

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.475/90

Date of Order: 26-11-93

BETWEEN:

T.Narayana Swamy .. Applicant

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1. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. Chief Commercial Superintendent,
South Central Railway,
Rail Nilayam, Secunderabad.
3. Divisional Railway Manager,
Guntakal Division,
South Central Railway,
Guntakal.
4. Divisional Commercial Superintendent,
Divisional Office, S.C.Rly.,
Guntakal. .. Respondents.

Counsel for the Applicant .. Mr. P.V.S.S.S.RamaRao

Counsel for the Respondents .. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI A.B.GORTHI : MEMBER (ADMN.)

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

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Order of the Division Bench delivered by
Hon'ble Shri T.Chandrasekhara Reddy, Member (Judl.).

This is an application filed under Section 19 of the Administrative Tribunals Act to direct the respondents to set aside the penalty imposed on the applicant by the 4th respondent and ~~also to set aside~~ the enhanced punishment awarded to the applicant by the 3rd respondent and as confirmed by the 2nd and 1st respondents and to direct the respondents to give promotion to the applicant in accordance with law from his present post of Enquiry-cum-Reservation Clerk, S.C.Railway, Tirupathi.

The facts so far necessary to adjudicate this O.A. in brief are as follows:-

2. The applicant was working as Enquiry-cum-Reservation Clerk at S.C.Railway, Tirupathi. While he was so working on 25.6.86, the applicant before entering duty declared Rs.4/- as his personal cash and signed accordingly in the personal cash register. According to rules and regulations before Enquiry-cum-Reservation Clerk assumes charge of his duties has to declare his personal cash and sign accordingly in the personal cash register. The duty hours of the applicant on 25.6.86 were 14.30 hrs to 20.30hrs (i.e. 2.30 p.m. to 8.30 p.m.). At about 17.30 hrs (5.30p.m.) according to the version of the applicant on 25.6.86, the uncle of the applicant handed over a jip bag containing his personal belongings like pens, refills and cash Rs.392/- along with a list for purchase of provisions which the applicant ~~had~~ forgotten to bring while coming from the duty. The applicant kept the said jip bag in ^{the} Cup board where the staff keep ^{their} private belongings while on duty. While the applicant was at his counter (Counter No.4) the

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Vigilance Inspector at about 8.00 p.m. checked the personal cash of the applicant and also the railway cash which was in the possession of the applicant. The applicant had failed to add the said amount of Rs.392/- in the personal cash register to the amount of Rs.4/- declared by him at the time he assumed duty at 14.30 hrs on 25.6.86. At the time of checking the counter of the applicant, the Vigilance Inspector found the railway cash to be correct. With regard to the cash of Rs.392/- that was found in the zip bag, the applicant was made to give a statement to the said Vigilance Inspector. As the applicant was in possession of excess and unaccounted cash of Rs.392/- the applicant was kept under suspension from 18.7.86 to 19.10.86 by the competent authority as disciplinary proceedings contemplated against him. On 21.8.86 the 4th respondent (disciplinary authority) issued a charge memo as against the applicant, wherein the charge read as follows:-

"That Sri T.Narayana Swamy, ECRC while on duty in the reservation office at Tirupathi on 25.6.86 and manning counter No.4 committed serious misconduct and failed to maintain integrity and absolute devotion to duty in that he was in possession of excess and unaccounted cash of Rs.392/- which he tried to conceal in his hand bag for his pecuniary gain. He disowned the ownership of the bag and the cash in it to relieve him from the excess cash as detailed in the statement of imputations.

Thus Sri T.Narayana Swamy, ECRC violated Rule 3(1) DAR II of the Ry, Service (Conduct) Rules 1966."

The applicant submitted his written statement in defence to the said charge memo dt. 18.7.86 to the 4th respondent. The 4th respondent appointed an enquiry officer. A regular enquiry was conducted. The enquiry officer submitted his report to the 4th respondent giving finding that the charge against the applicant was not proved. The report of the enquiry officer is dt. 12.2.87. The 4th respondent (disciplinary authority) after going through the enquiry report and other material

