

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 202/2015

Reserved on: 09.07.2019
Pronounced on: 23.07.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Prahlad Singh son of Late Shri Ram Singh, aged about 32 years, resident of T-46-B, Railway Colony, Ramganj Mandi, District Kota (Rajasthan). Presently working as ECRC, Railway, Ramganj Mandi, District Kota.

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. The General Manager, West Central Railway, Jabalpur (M.P.).
2. The Divisional Railway Manager, West Central Railway, Kota, Division Kota.
3. The Divisional Commercial Manager, West Central Railway, Kota Division, Kota.
4. The Senior Divisional Commercial Manager, West Central Railway, Kota, Division, Kota.

...Respondents.

(By Advocate: Shri Y.K.Sharma)

ORDER

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Per: A.Mukhopadhyaya, Member (A):

The relief sought in this Original Application, (OA), relates to the setting of the entire disciplinary proceedings, i.e. penalty order dated 11.04.2014, (Annexure A/1), order in appeal dated 27.10.2014, (Annexure A/2), and finally order in revision proceedings dated 06.01.2015, (Annexure A/3), on account of the entire proceedings being vitiated because of non-adherence to prescribed rules and procedures. The applicant contends that the charges in the disciplinary inquiry in question, (chargesheet and statement of charges dated 14.07.2011 are at Annexure A/4), were **"found not proved"** in the inquiry by Inquiry Officer, (IO); (report dated 31.01.2014 is at Annexure A/5-para 7 refers). However, the Disciplinary Authority, (DA), issued a disagreement note dated 21.02.2014, (Annexure A/6), in which 7 points of disagreement with the IO's report were mentioned and the applicant was asked to submit his explanation/clarification on the same within 15 days. The applicant however, could not reply to this note within the stipulated period and thereafter vide order dated 11.04.2014, (Annexure A/1), a penalty of

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reduction in pay by two stages in the pay scale for one year with cumulative effect was imposed upon him. In appeal, this penalty was reduced vide order dated 27.10.2014, (Annexure A/2 refers), to a reduction in his pay by one stage with cumulative effect. This penalty was confirmed in revision proceedings vide order dated 06.01.2015; (Annexure A/3 refers).

2. The applicant contends that the disagreement note issued in this case suffers from serious procedural irregularities in that the 7 points of disagreement as stated do not elaborate on the detailed reasons for differing from the findings in the IO's report which completely exonerated the applicant from the charges levelled against him. Thus, while the IO gave reasons while coming to his conclusions, the DA did not do so or make any specific reference to rules and procedures supposedly violated by the applicant. Instead he raised additional extraneous issues going beyond those mentioned in the chargesheet and statement of charges. The applicant states that the chargesheet itself was cryptic and vague and only accused the applicant of lack

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of integrity and dedication to duty, (Annexure A/4 refers), whereas the statement/description of charges did not make any specific reference to which rules and procedures the applicant had supposedly violated. The applicant alleges that there are factual discrepancies between the IO's report, (Annexure A/5), and the disagreement note, (Annexure A/6), in that while the disagreement note, (5th point) refers to a shortage of Rs.7874 in government cash at the applicant's ticket window, the IO's report specifically states, (Annexure A/4, item No.6.4 refers), that the Rs.7874/- allegedly found short in government cash resulted from the fact that the applicant was not allowed to complete the ticketing transactions in question, and further indicates that when these transactions were finalised at the end of his duty, (Annexure A/5 refers), the whole of the amount was fully accounted for; (item 4.13 of Annexure A/5 refers). Drawing attention to the 4th point in disagreement note, the applicant points out that there was never any charge either in the chargesheet or in the statement of charges that he issued tickets in favour of fellow employee Vivek Kashyap and deposited Rs.1342/-

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in the counter for the same. Thus, this additional charge which does not find any reference in the IO's report in any kind of specific terms was effectively added in the disagreement note. Thus, the applicant states since the entire disciplinary proceedings in this case are vitiated by the faulty and irregular chargesheet and disagreement note as detailed by him, therefore the impugned penalty, appeal and revision orders in the case, (Annexures A/1 to A/3), should be set aside and he should be exonerated from the charges in accordance with the findings of the IO.

