

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 8.1.2004

Original Application No.208/2002.

Ram Prasad 'B' S/oShri Bhanwar Lal, aged about 52 years, resident of Poonam Colony, Lane No.6, Kota. At present working as T.T.I. in the Western Railway, Kota Division, Kota.

... Applicant.

versus

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Chief Commercial Manager, Western Railway, Churchgate, Mumbai.
3. Senior Divisional Commercial Manager, Western Railway, Kota Division, Kota.

... Respondents.

Shri R. N. Mathur counsel for the applicant.

Shri S. S. Hassan counsel for the respondents.

CORAM

Hon'ble Mr. R. K. Upadhyaya Administrative Member.

Hon'ble Mr. Bharat Bhushan, Judicial Member.

: O R D E R :
(per Hon'ble Mr. R. K. Upadhyaya)

This application under Section 19 of the Administrative Tribunals Act, 1985, has been filed, claiming the following reliefs :-

- (i) by an appropriate order or direction the Hon'ble Tribunal may kindly call for the entire record and after examination the same be pleased to declare the impugned orders dt. 11.3.2001 (Annexure A/1) passed by Chief Commercial Manager, Western Railway, order dt. 20.11.2001 (Annexure A/3) passed by appellate authority and order dt. 20.4.2001 (Annexure A/6) passed by Disciplinary authority may kindly be set aside and quashed.
- ii) by an appropriate order or direction, the respondents be directed to reinstate back applicant in service with all consequential benefits.
- iii) any other order or direction which the Hon'ble Tribunal may deem fit and proper, the same may kindly be passed infavour of the applicant."

2. It is stated that the applicant was issued a charge sheet dated 01.11.1999 and the articles of charges were as follows :-

"Article-I

During a surprise vigilance check conducted on 28.08.1999 in train No.3020 DDM Express train between SwM to Kota. Shri Ram Prasad 'B' TII HQ.Kota who was manning A-1 Coach, was found

C. N. Mathur

even for short journey to get tickets converted to higher class. The passengers had boarded Second AC Coach from Swai Madhopur and the applicant was to charge them for the difference of fare from Swai Madhopur to Kota. It was stressed by the learned counsel that on 28.08.1998 the train had barely left Swai Madhopur and within 20 minutes the applicant was apprehended by the vigilance team. No Panchnama or seizure memo was prepared. Even the EFT Register maintained by the applicant has not been considered levelling it as an after-thought. Learned counsel stated that the whole case is based on the presumptions and there is no evidence to prove the charges. He, therefore, urged that not only the enhanced punishment order but also the charge sheet and disciplinary authority order should also be quashed and set aside.

4. The respondents have contested the application. In the reply filed, it has been stated that during a surprise vigilance check conducted on 28.08.1998 in train No.9020 Dehradun Express between Swai Madhopur to Kota, the applicant was found carrying 7 passengers with improper ticket in AC Sleeper coach. The excess fare ticket prepared by the vigilance team resulted into earning of Rs.4580/- to the Railway Administration. The applicant had declared only Rs.70/- as his private cash whereas the Vigilance team had found him in possession of Rs.1507/-. The Enquiry Officer has given a report on consideration of the material and documents that Charge No.1 was partly proved and Charge No.2 was fully proved. The appellate authority considered the punishment awarded by the disciplinary authority inadequate, therefore, he issued a show cause notice and enhanced the punishment of compulsory retirement with full retiral benefits to the applicant. According to the respondents, the law has been followed in letter and spirit and lenient view has been taken by the respondents as instead of removing from service, he has been awarded only punishment of compulsory retirement with retiral benefits.

5. We have heard the learned counsel for the parties and perused the material placed on record carefully.

6. Rule 22 of the Railway Servants (Discipline & Appeal) Rules 1968 provides as follows :-

22. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of

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This application under Section 19 of the Administrative Tribunals Act, 1985, has been filed, claiming the following reliefs :-

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- ii) by an appropriate order or direction, the respondents be directed to reinstate back applicant in service with all consequential benefits.
- iii) any other order or direction which the Hon'ble Tribunal may deem fit and proper, the same may kindly be passed in favour of the applicant."

