

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.2850/2011

RESERVED ON 01.09.2015
PRONOUNCED ON 11.09.2015

**HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE SHRI V.N. GAUR, MEMBER (A)**

Inder Kumar Sharma,
S/o Shri Chetan Lal Sharma,
E&RC, Northern Railway
Reservation Office,
Railway Station, Gurgaon.

Residential Address:-

Inder Kumar Sharma
C-72/B, Mohan Garden,
Uttam Nagar,
New Delhi-110 059.

...Applicant

(By Advocate: Shri G.D. Bhandari)

VERSUS

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi. ...Respondents

(By Advocate: Ms. Bhaswati Anukampa)

:ORDER:

HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J)

This application is directed against the order dated 05.03.2007 passed by the Disciplinary Authority imposing penalty

of reduction in pay by three stages in the time scale for three years with cumulative effect, as well as the order dated 21.06.2011 passed by the Departmental Appellate Authority reducing the punishment awarded by the Disciplinary Authority to reduction in pay by three stages for a period of one year with cumulative effect.

2. A departmental proceeding was initiated against the applicant by issuing the Memorandum dated 16.11.2004 under the provisions of Railway Servants (Discipline & Appeal Rules), 1968 (in short '1968 Rules'), on the basis of the statement of articles of charge that the applicant while working as Reservation Clerk at Reservation Office on 05.06.2004 generated a JCR tickets from New Delhi to Sealdah against Soldier Ticket No.519658 in favour of four adult passengers of 2-AC Class of Train No.2313 (Rajdhani Express), without checking the Soldier Ticket before issuing such ticket, thereby causing loss to the Railway Revenue to the tune of Rs.09/- (Rupees Nine only). The applicant on receipt of the charge memo has filed his reply. During the inquiry the applicant filed an application on 25.04.2005 before the Inquiry Officer requesting for supply of six additional documents, out of which the Inquiry Officer vide order dated 25.04.2005 allowed the prayer for three additional documents against serial nos.1, 2 and 3 of the said application. Vide another order dated 26.12.2005, the Inquiry Officer directed

the Railway Authority to produce the documents, i.e. serial nos. 1 and 3, which according to the applicant, however, have not been produced in the enquiry conducted against him. The Inquiry Officer, thereafter, submitted his report dated 29.11.2006 holding that the charge framed against the applicant has been proved. The Disciplinary Authority has furnished a copy of the said enquiry report to the applicant, who, thereafter, made a representation on 27.12.2006 against the said report. The order of punishment dated 05.03.2007 was then passed by the Disciplinary Authority reducing the pay of the applicant by three stages for a period of three years with cumulative effect, against which though the departmental appeal was preferred, the same has been dismissed vide order dated 10.08.2007. The applicant filed OA No.2251/2009 before this Tribunal, which was disposed of vide order dated 22.03.2011 setting aside the order passed by the Departmental Appellate Authority and remitting the matter for passing a reasoned and speaking order, based on the submission made by the applicant in his appeal, in accordance with the rules, within a period of three months from the date of receipt of the said order. The Departmental Appellate Authority, thereafter, passed order dated 21.06.2011 reducing the penalty to reduction of pay by three stages for a period of one year with cumulative effect, hence, the present OA.

3. We have heard learned counsel, Mr. G.D. Bhandari appearing for applicant and learned counsel, Ms. Bhaswati Anukampa appearing for respondents.

4. The learned counsel for the applicant submits that the order passed by the Disciplinary Authority as well as the Departmental Appellate Authority have been put to challenge on the ground that the said authorities could not have taken any disciplinary action against the applicant on the basis of the finding recorded by the Inquiry Officer in his report, as there was no evidence on record of the disciplinary proceeding to substantiate the charge leveled against the applicant. Referring to the application dated 25.04.2005 filed by the applicant before the Inquiry Officer as well as the orders dated 25.04.2005 and 26.12.2005 passed by the Inquiry Officer on the said application, it has also been submitted by the learned counsel that despite the orders passed by the Inquiry Officer for production of three documents mentioned at serial nos. 1, 2 and 3 of the said application, since the Railway Authority did not produce the said documents for inspection by the applicant, the reasonable opportunity, which is required to be given to the applicant in such proceeding, has been denied and hence according to the applicant the order passed by the Disciplinary Authority as well as the Departmental Appellate Authority, on the basis of such proceeding, are liable to be set aside and quashed.

5. Referring to Rule 9 (21) of the 1968 Rules, the learned counsel further submits that though the Inquiry Officer mandatorily requires to question the delinquent on the circumstances appearing against him in the evidence recorded in the disciplinary proceeding for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him, the said procedure has not been followed, hence the disciplinary action taken by the authority needs to be interfered with, for the reason that the applicant did not get the opportunity to explain the circumstances appearing in the evidence against him. It has also been submitted by the learned counsel that since the Inquiry Officer belongs to Vigilance Department of the Railways, he ought not to have conducted the enquiry against the applicant, as the applicant was allegedly charge sheeted after vigilance enquiry. Learned counsel submits that the Inquiry Officer being a Member of the Vigilance Department is, therefore, biased and hence, the Disciplinary Authority ought not to have imposed any penalty on the basis of the inquiry report submitted by the Inquiry Officer. The learned counsel further submits that since the orders passed by the Disciplinary Authority as well as the Departmental Appellate Authority do not contain the reasons and such orders were passed without taking into account the entire evidence adduced in the disciplinary proceeding initiated against the applicant, the same are liable to be interfered with.

