

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00238/2014

Dated this Monday the day 29th of July, 2019.

**CORAM : DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
RAVINDER KAUR, MEMBER (JUDICIAL)**

Shri L.T.Sayyad, son of Sayyad Taher, Age 52 years,
working as Deputy Chief Ticket Inspector, Bhusawal,
Residing at Maulana Azad Nagar, Opp. Bakri Kabrastan,
Khadka Road, Bhusawal, Dist. Jalgaon Pin 425 201. ... *Applicant*

(By Advocate Shri Vishal Shirke proxy counsel for Shri S.V.Marne)

VERSUS

1. Union of India, Through the General Manager,
Central Railway, Mumbai CST, Mumbai 400 001.
2. The Chief Commercial Manager, Central Railway,
Headquarters Office Mumbai CST, Mumbai 400 001.
3. The Divisional Railway Manager, Central Railway,
Bhusawal Division, Bhusawal, Dist. Jalgaon 425 201.
4. The Senior Divisional Commercial Manager,
Central Railway, Bhusawal Division, Bhusawal,
Dist. Jalgaon 425 201. ... *Respondents*

(By Advocate Shri R.R. Shetty)

Order reserved on : 24.04.2019

Order pronounced on : 29.07.2019

ORDER

Per : Dr. Bhagwan Sahai, Member (A)

Shri L.T.Sayyed, working as Deputy
Chief Ticket Inspector, Bhusawal, filed this OA
on 04.02.2014 seeking quashing and setting aside
(with consequential benefits) of the impugned
order dated 25.05.2012, passed by the Senior
Divisional Commercial Manager, Bhusawal
(Disciplinary Authority), 31.08.2012 passed by
DRM,—Commercial, Bhusawal on his appeal against

the order of the Disciplinary Authority and 10.09.2013 passed by Chief Commercial Manager (CCM) (PS), the Revisionary Authority. He has also sought cost of the present application.

2. Summarized facts :-

2(a). The applicant has stated that he was initially appointed as Ticket Collector on 08.12.1989 and then promoted to the post of Senior Ticket Examiner, and Deputy Chief Ticket Inspector. He has further stated that on 12.02.2011, he was deputed on 18030 UP Train (Shalimar Express) Ex-Bhusawal to Lokmanya Tilak Terminus, Mumbai. He reported on duty at 03:00 AM in the morning and after checking his cash in his wallet declared it in the Excess / Extra Fare Ticket (EFT) Book a total cash of Rs.305/-. He claims that as the train was running late, along with his other staff members he had tea, when he realized that there was additional cash of Rs.150/- in his shirt pocket which he had inadvertently not counted while entering in the EFT Book the amount of private cash in his possession. Therefore, he struck off the amount of Rs.305/- in the EFT Book and wrote in it afresh an amount of Rs.455/-.

2(b). The applicant has further stated that a Vigilance Team conducted preventive check, when his EFT Book and cash were checked. Till the time of Vigilance check, the applicant had not issued any EFT and therefore, he had no railway cash with him and the private cash of Rs.455/- in his possession also tallied with the entry in EFT Book. Since the Vigilance team noticed striking off of figure of Rs.305/- and mention of amount of Rs.455/- in the EFT Book, they got suspicious and asked from the applicant reasons for it. When he explained the reasons, he claims that the vigilance team was satisfied.

2(c). Subsequently he was issued by the respondent No.4 memorandum of charge-sheet on 29.06.2011, alleging possession of Rs.150/- in excess of his entry of private cash of Rs.305/- in the EFT Book. When the applicant denied the charge, the Disciplinary Authority decided to conduct departmental enquiry and appointed Inquiry Officer on 29.07.2011. During the inquiry, two prosecution witnesses viz. Shri S.R.Tripati, CVI and Shri G.T.Luke, Deputy CTI were examined. The applicant submitted his defence brief on 08.11.2011. The Inquiry

Officer submitted his report on 23.12.2011 holding that the article of charge levelled against the applicant was proved (Annex A-9).

