

(51)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 990/92

Date of Order: 13-9-95

Between:

M.D.Miskin.

.. Applicant

and

1. The Divisional Commercial Superintendent  
S.C.Railway, Vijayawada.
2. The Senior Divisional Commercial Superintendent  
S.C.Rly, Vijayawada.
3. The Additional Divisional Railway Manager,  
S.C.Rly, Vijayawada.
4. The Chief Commercial Superintendent,  
S.C.Rly, Railnilayam, Secunderabad.
5. The General Manager, S.C.Rly,  
Railnilayam, Secunderabad.

Respondents.

For the Applicant :- Mr. G.V.Subba Rao, Advocate

For the Respondents: Mr. J.R.Gopal Rao, SC for Rlys.

~~Secy/Adm/CCSC~~  
~~Secy/Adm/CCSC~~

CORAM:

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

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

Order passed by Hon'ble Justice Smt. ...  
Vice-Chief.

Charge sheet of 14-8-83 vide page-26 of the material papers

with the following three articles of charges was issued to the  
appellant, who was functioning as Sr. Bookkeeping Clerk, ... of  
the relevant time :-

"Article-I"

Sr. Bk. "B" in function of Sr. Bookkeeping Clerk, ...  
during 1982. As per the findings of 17 hours of  
14.8.83 which he performed duty amounted to Rs. 178.00  
including voucher, bill and pay order. At the close  
of his shift of 17 hours he handed over charge to  
Sri B. V. Ramalingam, who was recorded handover  
both in words and figures. He also shown book up  
without details of pay order which remains overwritten  
with sketch pen B. 301. He signed with time and date.  
He failed to obtain signature of Sri B. V. Ramalingam  
for the handing over of cash and vouchers. He again  
performed shift duty of 12.51 hours on 1-10-83 and 11-  
correct handover of Rs. 8280/- only in figures to Sri  
B. Jayan and appended his signature without time and date.  
Here again he failed to obtain the acknowledgment of  
his reliever Sri B. Jayan. He wrote book-up which re-  
mains started by handing over the fourth digit of cash  
and pay order. He did not write the pay order parti-  
culars also deliberately to avoid detection of the man-  
dation. The cash and vouchers were acknowledged on  
8 hours of 2-10-83. Sri Bk. in on 1-10-83 cash for 8.12  
hours shift and recorded taking over by Sri B. Jayan's  
cash of 1-10-83, 82 to 0 hours Rs. 707/- and though he  
wrote taking over in words he did not append his sig-  
nature and date. He failed to sign to record  
taking over for the cash of Sri Jayan 0-8 hours amount-  
ing to Rs. 1474.00. He further did not care to know  
what he handed to the cash and vouchers of his shift of  
1-10-83 for which he should have again recorded hand-  
ing over to Sri B. Jayan taking over from him.

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OA 990/92.

Dt. of Order:13-9-95.

(Order passed by Hon'ble Justice Shri V.Neeladri Rao,  
Vice-Chairman).

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Charge memo dt.14-9-88 vide page-26 of the material papers with the following three articles of charges was issued to the applicant, who was functioning as Sr.Booking Clerk, Eluru, at the relevant time :-

