

GENERAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

CIRCUIT SITTING AT BILASPUR

OA No.149/2004

Jabalpur, this the 17th day of May 2005.

CORAM

Hon'ble Mr. M. P. Singh, vice Chairman
Hon'ble Mr. A. K. Bhatnagar, Judicial Member

T.S. Dhurwe
S/o Man Singh Dhurvey
R/o village Turregarn
Post Office Dantola
via Bandha Bazar
Rajnandgaon
Chhattisgarh.

Applicant

(By advocate Shri V. Tripathi on behalf
of Shri S. Paul)

versus

1. Union of India through
the General Manager
West Central Railway
Jabalpur.
2. The Divisional Railway Manager
West Central Railway
Bhopal Division
Bhopal.
3. The Senior Divisional Commercial Manager
O/o The Divisional Railway Manager
West Central Railway
Bhopal Division.
4. The Divisional Commercial Manager
O/o The Divisional Railway Manager
West Central Railway
Bhopal Division

Respondents.

(By advocate None)

ORDER

By A. K. Bhatnagar, Judicial Member

By filing this OA, the applicant has claimed the
following reliefs:

- (i) Set aside the order dated 31.12.2002 (Annexure A1);
Order dated 6.11.2003 (Annexure A2) and Order dated
27.12.2003 (Annexure A3).
- (ii) Upon holding that the damage rent imposed on the
applicant is illegal, set aside the order dated
30.12.2003 (Annexure A4).
- (iii) Direct the respondents to provide all consequential
benefits to the applicant as if the punishment
order is never passed.

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2. The brief facts of the case are that the applicant who was appointed as Commercial Clerk on 20.9.91 was promoted in the year 1993 as Assistant Booking Clerk. He was further promoted in the year 1994 as Senior Booking Clerk. While working as Booking Clerk at Hoshangabad station in the year 2001, the applicant received a charge sheet dated 30.4.2001 (Annexure A5) alleging that he has overcharged Rs.1/- from the decoy passenger while selling ticket for 2 adults of sleeper class from Hoshangabad to Gorakhpur. It was further alleged that while checking, excess amount of Rs.4/- was found in his cash. An enquiry was conducted. The report of the enquiry officer was supplied to the applicant. He preferred a representation dated 29.11.2001 against the enquiry report. The disciplinary authority, after considering the same, imposed on the applicant the major penalty of compulsory retirement vide order dated 30.12.2002 (Annexure A1). The applicant submitted an appeal dated 24.1.2003 (Annexure A11). The appellate authority vide order dated 6.11.2003 (Annexure A2) modified the penalty to reduction to lowest stage in the same scale of pay for a period of 3 years with cumulative effect. It was further mentioned that the intervening period would be treated as dies non. Thereafter, the applicant preferred a revision petition on 3.12.03 which was rejected vide order dated 27.12.03 (Annexure A3). The applicant was compulsorily retired from service by order dated 30.12.2002 and he was reinstated by order dated 13.11.2003 (A-12) and posted at Itarsi. The applicant requested the authorities vide application dated 18.12.2003 to permit him to retain the quarter No.J-5/A till April 2004 on the ground of his children's education. An order dated 30.12.03 (A-4) was issued to the applicant whereby the damage rent of Rs.35400/- was imposed on the applicant and the respondents

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recovered Rs.1493/- from the salary of the applicant from December 2003 as damage rent.

3. Raising various grounds mentioned in para 5 of the OA, learned counsel of the applicant submitted that during the course of departmental enquiry, no independent witness was produced by the prosecution to establish the allegation. Moreover, the allegation levelled against the applicant does not constitute any misconduct. The applicant has never demanded any excess amount from the decoy passenger. He could not refund Rs. 1/- due to non-availability of change. The counsel further submitted that during the course of trap, para 704 of Indian Railway Vigilance Manual was not followed. Thus the entire departmental enquiry is liable to be quashed on this score alone. The defence of the applicant was totally ignored by the inquiry officer. Learned counsel further maintained that the appellate authority has exceeded his jurisdiction while passing the order that the intervening period would be treated as dies non. As per fundamental rule, the disciplinary authority should issue notice to the applicant before treating the intervening period as dies non. The revising authority has also not applied his mind while passing the order dated 27.12.2003. No reason has been shown as to why the order of the appellate authority was found to be in order. The defence of the applicant was not discussed in the order dated 27.12.03. Learned counsel further submitted that the order dated 6.11.2003 would be made effective from 30.12.2003 and therefore, the applicant would be treated as in service w.e.f.6.11.2003. Thus the applicant cannot be treated as unauthorized occupant of the Govt. accommodation. Learned counsel has also relied on 2003 (2)ATJ 119 in the case of Abdul Salam v. DRM, SC Railway.

