

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.1055 of 2010

Jabalpur, this Thursday, the 11th day of October, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ravi Prakash Mishra, S/o Late Shri C.H.Mishra,
Aged about 38 years, Senior Booking Clerk,
West Central Railway, R/o 257/18, Railway Subhash Colony,
Jabalpur (MP)-482001 **-Applicant**

(By Advocate –**Shri Manoj Sharma**)

V e r s u s

1. Union of India, West Central Railway,
Indira Market, Jabalpur (MP)-482001
Through its General Manager
2. Chief Commercial Manager, West Central Railway,
Indira Market, Jabalpur (M.P.)-482001
3. Financial Advisor & Chief Accounts Officer
(FA&CAO)(EST), West Central Railway,
Indira Market, Jabalpur (M.P.)-482001
4. Divisional Railway Manager, West Central Railway,
Opp. Algin Hospital, Jabalpur (M.P.)482001
5. Sr. Divisional Commercial Manager, West Central Railway,
Opp. Algin Hospital, Jabalpur (M.P.)482001
6. Divisional Commercial Manager, West Central Railway,
Opp. Algin Hospital, Jabalpur (M.P.)482001
7. Assistant Commercial Manager, West Central Railway,
Opp. Algin Hospital, Jabalpur (M.P.)482001 **-Respondents**

(By Advocate –**Shri A.S.Raizada**)

(Date of reserving the order:- 14.08.2018)

ORDER

By Navin Tandon, AM:-

The applicant is aggrieved by imposition of penalty and recovery of Rs. 45284/- from him.

2. The applicant has made following submissions:

2.1 He was working as Senior Booking Clerk with the respondent department at the relevant time January 2002 to January 2003 at Booking office, Railway Station, Jabalpur.

2.2 He was issued a minor penalty charge sheet on 09.01.2004 (Annexure A-5). However, the same was withdrawn on 13.04.2004 (Annexure A-6) with intention to serve major penalty charge sheet. Accordingly, he was issued major penalty charge sheet on 15/29.04.2004 (Annexure A-7).

2.3 The Enquiry Officer prepared the enquiry report on 13.03.2006 (Annexure A-9). At this Stage the applicant approached this Tribunal in O.A. No. 443/2006, which was dismissed on 15.10.2008 (Annexure A-8).

2.4 No prosecuting Officer was nominated by the Disciplinary Authority. The Enquiry Officer took burden on the shoulder to prove the charges by asking questions and during examination-in-chief of Prosecution Witness also.

2.5 Vigilance Department suggested a penalty of reduction to the initial stage in the grade of 4000-6000 by its letter dated 10.07.2006 (Annexure A-10). This act is interference on the Disciplinary Authority by an outside agency.

2.6 The Disciplinary Authority imposed the punishment of reduction to the initial stage in the grade of Rs. 4000-6000 for a period of three years with cumulative effect vide orders dated 23.02.2009 (Annexure A-1).

2.7 He filed an appeal with the Appellate Authority on 16.04.2009 (Annexure A-11).

2.8 During the period the appeal was pending, the respondent gave a show cause notice dated 02.09.2009 (Annexure A-12) for recovery of Rs. 45284/- from the applicant. He promptly submitted his reply on 14.09.2009 (Annexure A-13). However, order dated 18.01.2010 (Annexure A-4) was issued for recovery of Rs. 45,284/-.

2.9 He again approached this Tribunal in O.A. 462/2010, which directed the respondents to decide the appeal expeditiously, and until then no recovery were to be affected [orders (oral) dated 10.06.2010 (Annexure A-14)].

2.10 The appeal was rejected on 06.07.2010 (Annexure A-2).

2.11 The Revisional Authority was approached on 27.07.2010 (Annexure A-15).

2.12 The applicant approached this Tribunal again in O.A. No. 527/2010 which was disposed off on 16.07.2010 (Annexure A-16) directing the Revisional Authority to examine whether the recovery is to be made or not.

2.13 The Revision Appeal has been rejected on 28.09.2010 (Annexure A-3).

2.14 The applicant submits that he has wrongly been implicated in the case and the charges pressed against him are baseless.

3. The following relief has been sought for by the applicant in this Original Application:-

“8. Relief Sought:

(i) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal.

