

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 11th day of May, 2011

ORIGINAL APPLICATION NO. 373/2007

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

G.S. Ratan son of Shri Bachchan Singh, aged about 55 years, resident of C-2, Jain Tower, Bal Mandir Road, Kota Junction and presently working as Train Conductor (TNCR) (AC), West Central Railway, Kota Division, Kota.

.....Applicant

(By Advocate: Mr. C.B.Sharma

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Chief Commercial Manager, West Central Zone, West Central Railway, Jabalpur.
3. Additional Divisional Railway Manager, West Central Railway, Kota Division, Kota.
4. Senior Divisional Commercial Manager, West Central Railway, Kota Division, Kota.

.....Respondents

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

Brief facts of the case so far as relevant to this OA are that the applicant is a substantive employee of respondent railway and while working as Train Conductor in the scale of Rs.5500-9000/- was served with a major penalty charge sheet vide Memo dated 30.04.2003 alleging therein that he permitted two passengers possessing sleeper class ticket to perform journey in AC II Tier and failed to regularized the said passengers with the malafide intention to pocket the money



for his personal benefits and violated provisions of Rule 3 of Railway Service (Conduct) Rules, 1966.

2. The applicant denied the charges and demanded documents for submitting his proper defence vide request dated 29.05.2003 and in response to that respondent no. 4 vide letter dated 31.07.2003 made copy of EFT No. 538944 and denied copy of report of investigation inspector on the ground that charges have been framed on the basis of report and the same are not relied upon documents in the charge memo so the copy of the same cannot be provided.

3. After appointment of inquiry officer, regular inquiry was conducted against the applicant but no Presenting officer was appointed by the respondents. During the inquiry, prosecution witness, Shri Dhiraj Kapoor, and Defense witness, Shri Chandraveer Singh, were only examined. The applicant also submitted his written brief on 17.03.2005 before the Inquiry officer. The Inquiry officer submitted its report with the findings that charge is substantiated except the malafide intention of the charged official against which the applicant submitted his effective representation before respondent no. 4 but without due consideration, respondent no. 4 vide impugned order dated 14.07.2005 (Annexure A/3) imposed the punishment of reversion from the scale of Rs.5500-9000 to the scale of Rs.5000-8000 by fixing pay at the stage of Rs.5000 for three years with cumulative effect.

4. Against the impugned penalty order, the applicant preferred appeal dated 03.09.2005 before respondent no. 3 against the



punishment of reversion into the lower scale by fixing his pay at the minimum stage for three years with cumulative effect but the Appellate Authority rejected his appeal vide its order dated 07.12.2005 against which the applicant preferred Revision Petition dated 10.02.2006 but the Revising Authority also rejected the Revision Petition vide order dated 11.09.2006. Aggrieved and dissatisfied by the penalty order dated 14.07.2005, order dated 07.12.2005 by which appeal has been rejected and order dated 11.09.2006 by which Revising Authority rejected the revision petition of the applicant, the applicant preferred this OA on the ground that Disciplinary as well as Appellate Authority and Revising Authority had not considered the statement of defense witness who was performing the duties with the applicant and the applicant being female passenger allowed her to travel in AC coach on the understanding that she is not in possession of required amount and she will pay the difference amount at Kota. The same is on record and as per statement of the applicant and as well as statement of defence witness.

5. To substantiat his contention, learned counsel for the applicant has drawn our attention to Annexure A/3 by which penalty has been awarded alleging that the said passengers were traveling for 7 hours in AC II Tier and an amount of Rs.1360/- got recovered from these passengers as Railway revenue.

6. Learned counsel for the applicant also referred to the statement of Dhiraj Kapoor and cross examination conducted by the applicant and, more particularly, to the following questions:-



Q.19 Is it correct that annexure I, II, III and IV enclosed with the charge memo in question, were prepared by you?

Ans Yes, it is correct.

Q.26 Is it correct that the passengers traveling in upper class such as I class, II AC, I AC etc. should not be disturbed before 0600 Hours?

Ans Yes, it is fact that the regular passengers should not be disturbed before 0600 Hours in upper class but this rule does not apply for the irregular passengers and the lady passenger who was charged was irregular one, before check.

