

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA/050/00828/2015

Date of Order: 14.05.2019

C O R A M

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

1. Pinki Kumari, wife of Shri Ratich Chandra Jha, resident of Railway Quarter No. 553/F. Railway Gandak Colony, P.O. & P.S.- Samastipur, District- Samastipur.

..... Applicant.

By Advocate: - Shri Goutam Saha

-Versus-

1. The Union of India, through the General Manager, Eastern Railway, Hajipur, Vaishali.
2. FA & CAO/WST, East Central Railway, Biscomaun Tower, Patna.
3. Divisional Railway Manager, Samstipur Division, East Central Railway, Samastipur-848101.
4. Divisional Railway Manager (Personnel), Samastipur Division, East Central Railway, Samastipur, 848101.
5. Senior Divisional Commercial Manager, Samastipur Division, East Central Railway, Samastipur-848101.
6. Divisional Commercial Manager, Samastipur Division, East Central Railway, Samastipur-848101.
7. Assistant Commercial Manager, Samastipur Division, East Central Railway, Samastipur-848101.
8. Chief Commercial Inspector/HQ cum Inquiry Officer, East Central Railway, Saharsa-852201.
9. Commercial Supervisor, Samastipur Railway Station, East Central Railway, Samastipur-848101.

.....Respondents.

By Advocate: - Shri Mukundjee, Id. Sr. Panel Counsel
Shri Priyank Samdarshi, Id. ASC

O R D E R
[ORAL]

Per Jayesh V. Bhairavia, Member (Judl.):- The instant OA has been filed by the applicant seeking following reliefs :-

- 8.1 For quashing the order no. DCM/SS/C/08/2009 dated 11.5.2015 (Annexure-1)

- 8.2 For quashing the charge sheet bearing no. DCM/SS/C/08/2009 dated 19.04.2010 (Annx.-2.)
- 8.3 For holding the impugned punishment order dated 11.05.2015 as well as charge sheet dated 19.04.2010 cannot sustaining in the eye of law as *ab initio* void as is clearly apparent from the face of record itself.
- 8.4. For restoration of the pay and salary of the applicant and payment of arrears of salaries alongwith 18% interest.
- 8.5. For refunding Rs.64051/- alongwith 18% interest.

2. The brief facts of the case as submitted by the applicant is as under :-

- [i] It is contended that while the applicant was working to the post of Senior Commercial Clerk at Samastipur Railway Station she was suspended from the service by respondent no.7 vide order dated 7.7.2009.
- [ii] Vide letter dated 24.07.2009 issued by respondent no.5 it was informed to the applicant that as per the joint team/investigation report letter dated 18.06.2009 whereby it was found that the during her office tenure for the period of February 2008 to October 2008 (except June 2008) certain irregularities were found in issuing tickets and thereby a loss of govt. Revenue amounting to Rs.64051/- was caused therefore it was directed to the applicant to submit her explanation with respect to the said irregularities within five days failing which said amount of Rs.64051/- shall be deducted from her salary. (Ann.-3)
- [iii] In response to letter dated 24.07.2009, the applicant had submitted her representation/explanation on 03.08.2009. (Ann.-4) therein the applicant stated that she was not

served with copy of joint investigation team report dated 18.06.2009 as referred in letter dated 24.07.2009 and therefore, said report be supplied to her for submission of appropriate explanation. It is further contended that the applicant had a number of time informed the higher authority that the printing machine for issuance of ticket was not working properly. In spite of her reminder dated 17.01.2009, no documents were supplied. It was stated in the said reminder that in absence of non-supply of documents, it is not possible for her to submit proper explanation and if any debit note prepared against her the same will be only on the basis of presumption which will be totally against the principle of natural justice. (Ann.-7)

[iv] It is further contended that without supplying any document or without offering any opportunity of hearing the office order dated 25.11.2009 was issued by the office of the respondent no.5 and thereby coaching supervisor, Samastipur were directed to transfer the amount of Rs.64,051/- from unaccepted head to accepted head for the purpose of deducting the said amount from the salary of the applicant. In this regard it is further submitted that no option was taken from the applicant prior to changing the alleged amount from unaccepted head to accepted head. (Ann.-8).

[v] It is further contended that while applicant was in maternity leave she was forced to deposit an amount of Rs.64,051/- by threatening a punitive action and she was compelled to

deposit the said amount. The said amount was deposited on 27.03.2010 (Ann.-9). Thereafter, again the applicant had requested the competent authority to supply the documents with regard to the alleged inquiry report dated 18.06.2009 through registered letter dated 03.04.2010. (Ann.-10).

[vi] It is contended that the respondent no.6 who was biased against the applicant and realising the mistake for not supplying the copy of alleged joint investigation team report dated 18.06.2009. Suddenly, issued the impugned charge sheet dated 19.04.2010 (Ann.-2) wherein totally false, frivolous, and wrong allegations and charges have been levelled against the applicant that too without following the instructions/guidelines issued under RBE-22/2009. (Ann.-11).