2. It is stated that the applicant was issued a charge sheet dated 01.11.1999 and the articles of charges were as follows :-

"Article-I

During a surprise vigilance check conducted on 28.08.1999 in train No.2020 DDN Express train between SWM to Kota. Shri Ram Prasad 'B' TTI HQ/Kota who was manning A-1 Coach, was found

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carrying 7 (seven) passengers having improper ticket in A-I coach right from NDLS to Kota who were got regularised vide EFT No.B-095742 to B 095745 dated 28.08.1999 by the Vigilance team of Railways Board resulting into earning of Rs.4580/- to Railway Administration.

Article-II.

Moreover he was found in possession of Rs.1507/- excess in his private cash beyond his declared amount of Rs.70/- which he must have earned by indulging himself in carrying of passengers in his coach with improper ticket or without ticket."

The Enquiry Officer submitted his report, which was forwarded to the applicant along with the letter dated 19.03.2001 (Annexure A-8). The Enquiry Officer held that Charge No.1 was proved only partially as the fact that 7 passengers were travelling from New Delhi Station were suspectful but so far as Charge No.2 relating to excess private cash, the same was held to be ^{not} ~~not~~ proved. After considering the facts of this case, the disciplinary authority observed as follows :-

" In charge No.1 Shri Ram Prasad B., TFI/KTF was found carrying 7 passengers on improper ticket in coach No.A1 and during the vigilance Check, EFT No.905742 to 45 dated 28.8.99 was issued realising an amount of Rs.4580/- against these passengers. In the second charge Shri Ram Prasad B., was found in possession of excess money of Rs.1507/- in his private cash. This charge has been fully proved by the E.O. Shri Ram Prasad declared his private cash of Rs.70/- as his private cash, but he was having Rs.1507/- as excess money. Hence, he is held responsible for carrying excess money than declared."

He also levied punishment of reduction to two stages below in the same time scale of pay for a period of one year with future effect.

2. It is admitted fact that the applicant did not file any appeal against the order of punishment.

3. The appellate authority exercised his power under Rule 25 of the Railway Servants (Discipline & Appeal) Rules 1968 and issued a memorandum dated 03.10.2001 (Annexure A-4). The ^{Appeal} disciplinary authority was of the view that the punishment given by the disciplinary authority was not commensurate with the gravity of the

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offence. Therefore, he proposed to enhance the punishment of removal from railway service. After considering the reply to the show cause notice for enhancement of the punishment to removal from service and after affording an opportunity of being heard, the appellate authority passed the following order dated 20.11.2001 (Annexure A-3) of enhancement of punishment :-

- “ 1. During the Enquiry it was proved that the employee was carrying 7 passengers with improper ticket in AC Sleeper Coach on 28.8.98 in train No.9036 U. From him Vigilance team collected Rs.4580/- . The statement of the employee that these passengers came in AC Sleeper coach from SWM is unconvincing.
2. Moreover, he was also found carrying excess cash of Rs.1507/- which according to the employee were covered against foreign EFT. However, the same argument was also given to the Enquiry Officer, who had found that producing EFTS at a later stage during enquiry was only an after-thought and manipulation to cover the cash earned illegally. I agree with the E.O.

Therefore, looking into the gravity of the offence, the case is fit for 'removal from service'. However, taking a sympathetic view - in view of his family liabilities, I compulsorily retire him with full retirement benefits.”

The Chief Commercial Manager vide his letter dated 25.02.2002 maintained the enhanced punishment imposed by the appellate authority.

3. The applicant is aggrieved by these orders and has challenged the same in this application. It is claimed by the learned counsel for the applicant that as a matter of fact the entire disciplinary proceeding from the stage of issue of charge sheet deserves to be quashed and set aside. Learned counsel for the applicant stated that the impugned order of enhancement of punishment is a non-speaking order. He invited our attention to the decision of Hon'ble Supreme Court in the case of Ram Chandra vs. U.O.I. & Ors. 1986 (3) SCC 103 in support of his contention that the past conduct of the applicant has not been considered. According to the learned counsel, even the facts have not been properly considered. In this connection, attention was invited to the representation of the applicant dated 21.12.2001 wherein the applicant had stated that there was no witness to the effect that the passengers were actually travelling in 11Ind AC Ex. New Delhi Station. Neither the statements of those passengers nor the coach attendant ^{was} recorded. Even the Vigilance Inspector Shri K. K. Menon had stated that there was no restriction

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even for short journey to get tickets converted to higher class. The passengers had boarded Second AC Coach from Swai Madhopur and the applicant was to charge them for the difference of fare from Swai Madhopur to Kota. It was stressed by the learned counsel that on 28.08.1998 the train had barely left Swai Madhopur and within 20 minutes the applicant was apprehended by the vigilance team. No Panchnama or seizure memo was prepared. Even the EFT Register maintained by the applicant has not been considered levelling it as an after-thought. Learned counsel stated that the whole case is based on the presumptions and there is no evidence to prove the charges. He, therefore, urged that not only the enhanced punishment order but also the charge sheet and disciplinary authority order should also be quashed and set aside.

