

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL


03.07.2013

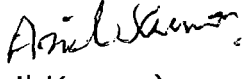
OA No.171/2012

Mr. C.B. Sharma, Counsel for applicant.
Mr. M.K. Meena, Counsel for respondents.

The learned counsel for the applicant submits that he does not wish to file rejoinder. Thus the pleadings are complete.

List it on ~~11~~ 11.07.2013.


(S.K. Kaushik)
Member (J)


(Anil Kumar)
Member (A)

ahq

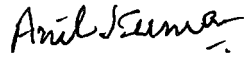
11-07-2013

OA No. 171/2012

Mr. C.B. Sharma, Counsel for applicant.
Mr. M.K. Meena, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate-sheets for the reasons recorded therein.


[Anil Kumar]
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 171/2012

Jaipur, the 11th day of July, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Chhotey Lal Meena son of Shri Kanhiya Lal Meena, aged about 51 years, resident of Shiv Colony, Manna Ka Road, Alwar and presently working as Chief Booking Supervisor, under Station Superintendent, North Western Railway, Railway Station, Alwar.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Chief Commercial Manager, North Western Railway, Head Quarter Office, Near Jawahar Circle, Jagatpura, Jaipur.
3. Additional Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.
4. Senior Divisional Commercial Manager, North Western Railway, Jaipur Division, Jaipur.

... Respondents

(By Advocate: Mr. M.K. Meena)

ORDER (ORAL)

The applicant has filed this OA claiming the following reliefs:-

- "(i) That the entire record relating to the case be called for and after perusing the same letter dated 29.11.2011 (Annexure A/1) passed by the revising authority with the letter dated 03.02.2011 (Annexure A/2) passed by the Appellate Authority and order dated 01.11.2010 (Annexure A/3) passed by Disciplinary Authority be quashed and set aside with all consequential benefits.
- (ii) That the charge memo dated 27.08.2010 (Annexure A/8) be quashed and set aside with all

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consequential benefits, as the same is not justified as per facts and circumstances.

- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was working as Chief Booking Supervisor, Railway Station, Alwar. Due to shortage of Booking Clerks and heavy rush of passengers on 26.06.2009, the applicant himself performed the duties of Booking Clerk. That on the same day i.e. 26.06.2009, a Vigilance check was conducted which detected shortage of Rs.23/- and the same was credited by the applicant immediately.

3. On accounts of shortage of Rs.23/- during the Vigilance check, the applicant was served with a minor penalty charge sheet without disclosing any irregularity on 08.10.2009 (Annexure A/4). The applicant represented against the charge memo on 25.02.2010 (Annexure A/5). However, the respondent no. 4 without due consideration imposed the punishment of stoppage of increment whenever due for one year without cumulative effect vide order dated 07.05.2010 (Annexure A/6). Thereafter, the applicant preferred an appeal before respondent no. 3 on 21.06.2010 (Annexure A/7).

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4. During the pendency of appeal, the respondent no. 4 cancelled the charge memo dated 08.10.2009 on 27.08.2010 but the Disciplinary Authority did not quash the penalty order dated 07.05.2010 imposed on the applicant in pursuance to the charge sheet dated 08.10.2009. The learned counsel for the applicant stated that the order of cancellation of the charge sheet dated 08.10.2009 was passed when the appeal of the applicant against the penalty order was pending before the competent authority.

5. The respondent no. 4 issued another charge memo on 27.08.2010 on the allegation that during the vigilance check, shortage of Rs.23/- was found. The applicant submitted a representation on 27.09.2010 (Annexure A/10) against the charge memo stating that the minor irregularity of shortage of Rs.23/- was due to the heavy rush of the passengers and shortage of staff.

6. The learned counsel for the applicant further submitted that respondent no. 4 without due consideration imposed same punishment vide order dated 01.11.2010 (Annexure A/3) for stoppage of increment whenever due for one year without cumulative effect. The applicant preferred appeal against this penalty order on 16.11.2010 before respondent no. 3 (Annexure A/11). Respondent no. 3 being Appellate Authority no where considered the facts mentioned in the appeal and rejected the same vide order dated 03.02.2011 and upheld the

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order of punishment. Being aggrieved by the order of Appellate Authority, the applicant filed a Revision Petition dated 01.07.2011 (Annexure A/12). However, the same was rejected on merit as well as treating it time barred. The learned counsel for the applicant submitted that the action of the respondents is arbitrary, illegal & unjustified and also against the provisions of Rule 6 of Railway Servants (Discipline & Appeal) Rules 1968 and Rule 3 of the Conduct Rules, 1966. Thus the action of the respondents is liable to quashed and set aside.

7. The learned counsel for the applicant also emphasized that the charge memo dated 08.10.2009 (Annexure A/4) was cancelled by the respondent no. 4 after passing the penalty order dated 07.05.2010 and also when the appeal of the applicant against this penalty order was pending consideration before the Appellate Authority. He drew my attention to the order dated 27.08.2010 by which the Charge Memo dated 08.10.2009 was cancelled and submitted that the penalty order dated 07.05.2010 (Annexure A/6) was not cancelled or withdrawn. Therefore, the action of respondent no. 4 in issuing a fresh charge sheet dated 27.08.2010 (Annexure A/9) is illegal and contrary to the provisions of law.

