



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

Original Application No. 350/00687/2014

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE DR (SMT) NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER

Gautam Sen
Son of Late D.K.Sen
Aged about 44 years
Ex-Senior GC/SHLM under over all control of
Divisional Railway Manager, Eastern Railway
Howrah, at present working as Bench Clerk
Under Railway Maistrate, Katwa, at present
Residing at Vill: Ramchandrapur
P.O: + P.S: Sankrail District: Howrah
PIN: 711 313;

... Applicant

- Versus -

1. Union of India
Through General Manager
Eastern Railway, Fairlie Place
Kolkata-700 001.
2. Divisional Railway Manager
Eastern Railway, Howrah.
3. Sr. Divisional Personnel Officer
Eastern Railway, Howrah.
4. Sr. Divisional Commercial Manager
Eastern Railway, Howrah.
5. Divisional Commercial Manager
Eastern Railway, Howrah.

.. Respondents

For applicant (Adv): Mr.C.Sinha

For respondents (Adv): Mr.A.K.Guha

Heard on: 05.06.2018

Date of order: 20 .09.2018

ORDER

MANJULA DAS, MEMBER (J):

Being aggrieved by the penalty order dated 09.02.2011, the applicant has approached this Tribunal vide this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief(s):

"a) To set aside and quash the Impugned Charge Memorandum No.GOM/CC/50/SHLM/09/VO dated 7.12.2009 issued by Divisional Commercial Manager, Eastern Railway, Howrah, Impugned Inquiry Report dated 16.7.2010, Impugned Punishment Notice No.COM/CC/50/SHLM/09/VO dated 9.2.2011 and Impugned Speaking Order dated 20.12.2010.

b) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. The facts, in brief, are that the applicant, while working as Sr. Goods Clerk, was charge sheeted vide memorandum dated 07.12.2009 on alleged ground of charges as specified therein. Thereafter, enquiry was conducted and the enquiry



officer submitted its report to the disciplinary authority on 16.07.2010 holding the charges as proved. Applicant submitted his reply to the enquiry report on 23.08.2010, however, he was inflicted a punishment of reduction by three stages in the same GP for a period of 3 years with cumulative effect vide punishment order dated 09.02.2011. Besides, a pecuniary loss amounting to Rs.1,50,053/- was also ordered to be recovered from the salary of the applicant based on the speaking order dated 20.12.2010. The recovery was started from February, 2011. Applicant preferred appeal on 18.03.2011 but the same has not been considered and disposed of in terms of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968.

3. Mr.C.Sinha, learned counsel for the applicant strongly objected to the charge no.1 by submitting that at that time applicant was a book delivery clerk and as per duty assigned he checked the OPR properly and found that all wagons were booked on the basis of original Tare weight and the weighment which was done at the originating station (Barbil) had been witnessed by Railway Staff in Railway weigh bridge. At the time of delivery the applicant had not received any reweighment sheet of the subjected rake and no intimation was also received by him



regarding re-weighment from GSS/SHLM Sri Ajit Kumar Bhattacharjee who was actually aware and received the rejected weighment sheet. According to the learned counsel, therefore, there is no question for the applicant to ensure the weighment at the time of delivery as per extent rule and the applicant allowed to delivery after collecting only the siding charges.

4. Learned counsel further submitted that after three years of the incident Sr.DCM/ER/HWH detected the weighment sheet and directed the GSS/SHLM to collect the non-realised punitive charge vide his letter dated 04.09.2009. It was further submitted that on September, 2009 both the station and the party (consignee) was alive and punitive charge if any could have easily been realised from the party concerned rather than vexing the applicant of the charge which is actually non-existing in nature.

5. According to the learned counsel, the applicant did not accept the charge no.2 as no PDC system was running at SHLM Station. Charge no.3 is also unacceptable as the duty of posting and entry of RRs particular was not within the purview of the applicant's duty, claimed the learned counsel.



6. Learned counsel also submitted that the appellate authority is duty bound to have considered and disposed of the appeal dated 18.03.2011 under Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 but without considering the same the penalty order dated 09.02.2011 was operated from February 2011. According to the learned counsel, applicant has been inflicted two penalties for the same offence which amounts to double jeopardy.