4. The respondents have contested the application. In the reply filed, it has been stated that during a surprise vigilance check conducted on 28.08.1998 in train No.9020 Dehradun Express between Swai Madhopur to Kota, the applicant was found carrying 7 passengers with improper ticket in AC Sleeper coach. The excess fare ticket prepared by the vigilance team resulted into earning of Rs.4580/- to the Railway Administration. The applicant had declared only Rs.70/- as his private cash whereas the Vigilance team had found him in possession of Rs.1507/-. The Enquiry Officer has given a report on consideration of the material and documents that Charge No.1 was partly proved and Charge No.2 was fully proved. The appellate authority considered the punishment awarded by the disciplinary authority inadequate, therefore, he issued a show cause notice and enhanced the punishment of compulsory retirement with full retiral benefits to the applicant. According to the respondents, the law has been followed in letter and spirit and lenient view has been taken by the respondents as instead of removing from service, he has been awarded only punishment of compulsory retirement with retiral benefits.

5. We have heard the learned counsel for the parties and perused the material placed on record carefully.

6. Rule 22 of the Railway Servants (Discipline & Appeal) Rules 1968 provides as follows :-

22. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of



the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

(a) Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice.

(b) Whether the findings of the disciplinary authority are warranted by the evidence on the record ; and

(c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe ; and pass orders -

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case :"

There is no dispute that when the vigilance team checked the applicant, he was found having excess private cash. The normal behaviour of human being would have been to correlate the excess cash with reference to the excess fare collected from any passenger. There is nothing on the part of the applicant to suggest that he behaved like a normal human being. On the other hand, it is admitted fact that he produced the EFT Register only during the course of the enquiry proceedings in his defence. This has rightly been not relied upon as evidence produced as an after thought. The contention of the learned counsel for the applicant that there is no application of mind by the relevant authorities is also far from the truth. It appears from the facts that the applicant was satisfied with the levy of punishment of stoppage of two increments for one year by the disciplinary authority and perhaps that is why he did not even file appeal. The whole grievance of the applicant had started only after issue of memorandum dated 03.10.2001 (Annexure A-4) under Rule 25 by the appellate authority and the appellate authority considered the punishment awarded by the disciplinary authority inadequate.

7. In our considered view, the action taken by the appellate

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authority was justified on the facts of this case. There is no denial of the fact that there were passengers in the Coach ~~held~~ ^{managed} by the applicant with ~~or~~ ^{or} improper tickets. There is also no denial of the fact that private cash in excess of the declared amount was recovered from him. It is for consideration whether the explanation given for excess private cash can be believed or not. On the facts of this case, it is simply unbelievable. A normal passenger if pays the money, expects a receipt for the same. If the applicant had realised excess money or issued a excess fare ticket, he should have issued the same to the concerned passenger. It is also undisputed fact that the vigilance team had collected Rs.4530/-, by regulaing the tickets of the passengers. Therefore, if anyone of them had paid excess fare to the applicant he would have noramilly refused to pay the same to the vigilance team again. On the facts of this case, the claim of the applicant does not appear to be believable. On the other hand, the respondents have followed the procedure. They have properly levied the punishment on the applicant. There is not disproportionate punishment if the gravity of the misconduct is taken into account. The decision of Hon'ble Supreme Court in the case of Ram Chandra (Supra) does not apply on the facts of this case. In the present case, the facts have been ~~not~~ ^{properly considered}. The applicant has been given opportunity of being heard and the punishment has been awarded after due consideration of the facts of the case. Therefore, no interference is called for.

8. In view of what is stated above in the foregoing paragraphs, this application is dismissed without any order as to costs.


(BHARAT BHUSHAN)
MEMBER (J)


(R. K. UPADHYAYA)
MEMBER (A)