

UTB

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

O.A.210/00071/2014

Dated this Tuesday the 06th day of August, 2019.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
Shri R.N. Singh, Member (Judicial).**

Manoj Gunderao Narwate,
Worked/Working as: Enquiry
Cum-Reservation Clerk, under
Reservation Office at Chinchwad,
Pune Division, Central Railway,
Pune, And Residing at:
E-8/16, Salunke Vihar,
P.O. S.R.P.F. Kondhwa,
Pune - 411 022,
Maharashtra State. Applicant.

(By Advocate Ms.Vaishali Agane).

Versus

1. Union of India, through
The General Manager,
Central Railway,
Headquarter's Office, CST,
Mumbai - 400 001.
2. Addl. Divisional Railway Manager,
Central Railway, Divisional Office,
Pune Division,
Pune - 411 001.
3. Sr.Divisional Commercial Manager,
(Sr.DCM) Divisional Office,
Commercial Branch,
Central Railway,
Pune - 411 001.
4. Divisional Commercial Manager,
(DCM) Divisional Office,
Commercial Branch,
Central Railway,
Pune - 411 001. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 03.06.2019

Order delivered on : 06.08.2019.

O R D E R
Per : Dr.Bhagwan Sahai, Member (A) .

Shri Manoj G. Narwate filed this O.A. on 30.01.2014 seeking quashing of orders dated 10.09.2013 (Annex-A-1) passed by Addl. Divisional Railway Manager and Revisionary Authority, office of Divisional Railway Manager, Pune, dated 02.04.2013 (Annex-A-2) passed by the Appellate Authority, Sr.Divisional Commercial Manager and dated 11.01.2013 (Annex-A-3) passed by the Disciplinary Authority i.e. Divisional Commercial Manager, Pune. He also seeks declaration that he deserves to be restored to his original status with effect from 09.10.2011 as if he had not been punished and wants refund of the penalty imposed on him with 10% interest.

2. Summarised facts:

2(a). The applicant has stated that after his selection in 2006, on promotion he was appointed as Enquiry-Cum-Reservation Clerk, Central Railway, Pune, he has not been issued any charge-sheet or memorandum or warning in the past and no adverse remarks have been communicated to him about his working. But he was issued a charge-sheet on 30.01.2012 alleging that Rs.397/- were found with him in excess in the Railway cash during a vigilance check conducted on 09.10.2011 and that

he failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Railway Servant in violation of Rule 3(1) of the Railway Services (Conduct) Rules, 1966.

2(b). By his representations dated 08.02.2012 and 09.02.2012, he had requested for supply of certain documents but they were not supplied to him and in the reply dated 17.04.2012 Respondent No.4 (i.e. Divisional Commercial Manager, Pune) informed him that the documents asked by him had no relevance with the inquiry. By his reply dated 20.04.2012, he denied the charges levelled against him.

2(c). The Inquiry Officer submitted his report on 28.06.2012 holding that the charges levelled against the applicant has been proved (Annex-A-9). Based that report, the applicant submitted his reply on 02.08.2012. Thereafter the Disciplinary Authority passed the order dated 11.01.2013 for reduction of his pay by two stages for a period of two years with adverse effect on future increments and promotions. His appeal against that order submitted on 08.03.2013 was rejected by the order of the Appellate Authority dated 02.04.2013. His revision petition dated 25.03.2013 was also rejected by the Revisionary Authority on 10.09.2013. Therefore, the present O.A. has been

filed.