6. Per contra, learned counsel for respondents submits that it is evident from the report submitted by the Inquiry Officer that there are ample evidence on record for holding that the charge framed against the applicant has been proved. Learned counsel further submits that the applicant, in fact, was given the chance to explain the circumstances appearing against him in the evidence and hence, there is no violation of the provision of Rule 9 (21) of 1968 Rules. The learned counsel further submits that all the relevant documents, which are listed in the list of documents appended to the charge memo, have been supplied and non-supply of documents, mentioned in serial nos.1 and 3 of the application dated 25.04.2005 filed by the applicant, would not render the disciplinary proceeding initiated against the applicant illegal, so also the disciplinary action taken against him. Regarding submission of the applicant that the Inquiry Officer being a member of Vigilance Department ought not to have conducted the enquiry, it has been submitted that the Vigilance Department has two distinct and separate branches i.e. Investigation Organization and Inquiry Organization, which is under the administrative control of SDGM and deal with the discipline and appeal inquiries arising out of vigilance cases. According to the learned counsel, the Inquiry Organization works independently without any influence by the Investigation Organization, hence conduct of the enquiry by the Inquiry Officer, who belongs to the Inquiry Organization would not vitiate the

inquiry. In any case, it has been submitted by the learned counsel, that since the applicant has failed to demonstrate any prejudice caused to him, the disciplinary action taken against him cannot be interfered with on the said ground, more so, when the applicant never any point of time, and even in the department appeal filed, raised any question relating to the conduct of enquiry by the said Inquiry Officer. The learned counsel referring to the order passed by the Disciplinary Authority as well as the Departmental Appellate Authority, which are put to challenge, submit, that it is apparent therefrom, that both the authorities have passed the orders upon appreciation of materials available on record of the disciplinary proceeding and hence, it cannot be said that those orders are non-speaking orders.

7. We have considered the submissions advanced by learned counsel for the parties and also perused the pleadings of both the parties.

8. One of the grounds on which the disciplinary action taken against the applicant has been put to challenge is that the Inquiry Officer being a member of the Vigilance Department of Railway ought not to have conducted the disciplinary proceeding against the applicant. Based on such contentions, this Tribunal vide order dated 13.07.2015, directed the respondent authorities to file an affidavit as to whether the Inquiry Officer belongs to the

Vigilance Branch of Railways or not. The respondent-railway, accordingly, filed an additional affidavit on 21.08.2015, wherefrom it appears that the Vigilance Organization of the Railway has two distinct and separate branches namely (i) Investigation Organization and (ii) Inquiry Organization. The Inquiry Organization is full fledged one under the administrative control of SDGM and deals with the discipline and appeal inquiries arising out of vigilance case. The said Inquiry Organization is manned by the Inquiry Officers (Senior Scale), Assistant Inquiry Officers (Junior Scale) and inquiry inspectors drawn from various disciplines of railway service. The said Organization is independent without any influence of Investigation Organization. The pleadings in the said additional affidavit have not been countered by the applicant by filing any reply affidavit. That apart, the applicant never any point of time has taken any objection relating to the conduct of inquiry by the said Inquiry Officer. The applicant has not taken such plea in the written statement filed as well as in the memo of departmental appeal preferred by him. No such plea has also been raised at any stage of the enquiry. On the other hand, the applicant without any objection has participated in the enquiry. That being the position, such contention of the applicant cannot be accepted and hence, rejected.

9. It appears that the applicant on 25.04.2005 filed an application before the Inquiry Officer praying for a direction to the Departmental Appellate Authority to produce the following six documents for inspection so that the applicant can defend himself effectively and completely.

"1. Originals of the RUDs as listed in the Annexure - III of the charge-sheet in question to unable me to compare them from the Photostat copies given to me, which are incomplete and not readable properly. (Custodian the D.A.)

2. Reservation Requisition tendered at SOJ on 22.06.2004 by Sh. M.L. Roy to get reservation from Sealdah to NDLS in AC 2 Tier Sleeper Class by Train No.2313 against the Soldier Ticket No.519658 to enable me to see if the Reservation Requisition of 05.06.2004 (Ex.P-5) was also written by the same person. (Custodian Vigilance, Railway Board or the CRS/SOJ).

3. Soldier Tickets Book (Record Foils) containing the record foil of Soldier Ticket No.519658, having been issued on 21.04.1999 from ASR to Behrampur against Warrant IAFT 1707 No.379594 of 08.04.1999 to see if the alleged fake S.T. No.519658 is not detached from the same S.T. Book. (Custodian CBS/ASR or the Vigilance Railway Board).