[vii] The applicant had also submitted her written defence statement dated 09.06.2011. (Ann.-12).

[viii] It is further contended that the Disciplinary Authority had nominated inquiry officer after one year of the issuance of the charge sheet. It is further contended that during the course of inquiry proceeding the applicant had filed defence statement dated 31.12.2012 under the provision of Rule 19.9 of the Railway Servants (D&A) Rules to the inquiry officer. (Ann.-13) and after closer of said inquiry proceeding the applicant had submitted her defence brief dated 31.01.2013 under Rule 20 of RS (D&A) Rules. (Ann.-14).

- [ix] The Inquiry Officer had submitted his inquiry report dated 31.07.2013 by which both the charges levelled against the applicant has been declared unproved. (Ann.-15 refers).
- [x] The applicant was served with letter dated 26.12.2014 alongwith copy of inquiry report and directed by the Disciplinary Authority to submit her representation on the said report of inquiry officer. (Ann.-16). In response to the said letter, applicant had submitted her representation dated 20.01.2015 and contended that since charges levelled against the applicant has not been proved during the inquiry and findings recorded by the inquiry officer in his report to the effect that the documentary evidence and statement of witnesses does not support the charges levelled against the applicant therefore the applicant had requested the Disciplinary Authority to exonerate her from the charges. (Ann.-17).
- [xi] It is further contended that without following instructions/guidelines issued under RBE-33 of 1996 dated 04.04.1996, the Disciplinary Authority vide its impugned order dated 11.05.2015 (Ann.-1) held applicant guilty for charges levelled against her and awarded penalty of reduction of present pay to the lower stage from Rs.9090/- to Rs.8740/- in the pay band of Rs.2800/- for a period of one year with cumulative effects.
- [xii] The counsel for applicant Mr. Goutam Saha submitted that the impugned order dated 11.05.2015 (Ann.1) of

Disciplinary Authority suffers from infirmities because the said authority failed to follow the instructions/guidelines issued by the Railway Board letter dated 04.04.1996 (RBE-33/1996) which command the Disciplinary Authority that where the inquiry authority holds a charge as not proved and the Disciplinary Authority takes a contrary view , the reason for such disagreement must be communicated, in brief to the charge officer alongwith the report of inquiry so that the charged office can make a representation. It was also directed in the said RBE that Disciplinary Authority has to first examine the report as per the laid down procedure and formulate its tentative view before forwarding the report of inquiry to the charge officer. It is further submitted that without supplying the disagreement note or any assigning any reasons with regard to report of the inquiry officer , the Disciplinary Authority issued the impugned punishment order against the applicant which is in violation of instructions/guidelines as referred hereinabove as also it is against the principle of natural justice and therefore the said impugned order is bad in law.

[xiii] The counsel for applicant further submitted that the impugned charge sheet dated 19.04.2010 (Ann.-2) was issued against the applicant in violation of provision of RBE No.22/2009 dated 06.02.2009 (Ann.-A/11) as the said charge sheet it has been mentioned that applicant has clearly contravened Rules 3 (1) (i), (ii) and (iii) of Railway

Service (Conduct) Rule 1966. Under the instruction of said RBE the Disciplinary Authority directed that proper care should be taken while framing the charges and only the rules applicable to the specific case should be mentioned in the charge sheet. Mention of both clause (I) relating to lack of integrity and clause (II) relating to lack of devotion of duty which broadly signify negligence with respect to the same charge, it would be quite misleading and given impression that the Disciplinary Authority is itself not clear about the misconduct committed by the charged official, therefore it becomes difficult to defend such a situation specially when challenged in the court of law and should therefore, be avoided. The said guideline under the RBE has not been followed by the Disciplinary Authority. In the case of applicant it is clear that the Disciplinary Authority has already made up his mind to punish the applicant before the inquiry initiation as such the charge as well as the inquiry proceedings becomes illegal on the ground of violation of principle of natural justice.

[xiv] It is further contended that an amount of Rs.6,0451/- has been illegally realised from the applicant as is clearly apparent from the face of record that too without providing any opportunity to explain her case and therefore she is entitled for refund of said amount. Therefore, the applicant has prayed for grant of relief prayed for in this OA.

3. The respondents have filed their written statement and thereby denied the contention of applicant. The Sr. Panel counsel Shri

Mukundjee submitted that the applicant has approached this Tribunal without availing departmental remedy of statutory appeal. It is further submitted that while applicant was working as Senior Commercial Clerk/ Samstipur during February 2008 to October 2008 it was found that she was involved in unlawful act, she obtained fare of high value ticket from the passenger but deposited the fare of low value ticket in railway account. In the light of Accounts Department's letter dated 17.06.2009/28.06.2009 an inquiry was constituted in which the applicant was responsible for the aforesaid misconduct and inquiry report dated 22.09.2009 of coaching superintendent -I/Samstipur clearly indicated that on the basis of documentary evidence and on the basis of it preponderance of probability it was concluded that applicant was responsible for such irregularities. (Ann.R/1 series refers). Thereafter, the respondents had decided to conduct full fledged disciplinary proceedings against the applicant and accordingly a SF-5 dated 19.04.2010 charge memorandum was served upon the applicant. The applicant had participated in the inquiry. The Disciplinary Authority after considering every aspect of the case as also considering the inquiry report, representation of the applicant and thereafter passed the speaking order dated 15.04.2015 and thereafter, punishment has been imposed upon applicant by the Disciplinary Authority vide NIP dated 11.05.2015. As such there is no infirmity in action taken by the railway administration, and therefore the applicant is not entitled for any reliefs as sought in this O.A.