2(d). The Disciplinary Authority issued the order of 25.05.2012 holding the applicant guilty of the charge and imposed the penalty of reduction to lower scale of pay by one stage for a period of one year with effect of postponement of future increments (Annex A-1). Against that, the applicant preferred an appeal to the respondent No.3 on 17.07.2012 (copy at Annex at A-11). However, the Appellate Authority rejected the appeal vide order dated 31.08.2012 (Annex A-2). Then the applicant filed OA No.152/2013 which he withdrew on 10.04.2013 (Annex A-12). Thereafter, he filed the Revision Petition to the respondent No.2 on 24.05.2013, which was also rejected by the order of 10.09.2013 (Annex A-3). Therefore, this OA has been filed.

3. *Contentions of the parties :*

The contention of the applicant and his counsel are that -

3(a). the impugned orders passed by the Disciplinary Authority, Appellate Authority and

Revisionary Authority are illegal, void and deserve to be set aside. There is no reason or evidence for punishing the applicant. During vigilance check the applicant was not found with short or excess railway cash or private cash but even then the applicant has been unnecessarily punished merely because of correction of amount of his private cash in the EFT Book;

3(b). there is no provision in rules or instructions which prohibits the Ticket Checking Staff for making any alteration in the figure of private cash and the correction made by him in the EFT Book was only about the wrongly declared private cash. Treating of this correction by the respondents as with *mala fide* intention has not been proved during the inquiry;

3(c). the applicant was not caught red handed while indulging in any malpractices and therefore, it is too dangerous to punish him on the basis of mere assumption that he had *mala fide* intention in altering in the EFT Book amount of the already declared private cash in his possession;

3(d). the Disciplinary Authority has held that the applicant did not get the alteration in the amount of declared private cash by some other railway staff before start of duty from Bhusawal. However, there is no provision for verifying the declared private cash by other employees. The Inquiry Officer did not believe the explanation submitted by the applicant for alteration in the private cash in the EFT Book;

3(e). during the inquiry, the Vigilance team member Shri S.R.Tripati, CVI had informed only about his opinion that the increase in the amount of private cash was in the multiple of Rs.50/-, which showed that it had been gained by the applicant illegally during his duty hours. There is no evidence to prove that the applicant has earned Rs.150/- from any passenger. Therefore, acceptance of the opinion of Shri Tripathi by the Inquiry Officer is totally preposterous. The Vigilance team did not find any passenger without proper ticket;

3(f). the orders of the Disciplinary Authority and the Appellate Authority are cryptic and non-speaking and therefore, they deserve to be quashed and set aside;

3(g). the Revisionary Authority has reported imaginary finding holding that it is not possible to believe that the applicant had not spent any amount during the course of his duty although no such finding was recorded in the orders of the Disciplinary Authority or Appellate Authority. This shows that the Revisionary Authority has not applied his mind to the points raised by the applicant;

3(h). the penalty of reduction to lower stage of pay by one stage for one year with cumulative effect will have severe effect on the service career of the applicant and he would lose three increments. When the applicant did not indulge in any malpractice, such severe penalty cannot be imposed on him on the basis of mere surmise;

3(i). the respondents have admitted in the reply to the OA that the applicant had cancelled the figure of Rs.305/- and changed it to Rs.455/- in the EFT Book after noticing / realizing that he had forgotten to declare full amount of the cash when he resumed duty from Bhusawal Station;

3(j). in view of this admission, the respondents cannot take the plea that the

applicant has no justification to prove his innocence. The presumption of the respondents about corruption on the part of the applicant does not have any value because the vigilance team did not find any passenger with irregular ticket in the coach manned by the applicant;

3(k). since the checking by the vigilance team is by surprise, the applicant could not have altered the amount of private cash in the EFT Book before the vigilance check. The upper ceiling limit for carrying private cash for Ticket Checking Staff is Rs.1,500/- (now increased to Rs.2,500/-) but the applicant was found in possession of Rs.455/- and therefore, he had not violated the upper limit of private cash. There is no reason or evidence for punishing the applicant as the applicant was not detected with short or excess amount of railway or private cash. There is no overwriting of entry in the EFT Book mentioned by the applicant which shows his *bona fides*. The charge levelled against the applicant is imaginary; and

3(1). in the punishment order, the Disciplinary Authority has merely reproduced the charge and the imputation holding that the

applicant did not get verified the alteration by some other staff. This finding of the Disciplinary Authority is not supported by any rules or instructions, there is no provision for verifying the declared private cash for the employees. The Vigilance team did not conclude that Rs.150/- were found in excess of his earlier declared private cash or that he had earned it illegally from irregular passengers without issuing receipts to them. Hence the O.A. be allowed.