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disagreed with the enquiry officer and imposed on the applicant the punishment of with holding of annual increments for 12 months without cumulative effect^(non-recurring). The penalty order imposed by the 4th respondent on the applicant is dt. 20.3.87. Against the orders dt. 20.3.87 of the 4th respondent, the applicant preferred an appeal on 8.4.87 to the 3rd respondent. The 3rd respondent issued a show cause notice to the applicant proposing to enhance the punishment that had been imposed by the 4th respondent to that of with holding of increments for a period of 3 years with cumulative effect (recurring). The applicant submitted his representation dt. 31.7.87 objecting for the proposed enhancement of penalty by the 3rd respondent. Ultimately the 3rd respondent by his order dt. 13.8.87 enhanced the penalty to that of with holding of increment for a period of one year with cumulative effect (recurring). Against the said order of the 3rd respondent dt. 13.8.87 enhancing the penalty, the applicant preferred a revision to the 2nd respondent herein. The 2nd respondent confirmed as per his orders dt. 23.11.87 the orders of the 3rd respondent. Against the orders of the 2nd respondent dt. 23.11.87 the applicant preferred a further revision to the 1st respondent on 8.12.87. The 1st respondent dismissed the same as per his orders dt. 26.2.88 confirming the orders dt. 23.11.87 passed by the 2nd respondent (Revisional authority). Aggrieved by the orders of the 1st respondent dt. 26.2.88, the applicant preferred O.A.474/88 before this Tribunal with the prayer to quash the above said orders passed by the 4th, 3rd, 2nd and 1st respondents. A number of contentions were raised on behalf of the applicant in O.A.474/88. A Division Bench

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Bench of this Tribunal disposed of the said OA.474/88
The ~~by~~ judgement dt. 22.8.88 with the following directions:-

"We accordingly set aside these three orders and direct that the appellate authority shall dispose of the appeal dt. 8.4.87 of the applicant in accordance with rules within a period of two months from the date of receipt of this order."

After the judgement of this Tribunal in OA.474/88 the 3rd respondent who is the appellate authority issued proceedings dt. 30.9.88 informed the applicant that the appeal ~~was~~ dt. 8.4.87 ~~not~~ considered and that the 3rd respondent proposed to enhance the punishment of the applicant to that of withholding of increments for a period of 3 years with cumulative effect (recurring), instead of punishment of withholding the increment for the period of 12 months with ^{out} cumulative effect (non-recurring) as imposed by the 4th respondent who is the disciplinary authority. To the said show cause notice the applicant submitted his reply dt. 17.10.88 requesting the 3rd respondent not to enhance the punishment. The applicant also submitted a written brief on 4.11.88 to the 3rd respondent ~~but like~~ ~~but~~ 3rd respondent as per his orders dt. 17.11.88 enhanced the penalty of withholding of increment for a period of one year with cumulative effect (recurring). As against the said orders dt. 17.11.88 the applicant preferred a revision to the 2nd respondent on 31.12.88. The 2nd respondent dismissed the revision of the applicant and the said order of dismissal of the revision of the applicant was conveyed by the Chief Personnel Officer to the applicant as per the communication dt. 14.3.89. Against the orders dismissing the revision of the applicant by the 2nd respondent the applicant preferred a further revision to the 1st respondent on 10.4.89. The 1st respondent passed orders rejecting the revision of the applicant and the said orders were

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communicated by the Chief Personnel officer as per his proceedings dt. 15.6.89. The present OA is filed by the applicant questioning the orders of the 4th, 3rd, 2nd and 1st respondents and for consequential relief at his next promotion from the present post of Enquiry-cum-Reservation Clerk as already indicated above.

3. The respondents have filed counter opposing this O.A. It is contended on behalf of the respondents that the charge framed against the applicant had been duly proved. It is also further contended that no principles of natural justice had been violated in the conduct of the enquiry. In conducting the enquiry ~~and~~ the applicant was given reasonable opportunity. It is also contended that the enhanced penalty imposed on the applicant by the 3rd respondent and as confirmed by the 2nd and 1st respondents is not excessive in view of the facts and circumstances of the case.

4. The fact that the applicant while working as Enquiry-cum-Reservation Clerk at Tirupathi i.e. on 25.6.86 Vigilance Inspector had checked the railway cash and also the personal cash of the applicant while the applicant was on duty manning the counter is not in dispute in this O.A. It is also not in dispute in this OA during the said check that an excess amount of Rs. 392/- was found in a zip bag that was in the possession of the applicant. As already pointed out the disciplinary authority who is the 4th respondent had imposed the punishment of with holding increment for a period of 12 months without cumulative effect. The said