4. Heard the parties and perused the record.

5. In the present case, it is noticed that the Disciplinary Proceedings was initiated against the applicant under the provision of Rule 9 of

Railway Servants (D&A) Rules 1968 vide charge sheet dated 19.04.2010 that while applicant was working as Senior Commercial Clerk/ Samstipur during February 2008 to October 2008 it was found that she was involved in unlawful act, she obtained fare of high value ticket from the passenger but deposited the fare of low value ticket in railway account which caused the railway revenue loss to the tune of Rs.64,051/- and the applicant/delinquent failed to follow provision issued by JPO and continued to issue simple ticket and not informed the higher authority about the non-working of ticket printing machine as also not recorded the said information in the diary and thereby contravened the Sub Rule 3.1 (I)(II) and (III) of Railway Service (Conduct) Rule 1966.

6. It is noticed that during the inquiry the applicant has participated in the said disciplinary proceedings and submitted her defence statement before the inquiry officer. The Inquiry Officer had submitted his inquiry report dated 31.07.2013 and in the said report the inquiry officer recorded his conclusion that after analysis of documentary evidence, statement of witnesses as well as defence statement of charged officials, the charges levelled against the applicant stands not proved. (Ann.-A/15). Thereafter, vide letter No. DCM/SS/C/08/2009 dated 26.12.2014 issued by the Disciplinary Authority, the inquiry report of Inquiry Officer was supplied to the applicant and further informed the charged officer i.e applicant herein that the Disciplinary Authority will take suitable decision after considering the report. If she wishes to make any representation or submission to the Disciplinary Authority the same may be filed within 15 days. (Ann. A/16).

7. In response to it, the applicant had submitted her representation dated 20.01.2015 wherein the applicant contended that the Disciplinary Proceedings was illegally initiated against the applicant vide charge sheet dated 10.04.2010. The charges levelled against the applicant was based on illegal debit report. During the inquiry, no witnesses have supported the charges nor any documents has proved the same. The Inquiry Officer has considered the every aspect of fact and the records and concluded that charges levelled against the applicants are not proved therefore she may be exonerated from the said charges. (Annexure A/17).

8. It is not in dispute that though the charges levelled against the applicant was not found proved by the Inquiry Officer in his inquiry report and for the said conclusion it is noticed that analysis of evidence and the reasons for the conclusion has been in detailed stated by the Inquiry Officer. However, in flagrant violation of provisions of Railway Board's instructions stipulated in RBE No. 33/1996 dated 04.04.1996, without issuing any reasons for disagreement note for not accepting the inquiry report dated 31.07.2013, the Disciplinary Authority vide impugned order dated 11.05.2015, held the applicant guilty and awarded penalty of reduction of pay of the applicant/delinquent. The said impugned order dated 11.05.2015 suffers from infirmity cannot be allowed to sustain in terms of provision of aforesaid RBE No. 33/1996 as also the law laid down by the Hon'ble Apex Court, in the case of State Bank of Patiala Vs. S.K. Sharma, (1996) (3) SCC 364, held that "No notice, No opportunity granted to the delinquent officer/employee for his defence, the order passed by the authority would undisputedly be invalid." In the present case, it is seen that the

applicant was never served with disagreement note by the Disciplinary Authority and without affording any opportunity to the applicant, punishment order has been passed. Such violation is undisputedly occasion prejudiced to the delinquent employee and for the said reason the impugned decision is not tenable.

9. Since the impugned order dated 11.05.2015 has been found to be illegal in our view there is no meaning to direct the applicant to file departmental appeal.

10. So far submission of the applicant with respect to validity and legality of charge sheet is concerned the said submission is not tenable since the applicant has already participated in the Disciplinary Proceedings and after providing due opportunity the said inquiry was concluded. Therefore, in our view, the said submission and prayer thereto is hereby rejected.

11. In conclusion, the order passed by the Disciplinary Authority dated 11.05.2015 (Annexure A/1) is hereby quashed and set aside. We remit the case to the Disciplinary Authority to take appropriate decision on the inquiry report afresh in accordance with extant rules and any disagreement with the said inquiry report dated 31.07.2013, the Disciplinary Authority shall follow the instructions contained in RBE 33/1996 dated 04.04.1996.

12. In view of the above, the O.A stands disposed of.

[Dinesh Sharma]
Administrative Member

[Jayesh V. Bhairavia]
Judicial Member

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