The respondents and their counsel in the reply and during the hearing have contended that-

3(m). when the applicant was on duty between Kalyan to Lokmanya Tilak Terminus on 12.02.2011 for coaches A1 and B1 in Train No.18030 UP, a Vigilance check was conducted and it found that no extra fare receipt had been issued by the applicant till then and there was no variation in the amount of Railway cash. He produced private cash of Rs.455/- but scrutiny of the EFT Book revealed that he had declared private cash of Rs.305/- when he resumed duty at Bhusawal station but subsequently he entered a different

amount in EFT Book for which he had no justification to prove his innocence and therefore, the applicant had illegally collected Rs.150/- from irregular passengers and might have not issued any receipt to them for that additional amount of Rs.150/-;

3(n). the applicant was provided reasonable opportunity to defend his case during the inquiry proceedings and the charge levelled against him has been established beyond any reasonable doubt. Therefore, the disciplinary authority imposed the penalty on him vide a speaking order dated 25.05.2012. This punishment was also upheld by the Appellate Authority in its order dated 31.08.2012;

3(o). since the applicant had not availed of the statutory remedy of filing of Revision Petition before the Revisionary Authority, his earlier OA No.152/2013 was withdrawn by him and therefore, it was closed directing the applicant to submit a Revision Petition. Thereafter, the applicant filed Revision Petition before the Revisionary Authority i.e. the Chief Commercial Manager, Central Railway, CSMT, Mumbai who confirmed on 10.09.2013 the penalty imposed by

the disciplinary authority and upheld by the appellate authority;

3(p). the reasons given by the applicant for alteration in the amount of private cash in EFT Book are not genuine and he failed to submit any valid defence. Every railway employee is expected to report on duty well in advance to avoid last minute hurry or haste. Therefore, the reasons given by the applicant that in hurry-burry he did not enter in the EFT Book the correct amount of cash in his possession cannot be accepted;

3(q). non-availability of any explicit provision in rules or instructions prohibiting a Ticket Checking Staff from making any alteration in the amount of private cash once declared by him does not mean that the Railway Administration allows or permits the alterations in earlier declared private cash. If this is allowed, then such staff members may easily take the advantage of such provision and as a matter of practice may adjust their unaccounted money collected illegally merely by altering the amount of cash declared in the EFT Book; and

3(r). in the present case, the train had arrived more than six hours late, which allowed sufficient time to the applicant to get the alteration in the amount of private cash declared by him certified by the Competent Officer or Supervisor but he did not do so. Therefore, the possession of private cash more than the earlier declared amount in the EFT Book by the applicant is sufficient to establish his *mala fide* intention. During the available time with the vigilance team it is not feasible to check all the passengers in all coaches to verify illegal transactions of money. Since the applicant had himself declared private cash of Rs.305/- at Bhusawal Station, subsequently he made another entry of Rs.455/-. Thus for the excess amount of Rs.150/- found in his possession, he could not prove his innocence and therefore, that excess amount had been collected by him as illegal gratification from passengers and therefore, the OA should be dismissed.

4. Discussion :-

We have perused the OA memo, its annexes, rejoinder and written notes of arguments filed on behalf of the applicant and

reply and sur-rejoinder filed by the respondents as well as the arguments advanced before us on 24.04.2019. Based on our careful consideration of these details of the case, and the contentions of the parties, our conclusions emerge as follows :-

4(a). The applicant had earlier filed OA No.152/2013 before this Tribunal without availing of the statutory remedy available to him for filing Revision Petition against the orders of the Disciplinary Authority and the Appellate Authority. However, it was withdrawn by him on 10.04.2013.

