Central Administrative Tribunal
Principal Bench

OA No. 2969/2013

Order reserved on: 27.07.2016
Order pronounced on: 19.08.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Sh. Ashok Ralhan,
Chief Ticket Inspector,
N.Rly.,Shakurbasti.

- Applicant

(By Advocate: Mr. Shanker Davite)

Versus

1. Union of India
   Through General Manager
   Northern Railway
   Baroda House,
   New Delhi-110002.

2. Divisional Railway Manager
   DRM Office,
   Northern Railway
   New Delhi.

3. Sr. Divisional Coml. Manager
   DRM Office,
   Northern Railway
   New Delhi.

- Respondents

(By Advocate: Mr.R.N.Singh)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

A major penalty charge sheet was issued to the applicant vide order dated 03.11.2005 when he was posted as Chief Ticket

Inspector (CTI), In-charge at Shakurbasti Railway Station. The charges read as follows:

> "Shri Ashok Ralhan, CIT/SSB while working as such on Platform No.1-A at Delhi Railway station on 10.7.05, where train No.2558 (Sapt Kranti Express) was placed, is found to have committed the following serious irregularities which came to notice during check of I.I/RB at 16.15 hrs on 10.7.05.
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> Charge No.1: - That he was found having Rs.147/- excess in his government cash which obviously, he had collected excess from the passengers for his irregular acts.
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> Charge No.2: - He was having Rs.150/- short in his private cash for which he could not advance any valid reason. Thus it proves that he had declared wrong and inflated private cash of Rs.150/-on the back of EFT No.009798 on 10.7.05.
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> Charge No.3: - That he issued EFT Nos.009799 to 009800 and EFT No.150101 to 150104 to the passengers holding general unreserved tickets on platform No.1-A before 16.15 hrs. On 10.7.05 by recovering difference of fare of reserved coach and a penalty of Rs.250/- each from them as if they were detected by him travelling in reserved sleeper class coach of the train. By this irregular act, he indirectly authorized these passengers to enter/travel in reserved coaches when they were not having prior reservation in sleeper class coaches and can cause over crowding in reserved coaches causing inconvenience to reserved passengers.
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> By the above act of omission and commission on the part of Sh. Ashok Ralhan, CIT/SSB show his misconduct and malafide intention and thus he failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a Railway Servant and thereby by contravened rule No.3.1 (i), (ii) & (iii) of Railway Services Conduct Rules, 1966."

2. The applicant denied all the charges following which a departmental enquiry was conducted. On 27.05.2006 the Inquiry Officer (IO) in his report returned the charges as proved. The applicant was given opportunity to submit his representation against the finding of the enquiry report which he did on 13.07.2006, but the Disciplinary Authority (DA) awarded the punishment of *reduction in pay by one stage in the same time*

scale for 3 years. His appeal against this order was rejected by the Appellate Authority (AA) on 09.10.2007. The revision petition was also rejected by the Revisioning Authority (RA) on 28.06.2013.

3. The applicant has challenged these orders on the following grounds:

(i) The shortage in private cash and excess in the Government cashwas due to the fact that both cash were mixed by the applicant. Such mixing became a necessity at times because the applicant had to return the change when a passenger offered bigger denomination currency notes. The Railway Board circular dated 16.11.2000 clearly stipulated that the rules did not prohibit the staff from mixing railway cash.

(ii) There was no misconduct on the part of the applicant in issuing EFT No.009799 to 009800 and EFT No.150101 to 150104 by recovering the difference of fare along with penalty of Rs.250/- from each passenger. The EFTs were issued at the request of the passengers who due to rush were not able to willing to travel in general class. The EFT was issued to illiterate and labourclass passengers. In the enquiry there was no evidence to show that the passengers who were issued EFTs were not illiterate. The enquiry report

also noted that the applicant had not allotted or given any berth numberor seat numberon the EFTs to raise any claim by any passenger for a berth in the reserved coach. Thus, there is no evidence to prove any malafide intention on the part of the applicant. The IO's conclusion that the charge was proved against the applicant was not sustainable in law.

(iii) The IO, DA, AA and RA had not considered the evidence and proved the charge and passed non-speaking and cryptic orders without any application of mind.

(iv) The concerned authorities did not consider the fact that on the same date in another check, a colleague of the applicant, namely, Sh. Shyam Lal, was also charged with similar misconduct but awarded the punishment of reduction by one stage in the same time scale for one year by the DA. Thus, there was a hostile discrimination against the applicant violating Articles 14 & 16 of the Constitution of India.