4. Action taken report by the concerned I.I.s. Railway Board against Air Force Sonjaant Roy M.L., who obtained reservation from me vide Ex.P-5, Ex.P-6 and Ex.P-7 on 05.06.2004 at DEC and attempted Rly. Reservation on 22.06.2004 at SOJ against the said fake ST. (Custodian DA/Vig. Railway Board).

5. Copy of FIR against Roy M.L. for deceiving/cheating/defrauding the Railway and violating the Copy Right Act, attracting the IPC/Cr.P.C. under different cognizable offences as this was a very serious case to damage the interest of the Railways and as such, FIR must have been lodged with the Police for prosecution of the culprit in question. (Custodian DA/Vig. Rly. Board).

6. Foreignsic Laboratory Report to conclude that ST No.519658, Ex.P-6, is basically fake and forged ticket and is not out of genuine supply of the ticket by the Railway to the Stations. This Foreignsic examination in the Laboratory was most essential to reach a fool proof result of the status of the Ex.P-6 original and as such this testing must have been arranged by the concerned I.Is., Railway Board. (Custodian DA/Vig. Rly. Board)."

10. The Inquiry Officer on the date of filing the said application i.e. on 25.04.2005, being satisfied about the relevancy, has passed the order allowing the prayer of the applicant for production of three documents at serial nos. 1, 2 and 3 of the said application for inspection by the applicant. It also appears from the order dated 26.12.2005 passed by the Inquiry Officer that the document mentioned at serial nos.1 and 3 of the aforesaid application have not been produced either by the Disciplinary Authority or the custodian of the documents despite various reminders issued. The assertion of the applicant that the documents mentioned in serial nos. 1 and 3 have not been produced by the respondent-authority in the enquiry conducted against him has not been controverted by the respondents in their counter or by producing the records of the enquiry. Once the Inquiry Officer was satisfied about the relevancy of the aforesaid documents, the respondent-authority was bound to produce the same, which has not been done, thereby denying the applicant his right to inspect the relevant documents, which amounts to denial of reasonable opportunity to the applicant to

defend himself. The Inquiry Officer without taking into consideration that aspect of the matter has submitted his report holding that the charge framed against the applicant has been proved. The Disciplinary Authority as well as the Departmental Appellate Authority also did not consider the said aspect of the matter while passing the impugned orders dated 05.03.2007 and 21.06.2004 respectively.

11. That apart, Rule 9 (21) of the 1968 Rules requires the Inquiring Authority to generally question the delinquent on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances appearing in the evidence against him, if the delinquent has not examined himself. It appears from the record of the OA that what Inquiry Officer did is - the applicant was asked only about his statement. The applicant was not given the chance to explain the circumstances appearing against him in the evidence adduced in the disciplinary proceedings, though the said provision gives the delinquent an opportunity to explain the circumstances appearing against him. It is amply clear that the said opportunity in the instant case has been denied to the applicant by the Inquiry Officer. The said aspect of the matter has also not been considered both by the Disciplinary Authority and the Departmental Appellate Authority while passing the impugned orders.

12. It is, therefore, evident from the aforesaid discussion that while the disciplinary inquiry was conducted against the applicant by denying the reasonable opportunity of being heard, in as much as the relevant documents were not produced, despite the orders passed by the Inquiry Officer, for inspection by the applicant, which has caused prejudice to the applicant in defending himself in the enquiry, he has also been denied the opportunity of explaining the circumstances appearing in the evidence against him as required under Rule 9 (21) of 1968 Rules.

13. Having held so, in normal circumstances, the matter is required to be remitted for conduct of the disciplinary inquiry against the applicant from the stage of production of the aforesaid documents. In the instant case, however, we are not inclined to do so, in view of the fact that the charge memo was issued to the applicant way back on 16.11.2004 for alleged loss of the Railway Revenue to the extent of Rs.09/- (Rupees nine) only. The applicant has for last about 11 years mentally suffered because of the aforesaid charge memo dated 16.11.2004 and the disciplinary proceeding initiated against him. The Disciplinary Authority as well as the Departmental Appellate Authority, as noticed above, despite the aforesaid pleas taken by the applicant did not consider the aforesaid lacuna in the disciplinary proceeding conducted against the applicant. The applicant having suffered for the last 11 years, we do not consider it to be a fit

case for remitting the matter to the Inquiry Officer for conducting the enquiry, more so, when the allegation is loss of Railway Revenue to the extent of Rs.09/- only, and there being no allegation of misappropriation.

14. In view of the aforesaid discussion, the order dated 05.03.2007 passed by the Disciplinary Authority as well as the order dated 21.06.2011 passed by the Departmental Appellate Authority are set aside and quashed. The applicant shall be entitled to all consequential benefits.

15. OA is accordingly allowed. No costs.

(V.N. Gaur)
Member (A)

(B.P. Katakey)
Member (J)

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