"Article--I

Sr.Md.Miskin functioned as Sr.Booking Clerk, Eluru during 1986. The shift earnings of 6.12 hours of 14.8.86 which he performed duty amounted to Rs.7078.00 including vouchers ABR and pay order. At the close of his shift at 12 hours he handed over charge to Sri B.V.Ramalingeswara Rao and recorded handingover both in words and figures. He also shown break up without details of pay order which remains overwritten with sketch pen by BSR. He signed with time and date. He failed to obtain signature of Sri B.V.Ramalingeswara Rao for the handing over of cash and vouchers. He again performed shift duty of 12.21 hours on 1-10-86 and recorded handingover of Rs.8280/- only in figures to Sri P.Jayan and appended his signature without time and date. Here again he failed to obtain the acknowledgement of his reliever Sri P.Jayan. He wrote break-up which remains altered by erasing over the fourth digit of cash and pay order. He did not write the pay order particulars also deliberately to avoid detection of the manipulation. The cash and vouchers were acknowledged on 8 hours of 2-10-86. Sri Miskin on 2-10-86 came for 6.12 hours shift and recorded takingover of Sri P.Jayan's cash of 1-10-86, 21 to 0 hours Rs.7090/- and though he write taking over in words he did not appended his signature date and time. He failed totally to record taking over for the cash of Sri Jayan 0-6 hours amounting to Rs.1474.00. He further did not care to know what happened to the cash and vouchers of his shift of 1-10-86 for which he should have again recorded handingover to BSR after taking over from P.Jayan.

... 3.

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Article-II

Sri Md.Miskin functioned as Sr.Booking Clerk, Eluru during 1986. On 14-8-86 in his shift duty of 6-12 hours he arranged payment on pay order No.28881 of 7-8-86 to Sri Shaik Mahaboob M.Man/ Eluru issued by the Railway Employees Co-op. Credit Society Ltd., According to Sri Md.Miskin, Sr. Booking Clerk, he paid only Rs.1377/- and Sri Shaik Mahaboob in his statement dt.16-10-86 said that he received only Rs.1377/-. Sri Md.Miskin at the end of his shift recorded handingover of Rs.7078/- his shift earnings both words and figures signed but did not recorded time and date. He has handed over the cash and vouchers to Sri B.V.Ramalingeswara Rao but according to Para 2437 of Comml.Manual Vol.II he did not obtain his acknowledgement. BSR also did not record time and date when he took over. Having failed to record proper handingover he did not care to ensure that cash and vouchers reached BSR safely. His contention that BSR has used his sketch pen and altered is only a cover up to save himself. He should have taken care to verify DTC and report the alterations since he worked again on 14-8-86 and stationed at Eluru. It is therefore to be construed that he in collaboration with BSR misappropriated Rs.2000/- and kept silent till it has come to light.

Thus Sri Md.Miskin violated Rule 3(1)(ii) of Railway Services (Conduct) Rules, 1966.

Article - III.

Sri Md.Miskin functioned as Sr.Booking Clerk, Eluru during 1986. He performed 12-21 shift duty on 1-10-86 and arranged payment of Rs.1234.00 on the S.Rly. Co.Op.Credit Society Ltd. Pay Order No. 34417 of 23.9.86 to Sri S.Ratnam, T'Man according to his statement dt.6-1-87 which was also agreed to by Sri Ratnam in his statement of 16-10-86. He at the close of his shift handedover Rs.8280/- including vouchers to Sri P.Jayan and though he recorded handing over in words and figures he did not obtain his acknowledgement as required under para 2437 of Comml.Manual Vol.II. He also did not record the time and date when handed over. The cash and vouchers

Manual Vol. 11

The Deputy Officer said that the charge against the applicant was proved only in regard to Article No. 1 and the applicant is exonerated in regard to Articles II and III. While appearing with the case, the respondent No. 1, the Divisional Engineer, Superintendent, Vijayawada, issued order of 15-5-50 stating

and the same was referred to the respondent by the respondent, W.S. 1.0. The respondent

[illegible]

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were acknowledged by BSR on 2.10.86 at 8 hours which goes to prove that this was in the Booking Counter. Md.Miskin performed duty on 2.10.86 6-12 hours and here again while receiving the shift earnings of Sri Jayan on 1.10.86 and 2.10.86 did not give a proper acknowledgement as could be seen from DTC. Sri Miskin should have received his shift cash of 1.10.86 from Sri Jayan and again recorded handingover to BSR and ensured that the cash and vouchers reached correctly the supervisory staff. His contention that the details which he wrote was erased should have been pointed out to BSR or reported to higher ups. His failure to do so establishes the fact he in collaboration with BSR misappropriated Rs.3000/- by tampering the pay order and to further thus he violated para 2437 of Comml. Manual Vol.II

Thus Shri Md.Miskin violated Rule 3(1)(ii) of Rly. Services (Conduct) Rules, 1966."