3. Contentions of the parties:

The applicant and his counsel in the O.A. and rejoinder filed on 03.08.2017 as well as during hearing of arguments on 03.06.2019 have contended that -

3(a). the applicant is innocent but even then he has been punished. But as per the Supreme Court view in case of **J. Ahmad Vs. Union of India, AIR 1979 SC 1029**, innocent mistakes or incorrect judgments or mistakes or negligence or not working upto the mark of expectation of the superiors or mere opinions of working are not misconduct and, therefore, by his innocent negligence, the applicant has not committed any misconduct;

3(b). reply of respondent No.4 dated 17.04.2012 that the documents requested by the applicant had no relevance to the inquiry as the defence would be prepared at the end of the inquiry was wrong and negated Para 2 of the charge-sheet. Because of non-supply of the requested documents, the applicant has been prejudiced;

3(c). the charge of malafide and illegal collection of the excess cash of Rs.397/- was not proved against the applicant. The extra cash was deposited with the Railway authorities and there was no complaint from any passenger on 09.10.2011

about collection of excess amount. Even then the Disciplinary Authority has stated that the applicant has violated the Indian Railway Commercial Manual (IRCM) without pinpointing which provision or rule was violated. The Disciplinary Authority should have issued a show cause notice to the applicant under Railway Servants (Discipline & Appeal) Rules, 1968 on the question of difference of opinion about finding of malafide intention, but such show cause notice was not issued to him;

3(d). the excess cash found with him was a result of system failure which was not properly investigated. The Inquiry Officer also in his report agreed that the copy of duty list of Enquiry-Cum-Reservation Clerk had not been provided to the applicant. The opinion of the Disciplinary Authority that if no preventive check was done on 09.10.2011, the amount of excess cash of Rs.397/- would have been pocketed by the applicant on that date is not correct, as there is no proof of dishonesty on his part;

3(e). there was no decoy check which could have established the malafide intention. Therefore, the report of the Inquiry Officer and the orders passed by the Disciplinary Authority, Appellate Authority and Revisionary Authority are illegal

and they should be quashed. They are based on no legal evidence. These orders violated principles of natural justice and reasonable opportunity of defence. The inquiry proceedings suffer from the vice of no legal evidence and no illegality with regard to violation of any rule. The law of inquiry is that every conduct of the Government servant shall be deemed to be innocent unless proved to be malafide and not the other way round;

3(f). the law of equality has not been observed with respect to the applicant and, therefore, Articles 14, 16 and 311(2) of the Constitution have been breached by violation of the rules by not granting reasonable opportunity to the applicant to defend himself. Since unauthorized persons were allowed entry, safety of cash and functioning of the cash counter were at grave risk;

3(g). out of Rs.52,000/- collected by the applicant within 2 hours and 18 minutes of assuming duty, the excess amount of Rs.397/- was less than even 1% of the total amount and it was collected innocently. During the inquiry proceedings, neither prosecution witness no.1 nor prosecution witness no.2 could prove malafide intention on the part of the applicant and there is neither direct evidence nor circumstantial

evidence to prove the malafide intention of the applicant. The applicant had himself stated on the same day i.e. 09.10.2011 that the extra cash of Rs.397/- might have been collected by him mistakenly, inadvertently due to negligence of the applicant and the passenger. The vigilance has always targeted the applicant, therefore, the O.A. should be allowed.

In their reply and during their arguments, the respondents contend that -

3(h). the contention of the applicant that only decoy check could have established his guilt is not factually correct. The evidence on the record clearly established preponderance of probability of the applicant having collected the excess amount with malafide intention;

3(i). since the applicant had been working as Enquiry-Cum-Reservation Clerk for nearly seven years and was well aware of the duties of that post, his asking for supply of duty list of that post is not acceptable. The Enquiry-Cum-Reservation Clerk has to collect the exact amount of ticket fare from the passengers;

3(j). the applicant has even wrongly mentioned his basic pay in Para 4.1 of the O.A. While his basic pay was Rs.9,790/-, he has mentioned it as Rs.10,170/-;

3(k). the applicant had been issued many charge-sheets earlier for his negligence and carelessness in work, service on him of those charge-sheets and punishment is revealed from his service register. For example, by order of 24.08.2005 major penalty was imposed on him under DAR proceedings. Therefore, the claim of the applicant that he has no previous history of charge-sheet or adverse remarks is false; and

3(l). the major penalty charge-sheet which is the subject matter of the present O.A. was issued to him on 30.01.2012. After considering the representation submitted by the applicant and other relevant aspects and procedural requirements, during the course of the inquiry proceedings the applicant was found guilty of the charges levelled against him as per the vigilance inquiry report dated 28.06.2012. The use by the applicant of terms illegal and gravely illegal against the actions and orders issued of the respondents is highly objectionable. Therefore, the applicant is not entitled for any relief and the O.A. should be dismissed.