8. He further submitted that the authorities no-where considered the matter on quantum of punishment because the penalty imposed on the applicant is disproportionate to the alleged mis-conduct. Therefore, he argued that the OA be

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allowed and the charge memo dated 27.08.2010 (Annexure A/9), the penalty order dated 01.11.2010 (Annexure A/3), order rejecting the appeal of the applicant dated 03.02.2011 (Annexure A/2) and the order of the Revising Authority dated 29.11.2011 (Annexure A/1) may kindly be quashed and set aside.

9. On the other hand, learned counsel for the respondents submitted that while the applicant was working as Booking Clerk on 26.06.2009, a Vigilance check was conducted and shortage of Rs.23/- was found at his seat. The applicant has admitted this fact and he also deposited Rs.23/- with the respondent department. He further submitted that it is not a question of small or big amount but since there was negligence and irregularity on the part of the applicant, he was served with a charge sheet and consequently penalty order was passed after following due process of law. His appeal was also considered by the Appellate Authority and after due consideration and examining the material on record, the appeal preferred by the applicant was rejected vide order dated 03.02.2011 (Annexure A/2).

10. The Revision Petition filed by the applicant before the competent authority was also duly considered and it was rejected on merit as well as being time barred vide order dated 29.11.2011 (Annexure A/1).

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11. He further submitted that the action of the Disciplinary Authority, Appellate Authority as well as the Revisionary is in accordance with the procedure and according to the provisions of law and there is no illegality or infirmity in these orders.

12. With regard to the charge sheet, the learned counsel for the respondents admitted that a charge sheet was issued to the applicant on 08.10.2009 (Annexure A/4) and subsequently order of penalty was passed on 07.05.2010 by the Disciplinary Authority. However, the charge sheet issued on 08.10.2009 was cancelled by the Disciplinary Authority vide order dated 27.08.2010 and a fresh charge sheet was issued to the applicant on 27.08.2010 (Annexure A/9). The learned counsel submitted that there is no bar in the Rules for issuing a fresh charge sheet after the cancellation of the earlier charge sheet. He further submitted that since the charge sheet dated 08.10.2009 was cancelled, therefore, the penalty order dated 07.05.2010 was automatically deemed to have been cancelled since it was issued on the basis of the earlier charge sheet dated 08.10.2009. Therefore, there is no illegality or irregularity in issuance of the fresh charge sheet dated 27.08.2010. He further submitted that it is admitted by the applicant that during the vigilance check, a shortage of Rs.23/- was found at his desk, which was deposited by the applicant in the Government Account. This itself confirms the charge on the applicant. Therefore, the present OA has no merit and it should be dismissed with costs.

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13. Heard the learned counsel for the parties and perused the relevant documents on record. It is not disputed that when the applicant was working as Booking Clerk on 26.06.2009, a Vigilance check was conducted and Rs.23/- was found short at his desk and the same was credited by the applicant immediately thereafter. The respondent no. 4 issued charge memo to the applicant vide Memo dated 08.10.2009 (Annexure A/4). The applicant submitted his representation and thereafter the Disciplinary Authority imposed the penalty on 07.05.2010. The applicant preferred an appeal against this order. When the appeal was pending, the Disciplinary Authority cancelled the charge sheet dated 08.10.2009 vide order dated 27.08.2010 but on the same day issued a fresh charge sheet to the applicant. In my opinion, there is no irregularity committed by respondent no. 4 in issuing a fresh charge sheet dated 27.08.2010 (Annexure A/9) to the applicant. The Disciplinary Authority has a right to cancel the earlier charge sheet issued on 08.10.2009 if he was of the opinion that it required some correction and since the charge sheet dated 08.10.2009 was cancelled, therefore, the order of penalty passed by respondent no. 4 dated 07.05.2010 became ineffective.

14. The applicant submitted his representation against the charge sheet dated 27.08.2010 (Annexure A/9), which was duly considered by the competent authority. The competent authority after considering the representation of the applicant

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passed the penalty order dated 01.11.2010 whereby he imposed the penalty of with-holding of increment for one year without future effect. I do not find any illegality/infirmity in the order dated 01.11.2010 (Annexure A/3) passed by the Disciplinary Authority. The procedure laid down for imposing minor penalty was duly followed by the Disciplinary Authority.

15. The Appellate Authority also considered the appeal filed by the applicant. He did not find any merit in the appeal and, therefore, rejected it and upheld the penalty order passed by the Disciplinary Authority.

16. Subsequently, the applicant filed a Revision Petition, which was duly considered by the competent authority and it was dismissed on merit as well as on the ground of delay. I do not find any irregularity or illegality in the order passed by the Appellate Authority or by the Revisionary Authority. I am inclined to agree with the averments made by the learned counsel for the respondents that it is not a question of small or big amount but since there was negligence and irregularity on the part of the applicant, therefore, he was served with the charge sheet. Consequently, the penalty order was passed after following the due process of law. I also do not find that there is any violation either of Rule 6 of the Railway Servant (Discipline & Appeal) Rules, 1968 and Rule 3 of the Conduct Rules. Looking to the gravity of the charge, I do not find that the penalty awarded to the applicant is disproportionate. Thus,

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I am of the view that the applicant is not entitled for any relief in the present OA.

17. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

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(Anil Kumar)
Member (A)

AHQ