

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**  
OA/050/00467/2015

Reserved on :- 03.04.2019

Date of Order : 16<sup>th</sup> April, 2019

**C O R A M**

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**  
**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Chandra Kishore, son of Sri Devendra Prasad, Assistant Station Master, East Central Railway, Supaul (Bihar).

..... Applicant.

- By Advocate : Shri M.P.Dixit.

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
3. The Additional Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
4. The Senior Divisional Operating Manager, East Central Railway, Samastipur (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar).
6. The Senior Divisional Financial Manager, East Central Railway, Samastipur (Bihar).

..... Respondents.

By Advocate :- By Advocate :- Shri S.K. Griyaghey.

**O R D E R**

**Per Mr. J.V. Bhairavia, J.M.:-** In the instant OA, the applicant has prayed for quashing of the impugned orders dated 12.01.2015 [Annexure-A/1] and 22.04.2015 (Annexure A/2) respectively. The applicant has also prayed for a

direction to restore the pay of the applicant, which he was drawing before issuance of the impugned order dated 12.01.2015 with all consequential benefits including arrears and interest thereon.

2. The brief facts of this case is that the applicant while working as Assistant Station Master, East Central Railway, Raghpur, a Vigilance raid was conducted on 15.03.2012 in between 16 to 24 hours. On 20.03.2012, the applicant was put under suspension which was subsequently revoked w.e.f. 14.05.2012. Thereafter, the applicant was served with a charge sheet dated 31.05.2012 [Annexure-A/3] issued by respondent no. 4 alleging that the applicant demanded and accepted Rs. 1225/- against five tickets in place of Rs. 1205/- and, as such, he received Rs. 20/- excess than the actual fare from Sri Binod Prasad who acted as decoy. Another allegation has also been levelled against the applicant that he did not declare his personal cash in Personal Cash Register/Station Diary, rather he declared his personal cash in system.

3. Thereafter, the applicant has submitted his reply on 09.07.2012 denying the allegations. The respondent no. 4, thereafter appointed Inquiry Officer. In the meanwhile, the said Inquiry Officer was transferred, therefore, another Inquiry Officer was appointed, who enquired into the matter but none of the prosecution witnesses have supported the prosecution case. The applicant has also submitted his defence statement to the Inquiry Officer. On 04.06.2014 [Annexure-A/5], the Inquiry Officer has prepared his Inquiry report wherein he has given clear cut finding that the basic allegation no. 1, [Article-1] has not been

proved whereas allegation no. 2 [Article-2], has been said to be proved. The said Inquiry Report was communicated to the applicant vide letter dated 16.09.2014 with disagreement note stating therein that the charge no. 1 is also proved.

4. The applicant has submitted his reply to the Inquiry report as also disagreement note on 09.10.2014 [Annexure-A/7]. Thereafter, the applicant was served with impugned punishment order dated 12.01.2015 [Annexure-A/1], whereby his pay has been reduced to the lower stage at Rs. 10,400/- G.Pay Rs. 2800/- in the pay band of Rs. 5200-20200 from Rs. 11,2010/- for a period of two years with cumulative effect with the effect of postponing future increments from the date of issue of the order. The applicant has filed appeal before respondent no. 3 on 23.02.2015 [Annexure-A/8] but the same has also been rejected by the appellate authority, vide letter dated 22.04.2015. The applicant further stated that it is illegal on the part of the respondents that they did not follow the provisions of Rule 704 and 705 of Indian Railway Vigilance Manual. Hence, this OA.

5. The respondents have filed their written statement and contended that the applicant has not exhausted all the available remedy which is mandatory as per Section 20 of the Administrative Tribunal Act, 1985 as he has not preferred revision before Revisional Authority under Rule 25 of the Railway Servant (Discipline & Appeal) Rules, 1968.

6. Further case of the respondents is that the applicant while working as Booking clerk on the counter no. 1 at Raghpur Booking Office, was

subjected to a departmental decoy check conducted by deputing Sri Krishna Paswan, Track Man under SSE (P-Way)/Patna as a decoy passenger and Sri Binod Prasad, Trolley Man under SSE (P-way)/Patna as independent witnesses. Shri Paswan was given 12 GC (Government cash) notes of different denomination valuing Rs. 1360/- and instructed him to purchase five tickets ex Raghpur to Amritsar from the counter no. 1 where applicant was on duty. On demand by decoy passenger Sri Paswan, five superfast tickets were issued by the applicant and in lieu of that he demanded Rs. 1225/- and kept it with government cash. Since, each ticket costs rs. 221/- only, therefore, the applicant had to ask for Rs. 1205/- and excess amount of Rs. 20/- had to refund but he did not refund the excess amount with ulterior motive.

7. Respondents have further stated that as per Commercial Circular No. 81/2006 and letter dated 04.05.2006 and 03.10.2006, the applicant had to declare his personal cash in register/station diary and in excess of Rs. 500/- he had to obtain counter signature by the concerned supervisor in the register but he failed.