(ii) Quash and set-aside orders ANN-A/1 to A/4.

(iii) Restore all the benefits of pay, perks and status after quashing orders ANN-A/1 to A/4.

(iv) Grant any other relief/s which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

(v) Award the cost of the instant list to applicant.

4. The respondents have filed their reply and have made the following submissions:-

4.1 The Vigilance Department of the Railways have investigated into the fraudulent refund from station earnings through fake pay orders at Jabalpur Station.

4.2 The enquiry has been conducted as per the extant rules.

4.3 It is not mandatory to appoint the presenting officer in every case as per the Railway Servant (Discipline & Appeal) Rules, 1968.

4.4 The applicant having participated in the enquiry now cannot question the procedure of the enquiry as adopted by the enquiry officer.

4.5 It is denied that there was any interference of the Vigilance Department. The Fraud was detected by the Vigilance Department.

4.6 The applicant was the last paying authority and he failed to verify whether the requisite columns have been fulfilled or not or the signature of witnesses has been obtained or not on the vouchers and the amount has been paid on the fake vouchers.

4.7 The applicant can not escape his liability merely on the ground that other persons were also responsible. In fact, other persons have also been punished.

5. The applicant has filed the rejoinder in which he has reiterated the fact that Vigilance Department is applying pressure on the disciplinary authority to award the penalty as is evident from

Annexure A-10. They have also brought out that recovery of one Shri M.K.Verma is set aside by this Tribunal in O.A. No. 613/2009 vide order dated 13.01.2011 (Annexure RJ/1).

6. Heard the arguments from both the counsels and the pleadings available on file.

7. It is seen that the applicant had approached this Tribunal in Original Application No. 443/2006 challenging the issue of major penalty charge-sheet by withdrawing the minor penalty charge-sheet. The facts as listed in the said O.A. are as under:-

“Factual matrix is that Memo Dt. 9th Jan, 2004 was issued under rule 11 of Railway Servant (Discipline & Appeal) Rules, 1968 alleging certain misconduct, which was withdrawn vide communication dt. 13.04.2004 without prejudice to issue SF-5 which is a standard form for initiating major penalty proceedings under Rule 9. Vide Memo dt. 15/29th April, 2004 major penalty proceedings were initiated he participated in the said department proceeding, though he had submitted representations questioning its validity. On completion of said proceedings and at the stage when he was supplied the copy of enquiry report he rushed to this Tribunal vide present O.A. Vide order dt. 7.7.2006, this Tribunal directed the respondents not to pass the final order in the disciplinary proceedings till final disposal of the present O.A.”

7.1 That the Tribunal vide its order dated 15.10.2008(Annexure A-8) dismissed the O.A. finding no merit.

7.2 It is clear that the applicant had approached this Tribunal after completion of the disciplinary enquiry and he was already supplied with the copy of the enquiry report. He had not raised the

issue of vitiation of the enquiry by non appointment of the presenting officer.

7.3 Therefore, it is the case of constructive res-judicata as per Order II Rule 2 of the CPC. Even otherwise, the applicant has not specifically raised as to how he was prejudiced by non appointment of the presenting officer.

8. Letter dated 10.07.2006 (Annexure A-10) from the Vigilance department was perused. This letter only considers adequacy of the punishment proposed to be imposed by the disciplinary authority. It is not the case that vigilance department has suggested the penalty of reduction to initial stage, as the applicant has claimed in this O.A.

8.1 It is well known that the Vigilance Department is duty bound to conduct preventive checks and draws its power from the CVC Act of the Parliament.

8.2 No other document/evidence has been produced by the applicant to indicate that the disciplinary authority has not acted on his own. Therefore we do not find any merit in the arguments of the applicant that the decision of the disciplinary authority is based on the pressure of Vigilance Department.

9. Learned counsel for the applicant has argued in detail regarding the fact that the charges have not been proved during the

enquiry. Even otherwise the charges stated in the charge-sheet are not applicable to the applicant.

9.1 The charge sheet (Annexure A-7) lists the following articles of charges:-

“That while performing his duties during Jan 2002 to Jan 2003 at the Booking officer, Rly. Station Jabalpur. He made the payment of (09) Stations pay orders indicated in the enclosures of joint note dt. 29/09/03 on the different dates as mentioned there-in for Rs. 51121/-00 in the violation of para 2168 & 2169 of IRCM-volume-II.

