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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

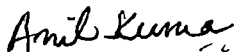
09.12.2010

OA No. 317/2006

Mr. Amit Mathur, Proxy counsel for
Mr. S.K. Yadv, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondent no. 2.
Mr. N.C. Goyal, Counsel for respondents nos. 1, 3 and
4.

Heard learned counsel for the parties.

For the reasons dictated separately, the OA is
dismissed.


(ANIL KUMAR)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 9th day of December, 2010

Original Application No. 317/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Dhanji Lal Meena
s/o Shri Jagannath Meena,
presently Station Master,
Baran, Kota Division,
West Central Railway.

.. Applicant

(BY Advocate: Shri Amit Mathur, proxy counsel for Shri S.K.Yadav)

Versus

1. Union of India
through the General Manager,
West Central Railway,
Jabalpur.
2. Senior D.O.M.,
West Central Railway,
Kota Division,
Kota.
3. Additional Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
4. Shri S.L.Runwal,
Railway Enquiry Officer (Vigilance),
Divisional Office,
Western Railway,
Ratlam.



... Respondents

(By Advocate: Shri N.C.Goyal,)

O R D E R (ORAL)

The applicant has initially filed OA thereby challenging the impugned chargesheet dated 13.12.2002 (Ann.A/1) and impugned punishment order dated 20.1.2006 (Ann.A/2) passed by the Disciplinary Authority and show-cause notice for enhancement of punishment dated 14.7.2006 (Ann.A/3) issued by the Appellate Authority. However, during the pendency of this OA, pursuant to show-cause notice issued by the Appellate Authority for enhancement of punishment, order dated 30.10.2006 (Ann.A/3A) was passed whereby penalty of reduction of pay to one stage below in the same time scale for a period of one year with future effect was enhanced to three stages below in the same time scale for three years with future effect. It is these orders which are under challenge and the applicant has prayed that the same may be quashed.

2. Briefly stated, facts of the case are that the applicant while working as Station Master/CHM was issued a memorandum of chargesheet dated 13.12.2002 (Ann.A/1) containing three articles of charge. In nutshell, the charges against the applicant were that the applicant while working in that capacity directed Smt. Padma Ben to prepare paid Railway Receipt No.885395 to 885398 of 40 box wagons loaded with H.P. coils ex. CHM to GZB without collecting due Railway freight i.e. Rs. 30,43,378 from the party and freight was

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actually received on 27.11.1998 in the shape of Demand Draft (DD) prepared by the concerned bank on 27.11.1998 and thus, he has not only misused the official capacity but also issued unlawful instructions, thus extended undue favour to the interested parties putting the railway administration in loss to the tune of Rs. 3,04,340. Further allegation was that he has shown wrong dispatch of DDs of the aforesaid amount of CHM goods cash dated 25.11.1998 by train No. 76 UP of 26.11.1998 through Shri Subodh Kumar Rai, Station Master CHM whereas such DDs were prepared by the concerned bank on 27.11.21998 and physically dispatched by train No. 76 UP on 28.1.98 by Shri Subodh Kumar Rai to the Chief Cashier, Church Gate. Thus, the applicant has misled the railway administration with the intention to hide his irregularities in issuing 4 paid Railway Receipts without collection of due freight and to manage the debit of the said amount raised against his known and interested party and also that he also managed false entries of demand drafts of Rs. 30,43,378 in the cash book dated 25.11.1998 through Shri Amarnath Prasad though the said DDs which neither received at CHM Station on 25.11.1998 nor the same were issued by the concerned bank before 27.11.1998. On the basis of these charges, departmental enquiry was held. The charges against the applicant stood proved on the basis of documentary evidence as well as the statement made by the witnesses including Shri Amarnath Prasad and Shri Subodh Kumar Rai during the preliminary enquiry, which statement also find mention in the listed documents and the statements so recorded during the preliminary enquiry was also

