

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of order: 08.10.1999

OA No. 848/92 (535/89)

Ramji Lal Sharma S/o Shri B.R.Sharma, at present employed on the Post of Head TTE, Gangapur City, Western Railway.

...Applicant

Vs.

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Senior Divisional Commercial Superintendent, Western Railway, Kota Division, Kota.
4. Chief Commercial Superintendent, Western Railway, Churchgate, Mumbai.

...Respondents.

Mr.J.K.Kaushik, counsel for the applicant

Mr. Manish Bhandari, counsel for the respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDERPer Hon'ble Mr. N.P.Nawani Administrative Member

The applicant in this Original Application has sought the following reliefs:

(i) "That memorandum dated 6.4.1987 (Ann.A1) N.I.P. dated 10.6.1988 (Ann.A2) imposing the penalty of reversion from Head T.T.E. to T.T.E. by third respondent, order dated 22.9.1988 (Ann.A3) rejecting the appeal passed by third respondent and order of reversion from T.T.E. to permanent T.C. passed by third respondent in respect of application vide order dated 31.5.1989 (Ann.A4) may be so far it relates to declared illegal and the same may please be set aside and consequential benefits be allowed to the applicant as if no such orders were passed against the applicant.



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(ii) That N.I.P. dated 29.4.1989 said to have been issued (as referred in Ann.A4) for ordering applicant's reversion from the post of T.T.E. to T.C. may also be quashed."

2. Notices of this OA was given to the respondents who have filed their reply. The applicant has also filed an additional affidavit which was taken on record.

3. Facts of the case as made out by the applicant and the respondents are being enumerated briefly hereunder. The applicant who was serving as Head T.T.E. at the time of incident on 16/17 November, 1985 and was on duty in a Sleeper Coach No.7413 on 26 UP betwwen Gangapur City and Ratlam. A chargesheet for major penalty was issued against him on 6.4.1987 (Ann.A1) alleging misconduct on three counts :

(i) he blocked berth No.7 showing it for TTE in contravention to instructions in force and did not allott<sup>ed</sup> this berth to needy passenger Shri Digamber Singh thereby causing harassment to him and loss of railway revenue,

(ii) he accepted Rs. 50/- from Shri Digamber Singh to carry him on berth No.7 without showing its allotment to him and when reservation receipt was demanded he misbehaved with the passenger and detrained him at Sawai Madhopur although room was available and

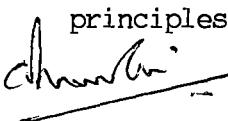
(iii) he concealed his identity by not putting on name plate while on duty.

After going through the procedure of inquiry, the disciplinary authority imposed the penalty of reduction to the post of TTE in the scale Rs. 1200-2040 (RPS) on pay Rs. 1530 per month for a period of 6 months without future effect vide order dated 10.6.1988 (Ann.A2). The appellate authority vide his order dated 22.9.1988 recorded that the findings of the inquiry are warranted by the evidence on record and decided that there was no reason to interfere with the punishment imposed by the disciplinary authority and rejected the appeal. Thereafter, the Chief Commercial Superintendent (Reviewing authority) vide his memo dated 7.2.1989 (Ann.A10) exercising the powers conferred on him by Rule 25 of the Railway Servants (Discipline and Appeal)

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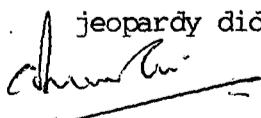
Rules, 1968 (for short, DR Rules) reviewed the case, considered that the penalty imposed was inadequate and keeping in view the gravity of the offence informed the applicant that it is proposed to impose the penalty of removal and if he wishes to represent, the same can be done within 10 days. The applicant has not annexed a copy of the order which must have been issued in consequence to the memorandum mentioned above but it appears from the letter dated 26.12.1995 (Ann.A11) from the General Manager, Western Railway, annexed by the applicant with his additional affidavit, that the reviewing authority had imposed the punishment of permanent reversion to the post of Ticket Collector but the General Manager had changed the punishment to one of reversion in grade Rs. 1200-2040 (RPS) on a permanent basis and fixed the applicant's pay at Rs. 1800 in that grade.

4. During the arguments, the learned counsel for the applicant essentially made out the case of no evidence. He argued that of the three charges, only charge No.1 had survived and that charge relates to the applicant having blocked the berth No.7 and showing it for TTE in contravention to instructions in force. It was contended that the applicant was entitled to reserved berth for TTE in view of the circulation of DO letter No. G 436/37 dated 1.9.1986 (Ann.A7) received from the Dy. CCS (R) CCG and addressed to the Senior DCS-KTT and others, in which a reference was made to Board's letter No. 83-TGI/139/4 dated 7.10.1985 and it was stated that a berth can be earmarked for the TTE and in view of this, the applicant had committed no wrong in blocking the berth for him. It was argued that this facility had come into operation from 7.10.1985 and not from 1.9.1986 when Ann.A7 was issued because any order of the Railway Board would automatically come into operation from the date it was issued. The second issue that was raised on behalf of the applicant was that he had already undergone the penalty of reversion and, therefore, the second penalty could not have been imposed on him by the reviewing authority/General Manager. The third issue raised at the fag end, and more in the nature of a mention, was that the General Manager could not have issued the order dated 26.12.1995 (Ann.A11) after the Original Application was admitted by the Tribunal in view of Section 19 (4) of the Administrative Tribunals Act, 1985. The learned counsel for the applicant has also cited a judgment of the Hon'ble Supreme Court 1999 (2) SLR, UP Cooperative Land Development Bank Vs. Chandra Bhan Dubey, in support of his contention that the principles of natural justice have been violated in this case. We



