

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 980 of 1997.

Dated this 12 th the day of January, 2000.

Sunil Narayan Gadgil, Applicant.

Shri D. V. Gangal, Advocate for the
applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. D. Vadhavkar, Advocate for the
Respondents.

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

Hon'ble Shri D. S. Baweja, Member (A).

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

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

(iii) Library.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Sunil Narayan Gadgil,
R/o. 12, Bhagirathi Nivas,
N.C. Kelkar Road,
Dadar (West),
Mumbai - 400 028.

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Applicant.

(By Advocate Shri D. V. Gangal)

VERSUS

1. The Union of India through
The D.R.M. (C),
Central Railway,
Mumbai C.S.T.,
Mumbai - 400 001.

2. Sr. Divisional Commercial
Manager,
Central Railway,
Mumbai C.S.T.,
Mumbai - 400 001.

3. Divisional Commercial Manager,
(Coaching),
Central Railway,
DRM (C)'s Office,
Mumbai C.S.T.,
Mumbai - 400 001.

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Respondents.

(By Advocate Shri V.D. Vadhavkar)

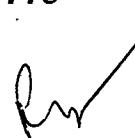
ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application challenging the disciplinary action taken by the respondents against the applicant. The

respondents have filed reply. We have heard Mr. D.V. Ganga1, the Learned Senior Counsel for the applicant and Shri V. D. Vadhavkar, the Learned Counsel for the respondents.

2. The applicant was working as Senior Booking Clerk at Juhi Nagar, Central Railway. It appears, on 12.08.1994 when the applicant was in the Booking Office, the vigilance officials made a surprise check. They recovered 22 used railway tickets from the pocket of the applicant. The allegation is that the applicant had procured used railway tickets in order to recirculate them by selling them to commuters. It was further seen that the applicant was in possession of excess cash of Rs. 571.00 which was undeclared and unaccounted and he had earned this money by malpractice. The further allegation against the applicant is, that in respect of cash transaction of the day it was found that there was deficit cash of Rs. 67.50ps., which means, he has misappropriated that amount. On these allegations, a charge-sheet was issued against the applicant dated 09/12.01.1995. A regular enquiry was held. The applicant participated in the enquiry and he engaged another railway servant to defend him in the enquiry. Two witnesses were examined on behalf of the prosecution and five witnesses were examined as defence witnesses by the applicant. Then after regular enquiry, the Inquiry Officer made a report holding that the charges are proved against the applicant. The Disciplinary



Authority accepted the enquiry report and passed an order dated 03.10.1996 by imposing penalty of dismissal from service. The applicant preferred an appeal before the Appellate Authority, who, after giving personal hearing to the applicant, found no merit in the appeal and dismissed the same by order dated 27.03.1997. The applicant carried the matter in revision before the higher authorities who dismissed the Revision Petition by order dated 16.06.1997. Being aggrieved by these orders, the applicant has approached this Tribunal.

3. The applicant's case is that he is innocent and he has not committed any of the irregularities alleged against him. He is questioning the finding of guilt recorded against him in the domestic enquiry. He has also taken two legal grounds in challenging the disciplinary action. One ground is that the officer who issued the charge-sheet was not competent to issue a charge-sheet and hence the whole proceedings are vitiated. The next ground is that the officer who passed the order of penalty was not the appointing authority of the applicant and, therefore, the order of dismissal is in violation of Article 311 of the Constitution of India. Therefore, the applicant has filed this application for quashing the impugned orders and consequential reliefs.



4. The respondents in their reply have mentioned the facts of the case and about holding enquiry and the concurrent order passed right from the Inquiry Officer upto the Revisional Authority. It is stated that the officer who has issued the charge-sheet and who passed the order of penalty was the appointing authority of the applicant and he was competent not only to issue charge-sheet but also to impose the order of penalty.

5. At the time of argument, Shri D.V. Gangal, the Learned Senior Counsel for the applicant only submitted two contentions before us. His first contention is that the charge-sheet should have been issued by the appointing authority but the officer who has issued the charge-sheet is not the appointing authority of the applicant. His further submission is, even the officer who issued the order of penalty was not the appointing authority of the applicant and, therefore, the order of dismissal for service is not sustainable in law. The Learned Counsel for the respondents refuted both the contentions.

6. Therefore, in the light of the arguments addressed before us, the two points that fall for determination are :

(i) Whether the authority who has issued the charge-sheet was competent to issue the charge-sheet?

(ii) Whether the authority who passed the order of penalty was competent to impose the penalty of dismissal from service?

