

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 556/95

Dated this _____ the _____ th day of 2nd January 2001.

Shri Narayan K. Panicker

Applicant

Mr. L.M. Nerlekar

Advocate for the
Applicant.

VERSUS

Union of India & Others

Respondents.

Mr. V.S. Masurkar

Advocate for the
Respondents.

CORAM :

Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

(i) To be referred to the Reporter or not ? yes

(ii) Whether it needs to be circulated to other Benches ~~as~~ of the Tribunal ?

(iii) Library. yes

S.L. Jain
(S.L. Jain)
Member (J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.556/95

Dated this Wednesday the 2nd Day of January 2001.

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J).

Shri Narayan Krishna Panicker,
Head Clerk in the office of
Divisional Railway Manager,
Central Railway, Bombay VT and
residing at Railway Quarter No.

MS/937/B,
Kolsewadi, Kalyan, Dist. Thane.

.. Applicant.

(By Shri L.M. Nerlekar, Advocate)

Vs.

1. Union of India, through
Divisional Railway Manager,
Central Railway,
Bombay V.T.
2. D.P.O.,
Central Railway, CST,
Bombay.
3. Sr.D.P.O.,
Central Railway, CST,
Bombay.
4. Addl. D.R.M.,
Central Railway, CST,
Bombay.

(By Shri V.S. Masurkar, Advocate)

O R D E R
[Per : Shri S.L. Jain, Member (J)]

This is an application under section 19 of the
Administrative Tribunals Act, 1985 to quash and set aside order
dated 19.5.1994 passed by the Revisional Authority, confirming
the penalty imposed by the Appellate Authority and Disciplinary

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Authority reducing the pay of the applicant from Rs.1720/- to Rs.1560/- with all consequential benefits, arrears of pay and 12% interest thereon.

2. The applicant was working as Head Clerk in the office of the Respondent, was permitted to work as Volunteer Booking Clerk on Sundays, Saturdays and public holidays and was paid Rs.5/- per hour subject to maximum of Rs.40/- per day during rush period. On 17.3.1991 when he was functioning as Volunteer Booking Clerk on Counter No.SP/8CT from 9.00 to 17.00 Hours, there was vigilance check. A charge sheet in respect of same was issued to the applicant, the applicant replied to the same, pleading not guilty, enquiry officer was appointed, after an enquiry, the disciplinary authority served the applicant with the report of the enquiry officer, the applicant represented against the same, the disciplinary authority held the applicant guilty, awarded the penalty as stated above on 15.9.1993; the applicant preferred an appeal against the same which was rejected on 21.3.1994 confirming the order of the disciplinary authority, the applicant challenged the same by filing a revision which was also dismissed on 19.5.1994.

3. The applicant challenges the disciplinary proceedings alleging the charge sheet to be vague one, failure to take the defence into account, the finding of the enquiry officer being perverse and bias, no evidence on record to come to a conclusion that the guilt of the applicant is established, failure of the

Disciplinary Authority, Appellate Authority and Revisional Authority to consider the material on record and to pass the orders mechanically without giving cogent reasons for their findings. The proceedings are also being challenged on the ground of not following the principles of natural justice. Hence this O.A.

4. The claim of the applicant is resisted by the respondents and the O.A. is sought to be dismissed with costs.

5. One of the ground alleged by the applicant is to drop Shri V.K. Awasthi, the prosecution witness-the Vigilance Inspector. The respondents have explained the reason for non examination of Shri V.K. Awasthi in para 10 of their written statement which is as under:-

"It is respectfully submitted that as Shri V.K. Awasthi Ex.Sr. (VIG(T) BB VT who has been repatriated from vigilance organisation to this parent department, one year back but as he did not join duty as CRC at Bombay CST and he was absent, his statement could not be recorded by the E.O.".

It is suffice to state that the applicant cannot insist to examine any witness by the prosecution during disciplinary proceedings. If he feels that the said witness may help him for the cause of truth or otherwise, he is at liberty to call him as defence witness, which has not been done in the present case. In such circumstance, he can not be heard to say that the failure to examine Shri V.K. Awasthi has prejudiced his case.

