

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1569/2013

Reserved on: 25.01.2017
Pronounced on: 7.02.2017

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Om Prakash Kumar
S/o Late Shri Sugambar Singh
Aged about 43 years
Resident of House No.157, C-Block
Saboli Extn., Nand Nagri,
Delhi-110093

... Applicant

(Through Shri Hemant Kumar, Advocate)

Versus

Union of India through:

1. The Secretary
Ministry of Railways
(Railway Board)
Rail Bhawan, Raisina Road,
New Delhi-110001
2. The Joint Secretary
Ministry of Railways,
(Railway Board)
Rail Bhawan, Raisina Road,
New Delhi-110001

... Respondents

(Through Shri P.K. Yadav, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was issued a Charge Memorandum dated
13.10.2004. Articles of Charges were as follows:

"ARTICLE OF CHARGE-I

On the basis of source information that an unauthorized travel agent is carrying on a business of procuring and supplying railway tickets and arranging allotment of confirmed tickets through Emergency Quota (EQ), a decoy check was planned by a team of Railway Board vigilance on 17.08.04.

A decoy passenger names Shri Prem Singh was sent to M/s New Friends Travels, Bhikaji Cama Place, New Delhi on 17.08.04 for booking a ticket for three persons by Train No.5622 of 19.08.04 from NDLS to NJP in sleeper class. Shri Ajay Kumar Bhagat, owner of the unauthorized travel agency demanded Rs.1500/- (Rs. Fifteen Hundred only) over and above the due fare of Rs.1093/- (One thousand ninety three only) of the ticket for arranging the confirmed berths from the Emergency Quota.

As per the plan, a raid was conducted by the vigilance team along with RPF/ Hazrat Nizamuddin at M/s New Friends Travels, UG-278, Som Dutt Chamber, Bhikaji Cama Place, New Delhi-66 at about 1600 hours on 18.08.04 at the time of the delivery of the ticket. Shri Ashok Kanojia and Shri Ajay Kumar Bhagat were arrested and some incriminating documents were recovered from them. A case vide Crime No.47/2004 u/s 143 Railway Act dated 18.08.04 was registered at the RPF Post/ NZM in this connection.

Subsequently, wait listed ticket in favour of the decoy passengers was found confirmed from EQ in Coach No.S-3 and Berth No.20 and 21 was released (RUD2) as assured by the Travel Agent.

During the investigation, it was found that the waitlisted ticket of the decoy passenger was confirmed from the Ministry of Railways on the written request made by Shri Debashis Panja, 1st pA to the MSR (N) to the Reservation Cell/ Railway Board (RUD1). The request for confirmation of berth was referred by Shri Om Prakash Kumar, PA, MSR (N) Cell. Thus, he misused his position for vested interest and for his personal gain.

"ARTICLE OF CHARGE-II

The decoy passenger is neither friend nor relative of Shri Om Prakash Kumar. The recommendation for confirmation of berth from EQ was made by Shri Om

Prakash Kumar in favour of decoy passenger who paid Rs.1500/- extra for getting berth released through emergency quota to unauthorized travel agent. Thus he not only connived at an offence of procurement and supply of railway tickets but also aided and abetted the same by arranging confirmation of berth from EQ. As such Shri Om Prakash Kumar is fully responsible for proving reservation through emergency quota thereby denying and debarring other genuine passengers who might have got reservation otherwise.

By the above acts of omission and commission, Shri Om Prakash Kumar, PA in the Hon.MSR(N) Cell failed to maintain absolute integrity, devotion to duty and acted in a manner, which is unbecoming of a Railway Servant contravening provisions of Rule No.3(1)(i) (ii),(iii) of the Railway Services (Conduct) Rules, 1966."

A proper departmental inquiry was held in which the Charged Officer was given the list of relied upon documents as well as the list of witnesses.

2. The Inquiry Officer (IO) submitted his report on 25.04.2011 with the conclusion as follows:

"In view of the above, I have come to the conclusion that the tickets in favour of decoy passengers were confirmed through emergency quota on the reference of the C.O., but there is no evidence/ documents/ statements to suggest/ arrive at the conclusion that the said tickets were released for monetary consideration, in connivance with the travel agency and the said release of quota in favour of decoy passengers deprived the genuine passengers of confirmed ticket, in normal course of passenger reservation system."