4. Learned counsel for the applicant submitted that the respondents have not been able to establish any misconduct on the part of the applicant. It was a case of 'no evidence'. According to learned counsel there were basically two charges one related to mixing of cash and second related to issue of EFT. The first charge cannot stand in the wake of the Railway Board instruction

dated 16.11.2000, a copy of which has been placed at page 47 of the OA. With regard to the second charge, the applicant had issued the EFTs under the Section 138 (2) of Indian Railways Act, 1989 at page 46 of the OA, which empowered the applicant to charge the difference between the fare paid by the passenger and what is payable in respect of journey which he undertakes. In this case, the passengers had general class tickets but were found in the reserved coach. Therefore, the applicant was duty bound to charge from them the difference of fare as stipulated in the rules.The IO, DA, AA and RA have not considered this contention of the applicant at all.

5. Learned counsel for the respondents, on the other hand, did not dispute the existence of the letter dated 16.11.2000 which states that rules did not prohibit the staff from mixing private cash with railway cash. However, he submitted, the charge no.3 regarding issuing of EFTs to unauthorised passengers was a serious misconduct on the part of the applicant. He had issued the EFTs to the passengers on the platform and not while travelling unauthorisedly in any coach in the running train. There was no rule that permitted the applicant to charge the difference of fare on the platform to authorise such passengers to travel in the reserved compartments.The section 138 (2) of the Indian Railways Act would not apply in this case as EFTs were not issued for travelling in a higher class. The DA, AA and RA had

considered the contentions raised by the applicant and rejected the same because there was no substance in those contentions. With regard to the allegation of hostile discrimination, he denied the same and stated that the punishment awarded in each case was according to the gravity of charges. Further this issue was never raised in his earlier representations.

6. We have heard the learned counsel for the parties and perused the record. With regard to charge no.1 & 2 the respondents in their orders have already admitted that there was no malafide intention on the part of the applicant even though the shortage in private cash and excess in railway cash was established. Further, the Railway Board letter dated 16.11.2000, which has not been controverted by the respondents,clarifies that rules do not prohibit the staff from mixing private cash with railway cash. The charge, therefore, boils down to the issue of EFTs to the passengers, which according to the applicant were issued in the coach but, according to the respondents it was done on the platform. The applicant has relied on Section 138 (2) of Indian Railways Act, 1989 claiming that he was empowered under the law to charge a difference in fare from the passengers which he did on 10.07.2005. The relevant Section reads thus:

> "(2) If any passenger,—
>
> (a) travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket; or

(b) travels in or on a carriage beyond the place authorised by his pass or ticket, he shall be liable to pay, on the demand of any railway servant authorised in this behalf, any difference between the fare paid by him and the fare payable in respect of the journey he has made and the excess charge referred to in sub-section (3)."

7. It is clear from the above provision that the difference of fare becomes payable by a passenger only when he either travels or attempts to travel in a carriage or by train of a higher class than that for which he has obtained a pass or purchased a ticket or travels beyond the place authorised by his pass or ticket. It is an admitted fact that the applicant did not charge the difference in fare on a running train. The applicant had either taken the difference in fare from the passengers on the platform or in the stationary train. In either case the above section does not authorise the applicant to charge the excess fare because the passengers were not travelling in a coach of higher class. A coach in which all seats are reserved cannot be equated with a coach of 'higher class'. During the argument it was mentioned by the learned counsel for the respondents that in the event of finding unauthorised passengers in a coach, the first action to be taken was to remove them from the coach. In our view by issuing the EFT even before the train has started, the applicant has only authorised the irregular entry and further travel of the passengers in a coach wherein only the passengers with reservation can travel. It has been argued that the EFTs did not show any

particular berth or seat to the passengers, therefore, there is no irregularity committed and no inconvenience was likely to be caused to the passengers. The reasoning behind this argument defies logic. If there is no berth vacant to be allotted to such passenger, even if the berth number and seat is not mentioned, the passengers will occupy the space either on someone else berth or the passage in the coach blocking free movement of passengers. In either case, that is going to cause inconvenience to the passengers and can be hazardous in the case of any untoward incident.

8. The respondents have conducted the disciplinary enquiry in accordance with the rules and the applicant has been given full opportunity to defend himself. It is trite that this Tribunal cannot act as an appellate forum over the decision of the competent authorities. In ***B.C. Chaturvedi vs. Union of India,*** 1995 (6) SCC 749, a Three Judge Bench of Hon'ble Apex Court held that the judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. Powers of judicial review is exercised to ensure that the individual receives a fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

9. Considering the arguments presented by both the sides and for the reasons stated in preceding paras, we do not find any

convincing justification to intervene in the matter. OA is, accordingly dismissed being devoid of merit. No costs.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

'sd'

August 19, 2016