

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order:

31.10.02

OA No.58/96

31st Oct '02

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Mohan Lal Sharma s/o Shri H.B.Sharma r/o 35 Indira Colony, Tonk Road, Sawaimadhopur, at present employed on the post of Senior Booking Clerk, Sawaimadhopur, Western Railway.

.. Applicant

Versus

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

.. Respondents

Mr. Shiv Kumar - counsel for the applicant

Mr. T.P.Sharma - counsel for the respondents

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the memorandum dated 27.2.84 (Ann.A1) whereby a major penalty chargesheet was issued, the order dated 12.7.85 (Ann.A2) whereby a penalty of reduction in rank to the post of Assistant Booking Clerk for a period of 3 years with future effect was imposed by the Disciplinary Authority, the order dated 21.9.94 (Ann.A3) whereby the Appellate Authority modified

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the said penalty to reduction to the post of Assistant Booking Clerk in the pay scale of Rs. 260-430 on the pay of Rs. 400/- for a period of two years without future effect and also the order dated 22.8.95 (Ann.A4) whereby the Revising Authority has upheld the punishment as modified by the Appellate Authority. In relief, he has prayed for quashing the said memorandum/orders with all consequential benefits.

2. The case of the applicant as made out, in brief, is that:-

2.1 While working on the post of Senior Booking Clerk at Sawaimadhopur, he was issued with a major penalty chargesheet vide impugned memo dated 27.2.84 on the allegation of not accounting the sale of 6 duplicate tickets sold by him in his duty hours on 16.10.82. On denying the allegation, an Inquiry Officer was appointed. Based on the Inquiry Officer's report, the Disciplinary Authority issued the impugned order dated 12.7.85 (Ann.A2). Since his defence was seriously prejudiced for not giving him the relevant documents for putting forth his defence and also the order of the Disciplinary Authority accepting the finding of the Inquiry Officer in a mechanical way without application of mind, he filed a Civil Suit, which was transferred to the Hon'ble Tribunal and registered as TA No.1864/86. The Hon'ble Tribunal was pleased to dispose of the same vide its order dated 1.12.93 (Ann.A10). Direction was given by the Tribunal to file an appeal within a period of one month, which was required to be disposed of by the Appellate Authority on merit. He filed an appeal clearly pointing out non-supply

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of relevant documents and denial of giving him reasonable opportunity to defend his case. He also pointed out manipulations, as may be seen from his representation dated 6.1.94 (Ann.A1). The aforesaid appeal was partly accepted and punishment has been reduced by the impugned order dated 21.9.94 (Ann.A3). The point raised in the appeal has been simply said to be unsatisfactory with no other reason. He submitted a revision petition which was rejected vide order dated 22.8.95 (Ann.A4).

3. The respondents have contested this application and submitted that the applicant's appeal has been disposed of after due consideration and application of mind confirming the punishment awarded to him. In this case, disputed question of facts are involved, which cannot be dealt with without leading of voluminous evidence in which this Tribunal does not involve as it requires appreciation of evidence, and is not within the jurisdiction of this Hon'ble Tribunal. The statements of the Superintendent, Printing Press, Ajmer, the concerned Booking Clerk who counted the bundle of duplicate tickets, Stock Incharge and concerned Booking Clerk who got the tickets issued for sale on window, were not relevant nor they were relied upon. Therefore, the applicant was informed by letter dated 13th August, 1984 that the documents asked for by him are the additional documents for which he can approach the Inquiry Officer, who alone can decide about the reasonableness of his demand. The applicant desired reappreciation of evidence, which is not permissible under law. All the documents which were reasonable for his defence and relied upon in the inquiry

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and by the Disciplinary Authority, were supplied to the applicant. The Appellate Authority and the Revising Authority have duly applied their mind. Their decision is not justiciable.

4. The applicant has not filed rejoinder.

5. Heard the learned counsel for the parties and persued the record.

5.1 During the course of arguments, the learned counsel for the applicant contended that the applicant has been seriously prejudiced by withholding the relevant documents, which were essential for his defence. He further submitted that these documents were neither supplied nor shown to him by the Disciplinary Authority. The applicant time and again also requested the Inquiry Officer for supply of documents. The demand register for tickets containing record of supply of bundle from number 39500 to 39749, which was relevant to the case, was not supplied despite specific request. He further submitted that the TCR (Ticket Collection Register) of Sawai Madhopur was not produced for preparing his defence in spite of specific request to the Inquiry Officer. The learned counsel for the applicant submitted that the demand register for the said period is a very important document for his defence and that the same was not intentionally shown to him, since it can not be destroyed before expiry of three years, the allegation being of 16th October '82 and his request was made during the proceedings of 16.2.85 (Ann.A5). He further submitted that without the preliminary inquiry, the respondents could not