7. In this case, the charge-sheet has been issued by the Assistant Commercial Manager and he himself has passed the order of penalty. The question mooted before us is, whether the Assistant Commercial Manager was the appointing authority of the applicant or not?

8. Reliance was placed on Rule 2(c) of the Railway Servants (Discipline & Appeal) Rules, 1968 which defines as to who is the Disciplinary Authority. It says that the competent authority under the rules to impose him the penalty is the Disciplinary Authority. Then schedule-II of the rules provide different disciplinary powers to be exercised by different officers in respect of different categories of officials. As far as major penalties are concerned, like compulsory retirement, removal from service or dismissal from service, the schedule provides it can be passed by the appointing authority or an authority of equivalent rank or higher rank. If the impugned order is passed by the appointing authority, then there is no difficulty to hold and it is not even disputed that both, issuance of charge-sheet and order of penalty are by a competent authority. However, if the officer who has issued the impugned order is not an

appointing authority, then the order of dismissal is not sustainable in law.

9. The applicant was initially appointed as Junior Booking Clerk but he was promoted as Senior Booking Clerk in 1994 and charge-sheet is issued subsequently and, therefore, the appointing authority at the relevant time must be with reference to applicant's promoted post, namely - Senior Commercial Clerk. The order of promotion is produced by the applicant and it is at page 138 of the Paper Book. It is dated 08.04.1994. The applicant's name is at sl. no. 153. This appointment order is issued by the Assistant Personnel Officer. If this was the only material, then there was no scope for argument at all, since the impugned order is passed by an higher officer. But the Learned Counsel for the applicant contended that though the order of promotion is issued by the Assistant Personnel Officer, there is a note at the end in the order of promotion, which is as follows:

"This has the approval of the competent authority."

It was, therefore, argued that in view of this note that the appointment has been approved by the competent authority, he must be a higher authority than the Assistant Personnel Officer. That authority can only be the appointing authority of the applicant. He, therefore, argued that in this case the promotion has been approved by a higher officer, namely - the Senior Divisional Commercial Superintendent is competent to pass the impugned

penalty order. The argument is no doubt attractive. At the first flush we were inclined to accept this argument and quash the impugned order of penalty but on deeper scrutiny and after going through the materials on record and file produced by the respondents' counsel, we have reached the conclusion that the authority who has issued the impugned order is the appointing authority of the applicant.

10. The Learned Counsel for the respondents has placed before us the Schedule of Powers on establishment matters of Central Railway. The relevant item for our present purpose is item no. 9. The subject is 'promotion to non-gazetted post'. Column no. 7 says that Junior Scale Officer has full powers in respect of Class-IV posts and Class-III posts and artisans in the grades upto Rs. 560/-. Therefore, a Junior Scale Officer has full powers of appointment to Class-III posts upto the grade of pay of Rs. 560/-. It is admitted by both counsel that earlier the pay scale of Sr. Commercial Clerk was in the pay scale of Rs. 330-560 which is revised to Rs. 1200-2040. The pay scale mentioned in the Schedule of Powers is the old pay scale. Therefore, a Junior Scale Officer has now powers of appointment to Class-III posts upto the Grade of Rs. 1200-2040, which includes the applicant's appointment. There is no dispute that Assistant Commercial Manager is a Junior Scale Officer.

11. Then we have the particular original file produced by respondents' counsel pertaining to the promotion of applicant and other officials to the post of Sr. Booking Clerk/Sr. Commercial Clerk. There is a detailed office note by the office about restructuring of Group 'C' Cadre in the commercial line in the pay scale of Rs. 1200-2040. Then it is mentioned as to how the posts is to be filled up. Then there is a note about the cadre strength, revised strength, existing vacancies and about communal reservations, etc. After putting a detailed note and submitting the list, the papers are marked to Assistant Personnel Officer(C) and Assistant Commercial Manager for approval. The list is first approved by the Assistant Personnel Officer (C) and then it is approved by the Assistant Commercial Manager. But however, the A.C.M. felt a doubt. The A.C.M. has noted that certain officials had registered their names for promotion as a Guard. Whether those officials can now be considered for the restructured posts and whether their option should be again called. Therefore, the A.C.M. who has written his observations in black ink himself, in turn referred this point to Divn1. Commercial Manager-I. Then on the reverse page the D.C.M. has agreed to the suggestions that fresh exercise of option may be called. Therefore, the Assistant Commercial Manager, who is the competent authority in the Schedule of Powers, has approved the appointment but entertained a doubt whether fresh option from the officials who had