The Enquiry Officer held that the charge against the applicant was proved only in regard to Article No.I and the applicant is exonerated in regard to Articles II and III. While agreeing with the same, the Respondent No.1, the Divisional Commercial Superintendent, Vijayawada, passed order dt.7-5-90 imposing the penalty of reducing the pay of the applicant in the time scale by one stage i.e. from 1520+40 pp to Rs.1480+40 PP in the scale of Rs.1400-2300 with effect from 16-5-90 for a period of one year, and the same was <sup>affirmed</sup> ~~informed~~ by the Respondent No.2 i.e. the appellate authority by order dt.9-8-90.

2. The Respondent No.3 i.e. the revisional authority issued show cause notice dt.1-10-90 in proceedings No.8/P 86/I/90/4 to the applicant in exercise of powers under section 25 of Railway

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Servants (Discipline & Appeal) Rules. The material portion thereon is as under :-

"Sri Md.Miskin, BC 580, Hd.Rg.CC/KGS is hereby informed that the undersigned having gone through the proceedings of disciplinary action against him by DCS/8ZA in pursuance of Memorandum (SF 5) of even No. of 14-9-88 issued against him considers the penalty of reduction in time scale by ONE STAGE i.e., from Rs.1520/-+40 PP to Rs.1480/-+40 PP in scale Rs.1400-2300 w.e.f. 16.5.90 for a period of one year (NR) imposed on him vide P.A. of even No. of 7.5.90 upheld vide Memorandum No.8/P.86/1/90/4 of 9.8.90 is inadequate in view of the gravity of the offence.

The undersigned, therefore, proposes to take action against him in accordance with the provisions of Rule 25 of R.S.(D & A) Rule, 1968.

Sri Md.Miskin is advised that the undersigned has provisionally come to the conclusion that the penalty imposed on him should be enhanced to that of reduction to the lower grade of Rs. 1200-2040 RSRP for one year (NR) on pay at the stage what he would have notionally drawn as on date has he continued in the lower grade.

.....  
.....  
....."

After considering the explanation of the applicant to the said notice, the impugned order dt.12-12-90 was passed by Respondent No.3, where by the enhancement of penalty is ordered as under :-

"Hence the penalty of reduction in time scale by one stage from Rs.1520+40 pp to Rs.1480+40 pp in scale Rs.1400-2300 (RSRP) for one year (NR) vide memorandum No.8/DCS/Con/140/86(B) of 7-5-90 is enhanced to that of reduction to the next lower

grade of 12.100-1040 (H.P.P) on no normal pay  
of 12.100-1040 (H.P.P) on no normal pay  
of one year (H.P.P)

It is decided in this case.

3. The reasons for enhancement of the penalty are stated  
in para-2 of the order of 12-12-20 and they are as follows :-

"2) As regards the charges contained in  
Article-II & III, O has stated that  
he disagreed with the findings of 10  
on the plea:  
1) That it is very difficult to establish at what stage and by whom the  
manipulations had taken place and the  
E.D. himself accepted that there was  
no direct evidence to pinpoint as to  
who had done the manipulation etc. O has  
argued further that, ultimately, it was  
the responsibility of booking supervisor  
who signed 100 of Cash and vouchers with-  
out scrutiny.

No doubt in para 6, 2.4, 2.5, O has  
agreed that there was no direct evidence  
as to pin point and say that the E.D. had  
done the alterations and mis-appropri-  
ated the amounts in connivance with the SR but  
at the same time it is not uncommon that  
in these type of cases of misappropriations,  
frustrated, hardly one can see any direct  
evidence. He further deals in detail in  
para 6.2.5, 6.2.6 to 6.2.11 for Article II  
and 6.3.3 & 6.3.4 for Article-III, the  
omissions and commissions of the CE to  
prove between the CE and the BSR and con-  
cludes stating of charges.