8. It is further submitted that though charge no. 1 was not proved but the disciplinary authority has proved the said charge also on the basis of material available on record. The respondents have stated that the applicant has placed reliance upon provision laid down under Rule 704 and 705 of Indian Railway vigilance Manual which has already been modified. The said conditions as stipulated in para 704 and 705 are not applicable in the instant case. However, para 307 of re-revised Indian Railway vigilance

Manual 2006 is fully applicable in the present case. The respondents are further stated that the order of appellate authority is well reasoned and speaking hence, the OA is fit to be dismissed.

9. Heard the learned counsel for the parties and gone through the records.

10. The applicant has relied upon the decision rendered by Hon'ble Supreme Court in the case of *Moni Shankar vs. Union of India & Another* reported in [2008] 3 Supreme Court Cases 484, wherein the Hon'ble Apex Court held that Manual, which is a set of executive instructions, though not binding, yet its violation could be taken into consideration along with other facts to determine objectively whether charges were proved. Further, the Hon'ble Apex Court in para 24 of the judgement held that –

*"24. The High Court unfortunately even without any material on record held that some excess amount was found from the appellant which itself was sufficient to raise a presumption that it had been recovered from the decoy passenger. No such presumption could be raised. In any event there was no material brought on record by the department for drawing the said inference. The High Court itself was exercising the power of judicial review. It could not have drawn any presumption without there being any factual foundation therefor. It could not have taken judicial notice of a fact which did not come within the purview of Section 57 of the Evidence Act.*

The Hon'ble Apex Court in para 26 held that –

*26. The High Court has only noticed Para 704 of the Manual and not Para 705 thereof. Para 705 was very relevant and in any event both the provisions were required to be read together. The High Court, thus, committed a serious error in not taking into consideration 705 of the Manual. The approach of the High Court, in our opinion, was not entirely correct. If the safeguards are provided to avoid false implication of a railway employee, the procedures laid down therein could not have been given a complete go-by."*

The applicant has also relied upon a decision rendered by this Bench of the Tribunal in OA No.500/2012 decided on 18<sup>th</sup> July, 2013, wherein this Tribunal held that there was clear violation of the rules and procedures to be followed in trap case as per the rules laid down in the Manual as well as the decision of the Hon'ble Apex Court as stated above.

11. The Tribunal noticed that conditions as stipulated in para 704 and 705 are not applicable in the instant case, on the contrary para 307 of revised Indian Railway vigilance Manual 2006 is fully applicable in the present case, which pertains to trap cases of Railway employees, therefore, the contentions of the applicant that respondents have not followed the conditions stipulated in para 704 and 705 during the trap case is not tenable. On the contrary it is noticed that the conditions stipulated with regard to trap case in para 307 of I.R.V.M. has been followed by the respondents in the present case and the disciplinary authority based on the materials on record hold the C.O. [applicant] responsible for the misconduct. hence there is no procedural lapses found in the disciplinary proceeding initiated against the applicant. Therefore, the judgment relied upon by the applicant is not applicable in the facts and circumstances of the present case [supra].

12. The Tribunal further noticed that there is no violation of principles of natural justice since full opportunities were given to the applicant to defend his case. Even the Disciplinary Authority before issuance of impugned order [Annexure-A/1], has given opportunity to defend his case on dissenting note/opinion on the enquiry report with regard to Charge

[Article] No.-1 and in response to it, the applicant has further explanation/defence and after considering it, the disciplinary authority came to the conclusion that both the charges levelled against the applicant has been proved on the ground that –

- [i] Rs. 1225/- was asked by the C.O. as the cost of ticket and this fact is clear as he has signed the paper;
- [ii] The then D.A. has recorded this fact and communicated to C.O.;
- [iii] So far the persona cash is concerned, the mention therein system, but there was no mention in register. Also the amount was beyond the prescribed limit, though the Enquiry Officer has proved this charge but mention in one place is in favour of the C.O. But non declaration in register and failure to bring it to the notice of the Supervisor indicates the violation of set norms.

On the basis of aforesaid reasons, the disciplinary authority hold the C.O. [applicant], responsible and imposed penalty of reduction to the 02 [two] stages below for a period of two years with cumulative effect, vide order dated 12.01.2015 [Annexure-A/1]. Thereafter, the appeal of the applicant was considered by the Appellate Authority and vide order dated 22.04.2015, the appeal was rejected by assigning the reasons therein and confirmed the punishment order.

Under the circumstances, it cannot be said that the applicant was deprived of any opportunity to defend his case. As such, there is no material on record which can establish the allegation of the applicant with regard to violation of mandatory requirement stipulated in IRVM as well as principles of natural justice. The charges levelled against the applicant is proved. Accordingly, the disciplinary authority has imposed the penalty. Under the circumstances, there is no reason for this Tribunal to interfere with the findings of the Disciplinary Authority as well as Appellate Authority.

13. According, this OA stands dismissed. No costs.

Sd/-

**[ Dinesh Sharma ]**  
**Administrative Member**

Sd/-

**[ Jayesh V. Bhairavia ]**  
**Judicial Member**

Pkl/