3. *Per contra*, the respondents aver that the applicant was required to provide ticketing service on a 'first come first served' basis and that he did not do so in the present instance, issuing 19 tickets without receiving the cash payment for the same. They state that an amount of Rs.7874/- related to these 19 tickets was found short in the government cash at the time of inspection. The respondents thus contend that the DA acted within his competence in expressing his tentative disagreement with the findings recorded by the IO and that the

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applicant was given due opportunity to submit his defence against the same. The applicant, who could have sought additional time to submit such defence, in case he failed to do so within the time given, did not seek any extra or additional time and did not submit any defence either. Consequently, the DA passed the impugned order at Annexure A/1 only after detailed examination of the documents available on record and this examination confirmed that when a sudden inspection was made of the station cash on 28.05.2011, Rs.7874/- was found short in the government cash available at the applicant's ticket window. The respondents aver that this shortfall being made good subsequently cannot absolve the applicant from liability on this account. As regards the disagreement note, the respondents state that the applicant was free to raise any objection he had, either to the format or to the content of the same, but chose not to do so. Thus, there is no substantive flaw in the procedure followed by the respondents in the inquiry in question and therefore the impugned orders are correct both in fact and rules.

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4. Learned counsels for the parties were heard and the material available on record was perused.

5. Apart from the pleadings and arguments made in the OA, learned counsel for the applicant, while referring to Rule 10 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 (hereafter called "**Rules**"), argued that the disagreement note of the DA is necessarily required to be limited to a consideration of the inquiry report and by inference to the chargesheet and statement of charges but that the note in this case went beyond the same. Citing the judgment dated 13.12.2016 in the case of **Pramod Prabhakar Patil vs. Union of India Another** (Writ Petition No.1941 of 2016), he stated that in this order, (para 7), the Bombay High Court had noted that **"the disciplinary authority travelled beyond the said charge...."** and this is one of the prime reasons that the impugned order against the petitioner/applicant in that case was held to be unsustainable and was set aside. The applicant's counsel also argued that as settled in the Principal Bench's judgment dated 31.05.2011 in the case of **Yashveer Singh vs. Union of India and Others**, (para 8 of this judgment refers), it is required of

the DA, when giving a disagreement note, to **“examine the evidence, discuss it cogently before discarding the findings of the IO...”**. He argued that this was clearly not done as a plain reading of the disagreement note in this case shows. Citing the case of **Mohd. Salim Beg vs. Secretary, Ministry of Communication and Information and Another**, (CAT judgment in OA No.3454/2012 dated 03.01.2014), applicant’s counsel argued that as in the cited case, (para 22 of the judgment refers), here also, an article of charge **“which has been held not proved by the Enquiry Officer and the charge held to be proved by the Disciplinary Authority are totally different”**. The DA in the present case in his disagreement note has referred to the applicant issuing tickets unauthorisedly and in violation of rules and procedures to specific fellow colleagues whereas the chargesheet and statement of charges nowhere detailed any such infraction. For these reasons, learned counsel for the applicant argued that the entire proceedings in this case are vitiated and defective beyond cure and therefore the orders imposing and confirming a penalty, (Annexures A/1 to A/3),

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flowing out of the same are bad in law and should be quashed and set aside.

6. Learned counsel for the respondents, in his arguments, contended that in substance the points of disagreement in the DA's note do correspond to issues referred to in the IO's report and that this disagreement note, for which no format is prescribed, substantively addresses the findings in the IO's report. He reiterated that the applicant was given due opportunity to represent against any shortcomings, whether of fact or rules or format, in the disagreement note, but that he chose not to do so and since it is a well settled proposition of law that the scope of judicial review in this case should be limited to a consideration of whether the procedure prescribed under rules was substantively followed and the principles of natural justice were adhered to, there are no grounds for intervention by the court in this case. He further contended that since the applicant was given due opportunity at each stage to represent his case there is no flaw on account of violation of rules or the principles of natural justice in this case.

7. A perusal of Rule 10 of the **"Rules"** [Rule 10(2)(a)] details the circumstances in which a disagreement note is to be served on the charged employee (CE). This involves providing the CE with tentative reasons for disagreement with the findings of the IO but does not refer to a situation where further inquiry is required on some other point. In the present case, it is undisputed that the disagreement note, (Annexure A/6 dated 21.02.2014 Point No.4), specifically refers to this applicant, (CE), getting tickets issued wrongfully to his colleague Vivek Kashyap whereas such an allegation does not find any specific mention in the chargesheet and statement of charges. In our view, if this issue came to the notice of the DA later on, he could and should have taken recourse to the provisions of Rule 10(1)(b) read with the explanation (i) to Rule 9 (25) of the **"Rules"** and recording reasons in writing, have remitted the case to the IO for further inquiry and report. By not doing so, he has deprived the applicant, (CE), of the opportunity to represent his version in the matter before the IO and limited the same to an opportunity to represent against

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the disagreement note itself. Such a curtailment has no basis in the “**Rules**” and is therefore not sustainable. For this reason alone, if nothing else, the procedure followed in these disciplinary proceedings is found to be irregular and defective.

8. In the result, the instant OA is allowed and the impugned orders dated 11.04.2014, (Annexure A/1), order in appeal dated 27.10.2014, (Annexure A/2), and order in revision proceedings dated 06.01.2015, (Annexure A/3), are set aside.

9. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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