

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 28/3/2002

OA 401/97

R.K.Mishra, Law Assistant O/o Chief Claim Officer, W/Rly,
Churchgate, Mumbai.

... Applicant

Versus

1. Union of India through General Manager, W/Rly,
Churchgate, Mumbai.
2. Chief Commercial Manager, W/Rly, Churchgate, Mumbai.
3. Divisional Rly Manager, W/Rly, Kota Dn, Kota.
4. Sr.Dvl.Commercial Manager, W/Rly, Kota Dn, Kota.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the -Applicant ... Mr.C.B.Sharma

For the Respondents ... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

This is a second round of litigation by the applicant in the same case. He had earlier filed an OA 494/89 challenging the order of the disciplinary authority dated 30.5.89 imposing on the applicant the penalty of reversion to the post of Ticket Collector for a period of two years with future effect. While disposing of the said




OA on 2.9.94 the Tribunal had observed that the OA had been filed without the applicant having exhausted the departmental remedy in the form of filing an appeal before the appellate authority. The applicant was directed to prefer an appeal to the appellate authority and the appellate authority was directed to dispose of the same within a period of two months by taking into account all the points raised by the applicant in his appeal. In pursuance of these orders, the applicant submitted an appeal dated 23.9.94 against the order of the disciplinary authority and the same came to be decided by the appellate authority vide order dated 18.12.95 (Ann.A/3). By filing this OA, the applicant seeks quashing of this order as also the order of the disciplinary authority, which was passed in the year 1987.

2. Heard the learned counsel for the parties. The main thrust of the learned counsel for the applicant was that the case against the applicant had not been fully established. He submitted that there were two charges against the applicant at the time he was working as TTE. First was that he demanded and accepted Rs.24/- from Smt.Asha Solanki, travelling by coach No.7176 of 24 UP on 16.4.86 without reservation, but he neither allotted any berth nor issued any receipt for the said amount of Rs.24/-, which he alleged to have misappropriated. The second charge was that he unauthorisedly blocked one berth



in the same coach. While the second charge was not proved, the first charge was held to have been proved in inquiry. The disciplinary authority had agreed with the findings and imposed the punishment. The learned counsel contended that the evidence adduced during the inquiry was not properly appreciated. We are not inclined to go into this aspect of the merit as it is not for the Tribunal to appreciate the evidence advanced before the inquiry officer unless the findings of facts of the case are such as no man of ordinary prudence would have reached in relation to the evidence so adduced. The instant case is not one such and perusal of the orders passed by the appellate authority clearly bring out the reasons as to why the charge No.1 has been held proved.

3. The learned counsel raised a plea that the order of punishment was defective for the reason that a penalty of reversion to the lower grade of Ticket Collector from the grade of TTE has been imposed alongwith a further rider that the applicant's pay after reversion shall be fixed at the minimum of the grade of Ticket Collector i.e. Rs.950/- in the scale of Rs.950-1500. He contended that Railway Servants (Discipline & Appeal) Rules, 1968 (for short, DAR) nowhere provide for such a penalty and this order in fact includes two penalties which are distinct from each other. He asserted that such an order which imposes two penalties on the same charge is not sustainable



in law. He also placed reliance on the orders of Hyderabad Bench of this Tribunal in the case of R.Devadanam v. UOI & Ors., in TA 634/86, decided on 3.3.89, and order of Jodhpur Bench in OA 27/96, Shyam Babu v. UOI & Ors., decided on 22.6.98.

4. Rule-6 of the DAR specifies the penalties which can be imposed on a railway servant. One of the minor penalties is mentioned in Rule-6(iii)(b) and reads as under :

"Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension."

Penalty at item (v) is distinct from (iii)(b) and reads as under :

"(Save as otherwise provided for in clause (iii-b), reduction to the lower stage in the time scale of pay for a special period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;"

The penalty of reduction to a lower time scale is provided in (vi), which reads as under :



"Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;"

It is clear from the penalties so prescribed under Rule-6 that 'reduction to a lower time scale of pay' is a penalty ~~distinct from reduction to a lower time scale~~ which is distinct from the penalties of 'reduction to the lower stage in the time scale of pay'. The penalties imposed by the disciplinary authority in the instant case reads as follows :

"Reversion to the post of TC, scale Rs.950-1500, on pay Rs.950/- p.m. for a period of two years with future effect."

The appellate authority has modified this penalty and has imposed the following punishment :

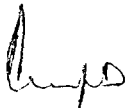
"Punishment of reduction to TC grade Rs.950-1500 on pay of Rs.950/- p.m. for a period of one year".

5. No doubt, the appellate authority has modified and reduced the quantum of punishment but even now we find this punishment order as defective. The penalty imposed



includes reduction to a lower rank as also reduction to the lowest stage of pay in the time scale of Rs.950-1500. These are two different and distinct penalties and cannot be imposed against one charge and in the same case. While taking this view, we find ourselves in agreement with the view taken by the Hyderabad Bench of this Tribunal in the case of R.Devadanam and that of Jodhpur Bench of the Tribunal in the case of Shyam Babu. The punishment awarded to the applicant is obviously not in accordance with rules and, therefore, the same deserves to be quashed. We consider ^{it} necessary to remit the case back to the appellate authority for passing appropriate orders as per rules and law keeping in view the discussions in the preceding paragraphs.

6. We, therefore, allow this OA partly. Order of the appellate authority dated 18.12.95 (Ann.A/3) is hereby quashed. The case is remitted back to the appellate authority for passing appropriate orders as per law keeping in view our observations and discussions in the paras above. The respondents shall comply with these directions within a period of two months from the date of receipt of a certified copy of this order. The parties shall bear their own costs.


(A.P.NAGRATH)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)