Guntakal and submitted that the respondents have not followed the mandatory procedures under paras 704 and 705 of Indian Railway Vigilance Manual. Therefore, the entire proceedings against the applicant are vitiated. The relevant paras of the said judgement are reproduced below:

"(A) Indian Railway Vigilance Manual - Paras 704 & 705-Removal-Order of removal from service issued on the charge of demanding and accepting bribe-Challenged-Two gazetted officers of the department are not taken as independent witnesses at the time of conducting the departmental trap-Test check memo was not signed by the decoy check passenger-Evidence given by the defence witness ignored-Independent witness never claimed that he had seen the applicant demanding and accepting money from the decoy passenger-Mandatory procedure prescribed under paras 704 and 705 not followed-Recorded GC Notes indicated in the test check cannot be accepted as a proper currency notes and authority to book the applicant under corruption-Entire proceedings vitiated-Order of removal from service quashed-Reinstatement with all consequential benefits including arrears of salary ordered.

(B) Indian Railway Vigilance Manual-Paras 704 and 705-Departmental Traps-Corruption-vigilance check by the Railway authorities-Procedure under paras 704 and 705 of Indian Railway vigilance Manual is a mandatory one and must be followed while laying trap."

4. Learned counsel for respondents contested the case by filing counter which is followed by a rejoinder by the applicant reiterating the facts mentioned in the OA.

5. Learned counsel for the respondents submitted that the fact remains that the applicant denied the return of Rs.1/- to the decoy passenger. All the PWS supported the allegations mentioned in the charge memo. It is further submitted that in the Rly cash Rs.4/- was found in excess excluding Rs.1/-. It is also wrong that no independent witness was produced, as Shri A.C.Mishra, R.P.F. official, was an independent witness in whole proceedings of decoy check. The applicant challenged the A1 order in appeal, which was partly allowed by the appellate authority modifying the

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order of compulsory retirement into reduction into lower stage for a period of 3 years with cumulative effect and the intervening period was treated as dies-nom. Learned counsel further submitted that the applicant had demanded Rs.565/- in place of Rs.564/- and retained the excess amount of Rs.1/- and even otherwise the vigilance party found Rs.4/- in excess which clearly shows that the applicant cheated the other passengers also, as stated in para 5 of the counter. The learned counsel finally justified the action of the respondents and submitted that no illegality has been committed by the respondents and the QA is liable to be dismissed.

6. We have heard learned counsel for both parties, and perused the records. We have perused the charge sheet which was issued for two charges:

- (i) He overcharged the decoy passenger by Rs.1/- on sale of one sleeper class ticket No.10271708 for two adults ex.Mangabad to Gorakhpur and a reservation slip No.10271709.
- (ii) He was detected with an excess amount of Rs.4/- in his railway cash.

7. We have seen the statement of PW1. In reply to question No.7, he says that he was 100 metres away from the counter at the time of transaction. PW2 also replied to question No.8 that he was 100 metres away from the booking clerk at the time of transaction. It is also stated by PW2 to question No.3 that the decoy and independent witness were with the Vigilance Team from Mumbai. We have also gone through the statement of Shri A.K.Rai, PW3. Shri A.K.Mishra who is said to be an independent witness is not a gazetted officer but an RPF personal only who is said to be with the trapping party from Mumbai. So he cannot be termed as an independent witness. It is also nowhere stated by the vigilance team that they tried to procure two gazetted officers and as

they were not available, Shri A.K.Mishra, RPF personal, was taken to be an independent witness. It is also not possible easy to be an eye witness or hear anything about the conversation of the raiding party from a distance of 100 yards.

8. In the facts and circumstances of the case and in view of the judgement of this Tribunal (Supra), it is clear that the respondents have not followed the procedure of Indian Railway vigilance Manual while laying the trap. In view of the above, the OA is allowed. The orders dated 31.12.2002 (Annexure A1), 6.11.2003 (Annexure A2) and 27.12.2003 (Annexure A3) are quashed. Respondents are directed to give all consequential benefits to the applicant.


(A.K. Bhatnagar)
Judicial Member


(M.P. Singh)
Vice Chairman

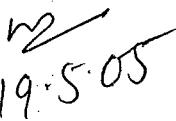
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पृष्ठांकन से ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि आमे दिएः—
(1) सचिव, जर्मनी रेलवे रेलवे वाय एवं रेलवे, जबलपुर
(2) आवेदक श्री/महिला/दूजे..... एवं काउन्सल
(3) प्रकाशी श्री/महिला/दूजे..... एवं काउन्सल
(4) अधिकारी, वे/वो, एवं अधिकारी, वे/वो
सूचना एवं अपश्यक कर्तव्यादी हेतु

*S. Pow Bv 208
S. K. Jain Bv 203 P*

*19/5/05
कुप रमेश्वर*

issued


19.5.05