are of the opinion that the judgment referred is not applicable in the present case as the Apex Court was dealing with a case in which the petitioner was condemned unheard. In this case the applicant has been provided all the opportunities as required under the procedures and, therefore, there was no violation of the principles of natural justice. The learned counsel for the applicant has also drawn our attention to the order dated 22.6.98 of the Jodhpur Bench of this Tribunal in OA No.27 of 1996. We, however, find that in the referred case, the applicant was given the penalty of reduction to a lower grade and at the same time his pay was fixed at the minimum of the lower grade. This case, therefore, does not help the case of the applicant, in view of the penalty imposed by the General Manager (Ann.A11) which is reversion in the grade of Rs. 1200-2040 (RPS) on a permanent basis and fixation of pay at Rs. 1800 in that grade.

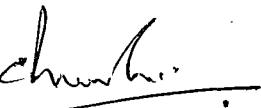
5. The learned counsel for the respondents rebutted the contentions made on behalf of the applicant. He argued that the applicant has failed to annex a copy of the Railway Board's letter dated 7.10.1985 which had only been referred to in Ann.A7 and thus without knowing details of the Railway Board's letter, he cannot claim that the applicant was within his rights to block a berth for himself. He added that plain reading of the documents annexed at Ann.A7, which is a copy of the DO letter dated 1.9.1986 received from Dy. CCS (R) CCG will clearly indicate that any order to operationalise the provision of seats for Coach Attendants, TTEs and Conductors in reserved coaches was to be issued by the Zonal Railways. It has been mentioned in the said letter that "it will be open for the Zonal Railways to earmark one of the seats from the RAC quota to be allotted to these staff". He also argued that even if it is assumed that one of the seats from RAC quota could be earmarked, it will become operative only from the date the Zonal Railway issues orders in this regard. The incident had taken place on 16/17 November, 1985 and on that date a copy of the DO letter dated 1.9.1986 (Ann.A7) was not even received in the Zonal Railway. In any case, it was grave misconduct on the part of the applicant to have allotted a berth for himself and it can be easily guessed as to why he had done this as seen from the background of this case. As regards the second issue, raised about double punishment for the same offence, the learned counsel for the respondents rejected the same as two punishments did not exist simultaneously in this case and the question of double jeopardy did not arise. The punishment was changed by the -----

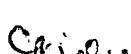


reviewing authority and ultimately there was only one punishment.

6. We have considered the arguments of the rival parties carefully apart from studying the records of the case. We are of the opinion that the contention of the applicant that this is a case of no evidence cannot be sustained. The applicant has himself admitted that he had blocked berth No.7 and shown it for TTE i.e. himself. It has also been established that on the date of incident there were no orders within the Zonal Railway for such blocking of berth. The inquiry officer in the report has also stated that the Board's instructions were circulated vide DRM/KTT's letter dated 26.9.1986 whereas the date of the incident was 16.11.1985 when the issue of providing RAC seats was not yet introduced, therefore, earmarking of berth for TTE was in violation of extent orders. Even otherwise the blocking could be done only if no seat had been provided in the coach for the staff. The applicant has not been able to prove that the coach in question did not have a seat for staff. Finally, the Board's letter, referred to above, could also not have made the applicant entitled to occupy a berth automatically. In view of above discussion, the first contention that this is a case of no evidence is not tenable and is, therefore, liable to be rejected. As regards the contention that two penalties were imposed on the applicant for the same offence, it is very clear that it is not a case of double penalty but the penalty imposed by the disciplinary authority being modified by the reviewing authority/ General Manager which then was the sole penalty imposed on the applicant. As regards the third contention that the General Manager, Western Railway could not have issued the letter dated 26.12.1995 in view of Section 19(4) of the Administrative Tribunals Act, 1985, it will be adequate to mention that the said letter was issued in reply to an appeal filed by the applicant and was part of the one continuing process of departmental proceedings drawn up against the applicant. Section 19(4) of the Administrative Tribunals Act is, therefore, not applicable.

7. In view of above, we find no reason to interfere with the impugned orders issued by the respondents and the application has no merit and is liable to be dismissed. It is so dimissed. Parties are left to bear their own costs.

  
(N.P. NAWANI)  
Adm. Member

  
(GOPAL KRISHNA)  
Vice Chairman