



CENTRAL ADMINISTRATIVE TRIBUNAL
KOKATA BENCH, KOLKATA

O.A./350/01798/2015

Orders Reserved on : 22nd Nov., 2017

Date of orders : 22nd Nov., 2017

CORAM

HON'BLE MRs. BIDISHA BANERJEE, MEMBER (J)
HON'BLE JAYA DAS GUPTA, MEMBER (A)

Bhaskar Bhardwaj, son of Lt. Phanindra Lal Bhardwaj, aged about 51 years, working as Sr. Console Operator under the C.C.M./PM/Eastern Railway, New Koiaghat, Kolkata, residing at Dakshinayan Apartment, 337, NSC Bose Road, Flat No. 4C, [Rear Block] Tentultala, Garia, Kolkata - 700084.

.....applicant

By Advocate : Mr. K.Sarkar.

Versus

1. Union of India, through the General Manager, Eastern Railway, 17, N.S. Road, Kolkata - 700001.
2. The Chief Commercial Manager, Eastern Railway, Kolkata.
3. The Sr. Divisional Personnel Officer, Seakdah Division, Eastern Railway, Kolkata - 700014.
4. The Addl. Divl. Rly. Manager [O] Sealdah Divn., Eastern Rly. Kol-14.
5. The Senior Divisional Commercial Manager, Sealdah Divn., Eastern Railway, Kolkata -14.
6. The Divisional Commercial Manager, Sealdah Divn, Eastern Railway, Kolkata -14.
7. Sri Subhasis Ghosh, CTI/PUB/SDAH, Eastern Railway & Enquiry Officer, Kolkata.

..... Respondents.

By Advocates: Mr. M.K.Bandyopadhyay.

ORDER

Per Bidisha Banerjee, Member (J):- This application has been filed seeking the following reliefs :

"8[i] to direct the respondents to cancel, withdraw and/ or rescind the purported charge-sheet dated 25.10.2010, enquiry proceedings held between 06.05.2013 and 29.05.2013, enquiry report dated 04.07.2013, order of punishment dated 28.02.2014, order of 1st appellate authority dated 08.12.2014 as contained in Annexure-"A-2", "A-6", "A-8", "A-10" and "A-13" herein respectively;

[ii] to direct the respondents to refund the sum deducted as Station debit from the salaries of the applicant during the period from Oct., 2010 to July, 2011@ Rs. 5178/- p.m. as contained in Annexure-"A-11" herein;

[iii] to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the issues involved herein;
 [iv] And to pass such further or other order or orders as to this Hon'ble Tribunal may seem fit and proper."

2. The indictments against the applicant were as under :

"A series of fraud came to light which was committed by Shri Bhaskar Bhardwaj, ECRC/BLN/SRO on 13.06.2009 in window no.3, shift no.1 and his ID is VASKAR.

The two missing ticket no.D-41150199 and D-41150200 were generated in the machine on plain paper by Shri Bhardwaj against cancellation of PNR No. 6328533456 and 6426219733 which does not cover under any Railway Rules.

Generation of any reservation ticket on plain paper is not permissible and it is highly irregular.

By the above, act, he has indulged in activities which shows lack of integrity, devotion to duty and also unbecoming of a Railway Servant. He has thus violated the Rule 3/1[i][ii]&[iii] of the service conduct rule, 1966 as amended from time to time."

3. The findings of the enquiry officer in the enquiry report, prepared on 04.07.2013, were as follows :

"FINDINGS :-

The undersigned is of the opinion that :-

[i] CO is responsible for generation of PRS tickets on plain white paper which is not permitted by Railway Rules.

[ii] The allegation of committing serious fraud against C.O. through misuse of these PRS tickets could not be established through enquiry proceedings, but fraudulent intention behind such activities of C.O. cannot be ruled out."

4. The D.A. issued a penalty order on 28.02.2014 imposing upon the applicant the following penalty, extracted verbatim hereinbelow :-

"To

Shri Bhaskar Bhardwaj

ECRC/BLN

Through : SM/BLN

Copy to the : Sr. DPO.SDAH[E-3], SM/CG for information and necessary action.

Sub. : Your SF-5 No.C/Confdl.19/2010 dated 20.10.2010.

I have gone through the whole DA case which reveals that C.O. is guilty in this regard.

Hence, the C.O. be punished by reduction of pay to a lower stage for 02 [Two] years [CE]. This issued without any prejudice.

[P.S.Mondal]

Designation : DCM/Sealdah"

5. The applicant preferred his statutory appeal to the ADRMO, Sealdah stating inter alia, as follows :-

"[d] That sir, as per rule, it is the duty and responsibility of the prosecution side to prove the charge they have framed against somebody. But in this case, prosecution side could neither prove any of the charges they framed nor they could irrigate any evidenced or document to prove the charges. So, the case became as a case of 'No evidence', at the end of the day and the allegation of violation of 3.1,[i][ii]&[iii] of RSC Rule cannot be established against me.

[e] That sir, it had become very unfortunate, that the DA failed to apply his mind, while imposing such a severe punishment. He did not consider to dig out the truth of the subject matter.

I had submitted an appeal against such unjustified punishment. The appeal was considered mechanically, without proper application of mind in the light of the Principle of Natural Justice. The imposed punishment was reduced a bit but the Appellate Authority, Sr. DCN/SDAH also failed to render justice for me.