9.2 Learned counsel for the applicant took us through Paras 2168 and 2169 of IRCM Volume II the same are reproduced below:-

“**2168.** Pay orders, (refund). When refund of an overcharge in freight or fare is found to be due, the Refund branch will issue a pay order (refund) in Form Com.P-23 Rev. authorizing the Station Master to pay the specified amount to the payee mentioned therein. The pay order (refund) will be sent to the payee and the station on which it is drawn will be advised of the fact separately.

2169. (a) Before making the payment, the Station Master should see that the pay order (refund) has been presented for payment within its currency and that it is genuine in all respects; this can be done by comparing the particulars on the pay order (refund) with the intimation of its issue received direct from the issuing office. If no such intimation has been received, the payment should not be made and matter reported to the Chief Commercial Superintendent without delay quoting full particulars of the pay order (refund).

(b) A dated acknowledgement for the amount paid must be obtained from the payee on the back of the pay order (refund) in the space provided for the purpose. The payment should be witnessed by a known person, whose signature

should also be obtained on the receipt. Station Masters are personally responsible for payment to the correct person.

9.3 Learned counsel for the applicant explained in detail that Para 2168 is only the first step of the procedure. Para 2169 sets out the responsibility of the station master to ensure that the payment is made to the correct person.

Following are the concluding lines of the said para:

“(b) Station Masters are personally responsible for payment to the correct person.”

9.4 He further took us to the definition which reads as under:-

“(50).“Station master” includes station Superintendent, Goods Superintendent, Inspector/Supervisor, Chief Goods Clerk or any other person incharge of a booking parcels, goods or other officers.”

9.5 Learned counsel for the applicant empathetically stated that the applicant does not come under the definition of station master as per the definition given above.

9.6 Learned counsel for the applicant further brought our attention to the conclusion drawn by the enquiry officer, which is as under:-

“Conclusion:-

It is concluded from the evidence recorded so far during the course of enquiry and perusal of documents that:-

In view of following:-

1. The Para No. 2168 has no concern with the DE.
2. As regard para no 2169, as intimation (advice) in relation to Refund Pay (order) were directly received by Station master, who in turn send the same to Dy. SS for the

purpose of verification of the pay order. The role of DE was limited only to collect the voucher (duly verified) and make payment. The DE has relied on the signature of the Dy SS and seal of the station, and made payment to the party while working as Booking Clerk on the concerned counter. It was also in the notice of CBS, how the refund was being given and no irregularity has been pointed out by CBS and he has stated that refund was correctly given. I therefore, do not find the DE, Shri R.P. Mishra, Sr. DC/JBP, guilty of the charge in this regard. However, DE has not ensured before making payment that the requisite columns on the vouchers are fulfilled and signature of witness are obtained on the vouchers.”

10. It is very clear from the enquiry report that the enquiry report did not prove the charges which were indicated in the article of charges.

The enquiry officer has only added one sentence namely:-

“However, DE has not ensured before making payment that the requisite columns on the vouchers are fulfilled and signature of witness are obtained on the vouchers.”

10.1 From the foregoing Para we are of the considered view that the article of charge stated in the charge sheet are not applicable to the applicant. The conclusion of the enquiry report is also on the same lines. The applicant can not be punished for the extra line in the enquiry report which finds some fault of the applicant which were not the part of the original article of charges.

11. In this view of the matter, the impugned orders passed by the disciplinary, appellate as well as revisionary authorities are quashed and set aside. The respondents are directed to grant all

consequential benefits to the applicant within a period of 90(ninety) days from the date of communication of this order.

12. As regards the impugned order of recovery is concerned, we find that the said order (Annexure A-4) has been passed after observing in Para 2 of the said order that “in the major penalty charge sheet the enquiry officer had found you guilty in the charges leveled against you”. Now, since the impugned order of penalty has been quashed, the respondents are directed to re-examine the matter of recovery and pass the order only after giving an effective opportunity of hearing to the applicant.

13. In the result, the Original Application is partly allowed with the directions as contained above. No costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member