Since Article-I has been es-  
tablished beyond doubt oral evidence as  
well as documentary evidence is available  
on record, it can be said that for these  
omissions and commissions, the fraud of  
Rs.2000+3000 (total seven thousand three hundred)  
would not have been to notice and immediately  
and could be worked out by the audit work-



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grade of Rs.1200-2040 (RSRP) on notional pay of Rs.1380/-+40 PP w.e.f. 1.1.91 for a period of one year (NR)."

It is assailed in this O.A.

3. The reasons for enhancement of the penalty are stated in para-2 of the order dt.12-12-90, and they are as follows :-

"2) As regards charges contained in Article-II & III, DA has stated that he disagreed with the findings of EO on the plea:

i) That it is very difficult to establish at what stage and by whom the manipulations had taken place and the E.O. himself accepted that there was no direct evidence to pinpoint as to who had done the manipulation etc. DA has argued further that, ultimately, it was the responsibility of booking supervisor who signed TOC of Cash and vouchers without scrutiny.

No doubt in para 6, 2.4, E.O. has agreed that there was no direct evidence to pin point and say that the CE had done the alterations and mis-appropriated the amounts in connivance with the SR but at the same time it is not uncommon that in these type of cases of misappropriations/ fraudes, hardly one can see any direct evidence. He further deals in detail in paras 6.2.5, 6.2.9 to 6.2.11 for Article II and 6.3.3 & 6.3.4 for Article-III, the commissions and omissions of the CE to prove between the CE and the BSR and concludes establishing of charges.

Since Article of Charge-I has been established beyond doubt oral evidence as well as documentary evidence is available on record, it can be said that but for these omissions and commissions, the fraud of Rs.2000+3800 (total seventeen thousands) would not have come to notice and immediately and could be pointed out by the staff work-

....7.

ing in the Booking Office by being cutting  
allocations in the total amount and 25% could be  
pinned up for the same. He would then describe  
exemplary penalty of dismissal from service and  
prosecution. All these failures which pertain  
to the basic and fundamental duties of the  
Booking clerks for which the charged employees  
was appointed and trained, and which led to  
mis-appropriation of Government money could  
not have occurred but for the implicit conni-  
vance which the circumstantial evidence proves  
beyond doubt.

Therefore, I do not agree with the U. A. A.  
that Articles of Charges II & III are not  
proved.

Therefore, I do not agree with the U. A. A.  
that Articles of Charges II & III are not  
proved.

In view of the position explained above,  
the charged employee is held responsible  
for all the charges and it is proposed  
to impose a penalty of reversion from 1411-1500  
(R250) scale of pay to next scale of pay  
6.1200-2040 for one year A.R. His pay is  
fixed at the stage where he would have naturally  
been drawn in the lower grade as on date."

4. It is manifest from the relevant portion of the show  
cause notice dt. 1-12-90 that the reasons given for enhancement  
order dt. 12-12-90 were not referred to in the notice dt. 1-12-90.  
A reading of the order dt. 1-12-90 merely indicates that on the  
basis of the findings given by the Disciplinary Authority, the  
punishment that was awarded was considered to be insufficient  
it does not indicate that the revisional authority was dis-  
satisfied with the findings of the disciplinary authority in  
regard to charges I and II which are the subject of the show-

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ing in the Booking office by seeing cuttings alterations in the total amount and BSR could be pinned up for the same. He would then deserve exemplary penalty of dismissal from service and prosecution. All these failures which pertain to the basic and fundamental duties of the Booking Clerks for which the charged employee was appointed and trained, and which led to mis-appropriation of Government money could not have occurred but for the implicit connivance which the circumstantial evidence proves beyond doubt.

Therefore, I do not agree with the D & A that Articles of Charges II & III are not proved.