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penalty imposed by the 4th respondent had been enhanced ^{by} to that of withholding of increment for the said period of 12 months with cumulative effect. It is the contention of the learned counsel for the applicant that the 3rd respondent did not have powers to enhance the penalty that had been imposed on the applicant by the 4th respondent. Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 deals with consideration of appeal. Rule 22 makes it clear that the appellate authority shall consider whether the penalty imposed is adequate, in-adequate or severe and pass orders confirming, enhancing, reducing or setting aside the penalty. Admittedly in this case to enhance the penalty imposed by the 4th respondent (disciplinary authority), the 3rd respondent had issued a notice to show cause why the penalty imposed on the applicant by the 4th respondent should not be enhanced and after affording a reasonable opportunity to the applicant the 3rd respondent had enhanced the said penalty imposed by the 4th respondent. As seen the 3rd respondent (appellate authority) has power under the Railway Servants (Discipline & Appeal) Rules to enhance the punishment imposed by the disciplinary authority who is the 4th respondent herein. In enhancing the penalty by the 3rd respondent no rule of natural justice is violated. The due procedure had been followed by the 3rd respondent before enhancing the said penalty imposed on the applicant by the 4th respondent. The enhancement of penalty by the 3rd respondent is in accordance with law. So, we see no force in the contention of the learned counsel for the applicant that the 3rd respondent had no power to enhance the said penalty.

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5. As already pointed out while narrating the facts, the enquiry officer had held that the charge against the applicant is not proved. The disciplinary authority had differed from the report of the enquiry officer and had held that the charge against the applicant was proved and had imposed the penalty on the applicant as already indicated. Rule 10(3) of the Railway Servants (Disciplinary & Appeal) Rules, 1968 reads as follows:-

"The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."

6. It is the contention of the learned counsel for the applicant that the orders of the disciplinary authority are vitiated as the disciplinary authority had not recorded its reasons for differing with the findings of the enquiry officer in his report and in imposing the said penalty on the applicant. It is also the further argument that the disciplinary authority had not applied its mind while differing with the findings of the enquiry officer and in holding that the charge against the applicant had been proved. We have gone through the entire material including the report of the enquiry officer and the order of the disciplinary authority differing from the findings of the enquiry officer. The disciplinary authority after going through the entire material had disagreed with the findings of the enquiry officer. There is sufficient evidence on record for the disciplinary authority to differ from the enquiry officer. As already pointed out the charge as against the applicant is that the applicant committed a serious misconduct and failed to maintain integrity and absolute devotion to duty as he was in possession of excess and

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unaccounted cash of Rs.392/- which he tried to conceal in his hand bag for his pecuniary gain. The fact that the applicant was found in possession of Rs.392/- cash when the Vigilance Inspector searched the counter manned by the applicant on 25.6.86 is not in dispute in this O.A. Heavy burden is cast on the applicant to explain how he came into possession of the said cash. The I.C.R.A. Commercial Manual Vol.II paras 24, 29 page No.138 reads as under:

"Keeping of private cash in station etc. forbidden:

- a) 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 officials it should be remitted to the cash office.
- b) The staff working in Booking offices, parcel 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."

7. So, from Clause (b) it becomes amply evident that the applicant has to declare in writing his private cash before the assumption of duties, in the station diary or in the separate register maintained for this purpose. Admittedly the applicant had declared on the said day that he had only a cash of Rs.4/-. With regard to the cash of Rs.392/- he had stated to the Vigilance Officer that he had brought the amount to purchase the house hold articles from his house. From the said statement it appears that the applicant had cash of Rs.392/- at the time ^{of} assuming

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duty and ~~he~~ had failed to declare. But in the OA it is specifically pleaded that zip bag containing the cash of Rs.392/- had been handed over to him on 25.6.86 at about 5.30 p.m. by his uncle along with the slip for purchase of provisions which he had forgotten to bring home while coming to the duty. If such slip had been there, then in search proceedings that had been drafted in the reservation ~~Counter~~ office on 25.6.86, a reference to the said slip should have been there. Search proceedings drafted is annexed to the counter which is page-4. Absolutely there is no mention about the provisions slip in the zip bag that contained Rs.392/-. So, the fact that the applicant's uncle had come to the counter where the applicant was working at 17.30 hrs on 25.6.86 and had kept the bag containing Rs.392/- along with the slip for purchase of provisions appear to us to be cock and bull story to explain the cash of Rs.392/- which the applicant had unauthorisedly come into possession on the said day. Nothing prevented the applicant from declaring the private cash that had been subsequently received during his duty hours and obtain attestation from his superior which appears to be the practise as seen from the record. From the circumstances narrated above and from the material on the record there cannot be any doubt about the fact that ~~the~~ applicant was found in possession of excess unaccounted cash of Rs.392/- and we see every justification on the part of the disciplinary authority in disagreeing with the finding of the enquiry officer and in holding that the charge as ~~as~~ against the applicant had been proved. We are satisfied that the disciplinary authority had applied its mind to the facts of the case before disagreeing with the findings of the enquiry officer. The reasons given by the disciplinary