[f] That sir, while considering my appeal, the Appellate Authority somehow failed to pay attention to one of the most vital aspect of this case, i.e. a lump sum amount worth Rs. 51,780/- has already been recovered from salary, without giving any prior notice which is normally needed as per 'Payments and Wages Act'.

[g] That sir, I am imposed with a punishment having a cumulative effect, which will not only tell upon my present financial stature but also to an extent of my Post-retirement benefit and of the family pension of my spouse, which would be a gross injustice to me and my family.

6. The appellate authority on 08.12.2014, passed the following orders :-

"I have gone through the details of the case and the appeal of the C.O. Sri Bhaskar Bhardwaj who was charged with misuse of PRS ticket stationary. He has admitted that he generated two cancellation tickets on blank paper. Two unused tickets of the previous day were missing according to the C.O., but no missing report was filed by him or the superior. Such irregularity provide enough circumstantial evidence that the "money value books" could have been misused. Procedure laid down to log in with supervisory id provides a layer of check to prevent such misuse which, however, was not followed in this case.

In such circumstances, I hold Sri Bhardwaj guilty of the charges which deserved more severe punishment than that has been given by the first appellate authority. However, considering the fact that an amount of debit raised on this account has been realized from the CO, I uphold the

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punishment of reduction of pay to a lower stage for one year with cumulative effect.

Realization of the "debit" can not be construed as a punishment in this case since it is a well established practice in Railway commercial working to save guard the organization against any pecuniary loss caused by the commission of an act outside laid down procedures."

7. The grounds of challenge to the entire proceedings emanating from the charge memo till its culmination with the appellate authorities order, are as under

[i] The charge-sheet was issued with the biased mind which was manifest from the use of the word "a serious fraud came to light which was committed by Shri Bhaskar Bhardwaj";

[ii] No fact finding enquiry was held to establish the case or the prosecution;

[iii] Although the findings of the Enquiry Officer was unambiguous and clear that the CO was responsible for generating of PRS tickets, but the allegation of serious fraud through misuse could not be established through enquiry proceedings, yet Disciplinary Authority before imposing grave punishment did not issue his formal note of disagreement;

[iv] The Disciplinary Authority's remarks that the whole disciplinary appeal case revealed that the CO is guilty and punished the applicant with a severe punishment was bad in law;

[v] His appeal was not considered in proper perspective, and therefore, the appellate order was issued vindictively, with total non application of mind and on the basis of surmises and conjecture, which was not in accordance with relevant rules, precedents and fair play.

8. Learned counsel for the applicant vociferously pointing out the defects in the enquiry and its culmination, would seek quashing of the entire proceedings, starting from the charge-memo till the appellate order.

9. Per contra, learned counsel for the respondents would submit that the charges were framed keeping in view the fact that serious fraud had come to light, and therefore, there was no infirmity with the language used while framing the charges and there was no intentional flouting of the rules and norms. The ld. Counsel would further argue that since there was a serious charge and the same could have resulted to loss of revenue, the applicant was appropriately punished.

10. We heard the learned counsels for the parties and perused the materials on record.

11. We Noticed that although the charges were framed using the word "fraud committed by the applicant" he was given adequate opportunities to defend himself and could not be said to be prejudiced in any manner whatsoever and he had not objected to use of such words when the time was ripe. However, since the findings given by the Enquiry Officer that 'the allegation of committing serious fraud brought against CO through misuse of TRS tickets could not be established through enquiry proceedings, were partially in his favour the Disciplinary Authority ought to have issued a formal note of disagreement instead he ignored the findings of the Enquiry Officer and imposed a grave penalty. Further we noted that the penalty order was unreasoned and non speaking order. Both the Disciplinary and Appellate Authority were required to issue their orders in scrupulous observation of the procedures, extracted hereinbelow -

12. **Rule 10. Action on the Inquiry Report of the Railway Servants**

[Discipline & Appeal Rules] stipulates as follows :

"[1] If the Disciplinary Authority -

[a] after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;

[b] is not itself the inquiring authority may for the reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall

thereupon proceed to hold further inquiry according to the provisions of Rule 9, as far as may be.

[2] The Disciplinary authority –

[a] shall forward or cause to be forwarded a copy of the report of inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any held under sub-rule [1][a] together with its own tentative reasons for disagreement, if any, with finding of the inquiring authority on any article of charge to the Railway servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within 15 days, irrespective of whether the report is favourable to the Railway servant;

[b] xxx xxx xxx

22. Consideration of appeal

[1] xxx xxx xxx

[2] In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider –

[a] whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

[b] whether the findings of the disciplinary authority warranted by the evidence on the record; and

[c] whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders –

[i] confirming, enhancing, reducing or setting aside the penalty,

Or

[ii] remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case ;

13. In view of foregoing observations, we quash the penalty order dated 22.08.2014 as well as the appellate order dated 08.12.2014 and remand the matter back to the Disciplinary Authority to issue a fresh order in scrupulous observation of RSD&A Rules as extracted [supra] and direct the Disciplinary Authority to pass appropriate orders within a period of three months from the date of communication of this OA. It goes without saying that in view of quashing of the penalty order, the applicant would be entitled to his full salary as he was enjoying

prior to such imposition of penalty. as per rule 5th.

14. The OA is, therefore, partly allowed. No costs.

[Jaya Das Gupta]
Member (Admn.)
mps/-

[Bidisha Banerjee]
Member (Judicial)