7. Learned counsel further submitted that the disciplinary authority has brought into picture extraneous consideration beyond the charges. According to the learned counsel, principles of natural justice and procedural justice have been flagrantly violated by the respondent authorities under the facts and circumstances of the case.

8. On the other hand, Mr.A.K.Guha, learned counsel for the respondents submitted that during the preventive check conducted by the Vigilance Team/Eastern Railway at Shibpurchar Goods Office/E Railway on 06.09.2008 at 16-20 hrs the following irregularities were detected on the part of applicant, Sr.GC/Shalimer who was in charge of delivery entrusted vide office order dated 24.05.2004 and 06.05.2005.

- (i) A rake of 40 BCN booked from Barbil to Shibpurchar containing Pig-iron was detected having overloaded of 243.03 Tonnes and the weighment sheet no.40 was clearly found get entered into the Dak Book of Shalimar Goods on 09.08.2006 for onward transmission to Shibpurchar Goods. All the Railway Receipts indicate the booked weight of the consignment and the concerned weighment sheet indicates overweight of the rake beyond permissible capacity so clearly punitive charge is admissible in this instant case. The applicant delivered the consignment without accounting for the excess load of 243.03 tones and also without realization of punitive charge resulting to huge loss of Railway revenue to the amount of Rs.1,50,053.
- (ii) The applicant did not declare his personal cash on the material date while performing his duty but he produced Rs.940/- before the Vigilance checking team which was also beyond the permissible limit of Rs.750/- which is a clear violation of provisions of Para 2429 of Indian Railway Commercial Manual, Vol-I.

(iii) The Delivery Book at Shalimar was found by the checking team not being maintained after 25.08.2008 upto the date of Vigilance check i.e., 06.09.2008. The applicant was entrusted with the job of delivery of inward rakes and maintenance and regularization of Delivery Register but he failed to do the same.

9. In reply to the submission of the learned counsel for the applicant apropos double jeopardy, learned counsel for the respondents submitted that as per Railway Board circular dated 17.05.1962, the railway authority is competent to inflict some other penalty when an employee is held responsible for causing loss to Govt. exchequer either for negligence or breach of orders. The applicant although submitted that he filed appeal on 18.03.2011 but no such appeal was available with the department. According to the learned counsel, the appeal may be misplaced, and therefore, prayed before the court that applicant may be directed to submit the appeal afresh before the authority so that same may be considered and disposed of by them to exhaust the departmental remedy.

10. We have heard learned counsel for both the sides, perused the pleadings and the documents relied upon.



11. The memorandum dated 07.12.2009 was issued with the following article of charges:-

"(i) As per office order book commencing w.e.f. 01/09/1998 Sri Sen was entrusted with granting of delivery of all inward Traffic vide office order dtd. 24/05/2004. It was also reiterated vide office order dtd. 06/05/2005 that Sri Sen had to discharge the duty of delivery of goods. A rake of 40 BCN booked from Barbil to Shibpurchar containing pig-iron booked through invoice no.36 to 42. Railway receipts no.E465284 to 2465290 dtd. 06/08/2006 was weighed at Padmapukur electronic weigh bridge of South Eastern Railway on 9/8/06, having weighment sheet no.40.

The rake was detected having overload of 243.3 tones. The weighment sheet no.40 was found entered in the dakbook of Shalimar goods on 09/08/06 for onward transmission of Shibpurchar goods.

CS/Shalimar has confirmed that the weighment sheet no.40 was duly forwarded on 09/08/2006 and acknowledged by the staff at Shibpurchar. However, the acknowledgement was surreptitiously crossed out at a later stage without any one's knowledge.

In the acknowledgement column impression of signature in lieu of acknowledgement was visible/available but it has been crossed out it was done with an ulterior motive to suppress the weighment and to defraud ailway.

The consignment was delivered on 26/8/06 by Sri Gautam Sen without accounting for the ecess load of 243.3 tones.

It was the prevalent system that rakes were being weighed at Padampukur Weighbridge and delivery granted on the basis of weighment recorded but in this case no effort was deliberately taken to account for the weighment sheet prior to effecting delivery Provisions of Para 1819 of Indian Railway Commercial

Manual Vol.2 stipulating realization of all charges prior to delivery was violated.

By the aforesaid fraudulent act, Railways lost an amount of Rs.1,50,053 towards the non-realization the Punitive charges.