4. Analysis and conclusions:

We have perused the OA memo, its Annexes and rejoinder filed by the applicant, reply filed by the respondents and the

arguments advanced before us by both sides on 03.06.2019. From a close study of the case record and careful consideration of the rival contentions, our findings are as follows :-

4(a). The main contention of the applicant in this O.A. is that the report of the Inquiry Officer dated 28.06.2012 and based on it the orders passed by the Disciplinary Authority on 11.01.2013, Appellate Authority dated 02.04.2013 and by the Revisionary Authority dated 10.09.2013 are illegal and, therefore, they should be set aside.

4(b). The facts of the case clearly establish that when the applicant was on duty as Enquiry-Cum-Reservation Clerk on 09.10.2011, the preventive vigilance check found with him Rs.397/- excess in the Railway cash in his counter and the amount of private cash was also found slightly lower than the declared amount.

4(c). During the the inquiry proceedings before the Inquiry Officer, in his defence on 22.06.2012 the applicant had admitted that Rs.397/- excess were found with him in the Railway cash and that he might have taken

currency of Rs.500/- instead of Rs.100/- from a passenger which resulted in the excess Railway cash. The applicant has never denied the fact of presence of this excess amount in the Railway cash in his counter during the vigilance check on 09.10.2011. The Inquiry Officer, Disciplinary Authority, Appellate Authority and Revisionary Authority have consistently mentioned this admission of the applicant that Rs.397/- in excess were found in the Railway cash in the applicant's counter.

4(d). The applicant's plea that a copy of duty list of the Enquiry-Cum-Reservation Clerk was not supplied to him during the inquiry proceedings is not an acceptable plea, it is only a flimsy plea as a diversionary tactic. As explained by the respondents, the applicant had been working on that post for almost seven years before the incident on 09.10.2011 and, therefore, as a well experienced Enquiry-Cum-Reservation Clerk, he was fully aware of the duties of that post. Hence supply of a list of his duties during the inquiry proceedings was not very material as the main charge had

already been admitted by him and proved against him about the excess amount of Rs.397/- of Railway cash found in his counter. As concluded by the respondents, obviously that excess amount had been collected by the present applicant from the passenger(s).

4(e). In Para 4.3 of the O.A. the applicant has averred that his working throughout as honest, sincere and dutiful, he has not been issued any charge-sheet or memorandum or warning in the past. He has also not been communicated any adverse remarks about his working. But these claims of the applicant are totally false and deliberate suppression of facts. As submitted by the respondents, by order of 24.08.2005 he had been imposed penalty of reduction by one stage in the same time scale of pay for one year with cumulative effect, by order of 23.09.2009 another penalty was imposed on him withholding his next increment for one year without adverse effect on future increments and again by order dated 30.08.2011, he was awarded another punishment of reduction in pay by one stage in time scale for six months without

adverse effect on future increments and seniority. Thus not only the charges in the present disciplinary enquiry were proved against him, he had also been repeatedly punished earlier in the past.

4(f). From the case record, we also find that the applicant had been given full opportunity to defend himself, principles of natural justice have been observed by the respondents and in this respect no illegality has been committed by them in conducting the disciplinary proceedings and in passing of the orders. In our opinion, the punishment imposed on the applicant is also not grossly disproportionate to the charge proved against him.

In view of these facts and conclusions, we find no merit in the O.A. Further in view of his false averment in the O.A. and suppression of facts about repeated punishment in the past, it deserves dismissal with cost.

5. Decision:

The O.A. is dismissed with cost. The applicant should pay Rs.5,000/- as cost to the

respondents within one month of receipt of
copy of this order.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

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7/8/14