Q.28 In reply to Q/22 you have asked the CO to charge the passenger as per rule. Please state what are the rules for charging the irregular passengers?

Ans As per the existing rule at the time of preventive check; if the irregular passenger has been permitted by the TTE/ TNCR only difference will be collected. In case the irregular passengers have not sought the permission from the TTE/TNCR penalty plus difference will be collected from the irregular passengers.

Q.34 Please state whether the lady passenger during night can be forced to be derailed or dislodged from AC 2 Tier?

Ans The lady passenger should be avoided to be dislodged particularly during night hours for shifting from one coach to another, until or unless it is not necessary.

Learned counsel for the applicant also referred the finding given by the Inquiry Officer in its clause 6.1.9 "Charge is substantiated except the malafide intention of the CO."

6. Per contra, learned counsel for the respondents submitted that looking to the gravity of the offence committed by the applicant, Vigilance department submitted report for prevention of corruption with the recommendation for initiation of action against the staff detected in prevention of corruption and found responsible for irregularities committed accordingly after considering all facts of the complete DAR inquiry where it was found that the applicant allowed passengers contrary to the Railway Rules and hence after offering of



the reasonable opportunity, the punishment was imposed according to the law. The punishment awarded by the Disciplinary Authority has been upheld by the Appellate Authority vide order 07.12.2005 as well as by the Revising Authority vide order dated 11.09.2006. These finding cannot be interfered at this stage by this Court.

7. Respondents also referred to the statement of Shri Chandravir Singh, Khallasi, Khallasi, (Defence Witness) in question No. 44 while general examination, which is as under

Q.44 Did you pass any remark on the working charge of A/1 of 9020 on the day of incidence about non recovery of the difference of fares from the lady passenger who was allowed by you from NDLS to Kota?

Ans The lady passenger seemed to me from being reputed family background, looking to her promise to pay at Kota and even after talking to her husband on mobile phone, I was fully convinced. Therefore, I did not pass any remark on the chart. This fact was also told to I.I. before he started check. The I.I. had checked the coach thoroughly with the result some passengers objected to it for being checked at improper time. I also explained the same through my version recorded by the I.I. on spot on 18.7.2002 and this was accepted by him. The I.I. deliberately did not record the statement of the lady passenger despite my repeated request. More details I will submit through my written brief for which I may kindly be given sufficient time.

8. Further the learned counsel for the respondents referred to 5.0.0 of Inquiry report which is as under-

"5.0.0 EVALUATION OF EVIDENCE CHARGE WISE-

5.1.0 From the deposition of the prosecution witness, defence witnesses and acceptance of CO, it has been proved beyond doubt that two passengers (including one lady passenger) were permitted by the CO and detected by the I.I. (V) during his check between NDLS and Kota. They were traveling on a PNR ticket for sleeper class (reply of CO's version (vide answer 3) dated 18.7.2002. The passengers were not regularized until the vigilance check was conducted. The recovery of Rs.1360/- has also been confirmed. The private as well as Govt. cash were checked and no



variation was detected by the I.I. vide spot cash proceedings. No money dealing between the passengers and the CO could be substantiated up to the time the vigilance check was conducted. However, the TNCR could have arranged the recovery of due amount from the lady passenger at NDLS or in running train before the vigilance check was conducted as was done by the I.I. after the train left GGC. The CO failed to record neither on the chart about the travel of the irregular passenger in AC 2 tier coach nor did he endeavour to obtain written version of the lady passenger when permitted by him."

9. Learned counsel for the applicant in support his arguments placed reliance on the judgment rendered by the Hyderabad Bench of the Tribunal in the case of **R. Devadanam vs. Union of India & Others**, reported in 1989 (2) CAT 131. With regard to the penalty awarded to the applicant for reduction of scale, Hyderabad Bench observed that reduction of scale is a double jeopardy and with regard to reduction, cumulative penalty and penalty of reduction in rank for two years with cumulative effect and loss of seniority and also reducing his pay in lower scale to a stage of Rs.500/-, Hyderabad Bench held that earlier part of penalty of cumulative effect was in order but not the later part of reduction in lower stage, as two amounted to two penalties.