(ii) It was found that no personal cash was declared by Sri Gautam Sen, Sr.GC. As per provisions of Para 2429 of Indian Railway Commercial Manual Vol.1. Staff working at Goods Office and dealing with Public have to disclose their personal gain. On being asked he had produced Rs.940-00 as his personal cash which was beyond the permissible limit in Rs.750-00 for stationary staff.

(iii) The delivery book was also found not maintained after 25/08/08 upto date of check in 06/09/08 although delivery has been granted for Six rakes by Sri Gautam Sen during the period."

Applicant filed statement of defence against the said memorandum dated 07.12.2009. The enquiry officer submitted the enquiry report before the disciplinary authority on 16.07.2010 holding as under:-

"The C.O is found guilty of all the three charges as indicated"

Against the said enquiry report, applicant filed reply on 23.08.2010, and thereafter the disciplinary authority, vide speaking order dated 20.12.2010, directed the following:-

a) The pecuniary loss (Rs.1,50,053.00) only) caused to railway, to be realized from the salary of the C.O. is guilty (Sr.Goutam Sen, Sr.CC/SHLM)

The punishment is as under:

b) "Reduction of pay in three stage lower in CE in same grade, pay for three years. This is strictly with prejudice."

The disciplinary authority vide order dated 09.02.2011 imposed the punishment of reduction of pay in three states lower in same GP for a period of three years with cumulative effect upon the applicant and liberty was given to him to file appeal within 45 days. According to the applicant, the applicant filed the appeal on 18.03.2011.

12. In the present case, the applicant set forth two legal grounds, namely:-

(i) Without disposal of the appeal the respondents have started the recovery of Rs.1,50,053/- from the salary of the applicant from February, 2011 and the punishment was effected, thus, violated Rule 20 of the Railway Servants (Disciplinary & Appeal) Rules, 1968.

(ii) The disciplinary authority imposed the double punishments upon the applicant by way of recovering



Rs.1,50,053/- from the salary of the applicant and by reduction of pay by three stages in the same GP with cumulative effect. According to the learned counsel, imposing two punishments for the same offence is not permissible in law.

13. Per contra, learned counsel for the respondents drew our attention to Annexure R-2 filed with the written statement which is the Railway Board Circular No.E(D&A)/62-RG-6-26 of 17.05.1962. The said circular prescribes as under:-

" When an employee is held responsible for loss of money, etc., the competent authority may inflict some other "penalty" also in addition to the penalty of recovery from pay of the loss caused to Government by negligence or breach of orders. Both of the penalties may be imposed, by one and the same order."

(emphasis supplied)

14. When this matter came up before this Tribunal on 21.05.2014, following interim order was passed:-

"Since a prima facie case has been made out for grant of stay the recovery against pecuniary loss of Rs.1,50,053/- is stayed."

The said interim order was extended from time to time and the matter was finally heard on 05.06.2018 and it was reserved for orders.

15. Though the learned counsel for the respondents prayed that applicant may be directed to submit the copy of the appeal afresh enabling the respondents to consider and dispose of the appeal so that the departmental remedy is exhausted. As the penalty order was issued on 09.02.2011, we are not inclined to issue any direction for disposal of the appeal at this stage, as suggested by the counsel for the respondents. Since the matter is heard thoroughly, we deem it fit and proper to take a decision on merits.

16. Now the question comes whether there is double jeopardy while imposing punishment by the disciplinary authority. The enquiry officer in his findings regarding charge no.i recorded as under:-

"The C.O. in his defence brief has indicated that he did not receive the weighment sheet. He did not give physical delivery of the said rake. So, liability of collecting punitive charges does not arise against him. It was not a railway siding. The siding clerk used to give physical delivery and it was the duty of the supervisor to ensure collection of any dues including punitive charges, if any, prior to delivery."

The enquiry officer further recorded as under:-

" In the RRs vide P/Ext.5, it reveals that loading was not supervised by Rly. staff. Weight was charged on actual tare weight. Weight was witnessed by Rly. staff. From the RRs, it is not clear whether the weight indicated in the RRs was the out come from weight of the entire inward rake done at a weighbridge at the originating station first available weighbridge station. If not the total rake is weighted in a weighbridge at Barbit of first available weighbridge, weighment done at PDPK cannot be ruled out, based on the Rly's circular submitted by PW3. Further, PW3 confirmed in reply to question No.1 that all inward rakes for SHLM were being re-weighed at destination since 2006.