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authority for disagreeing with the enquiry officer are sufficient and also satisfactory. So, the contention of the learned counsel for the applicant that the disciplinary authority had not complied with the rule 10(3) of the Railway Servants (Discipline & Appeal) Rules, 1968 as the disciplinary authority had not recorded reasons for such disagreement of the findings of the enquiry officer and in recording its own findings holding that the charge is proved cannot be accepted.

8. The disciplinary authority in its orders had written a disagreement note disagreeing with the findings of the enquiry officer. It is contended that the disagreement note is quite different from the charge framed against the applicant and hence the orders of the disciplinary authority cannot be sustained. The disagreement note is part and parcel of the order of the disciplinary authority disagreeing with the findings of the enquiry officer. The disagreement note cannot be separated from the orders of the disciplinary authority disagreeing with the report of the enquiry officer. The disagreement note also supports the charge as against the applicant. Disagreement note in any way does not go to show that the charge as framed against the applicant is not established. So, we are unable to agree with the contention of the learned counsel for the applicant that the charge and disagreement note are different as already pointed out the disagreement note of the disciplinary authority supports in establishing the charge as against the applicant.

9. In this case the punishing authority while disagreeing with the findings of the enquiry officer had not afforded any opportunity to the applicant while passing the

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order of punishment. It is not pleaded in this OA as the applicant is not heard before the disciplinary authority differed from the report of the enquiry officer that the principles of natural justice had been violated. As a matter of fact such a contention was not raised before us during the hearing of this O.A. Even though the applicant had not been ~~afforded~~ offered an opportunity by the disciplinary authority, before the disciplinary authority differed with the report of the enquiry officer in imposing the said penalty we see absolutely no prejudice having been caused to the applicant. As already pointed out the applicant was admittedly found in possession of excess cash of Rs.392/- for which he failed to account. Even if such any opportunity had been given by the disciplinary authority the very same explanation which the applicant had given in the OA namely that his uncle on the said day i.e. 25.6.86 had handed over a bag containing cash of Rs.392/- with a slip for purchase of provisions would have been given by the applicant which explanation does not appeal to any of this case. So, even though the applicant had not been heard by the disciplinary authority before the disciplinary authority differed with the enquiry officer and imposed the said punishment on the applicant, in view of the facts and circumstances of the case the applicant cannot be said to have been denied reasonable opportunity and ~~there was~~ that the principles of natural justice had been violated.

10. Even though it is pleaded in the OA that the Chief Personnel Officer has acted as revisional authority in this case, a scrutiny of the record would go to show that the 2nd respondent had acted as revisional authority in this case and the confirmation orders passed by the 2nd respondent

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with regard to the penalty imposed on the applicant had been conveyed to the applicant by the 2nd respondent through the Chief Personnel Officer. The same procedure had been followed in conveying the order of the General Manager to the applicant. So, to contend the Chief Personnel Officer has acted as revisional authority with regard to the applicant has no basis.

11. We see no merits in this OA and hence the OA is liable to be dismissed and is accordingly dismissed. The parties shall bear their own costs.

T. Chandrasekhara Reddy
(T. CHANDRASEKHARA REDDY)
Member (Judl.)

A. B. Gorthy
(A. B. GORTHY)
Member (Admn.)

Dated: 26 November, 1993

S. M. H. J.
Deputy Registrar (J)

To sd

1. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
2. The Chief Commercial Superintendent, S.C.Rly, Railnilayam, Secunderabad.
3. The Divisional Railway Manager, Guntakal Division, S.C.Rly, Guntakal.
4. The Divisional Commercial Superintendent, Divisional Office, S.C.Rly, Guntakal.
5. One copy to Mr.P.V.S.S.S.Rama Rao, Advocate, 5-9-22/37 Adarshnagar, Hyderabad.
6. One copy to Mr.N.R.Devraj, SC for Rlys. CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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26/11/93

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR.R.RANGARAJAN : MEMBER(A)

Dated 26-11-1993

ORDER/JUDGMENT:

M.A/R.A/C.A.No.

in

O.A.No. 26/11/93

O.A. 475/93

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