Therefore, I do not agree with the D & A that Articles of Charges II & III are not proved.

In view of the position explained above, the charged employee is held responsible for all the three charges and it is proposed to impose a penalty of reversion from 1400-2300 (RSRP) scale of pay to next scale of pay Rs.1200-2040 for one year N.R. His pay is fixed at the stage what he would have notionally drawn in the lower grade as on date."

4. It is manifest from the relevant portion of the show cause notice dt.1-10-90 that the reasons given for enhancement <sup>mentioned in</sup> order dt.12-12-90 were not referred to in the notice dt.1-10-90.

A reading of the order dt.1-10-90 merely indicates that on the basis of the findings given by the Disciplinary Authority, the punishment that was awarded was considered to be lenient. But it does not indicate that the revisional authority was disagreeing with the findings of the Disciplinary Authority in regard to charges II and III where by the applicant <sup>was</sup> ~~is~~ exone-

... 8.

rated, and ~~hence~~ <sup>not</sup> the applicant was asked to explain as to why he should not be held guilty for the charges II and III also, whereby the penalty had to be ~~enhanced~~ <sup>enhanced</sup>.

5. In view of the above infirmity, the order No.B/P.86/I/90/4 dt.12-12-90 is vitiated for it is a case of not giving proper opportunity to explain for the enhancement of penalty.

6. It is submitted that the other two officials <sup>who</sup> actually misappropriated the amounts referred to in Articles of charges were already punished and the amounts were also realised. <sup>So</sup> <sub>we</sub> feel it ~~is~~ not a case where the liberty has to be given to the revisional authority to proceed after giving proper show cause notice.

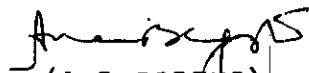
7. The learned counsel for the applicant has not drawn our attention to any infirmity or irregularity in the procedure followed by the Enquiry Officer or by the Disciplinary Authority or Appellate Authority and we do not find any reason to ~~defer~~ <sup>defer</sup> from the order dt.7-5-90 of Respondent No.1, which was affirmed by the Respondent No.2 by order No.B/P86/I/90/4 dt.9-8-90 <sup>where</sup> by ~~imposing~~ penalty of reduction in time scale by one stage i.e. from 1520+40 PP to Rs.1480+40 PP w.e.f. 16-5-99 <sup>was imposed</sup>.

8. In the result, the impugned order No.B/P.86/I/90/4 dt.12-12-90 passed by the Respondent No.3 is set aside and we confirm the order dt.7-5-90, which was affirmed by the Respondent No.2 in its order dt.8-9-90. It is needless to say that

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as the order dt.12-12-90 is set aside, the applicant had to be paid arrears in accordance with law. The O.A. is ordered accordingly. No order as to costs.//

  
(A.B. GORTHI)  
Member (A)

  
(V. NEELADRI RAO)  
Vice-Chairman

Dated: 13th September, 1995.  
Dictated in Open Court.

  
Deputy Registrar (J) CC

avl/

To

1. The Divisional Commercial Superintendent,  
S.C.Rly, Vijayawada.
2. The Senior Divisional Commercial Superintendent,  
S.C.Rly, Vijayawada.
3. The Additional Divisional Railway Manager,  
S.C.Rly, Vijayawada.
4. The Chief Commercial Superintendent,  
S.C.Rly, Railnilayam, Secunderabad.
5. The General Manager, S.C.Rly,  
Railnilayam, Secunderabad.
6. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
7. One copy to Mr.J.R.Gopal Rao, SC for Rlys, CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. One spare copy.

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

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

and

*P.B. Gordhi*

THE HON'BLE MR. R. RANGARAJAN : M (ADMN)

DATED:- 13-9-1995.

~~ORDER~~ JUDGMENT.

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

in

O.A.No. 990/92

T.A.No.

(W.P. )

Admitted and Interim Directions  
Issued.

Allowed

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

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*No spare copy*