It is clear vide para 1976 of IRCM Vol.II that a railway administration may, in addition to the freight and other charges recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty as may be prescribed, before the delivery of the goods, when a person loads goods in a wagon beyond its permissible carrying capacity.

Here the RRs indicate the booked weight of the consignments and the weighment sheet indicates the wagon wise overweight of the rake beyond permissible carrying capacity. As such, punitive charge is admissible in this case.

Taking all the aspects in view, the C.O. failed to realised the due punitive charges in the said case."

17. With reference to charge no.ii, the enquiry officer considered the defence of the CO (applicant) wherein applicant mentioned that no PCD register was maintained at goods office



and the duty for maintaining the PCD register rested with the supervisor and not on the CO. The CO could not record his personal cash in PCD register in the office. The CO recorded the same in a loose copy, duly certified by supervisor, as it was crossing the ceiling limit. The CO can produce the same if called for. As the PWs were to prove the charges, so the same was not being submitted by the CO.

The enquiry officer recorded his findings regarding charge no. ii as under:-

"From the above, it is clear that the C.O. produced Rs.940/- as his personal cash, but the investigating official had no knowledge whether the C.O. endorsed his declaration to that effect, duly certified by his supervisor. The PW3 i.e., the HGC (Presently incharge of the SHLM Goods) had no knowledge of the issue, since he was in sick list during the relevant period. The C.O. has not submitted the said declaration along with his defence brief, of the C.O.'s claim to that effect appeared to be not factual. The C.O. accepted that his personal case for Rs.940/- exceeded the ceiling limit. As such, the charge (ii) also goes against the C.O."

18. Regarding charge no.iii, the enquiry officer recorded his findings as under:-

"As per job distribution vide P/Ext.7 delivery of inward rakes was entrusted upon the C.O. and so he had the duty to maintain the delivery register. It is evident vide



P/Ext.2 that the delivery of 6 rakes arrived SHLN between 26-08-08 and 06-09-08 were not recorded by the C.O. in the delivery register. The pleas now taken by the C.O. in his defence brief that other members of SHLM were also maintain the delivery register appeared to be not accepted. So, the charge (iii) also goes against the C.O."

19. Thus, as per the above we are also convinced that there is pecuniary loss caused to the Govt. for the negligence of the CO (applicant). As per the Railway Board Circular dated 17.05.1962, the authority may inflict some other penalty in addition to the penalty of recovery from the pay of the loss incurred to the Government by negligence or breach of orders. In the instant case, we do not find any infirmity or irregularity in the conduct of the disciplinary proceeding leading to imposition of penalty.

20. The only issue to be decided as to whether applicant has been subjected to double jeopardy, as alleged by the applicant or not. In the instant case, whether recovery of Rs.1,50,053/- can be termed as punishment or realisation of loss caused to the Govt. for not realising the punitive charges. On examination of the matter, we found that for the loss caused to the Govt. due to negligence the applicant had already been



punished with the major penalty of reduction of pay by three stages in the same GP with cumulative effect. It is not the case that the applicant misappropriated the amount nor this is a case of proven corruption. Hence, we are of the considered view that since the applicant has already been punished by reduction of pay by three stages in the same GP with cumulative effect vide major penalty order dated 09.02.2011 for his proven negligence of not levying punitive charges, further subjecting him to recovery of Rs.1,50,053/- (assessed to be the loss of non realisation of punitive charges) amounts to double jeopardy and hence is not justified. In this context, the famous principle canonized in the dictum, "NEMO DEBET BIS VEXARI PRO EADEM CAUSA" meaning thereby no one should be vexed twice for one and the same offence, is attracted in this case. In this connection, we may observe that this Tribunal finding a *prima facie* case stayed the recovery against pecuniary loss of Rs.1,50,053/- and the same has been continuing as such.

21. In view of the above, without interfering with the punishment of reduction of pay by three stages for a period of three years (CE), we hereby set aside the punishment of recovery



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of Rs.1,50,053/-. Resultantly, the respondents are directed to refund the amount already recovered from the applicant.

22. OA is partly allowed as above.

(DR.NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICAIL MEMBER

/BB/

