

**Central Administrative Tribunal
Principal Bench**

OA No.1818/2013

New Delhi, this the 19th day of December, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Shri Ravinder Kumar Madan
S/o Shri Bhim Sain Madan
Head Enquiry & Reservation Clerk
Railway Station
Panipat. Applicant.

(By Advocate : Mrs. Meenu Mainee)

Vs.

Union of India through

1. General Manager
Northern Railway
Headquarters Office
Baroda House,
New Delhi.
2. Divisional Railway Manager
Northern Railway,
State Entry Road,
New Delhi.
3. Divisional Traffic Manager
Northern Railway
State Entry Road,
New Delhi. Respondents.

(By Advocate : Shri Sat Pal Singh)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant was working as Booking Clerk in the Northern Railway. A vigilance check was conducted by the Vigilance Department on 03.01.2005 on the counter being

operated by the applicant, and it was noticed that there was shortage of Rs. 5,369/- in the Cash balance. A charge memo was issued on 14.06.2005. On finding that the explanation offered by the applicant was not satisfactory, the Inquiry Officer was appointed, who, in turn, submitted the report holding that the charges against the applicant are proved. Taking into consideration, the report of the IO and the comments of the applicant on the same, the Disciplinary Authority passed an order dated 30.05.2006 imposing on applicant the penalty of reduction in pay by three steps, in same time scale for three years with cumulative effect.

2. The applicant availed the remedy of appeal. Even while the appeal was pending, the Reviewing Authority, i.e., the Additional Divisional Railway Manager issued a Show Cause notice dated 05.09.2006 requiring the applicant to explain as to why the punishment be not enhanced. On consideration of the explanation submitted by the applicant, the Reviewing Authority enhanced the punishment of reduction in pay to the lowest step in same time scale for a period of five years with cumulative effect, through order dated 29.09.2006. The further revision was rejected on 10.07.2007.

3. The applicant filed OA No.1926/2007, feeling aggrieved by the order of punishment, as enhanced by the Reviewing

Authority. The OA was partly allowed on 09.04.2008 setting aside the impugned order of punishment, and the matter was remanded back to the Disciplinary Authority for passing a speaking order. In compliance with the same, the Disciplinary Authority passed an order dated 10.10.2008 imposing the same punishment that was set aside in the OA. The appeal preferred by the Applicant was rejected on 27.10.2018. Hence, this OA.

4. The applicant contends that the very appointment of the Inquiry Officer was vitiated on account of the fact that an officer from the Vigilance Department was appointed. It is stated that the Vigilance Department did not ensure the presence of two independent witnesses at the time of inspection. It is also stated that the various orders passed by the authorities are not speaking in nature. Finally, it is urged that the IO failed to examine the applicant herein as required under Rule 9 (21) of the Railway Servants (Discipline & Appeal) Rules, which is similar to Rule 14 (18) of CCS (CCA) Rules, 1965.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the charges alleged against the applicant are very serious in nature and once they were held proved, the punishment commensurate with the gravity was imposed. It is also stated that the prescribed procedure was

followed through out and at no stage, the applicant raised objections, referable to any provisions of law.

6. We heard Mrs. Meenu Mainee, learned counsel for the applicant and Shri Sat Pal Singh, learned counsel for the respondents in detail.

7. The charges framed against the applicant read as under:-

“Annexure-I

Article of charges on the basis of which action under D&AR is to be taken against Sh. R. K. Madan/H.E.R.C./GGN, while working in PRS Office on 03.01.2005, he committed following serious lapses:-

1. That Rs.5,369/- found short in his Govt. Cash.

By the above acts of omission and commission, Sh. R. K. Madan/HERC/GGN failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby contravened the provisions of Rule 3.1 (i), (ii) & (iii) of Railway Service Conduct Rules, 1966.

Annexure-II

Statement of imputation of misconduct/misbehavior on the basis of which action under D&AR is to be taken against Shri R. K. Madan/HERC/GGN.

A preventive check was conducted on 03.01.2005 in PRS Office GGN. Sh. R. K. Madan/HERC/GGN, who was working on the Counter No.2011 in Evening Shift, was the subject of check. His Govt. and Private Cash was checked. He produced Rs.17,340/- as Govt. Cash on hand against the cash as per D.T.C. Rs.22,709/- and he produced Rs.65/- as Private Cash against the declared Private Cash Rs.65/-. Thus, Rs.5,369/- found short in his Govt. Cash.

By the above acts of omission and commission, Sh. R. K. Madan/HERC/GGN failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby contravened the provisions of Rule 3.1 (i), (ii) & (iii) of Railway Service Conduct Rules, 1966."

8. The applicant did not dispute that there was a shortage of cash to the extent of Rs. 5,369/-. His explanation was that he had to make an adjustment in favour of his family friend who suffered bereavement in the family, and shortly thereafter, the cash was refunded. Not satisfied with this explanation, the Disciplinary Authority appointed the Inquiry Officer. The IO held the charges as proved. A copy of the report was furnished to the applicant, and his explanation was taken into account. Consequently, the Order of punishment was passed imposing the punishment of reduction of the pay scale by three stages to be in force for three years. The remedy of appeal availed by the applicant was not fruitful. However, the Reviewing Authority exercised *suo motto* power and enhanced the punishment which is to the effect that the reduction of pay scale shall be in force for five years instead of three years.

9. In OA, this Tribunal found fault with all such orders and expressed its disagreement with the enhancement of punishment. The matter was ultimately remanded to the Disciplinary Authority. On such remand, the DA imposed

the punishment which was, in fact, the one ordered by the Reviewing Authority.

10. We are not at all in agreement with the contentions urged by the applicant based on the question of appointment of IO or absence of two witnesses. The reason is that these objections were not raised at the relevant point of time. Had they been raised, there would have been an opportunity to the respondents to take corrective steps, assuming that something went wrong. In case the applicant had any objection towards the officer who was appointed in that behalf, he was expected to raise the objection at that time itself. No such objection was raised and the applicant participated in the enquiry throughout, without any demur. At this stage, the applicant cannot be permitted to raise these objections.

11. Secondly, in the earlier round of litigation in OA No.1926/2007, none of these grounds were canvassed or, if canvassed, did not weigh with the Tribunal. Had the grounds been so strong and weighed with the Tribunal, there would not have been any necessity to remand the matter to the DA at all. The defects pointed out by the applicant are curable in nature, and they are not so serious so as to vitiate the entire proceedings.

12. One factor which is in favour of the applicant is that the power to enhance punishment was exercised/undertaken by the Reviewing Authority, contrary to law. Though it has been set aside by the Tribunal in the earlier round of litigation, it has its shadow in the subsequent order passed by the DA.

13. Once the DA weighed the *pros and cons* of the case and imposed the punishment of reduction of pay scale by three stages to be in force for three years, there was no basis for the Reviewing Authority to enhance it. In effect, the relief availed by the applicant successfully before this Tribunal, became an avenue to put a seal of approval for the DA to enhance the punishment at his level. We are of the view that the punishment as imposed at the initial stage can be maintained.

14. We, therefore, partly allow the OA and modify the order of punishment to the effect that the reduction of the pay scale by three stages shall be in force for a period of three years. If the applicant has been subjected to any detriment beyond that, the same shall be restored forthwith.

There shall be no order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/