

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00017/16

Date of Order: 01.08.2019

C O R A M

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

Ajeet Kumar, Son of Late Triveni Mahato, resident of Village- Chakdaulat, PO- Akhavishanpur, PS- Ujiyarpur, District- Samastipur- 848132.

.... Applicant.

By Advocate: - Mr. G. Saha

-Versus-

1. Union of India through the General Manager, East Central Railway, Hajipur, Vaishali- 844101.
2. General Manager (Vigilance), East Central Railway, Hajipur, Vaishali- 844101.
3. Additional Divisional Railway Manager, Samastipur Division, East Central Railway, Samastipur- 848101.
4. Senior Divisional Commercial Manager, Samastipur Division, East Central Railway, Samastipur- 848101.
5. Commercial Superintendent, Sugauli Junction, East Central Railway, Sugauli, East Champaran- 845456.
6. Enquiry Officer, O/o General Manager (Vigilance), East Central Railway, Hajipur, Vaishali- 844101.

.... Respondents.

By Advocate: - Mr. Mukundjee, Sr. Panel Counsel,
Mr. Shiv Kumar

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for quashing the punishment order dated 23.07.2013 by which a penalty of reduction of pay to a lower stage for a period of three years with cumulative effect was imposed upon him by the Disciplinary Authority (Sr. Divisional Commercial Manager, EC Railway, Samastipur). He has also prayed for quashing of the Appellate Order dated 10.03.2014 and the charge sheet

dated 05.01.2012 and the Enquiry Report dated 31.08.2012 (Annexures A/2, A/3 and A4 respectively) and for restoration of pay and salary of the applicant along with arrears of salary and 18% interest. Besides questioning the facts alleged in the charge sheet given to him he has also alleged lack of application of mind, lack of independent witnesses and lack of sufficient proof. He has also alleged that the enquiry has been conducted as per dictates of the Vigilance Department and the hearing was also fixed in the office of GM, Vigilance and the Enquiry Officer is also from the Vigilance Department which amounts to investigator himself being the prosecutor. Neither the Disciplinary Authority nor the Appellate Authority have considered the facts and circumstances of the Defence of the applicant and have issued the punishment orders in a way which shows predetermination. The punishment imposed is harsh as there was no misappropriation of Government cash by the applicant. He has also alleged factual inaccuracies in the appellate order (wrong mention of the amount of refund to third passenger as Rs. 92/- instead of Rs. 32/-).

2. The respondents have filed their written statement in which they have denied the claims made by the applicant. They have alleged that the applicant has approached this Tribunal without exhausting his available remedy of filing revision petition before Revisionary Authority. The applicant was found to have conducted gross misconduct during a vigilance check conducted on 12.09.2011. Rs. 632/- was found short in government cash and 3 tatkal reservation tickets were found on his counter without any claimant and the requisition slip was also not properly endorsed. A

chargesheet was served upon the applicant. All the witnesses confirmed that the charges levelled against the applicant were true. It was also found during enquiry that there was excess money of Rs. 76/- under applicant's custody. Since charges were proved against the applicant the punishment by order dated 23.07.2013 was imposed and was later upheld by the Appellate Authority. The respondents have denied having got any instructions from the Vigilance Organisation to issue the chargesheet. Only allegation levelled against the applicant was supplied by the Vigilance Organisation. The charged officer had not sought calling of any other witnesses from defence side. The Inquiry Officer is the part of General Administration Wing under control of SDGM and it does not fall under Vigilance Department. It was the discretion of the Inquiry Officer to call or not to call passengers during enquiry. However, the statement of passengers is the proof as RUD 3 to 5 (Annexure R/1 series). The orders of the Disciplinary Authority and the Appellate Authority show sufficient application of mind and detailed appreciation of evidence. The inquiry report had itself clarified how the charge of shortage of Rs. 632/- in the Government cash was not found to be fully substantiated on completion of transactions of the three tatkal tickets available on the counter. The excess discovered at the end of transactions indicated beyond doubt the misconduct of the charged officer. All other charges (Article II and III) were found to be totally proved against the applicant. The order of the Appellate Authority has also been passed after due consideration of the applicant's appeal and there is no infirmity in the action taken by the Railway

administration. The respondents have also alleged that this case is barred by period of limitation and the applicant has tried to shift the burden of delay by way of concocted story. As per request of the applicant the order of appellate authority was provided to him again (and this should not extend the period of limitation).

3. We have gone through the pleadings and heard the arguments of learned counsels of both the parties.

4. The learned counsel for the applicant cited a judgment of the Hon'ble Supreme Court in U.P State Agro Industries Corpn. Vs. Padam Chand Jain reported in 1995(2) SCC 655 where the Hon'ble Supreme Court upheld the judgment of Allahabad High Court cancelling a punishment where the copy of inquiry report was not provided to the charged officer and the inquiry officer had exonerated the charged officer of all the charges. We do not find this cited decision to be at all applicable to the facts of the present case. It is clear from the records of this case that sufficient opportunity was provided to the applicant to defend himself and he has made ample use of that opportunity. The Inquiry Officer, the Disciplinary Authority and the Appellate Authority have gone through his defence, and have analysed it and come to their conclusions based on available evidence. There does not appear to be any prima facie strong reason to suspect that the Inquiry Officer, the Disciplinary Authority and the Appellate Authority had any malafides against the charged officer. The alleged error in the Appellate Authority's order (mentioning Rs. 92/- instead of Rs. 32/-, appears to be a minor typographical error and cannot vitiate the overall decision.

Since the punishment has been imposed on finding, at the time of a surprise vigilance check, that the charged officer committed acts or omissions which amounted to misconduct, and since he has been punished after proper enquiry, we do not see any reason to interfere with the punishment in the absence of any violation of rules or procedures. The OA is, therefore, dismissed. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member