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proved in the manner known to law during the regular enquiry. The Disciplinary Authority on the basis of documentary evidence as well as on the basis of finding recorded by the Enquiry Officer held the charges proved and imposed reduction of pay to one stage below in the time scale for a period of one year with future effect. The applicant filed appeal against the order passed by the Disciplinary Authority and during pendency of the appeal, the Appellate Authority vide order dated 14th July, 2006 gave a show-cause notice to the applicant for enhancement of punishment as the Appellate Authority was of the tentative view that gravity of offence committed by the applicant is such so as to enhance the punishment to the penalty of reduction of pay to three stages below in the same time scale for three years with future effect. Along with the show-cause/memorandum dated 14th July, 2006, the Appellate Authority has also annexed reasoning which prevail with him to enhance the punishment, which thus reads:-

"I have gone through the case and it is found that Shri Dhanji Lal Meena, ASM/BAZ while working as SS/CHM Stn. BCT Divn. did not ensured collection of freight amount of Rs. 30,43,378/- from the party before signing and issue of paid RR prepared by Goods staff of CHM station, which was his responsibility. The act of Shri Meena resulted in the loss of Railway revenue to the tune of Rs. 3,04,340/- at that time recoverable from the party, as the party failed to pay the freight charges in time.

Further, he managed to show dispatch of DDs amt. Rs. 30,43,378/- as CHM goods cash dtd. 25.11.98 by train no. 76 UP of 26.11.98 to conceal his misdeed, though all the DDs were prepared by the concerned bank on 27.11.98.

Sh. D.L.Meena, ASM committed gross misconduct by issue of paid RR to the party without collection of freight in time and tried to cheat Rly administration by showing wrong dispatch of Rly. revenue (in the form of DDs) in advance which was physically received at a later date.

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Hence, he is fully responsible for loss of Rly revenue to the tune of Rs. 3,04,340/- at that time, which deserves higher punishment than "Reduction of pay to one stage below in time scale for a period of one year with future effect imposed by DA, therefore I propose to enhance the punishment as under:-

"Reduction of pay to three stages below in time scale for a period of three years with future effect."

The applicant has filed representation against the said show-cause notice and thereafter the Appellate Authority has passed the following order:-

"Shri Dhanji Lal Meena, ASM/BA/ had submitted an appeal against the order of DA & Sr. DOM KTT.

On going through the appeal, it is found that the gravity of offence committed by him was of serious nature. As such, a notice for enhancement of penalty has been served to Shri Dhanji Lal Meena, Kota.

On careful examination of explanation dtd. 26.07.2006 on the notice for enhancement of penalty submitted by CO it is noted that no additional fact has been brought therein and that it is merely reiteration of earlier pleas. However, on my critical analysis of the facts, I am of the view that trying to distinguish between "preparation" and 'handing over" (issuance) in para 4 of the explanation he must have remembered that signing a document is a conclusive proof about its completion in all respect and in readiness to be brought in operation. A document, if requires certain formalities to be completed especially certain conditions etc. incorporated therein should not be signed after preparation, till those are completed.

Apart from it, the CO has also not brought on record any documentary evidence to show and establish that RRs were not handed over (issued) on the day of their preparation and signed i.e. 24/25.11.1998 nor any remark/note to this effect is seen to have been made in the Station Master charge book of relevant days.

Hence, it may be duly inferred that RRs were prepared as "Paid" with remark "Freight paid by DD & Cash on 24/25.11.1998 signed and also issued to the party on the very day, in contradiction of the remark made therein i.e. without

collection of the freight by cash DD for which the CO is fully responsible.

Likewise while quoting the absence of any specific provision vide para 5 of the explanation, he should also have kept in mind that the Railway Administration has a... right to recover from the consignee/endorsee any due charges like freight etc. and for which Rly. has a lien on the goods, in accordance with the provisions contained in section 83(i) of the Railway Act, 1983 and therefore, it would have been in the interest of Railway administration to issue supersession and RR as "To pay" even if the party did not opt.... under the circumstances.

Thus, after taking all the above aspects in to consideration and their judicious scrutiny, I am of the firm opinion that the CO is fully responsible for all the allegation made in the case against him that the punishment awarded by the Disciplinary Authority is inadequate and impropportionate to the offence, which warrants enhancement to the extent of the gravity of the matter.

Under the facts and circumstances explained above, a penalty of reduction of pay to three stages below in time scale for a period of three years with future effect is imposed.

