

(H3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1193 of 1991

DATE OF JUDGMENT: 14th June, 1993

BETWEEN:

Mr. A. Manivelan ..

Applicant

AND

1. The Assistant Commercial Superintendent,
Secunderabad (BG) Division,
South Central Railway,
Secunderabad.
2. The Divisional Commercial Superintendent,
S.C.Railway (BG) Division,
Secunderabad.
3. The Sr. Divisional Commercial Superintendent,
S.C.Railway (BG) Division,
Secunderabad. ..

Respondents

APPEARANCE:

COUNSEL FOR THE APPLICANT: Mr. G.V. Subba Rao, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. D. Francis Paul, SC for Railways

CORAM:

Hon'ble Shri Justice V. Neeladri Rao, Vice Chairman

Hon'ble Shri P.T. Thiruvengadam, Member (Admn.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

The applicant is working as Travelling Ticket Examiner. While he was checking the Coach Nos.S4 and S5 in Train No.6060 on 22.11.1989 from Hyderabad to Vijayawada, the Vigilance Inspector checked the cash available with him after the train left Kazipet. Then, according to the Vigilance Inspector, there was some shortage of cash and the applicant was required to note down the denominations of the notes and the particulars of the coins which were found with him and the applicant made note of the same and as per those particulars noted in the sheet by the applicant there was a shortage of Rs.21/-. The applicant by alleging that there was mistake in totalling, requested the Vigilance Inspector to hand over that sheet to him for making correction. The case of the Vigilance Inspector is that the applicant had taken the said sheet and made corrections to make it appear that there was only a shortage of Rs.4/- and the applicant had torned it into pieces.

2. On 3.9.1990, a memo was issued to the applicant calling for his explanation in regard to this incident. A statement of imputations of misconduct or misbehaviour based on the above incident was also enclosed with the said memo. The applicant submitted his statement on 6.9.1990. The disciplinary authority passed the order dated 19.10.90 imposing a punishment of withholding ~~of~~ the increment for three years without cumulative effect. The appeal thereon ^{Revision against that OA was dismissed.} was dismissed by an order dated 26.12.1990. It is challenged in this OA.

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3.. The contention for the applicant that there is infirmity in the proceeding as no charge is framed is not tenable as Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 states that before imposing minor penalty, the Railway servant has ~~to be informed in writing of the proposal of the~~ to take action against him and ~~imputation~~ of misconduct or misbehaviour on which the action is proposed to be taken and to give him a reasonable opportunity for making such a representation as he may wish to make against the proposed action, and it does not contemplate about framing of the charge.

4. Ofcourse, Rule 11 of the above rules also envisages holding of an inquiry if the disciplinary authority is of the opinion that such an inquiry is necessary in the circumstances of the case for imposing minor penalty. Explanation dated 6.9.1990 of the applicant does not disclose that he made ~~such~~ a request for oral inquiry. The allegation in the OA in ~~para 10~~ Para 10 of the OA that he made ~~a~~ ^{oral} request for oral inquiry is denied. The belated assertion of the applicant in regard to the same cannot be accepted.

5. The further contention for the applicant is that there were no findings in regard to the imputation of misconduct or misbehaviour as can be seen from the order dated 19.10.1990 of the disciplinary authority. The relevant portion reads as under:-

"At any point of time when check is exercised about the Railway Cash, the employee should produce the correct Cash as per the records.

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If employee is not at fault, no need for any misbehaviour with checking officials. He has produced less by Rs.21/- in the Railway Cash originally, later on it is made to Rs.4/- by altering the Cash particulars. Hence, I impose the punishment of withholding of his annual increment for three years (N.C.)."

In view of the same, the contention for the applicant that no findings are given cannot be accepted. Of course, the disciplinary authority would have been more specific and precise in giving the findings.

6. The applicant had given some explanation in the OA for the shortage of Rs.4/- but no such explanation was given in his explanation dated 6.9.1990. So, the present explanation in the OA which is a belated one, cannot be accepted.

7. ~~But~~, it may be noted that it is only a case of shortage but not a case of excess amount when the Vigilance Inspector checked the cash available with the applicant when he was ~~checking~~ ^{viewed as} sleeper coaches as T.T.E. A serious view has to be taken and the offence has to be ~~given more~~ ^{given more} weight if there is any unexplained excess amount. If excess amount is found in such case, it has to be held that it is a case of ~~wrongly~~ ^{by} collected excess amount from the passengers for his benefit. But now it is the case of shortage. The order dated 19.10.1990 of the disciplinary authority or the order dated 26.12.1990 of the appellate authority does not

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G.W.D.

To

1. The Assistant Commercial Superintendent,
Secunderabad (BG) Division,
S.C.Railway, Secunderabad.
2. The Divisional Commercial Superintendent,
S.C.Railway (BG) Division, Secunderabad.
3. The Sr.Divisional Commercial Superintendent,
S.C.Railway (BG) Division,
Secunderabad.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
5. One copy to Mr.D.Francis Paul, SC for Rlys. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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make it clear that the concerned authorities kept in view that it is a case of shortage and not a case of excess. The punishment that has been awarded in case of shortage will be naturally less than the quantum of punishment that has been awarded in case where it is one of excess. Hence, we are constrained to set-aside the order dated 19.10.1990 of the disciplinary authority which is upheld by the appellate authority and to remit it to the disciplinary authority for passing order in regard to the punishment by keeping in view the observations in this order. There is no need to issue any notice to the applicant before awarding punishment in pursuance of the order in this OA as second notice is not contemplated after amendment of the Article 311 of the Constitution of India.

8. In the result, the order dated 19.10.1990 of the 1st respondent which is affirmed by the orders dated 26.12.1990 and 31.8.1991 of the 2nd and 3rd respondents respectively are set-aside and the matter is remitted to the 1st respondent for passing an appropriate order in regard to the punishment by keeping in view the observations in this order. No costs. The OA is ordered accordingly. Office has to communicate a copy of this order to the 1st respondent by 28.6.1993. It is needless to say that if the applicant is going to be aggrieved by the order to be passed by the 1st respondent, he is free to prefer an appeal.

(Dictated in the open Court).

P. T. THIRUVENGADAM
(P.T. THIRUVENGADAM)
Member (Admn.)

V. NEELADRI RAO
(V. NEELADRI RAO)
Vice Chairman

Dated: 14th June, 1993.

Deputy Registrar (2)