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serve him the chargesheet of a major penalty without first, *prima facie*, establishing as to how the ~~duplicate~~ tickets travelled upto the pigeon hole of the ticket board violating all the instructions of the Railway Board contained in Ann.A9. Instead of fixing the responsibility on those responsible for printing duplicate tickets, incorrect counting and failure in detecting the duplicate tickets, he is made scape goat for no fault. The learned counsel for the applicant further submitted that as per the order of the Tribunal, the Appellate Authority was required to pass an appropriate order on merit and further that in accordance with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 the Appellate Authority was required to consider the case of the applicant whether the procedure as laid down in the rules has been complied with or not and whether the findings of the Disciplinary Authority are warranted by evidence on record. He further submitted that the order of the Appellate Authority, as may be perused from Ann.A3, is a non-speaking order and without consideration of merit of the case. The Appellate Authority has simply stated that proper procedure has been followed, although the applicant has specifically brought out in his representation as to how the procedure was not followed and also that he has been denied the opportunity of having the relevant documents. It has been further stated in this order that the explanation given by the applicant is not satisfactory and that the applicant has depended upon the amount deposited by Shri Om Prakash Sardul, another Booking Clerk to explain for the shortages. It is also stated in the appellate order that in this connection the calculation

put up by the applicant was found to be incorrect.  $120 \times 6.40 =$  Rs. 768 and not 786. The difference is not Rs. 45.60 on page 5 but rather Rs. 25.60. In any case, the two have no connection at all. The learned counsel for the applicant submitted that this finding of the Appellate Authority is without any application of mind, since the applicant has contended in his representation that there is no shortage of the amount and Shri Om Prakash Shardul has already deposited the amount. Further, the calculation mentioned in his representation, which were said to be incorrect, were based on the DTC of 15.10.82. The applicant has correctly stated that what should have been the amount and that for Ticket No.39559 to 39679, the excess remitted by Shri Om Prakash is Rs. 45.60 belong to the same series which was sold by Shri Om Prakash immediately before he took over the charge and that 6 duplicate tickets said to have been issued by the applicant bearing No. 39680 onwards were numbers immediately after the No.39679 admittedly sold by Shri Om Prakash. Therefore, the duplicate tickets were in fact sold by Shri Om Prakash, otherwise, he could not deposit excess amount of Rs. 45.60 against this series of tickets. There is no explanation as to why Shri Om Prakash deposited this amount. Therefore, the order of the Appellate Authority is without application of mind and, therefore, required to be struck down. The learned counsel for the applicant further submitted that he accounted for the tickets as sold by him. Therefore, it is strange that the applicant has been charged for selling 6 additional tickets with duplicate numbers. Even if it is assumed that six tickets were having duplicate numbers and those

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duplicate number tickets were sold by the applicant, the number of tickets given to him <sup>which were</sup> accounted for by him, cannot mean that he sold six additional tickets and pocketed that amount of Rs. 38.40 for these six tickets. The respondents have failed to see this aspect. Further, it is not necessary that the duplicate number tickets alongwith original number tickets will be placed in the same sequence in the pigeon hole or would form part of the same bundle. He also submitted that the order of the Revising Authority, as may be perused, is without application of mind and does not cover the points raised in his petition. He has simply stated that all these points have been examined at various stages. He finally submitted that the applicant has been made scape goat for the fault of the other staff of the railway administration. The respondents have failed to establish that there were excess tickets in the pigeon hole and the applicant sold those excess tickets and pocketed the amount. Accordingly, this is not a case of no evidence.

5.2 The learned counsel for the respondents submitted that the Inquiry Officer in his report has recorded that since the statements of the Superintendent of Printing Press, who printed the duplicate tickets, of booking office concerned staff who had checked the tickets at Kota, of person who had received the tickets from C.B.C. were not recorded earlier, the same cannot be supplied. Regarding the demand register, the same could not be shown to the applicant for the reason that it is not available. The learned counsel for the respondents further submitted that the Appellate Authority has reduced the penalty after due consideration of his representation.

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Normally in such cases, the penalty of dismissal is warranted but keeping in view the facts and circumstances of the case, a lower penalty was ordereed by the Appellate Authority by modifying the penalty imposed by the Disciplinary Authority. The orders of the Appellate and Revising Authorities are passed after due application of mind. He also submitted that there is sufficient evidence on record to establish the misconduct of the applicant. He submitted that the applicant sold 46 tickets bearing number 39679 to 39725. The duplicate six tickets bearing the numbers 39680, 81, 82, 84, 85 and 86 fell within the ticket numbers sold by the applicant in his shift on 16.10.82 and these six tickets alongwith six other tickets bearing the same numbers were used by the passengers on 16.10.82 itself and all 12 tickets were collected at Sawai Madhopur station from passengers who travelled on 16.10.82 by 83 Dn Train from Kota to Sawai Madhopur soon after the Tickets were issued by the applicant. The Inquiry Officer has come to the conclusion that the charge is established based on the evidence on record. He also submitted that the matter with regard to excess return of money by another Booking Clerk has been discussed by the Inquiry Officer in his report and does not pertain to the ticket numbers in question.

6. Having considered the submissions of the learned counsel for the parties, the material on record, the report of the Inquiry Officer and the 12 tickets shown to us, we are of the view that this case cannot be said to be a case of no evidence. The penalty imposed is not harsh. We are also of the view that non-production of

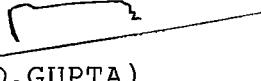
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certain documents/registers, reasons apart, would not be to the prejudice of the applicant. In the circumstances, no judicial interference is called for in this case. Accordingly, this OA is dismissed without any order as to costs.



(M.L.CHAUHAN)

Member (Judicial)



(H.O.GUPTA)

Member (Administrative)