10. Learned counsel for the applicant also placed reliance on the judgment rendered by the Lucknow Bench of the Tribunal in the case of **Raja Ram Verma vs. Union of India & Others**, ATJ 2003 (3) 473 to substantiate that Disciplinary Authority had not applied its mind. He also referred to the judgment rendered by the Apex Court in the case of **B.C. Chaturvedi vs. Union of India & Another**, reported in 1996 (32) ATC 44, for the purpose that this Tribunal is having plenary jurisdiction and has inherent power to do complete justice between the



parties similar to Supreme Court's power under Article 142 where the punishment/penalty imposed by the Disciplinary/Appellate authority in departmental inquiry against the public servant is disproportionately excessive so as to shock the judicial conscience. High court can modify the punishment/penalty by moulding the relief to avoid possible infringement of Article 14 of Industrial Disputes Act, 1947.

11. Having heard the rival submissions of the respective parties and having carefully perusal of the judgment rendered by the CAT and Hon'ble Supreme as well as statement recorded by the Inquiry Officer and Inquiry report as well as the punishment order passed by the Disciplinary Authority, upheld by the Appellate Authority and Revising Authority. It is not disputed that during vigilance lady passengers had already traveled 7 hours journey in AC II tier coach and they did not possess the valid ticket. Thus Rs.1360/- got realized from them as railway revenue. During checking, it was also observed that no excess amount had been found with the applicant and the amount which was found was according to the tickets realized from other passengers. The statement of the applicant was not considered that being lady passenger and having verified that she will pay the difference amount at Kota and the factum of bonafide was also verified by the applicant from her husband on mobile phone and being convinced, the applicant allowed her to undertake her journey in AC II Tier and before completion of the journey, vigilance check was undertaken and it was found that no money has been recovered from the said passengers. Therefore, the Vigilance had recovered the difference amount and Vigilance suggested that inquiry be conducted against the applicant and inquiry was conducted. In the inquiry report, the Inquiry Officer



submitted that charge is substantiated except the malafide intention of the CO. It appears that finding of the Inquiry officer has not been considered properly by the Disciplinary Authority as malafide intention has not been proved against the applicant beyond reasonable doubt but the Disciplinary Authority had awarded the major penalty vide order dated 14.07.2005 (Annexure A/3) and reduced the pay scale from 5500-9000/- to Rs.5000-8000/- by fixing pay at the stage of Rs.5000/- for three years with cumulative effect.

12. Having carefully perusal of the questions and cross examination conducted and answer by the Dhiraj Kapoor that passengers traveling in I Class, II AC and I AC etc. should not be disturbed before 0600 hours and in answer to question No. 34 also admitted that lady passengers should be avoided to be dislodged particularly during night hours for shifting from one coach to another, until or unless it is not necessary. There are many other aspects which have not been considered by the Disciplinary Authority, Appellate Authority and the Revising Authority and looking to the memorandum of charge sheet, gravity of the charges and the finding given by the Inquiry officer, who has categorically stated that no malafide intention of the CO has been proved. Since no malafide intention of the applicant has been proved and no excess money has been recovered from the applicant, it cannot be said that the charges leveled against the applicant is proved beyond reasonable doubt but negligence of the applicant is proved beyond reasonable doubt that he had allowed lady passenger to travel in the AC II Tier coach without having the valid ticket and failed to realized the difference of the amount of Rs.1360/- from these passengers as railway revenue and definitely, the applicant is guilty for negligence



and for the negligence punishment awarded vide Annexure A/3 is excessive in view of the ratio decided by the Hon'ble Supreme Court and various other judgments. As in the case of B.C. Chaturvedi (supra), Hon'ble Supreme Court had observed that where the punishment imposed by the Disciplinary Authority/Appellate Authority in departmental inquiry against the public servant is disproportionately excessive so as to shock the judicial conscience, the Court can modify the punishment order.

13. Thus having considered the inquiry report, we find that the Disciplinary Authority, Appellate Authority and Revising Authority have not properly examined the case of the applicant. Thus in our considered view, looking to the peculiar facts and circumstances of this case, the penalty awarded to the applicant is disproportionately excessive. Thus we are of the view that penalty awarded vide Annexure A/3 deserves to be quashed and set aside and modified to that of 'Censure'.

14. With these observations, the OA is partly allowed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

AHQ