B.L.DM

6. The other ground raised by the learned Counsel for the applicant is that the case is of no evidence or the findings of the Enquiry Officer, Disciplinary Authority, Appellate Authority and Revisional Authority are perverse one. Keeping the contention of the learned Counsel in mind, we proceed to examine the material on record.

7. The charges levelled against the applicant were as under:-

- "(i) Applicant was found in possession of one II/O/RTN Ticket No.75206 Ex.MLND to VK with an intention to resell.
- (ii) The applicant was found with a shortage of Rs.11/- in his Railway cash.
- (iii) The applicant failed to declare his Private cash and did not cooperate with vigilance team and
- (iv) The applicant was found in heavy admitted debit till the date of check".

8. On perusal of the replies by the applicant immediately after the vigilance check we are of the considered view that shortage of Rs.11/- during the cash check, non declaration of private cash with reasons therefor, in possession of Ticket No.75206 IIInd Mulund to Vikhroli-Return and outstanding debits were admitted.

9. Much is argued regarding the said statement, but in view of the reply submitted by the applicant in answer to the charge

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Bym/

sheet on 23.1.1992, he again has admitted the possession of the said ticket No. 75206 IIInd Mulund to Vikhroli Return, shortage of Rs.11/-, failure to declare the personal cash and admitted debit.

10. Thus reasons thereafter submitted for such statement on the day of vigilance check being obtained and not voluntary one cannot be accepted at this stage. However, in reply to the charge sheet, the explanation along with admission of the facts as stated above may be considered if it is based on record or is in accordance with law.

11. The explanation submitted in respect of the Ticket No. 75206 is as under:-

"In actual fact this ticket was left on the Booking Counter by one of the commuters. I had no other alternative than to keep it aside, so as to do the job quickly and efficiently, as I had no time to destroy it".

12. Keeping in view the said fact, the learned Counsel for the applicant cannot be permitted to argue that the applicant was not in possession of the said ticket or the evidence of the witnesses does not establish the possession of the applicant in respect of the said ticket. However, it is suffice to mention that evidence of G.D. Dube and R.G. Sonawane establishes this fact.

13. The learned Counsel for the parties relied on Rule 2429(2) which is as under:-

"2429. Keeping of private cash in station safe, etc., fotbidden - Private cash should not be kept in the railway cash chest, drawers, ticket tubes, cash safes etc. If any such amount or extra cash, whether stated to be private or otherwise, is found by the supervisory staff or inspecting official, it should be remitted to the cash office.

AM

(b) The staff working in booking offices, parcels offices and goods sheds, whose duties actually involve cash transactions with the public, must declare in writing their private cash daily before they take up their duties in the station diary or in the cash book or in a separate register to be maintained for this purpose. The specific categories of staff to whom these instructions apply, will be notified by the railway administrations concerned".

13A. On perusal of the same, we are of the considered opinion that it makes no distinction in respect of official working in regular course or Booking Clerks and Voluntary Booking Clerks. The learned Counsel for the applicant argued that as the applicant was having no private cash, therefore, the declaration of the same was not essential one to which we are not inclined to subscribe for the reason that in such situation the cash "Nil" is the declaration. Assuming it for the sake of arguments the said position, then the charge (iii) may fail.

14. Regarding shortage of Rs.11/- it is to be mentioned that the defence is that as Vigilance Team has taken away the cash, he could not make good of the shortage. We are not in agreement with the learned Counsel for the applicant for the reason that as the applicant was not possessed of any personal cash, hence there was no chance/opportunity to make good the shortage.

15. Regarding admitted debit, the applicant has not produced the money receipt for payment of the same even in May, 1991 as he claimed as defence in Disciplinary proceedings.

16. The evidence of prosecution witnesses about training imparted to the Voluntary Booking Clerks, duty to declare cash etc. is not relevant in view of the legal position stated above.

Out of the four charges levelled against the applicant, even if three are proved, this Tribunal has no jurisdiction to interfere in the penalty awarded to the applicant and it stands.

17. In the result, we do not find any merit in the O.A., it is liable to be dismissed and is dismissed accordingly, with no order as to costs.

S.L.Jain
(S.L. Jain)
Member (J)

B.Bahadur

(B.N. Bahadur)
Member (A).

H.