ADRM"

3. Notice of this application was given to the respondents.

The respondents have justified their action on the basis of findings recorded in the enquiry report as well as the reasoning given by the Disciplinary and Appellate authorities, relevant portion of which has been reproduced above.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The learned counsel for the applicant submits that the defence taken by the applicant has not been taken into consideration by the Disciplinary as well as Appellate Authority. Further contention raised by the learned counsel for the applicant is

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that on the basis of the statement made by PW-2, Shri Amarnath Prasad and PW-5, Shri Subodh Kumar Rai, no case is made out against the applicant. The learned counsel for the applicant has drawn our attention to the statement of PW-3 Smt. Padma Ben whereby in reply to question no.152 during the cross examination she has denied that such railway receipts which alleged to have been prepared on the instructions of the applicant, were not prepared on the basis of the consideration or under any threat. Be that as it may, this part of the statement made by PW-3 does not improve the case of the applicant, inasmuch as, the question which was specifically put to the witness during the cross-examination was that whether the applicant has extended any threat or has pressurized PW-3 to prepare railway receipts for some consideration. It is this part of the statement which the witness has denied that though the railway receipts were prepared on the instructions of the applicant but the same were not prepared either under threat or for some consideration at the behest of the applicant.

6. We have given due consideration to the submission made by the learned counsel for the applicant. From the material placed on record, it is evident that though the railway receipts necessary for the freight paid through the DDs and cash were prepared by Smt. Padma Ben, PW-3 but since the freight was not paid on the same date, therefore, she did not sign the railway receipts. Smt. Padma Ben while working in the capacity of commercial staff was required to prepare the railway receipt and sign the same but since huge amount of Rs. 30,43,378 was not received by her, as such, she

[Signature]

did not sign the railway receipt. It is admitted fact that the railway receipt dated 25.11.1998 was signed by the applicant being Station Master. When the amount was not received on 25.11.1998, it was not permissible for the applicant to sign the railway receipt for the aforesaid amount especially when primarily it was the duty of the commercial staff to prepare and sign the railway receipt after receipt of the due amount. Not only that, in order to cover up this misdeed, DDs were shown to have been dispatched through the remittance Note No.463127 dated 25.11.1998 by train no.76 UP of 26.11.1998 through Shri Subodh Kumar Rai whereas in fact the same were dispatched by train no.76 UP of 28.1.1998 . Thus, not only the applicant has signed the railway receipt for payment of Rs. 30,43,378 on 25.11.98 when no such amount was received from the interested party but he also prepared a false document i.e. Cash remittance note No.463127 dated 25.1.1998 showing wrong dispatch of DDs. We fail to understand how the four demand drafts amounting to Rs. 30,43,378/- could have been dispatched on 25.11.98 when the same were prepared by the concerned bank on 27.11.1998 and how the applicant has signed the railway receipt on 25.11.1998, when the aforesaid amount was not received. It is settled position that man may lie but document may not lie. The entry in the cash book as well as date on the demand drafts coupled with the statement of the witnesses make it clear that the amount was received on 27.11.1998 and not on 25.11.1998. Although the learned counsel for the applicant has drawn our attention to the statement of PW-2 and PW-4 to prove that entry in

the cash book regarding receipt of the amount was made on 25.11.1998, but if the statement of these witness is considered in its entirety, it is evident that the aforesaid amount was not available either with Shri Amarnath Prasad or Shri Subodh Kumar Rai, PW-5. It may be stated that Shri Subodh Kumar Rai was declared hostile still during his re-examination in reply to question no. 126 he has categorically stated that cash was not made available in his charge on 26.11.1998. Similarly, Shri Amarnath Prasad in reply to question no. 11 has categorically stated that he has made entry in the cash book on the basis of railway receipt prepared by the applicant and he was not aware whether the DDs were received on 25.11.1998, as he has not seen the DDs. Thus, in view of this specific stand taken by Shri Amarnath Prasad and Shri Subodh Kumar Rai, who were required to make entry in the goods shade cash book, it is evident that the charges against the applicant stand fully proved. The railway receipts were signed by the applicant without requisite cash in his possession. For the first time entry of the aforesaid amount was made in the charge book in duty of Shri Subodh Kumar, ASM on 27.11.1998 and in the goods shade cash book of Shri Amarnath Prasad. Shri Amarnath Prasad has also categorically stated that he has posted entries from 23.11.1998 to 27.11.98 in one stretch. If it is so, how the entry of receipt of the aforesaid amount in cash book on 25.11.1998 could have been made by Shri Amarnath Prasad when the entry was made in the cash book admittedly on or after 27.11.1998, which is clear from the version of Shri Amarnath Prasad that entry in the cash

book on 25.11.1998 was made on the basis of railway receipt signed by the applicant and not on the basis of DDs.