registered for Guards post should be called for not. On that point he sought clarification from his superior, namely - the Divn1. Commercial Manager-I, who agreed to this proposal of calling fresh option from those officials who had registered their names for Guards post. Therefore, though in the order of promotion it is stated that approval of the competent authority is taken, it is not regarding the actual promotion but it is only on a particular point, namely - whether fresh option should be called for from the officials who had registered their names for Guards post. Even in the order of promotion we find that as against sl. No. 3, Sanjay Wankhede is not given promotion but in the remarks column his name is shown as registered for Guards. Same entry is found against sl. nos. 4, 5, 6, 15, 16 and 17. Then on the last page of the promotion order it is clearly mentioned that these candidates at sl. nos. 3, 4, 5, 6, 15, 16 and 17 are not eligible for promotion to the grade of Rs. 1200-2040 in commercial cadre, since they have registered their names for the post of Guards. If any of the employees desire to seek promotion in commercial cadre, then they should submit their written option for the same within fifteen days. It is for this note of calling for fresh option, the approval of the competent authority is taken and not for the entire promotion of 200 officials mentioned in the order of promotion.

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After going through the record we are satisfied that the competent authority who promoted the applicant was the Assistant Commercial Manager. The approval is taken from the Divisional Commercial Manager only regarding five six officials to call for fresh options from them and it does not apply to the applicant. If once we hold that the Assistant Commercial Manager was the authority who appointed the applicant, then the impugned order passed by the said Authority is perfectly valid. Consequentially, the charge-sheet issued by the Assistant Commercial Manager is also valid. Hence, we need not consider the alternative submission made by the respondents that the charge-sheet will hold good even if it is issued by a lower authority as long as he is the controlling authority of the applicant. In our view, in the present case the charge-sheet is issued by the Assistant Commercial Manager and he has issued the penalty order and since he is the appointing authority of the applicant, his action is perfectly valid, justified and does not call for interference by this Tribunal.

12. Since only two arguments were addressed - about legality of the charge-sheet and want of competence for the authority who issued the penalty order, the application has to fail in view of our above reasoning. No arguments were addressed on merits. However, before parting with the case, in order to satisfy our judicial conscience, we have perused the facts of the case and

find that even on merits there is no scope for interference. It is a case where the applicant was caught red handed by the vigilance staff while he was on duty and he was found in possession of about more than twenty used tickets. When he is incharge of the Booking Office, he had no business to be in possession of used tickets in his pocket. On the face of it, the conduct of the applicant shows that something is fishy and all was not well. What is more, the applicant is admitting the fact that he was in possession of the used tickets. As could be seen from his explanation, he says that somebody had kept some used tickets on his table when he had gone to the toilet and he took it and kept it in his pocket when immediately the vigilance staff came. On the face of it, the explanation is artificial.

As far as shortage of cash of Rs. 56/- and odd, it is admitted. The fact that applicant was in possession of excess cash other than the declared cash is also an admitted fact. But he gave an explanation that he had taken that amount of about Rs. 600/- from some friend. It is purely a case of appreciation of evidence as to whether the prosecution case should be accepted or the explanation of the applicant should be accepted. What we are trying to point out is that the case is based on admitted and undisputed fact. Possession of twenty or more used tickets is admitted. Possession of excess cash other than the declared cash is admitted. Shortage of cash of Rs. 56/- and odd is admitted. Two witnesses were examined on behalf of prosecution and five

witnesses were examined as defence witnesses. On appreciation of evidence, the Inquiring Authority, Disciplinary Authority, Appellate Authority and the Revisional Authority have concurrently held that guilt is proved. It is well settled that the scope of judicial interference is very very limited. This Tribunal cannot sit as an Appellate Court and re-appreciate the evidence. If there is some evidence on the basis of which the impugned order can be sustained, then this Tribunal cannot go into the adequacy of evidence or reliability of the evidence. It is not a case of 'no evidence'. Not only there is some evidence on record but there are also admission of the applicant and most of the facts are undisputed. It is purely a question of accepting the explanation given by the applicant or not. Hence, in the facts and circumstances of the case, we find that even on merits the applicant has no case.

We must mention in fairness to the Learned Counsel for the applicant that he did not address any argument on merits but still we have on our own perused the facts of the case to satisfy our judicial conscience that no injustice is done to the applicant even on merits so as to call for interference by this Tribunal.

13. In the result, the application fails and is hereby dismissed. No order as to costs.

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A).

R. G. Vaidyanatha
12-1-2000
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.