3. The Disciplinary Authority (DA) disagreed with the findings of the IO and issued disagreement note dated 20.06.2011 primarily on following counts:

- (a) Shri Ajay Kumar Bhagat, Shri Ashok Kanojia and Shri Raj Kumar have been convicted in the criminal case. Shri Om Prakash Kumar, a witness in the said case, was not charged in the criminal case as during the course of investigation by RPF/NZM, both Shri Om Prakash Kumar (C.O.) and Shri Raj Kumar deposed that Shri Raj Kumar used to get the waitlisted tickets confirmed by Shri Om Prakash Kumar through Emergency Quota due to their friendship without any monetary consideration. Hence, no adverse remarks could be seen against him in the Special Railway Magistrate's judgment also. Shri Om Prakash Kumar was, however, taken up departmentally on the reference of Board's vigilance and the charges were framed on the basis of the investigation conducted by the Vigilance to find out link between the unauthorized tout Shri Ajay Kumar Bhagat and those who used to help him in getting confirmed accommodation through Emergency Quota.
- (b) Shri Om Prakash Kumar's own deposition before the Vigilance on 31.08.2004 that Shri Raj Kumar had been getting tickets confirmed on 1-2 occasions almost every week.
- (c) Though there is no direct evidence that the C.O. used to get the tickets confirmed with vested interest and for his personal gain, the circumstantial evidence suggests without doubt that a strong nexus prevailed between Shri Raj Kumar and the C.O. and therefore, it is quite unlikely that the C.O. was befooled by Shri Raj Kumar and he didn't know about involvement of his friend in the illegal business of sale and purchase of railway tickets. Moreover, in departmental enquiry, guilt can be arrived at on the basis of circumstantial evidence alone.

(d) Regarding the other part of the charge that by his act, the C.O. also denied and debarred genuine passengers who might have got the berths confirmed in normal course of Passenger Reservation System, it is observed that if the Emergency Quota had not been misused by the C.O., genuine passengers would have definitely been benefitted as a matter of fact. Hence, Article-II of the charge also stands fully proved.

4. After receipt of reply from the Charged Officer namely the applicant, Shri Om Prakash Kumar, the DA passed his detailed order dated 15.09.2011 and a penalty of reduction to lower stage in the time scale of pay by one stage i.e. from Rs.16820 (plus GP Rs.4600/-) to Rs.16190 (plus GP Rs.4600) for a period of two years which will have the effect of postponing the future increments of his pay, was imposed on the applicant.

5. The applicant filed an appeal dated 25.10.2011, which was considered by the Appellate Authority (AA) and the AA reduced the period of penalty from two years to one year vide his order dated 26.07.2012.

6. The case of the applicant is that the orders of the DA as well as AA are based on conjectures as the IO had after a detailed inquiry come to the conclusion that the charges are not made out. Secondly, it is argued that in his appeal dated 25.10.2011, the applicant had raised the issue that there was no direct evidence available that the applicant used to get the tickets confirmed with vested interest and for personal gains, yet the DA and AA concluded that there was evidence. It is further

his contention that the issues raised by the applicant in his appeal have not been addressed in the AA's order. In this regard, the applicant relied on the judgment in **M/s Kranti Asso. Pvt. Ltd. & Anr Vs. Sh. Masood Ahmed Khan & Others** (SLP (C) No. 20428/2007, specifically to the following observations:

- "j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/ her decision making process then it is impossible to know whether the person deciding is faithfully to the doctrine of precedent or to principles of incrementalism.
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process."

7. Learned counsel for the respondents, first of all, raised the objection that the applicant has not exhausted the alternate remedy available to him, namely, an appeal before the Railway Board and, therefore, this OA deserves to be dismissed at this stage in view of Section 20 of the Administrative Tribunals Act 1985.

8. Leaned counsel for the applicant relied on the order of this Tribunal in **Dr. B.V. Prasad Reddy Vs. Union of India and Ors**, 2005 (1) SLJ 61 CAT and specifically to para 9, where the Mumbai Bench of the Tribunal has observed as follows:

- "9. Now we examine the preliminary objections raised by learned Counsel for the respondents. So far as the objection of non-exhausting of departmental

remedies is concerned, we agree with the submission of the learned Counsel for the applicant that since the O.A. is already admitted, the Tribunal is deemed to have exercised its discretion in admitting the application without exhausting the departmental remedy under [Section 20](#) (1) of the [Administrative Tribunals Act](#), 1985. It is also relevant to note that the respondents have expressed their opinion regarding the case of the applicant on merit in their written statement, therefore, no useful purpose will be served by remitting the matter to the respondents. We have to see that substantial justice is done in the matter and case of the applicant is not thrown out merely on technical grounds. Dismissing the application on technical grounds would not in any way advance the cause of substantial justice rather it would result in failure of justice. We, therefore, hold that preliminary objection raised by learned Counsel for respondents regarding non-exhausting the departmental remedies by applicant is devoid of merit."