7. The contention raised by the applicant that defence of the applicant has not been taken into consideration either by the Disciplinary Authority or by the Appellate Authority requires our right rejection. The order of the Appellate Authority has been reproduced in the earlier part of the judgment. Perusal of which reveals that the defence of the applicant was taken into consideration and it is only thereafter the enhanced penalty was imposed. Further, the Disciplinary Authority has also given reasoned order why the defence of the applicant cannot be accepted. At this stage, it will also be useful to quote the reasoning given by the Disciplinary Authority while awarding punishment and thus reads:-

"I have gone through the Defence given by the Delinquent employee, Enquiry report and enclosed statements. It is clear from the Enquiry report and various statements that RRs having endorsement (freight paid by DD and Cash) were prepared by Smt. Padma ben, HGC/CHM. But it seems from report and statements that freight was not paid on same day, therefore, she did not sign the RR and if cash was received from party it should have been reflected in cash book, but it is surprised that amount of Rs. 30,43,378/- was not reflected from 24.11.98 to 26.11.98 and RR was handed over to the party. Delinquent employee's plea that Commercial staff some times not hand over cash to ASM can be true if RR was prepared and signed by Comml. Staff. But in this case RR was signed by the Delinquent employee and cash should have been in his possession. The first time entry of Rs. 30,43,378/- was entered in charge book in duty of Shri Subodh Kumar, ASM in 14-22 hrs. shift on 27.11.98 and same in goods shed cash book of Sh. Amarnath Prasad or Sh. Subodh Kumar. It seems that all staff of CHM station is involved in covering up this case, but primary responsibility lies with the delinquent employee, as he signed the RR. Preparation of RR is not essential for labeling and marking of wagon before dispatch as " without RR wagons/rakes cannot be moved for want of RR and RR cannot be issued unless the party pays the freight and detention of train on this account are supposed to be

treated on party's account for which demurrage is levied. Plea of the delinquent employee cannot be accepted that there is no sufficient reason to loss of revenue. In this case, demurrage charges till complete freight was paid is avoided and if "to pay" RR should have been issued additional freight charge "To pay" is also avoided. In both the situations, there is a clear case of loss of railway revenue.

Credit can be given for demurrage charges as circular no. C.256/8 dtd. 19.11.98 was not delivered to CHM station, but charges for "to pay" were recoverable as per extent railway rules.

It is also observed that from the statements of other prosecution witnesses and enquiry report of other employees were not pin-pointed further. But technically and according to the documentary proof of the delinquent employee is clearly found responsible. Therefore his defence cannot be accepted.


The penalty of "Reduction of pay to one stage below in time scale for a period of one year with future effect" is imposed...."


8. The learned counsel for the applicant while drawing our attention to the written arguments submitted to the Enquiry Officer (Ann.A/11) to the effect that in the station diary dated 26.11.98 it has been mentioned that in the absence of safe, the cash was not sent and to the similar effect is the entry made on 27.11.1998 and argued that in fact the cash was huge which was received by Shri Amarnath Prasad, Cashier on 25.11.1998, as such, the railway receipt was signed and in case Shri Amarnath has deposited the amount in the bank on later date and prepared the DD on 27.11.1998, the applicant cannot be held responsible for the said lapse. The submission so made by the learned counsel for the applicant, though attractive, but deserves out right rejection. The said plea has been raised by the applicant for the first time in his objection to enquiry report whereas he has not cross examined Shri

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Amarnath or any witness on this aspect that the cash was received on 25.11.1998 and the same was handed over to the cashier and it was for that reason the railway receipt was signed by him. Thus, this contention of the applicant cannot be accepted and deserved rejection.

9. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.


(ANIL KUMAR)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

R/