4(b). On 12.02.2011, the applicant had boarded the Train 18030 UP duty (Shalimar Express) at Bhusawal Station and declared his private cash of only Rs.305/- in the EFT Book. Later on he altered that amount of the private cash to Rs.455/- thereby attempted to declare this amount to be his private cash in his possession on that day at start of his duty. At what time and at which place he made the revised entry of his private cash in the EFT Book has not been brought on record. Hence these details are not clear, though the applicant claims to

have altered the amount at Bhusawal, that too on advice of other staff members.

4(c). However, this claim cannot be believed as it seems only an afterthought as the alteration in the amount of his declared private cash was not attested by any of those so-called other staff member advisors. In 2011, the applicant was 49 years old, thus he was not a fresh or new entrant in the service of the Railways, he was an experienced Railway ticket checking employee and had the revised entry of his private cash been genuine and truthful as claimed by him, he was well-versed with the practice followed in such cases and he was expected to make such altered entry in presence of some other staff members at Bhusawal only who would have attested that fact. But he did not do so. Except mentioning a plea of no such provision in the Rules or instructions, no reason has been given by the applicant for not doing it. It seems the altered amount of his private cash of Rs.455/- as noticed by the Vigilance Team at Kalyan had been entered by him not at Bhusawal but later on during journey of the train.

4(d). The applicant had also not issued any ticket to any passenger for excess fare and thus there was no additional amount of Railway cash mentioned by him in the EFT book. Thus the excess amount of Rs.150/- found by the vigilance team was of his private cash only.

4(e). The claim of the applicant that while recording the amount of his private cash in the EFT Book he had not counted the cash in his pocket and mentioned only the amount in his wallet is totally unbelievable. It seems to be a creatively weaved imaginary story as an afterthought. This version is not credible and cannot be believed because as an experienced ticket checking railway employee, he knew what was to be recorded as his private cash in his possession. Hence not accepting of this story by the inquiry officer was right.

4(f). While the applicant terms conclusion of the respondents (revisionary authority) as imaginary, we find that the respondents relied on the fact of unexplained change in the amount of private cash entered in the EFT Book by the applicant. The applicant has not brought on record in the O.A. or during the hearing any

instructions that private cash only in the wallet is to be recorded in the EFT Book. Hence there is no basis to believe in and accept this imaginary plea of the applicant.

4(g). As mentioned by the applicant, the train was running late at Bhusawal, so his contentions such as in hurry-burry he forgot to mention the amount of private cash in his pocket and he recorded only the amount of cash in his wallet, that the vigilance team was satisfied with his explanation in this regard and that it is dangerous not to believe his explanation are totally misleading and false. These have been mentioned by him just for the sake of mentioning something in the O.A. and arguments. We find force in the submission of the respondents that if such altered entries of private cash in the EFT Book are accepted, any staff member can easily indulge in uncontrolled corruption.

4(h). In carrying out the disciplinary proceedings, the respondents have followed the prescribed procedure under the rules. There is no contention of the applicant about any shortcoming in the procedure of the disciplinary proceeding against him. During the proceedings,

the applicant was accorded reasonable opportunity by the respondents to defend himself and therefore, we find that principles of natural justice have been complied with in this case.

4(i). The main contention of the applicant is that the revised entry made by him about his private cash in the EFT Book was genuine but the respondents did not believe his version. However, the inquiry officer in his report clearly concluded that the applicant had illegally collected Rs.150/- from irregular passengers and he might have not issued any ticket to them and therefore, his charge stood proved. This conclusion has been justifiably accepted by the respondent authorities.

4(j). The Disciplinary Authority, the Appellate Authority and the Revisionary Authority after considering the submission of the applicant have consistently held that the charge against him had been proved and his submissions were not acceptable because of which the appeal and revision petition filed by him were rejected by the Appellate Authority and the Revisionary Authority.

4(k). In view of the above facts of the case and our conclusions, we do not find any infirmity or illegality in the decisions and orders of the respondents. As a result, the OA does not have any merit and it deserves to be dismissed.

5. **Decision :-**

The OA stands dismissed. No costs.

(Ravinder Kaùr)
Member (Judicial)

(Dr. Bhagwan Sañai)
Member (Administrative)

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JD
30/7/19