9. It is argued that at this late stage, the respondents cannot raise such an issue and it should have been raised at the admission stage itself and that the purpose of justice will not be served, if this OA is now dismissed on this ground after almost four years. Moreover, it is stated that there is no provision in the rules for appeal before the Railway Board.

10. We accept the argument of the learned counsel for the applicant and hold that it will not be in the interest of justice to dismiss this OA at this stage after almost four years on the ground that alternate remedy has not been exhausted. The respondents should have raised this issue preferably at the stage of admission itself.

11. Learned counsel for the respondents submitted that the departmental proceedings have been conducted strictly in accordance with the rules and procedure. The inquiry report was

not accepted by the DA for which cogent reasons have been given, which have already been quoted above. The applicant thereafter filed his reply to the disagreement note and after a detailed consideration, the DA passed his order dated 15.09.2011. The DA has clearly stated the logic based on which he has held the applicant guilty and that they are not conjectures but arise out of evidence that was available before the IO.

12. The AA also considered the objections raised by the applicant in his appeal and has dealt with each and every objection in his order.

13. The learned counsel for the respondents further states that in any case the settled law is that the Tribunal shall not get into re-appreciation of evidence in a departmental proceeding but only consider whether there has been any irregularity or illegality or arbitrariness in the procedure adopted by the respondents. He also relied on the judgment in **Panchmahal Vadodara Gramin Bank and Others Vs. D.M. Parmar**, (2011) 15 SCC 310, in which the Hon'ble Supreme Court has held that non supply of documents do not result in violation of principles of natural justice. It is argued that in this case, relevant documents were made available to the applicant. Learned counsel for the respondents also relied on the judgment in **State Bank of Mysore and Others Vs. M.C. Krishnappa**, (2011) 7 SCC 325, wherein it has been held that it is well settled that punishment is

primarily a function of management and courts rarely interfere with quantum of punishment.

14. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

15. The charge memorandum shows that on the basis of information that an unauthorized travel agent is carrying on a business of procuring and supplying railway tickets and arranging allotment of confirmed tickets through emergency quota, the vigilance wing of the railways set up a decoy passenger. The travel agent charged Rs.1500/- over and above the normal fare and it was found that the decoy passenger was confirmed from emergency quota as assured by the travel agent. A criminal case was filed against Shri Ashok Kanojia, Shri Ajay Kumar Bhagat and Shri Raj Kumar and they were convicted. Shri Raj Kumar turned out to be an old acquaintance of the applicant, who had been getting the tickets confirmed through the applicant who was at that time on a post, which handled emergency quota. In the criminal proceedings, both the applicant and Shri Raj Kumar had deposed that Raj Kumar used to get the waitlisted tickets confirmed by the applicant through emergency quota due to their friendship without any monetary consideration. Hence, no adverse remarks could be seen against the applicant in the Special Railway Magistrate's judgment also. The IO gave a clean chit to the applicant primarily holding that there was no direct evidence to show that the applicant released

the emergency quota seats through Raj Kumar for some consideration, monetary or otherwise. Regarding the second charge, the IO held that it was a corollary of the first charge and since first charge has not been proved, the second charge also stands not proved.

16. The DA, and in our view rightly so, differed with the inquiry report for cogent reasons, which we have already quoted above. The applicant replied to it and this was considered by the DA and the penalty order passed. The AA also considered the points raised by the applicant in his appeal and gave reasons why he does not accept those points but took a lenient view and reduced the punishment. The only ground of the applicant is that the DA in his order has based his conclusion on conjectures. This is not borne out by the facts at all because there was a complaint about some hanky-panky going on. The decoy passenger managed to get confirmed booking through Raj Kumar and the travel agent. The emergency quota was released by the applicant at the request of Raj Kumar. Both the travel agent functionaries as well as Raj Kumar were convicted by the Criminal Court. All this clearly points out that there was a racket going on for getting emergency quota released to passengers booked by the travel agency through Raj Kumar, who was an old acquaintance of the applicant.

17. The applicant, in his own deposition before the vigilance, had said that he had been getting tickets confirmed in the past. We so no reason why the applicant says that the report of the

DA is based on conjectures. The DA rightly came to the conclusion that the applicant was a part of the chain, based on preponderance of probabilities and clear circumstantial evidence.

18. As regards judgment of the Hon'ble Supreme Court in M/s Kranti Associates (supra), as we have stated earlier, the disagreement note as well as AA's order states very clearly and in detail why the defence of the applicant is not acceptable. Therefore, we do not accept the contention of the learned counsel for the applicant that the issues raised by the applicant have not been considered adequately by the DA and the AA. We are, therefore, of the clear opinion that the respondents have not committed any illegality in holding the departmental inquiry and passing of the orders by the DA and the AA. The OA is, therefore, dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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