

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 782 of 2001

Jabalpur, this the 31st day of March 2003.

Hon'ble Mr. Shanker Raju - Member (Judicial)
Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)

Hara Dhan Dutta
S/o Shri J.C. Dutta,
aged about 50 years,
Ex-Travelling Ticket Examiner (TTE)
R/o Hemu Nagar, House No. 505,
Near Railway Line,
Old Cabin, Bilaspur (Chhattisgarh)

- APPLICANT

(By Advocate - Shri V. Tripathi)

VERSUS

1. Union of India
through its Secretary,
Ministry of Railway,
Railway.
New Delhi.
2. The General Manager,
South Eastern Railway,
Garden Reach, Kolkata.
3. The Additional Divisional Railway Manager
(Appellate Authority),
South Eastern Railway,
Bilaspur (Chhattisgarh).
4. The Sr. Divisional Commercial Manager,
(Disciplinary Authority),
South Eastern Railway,
Bilaspur Division,
Bilaspur.
5. Chief Commercial Manager
(Revisional Authority)
14, strand Road, 8th Floor,
KOLKATA

RESPONDENTS

(By Advocate - Shri H.B. Shrivastava)

O R D E R (oral)

By Shanker Raju, Member (Judicial) -

Through this O.A. the applicant impugns order dated 14.3.2001 removing him from service; appellate order dated 8.8.2001 maintaining the punishment; and revisional order dated 19.9.2002 whereby the punishment of removal has been reduced to stoppage of increment for three years with non-cumulative effect.

2. The applicant who was proceeded against for a major penalty on the allegation that while the applicant was working as TTE, on a surprise check conducted by the Senior DOM, Bilaspur on 4.8.2000 in train No.3033 Dn, Rs.1774 physical cash was found in his possession on verification, and excess cash of Rs. 687/- was found which shows that the applicant has collected illegal money with malafide intention from the passengers.

3. Enquiry proceeded with examination of witnesses, statement of defence by both the parties. Through his enquiry report, the enquiry officer has held the applicant guilty of having found in possession of excess cash of Rs. 687/-. On representation to the disciplinary authority, punishment of removal was imposed, which on challenge was maintained by the appellate authority.

4. The applicant preferred a revision-petition as well. While disposing of the revision-petition, though the revisional authority observed that there is no specific proof that the personal cash and public cash was counted separately, however, on account of over-writing and apparent correction in the rough journal where personal cash was indicated, punishment of removal has been reduced to a minor penalty and the intervening period has been treated as *Idies non.*

5. The learned counsel of the applicant Shri Tripathi assails the orders on the ground that an extraneous charge which has not been alleged in the charge-sheet of manipulation and interpolation of the rough journal which was in possession of the applicant till 8.4.2000 is a futile attempt to establish the false claim that amount of Rs. 687/- was found to be his personal cash was considered. Although the revisional authority has categorically observed that the charge of excess amount was not fully proved, but the punishment has been reduced. However, the applicant has been denied

the opportunity to assail this part of the charge, which is in violation of principles of natural justice.

5. Another contention of the applicant is that as the penalty of removal from service has been toned down to a minor penalty, the intervening period is to be treated as spent on duty for all intent and purposes.

6. On the other hand the learned counsel of the respondents strongly rebutted the contentions of the applicant and stated that as per the clarification issued in case where punishment of removal, dismissal or compulsory retirement has been reduced, the reduced penalty shall take effect from the date of reinstatement and accordingly the intervening period from dismissal to reinstatement has been rightly treated as dies non. On the issue of merits of the case, it is stated that the charge against the applicant has been proved and he has found in excess cash. The over-writing and apparent corrections which were proved during the enquiry cannot be assailed. However, it is stated that on a compassionate view, the punishment has been reduced. The impugned orders passed by the respondents are reasoned and do not call for any interference.

7. We have carefully considered the rival contentions of the parties and perused the material available on record. Till so far as the charge on which the punishment has been reduced is over-writing and apparent correction in the rough journal, which has also been relied upon by the appellate authority, from the perusal of the charge-sheet we do not find any such charge levelled against the applicant. Accordingly on extraneous charge though the revisional authority has absolved the charge of possession of excess cash, has not fully proved for want of compliance of relevant procedure, yet the punishment is maintained on a charge which is alien to the charge-sheet. It is a settled

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principles of law that any extraneous charge should be put to a ~~delinquent~~ before he is punished on the same. Moreover, the principles of natural justice require that nobody should be condemned unheard, by denial of an opportunity to rebut the extraneous part of the charge. In our considered view the applicant has been greatly prejudiced and the aforesaid orders cannot be sustained in law.

8. In so far as treatment of ^{intervening} period is concerned, as per the rules on the subject once the penalty is toned-down, the same shall take effect from ~~the~~ date of original punishment but a decision to the contrary has been taken by the Board, which is also requires reconsideration.

9. In the result, for the foregoing reasons as the appellate and punishment orders were merged in the revisional order, we set aside the revisional order except the part which reinstates the applicant in service. The revisional authority shall reconsider the penalty imposed upon the applicant in the light of the fact that the same has been maintained on an extraneous charge against which the applicant has not been afforded an opportunity. The aforesaid authority shall also consider the intervening period from the date of removal till the date of reinstatement afresh. The aforesaid exercise shall be completed by the revisional authority by passing a detailed and speaking order within three months from the date of receipt of a copy of this order. In the event the revisional authority comes to a conclusion that the punishment should be reduced, it should not be of a ^{higher} side compared to what has been imposed in the earlier order. The O.A. is accordingly ~~disposed of~~. No costs.

(R.K.Upadhyaya)
(R.K.Upadhyaya)
Member(Admnv.)

S. Raju
(Shanker Raju)
Member(Judicial)

प्रांगण से ओ/वा..... जबलपुर, मि.....
प्रतिस्तिथि अधो दिन -

(1) जवाहिल, उपर्युक्त नाम उपनिषदा-1, जबलपुर
✓ (2) उपर्युक्त नाम/वार्ता/वा..... ने अनुसन्धान
(3) प्रस्तुति ओ/वीरेन्द्री/वा..... द्वारा अनुसन्धान
(4) उपर्युक्त नाम ग्रा. जबलपुर व्यापार का
सुन्धान एवं आवधारक कार्यालय द्वारा

S. Paul Acharya
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H.B. Shrivastava Adde

S. Paul Acharya
अप्रैल 2003
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