

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00371/2016

Date of Order: 22.07.2019

C O R A M

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

Vishal, Son of Sri Rameshwar Prasad, Senior Ticket Examiner, East Central Railway, Jhajha (Bihar).

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The Chief Commercial Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Divisional Railway Manager, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).
4. The Additional Divisional Railway Manager, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).
6. The Senior Divisional Commercial Manager, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).
7. The Divisional Commercial Manager, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).
8. The Senior Divisional Financial Manager, East Central Railway, Danapur, PO- Khagaul, District- Patna (Bihar).

.... **Respondents.**

By Advocate: - Mr. D.K. Verma

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- The instant OA is against the order of punishment dated 26.05.2014 issued by the respondent no. 6 (Sr. Divisional Commercial Manager, East Central Railway, Danapur) by which a

punishment of withholding of three increments with cumulative effect has been imposed on the applicant. The applicant has alleged that the said punishment is bad in law, arbitrary, unjust, disproportionate and is based on conjectures and surmises. There has been no application of mind by the respondent no. 6 and the said punishment order has been retained by the Appellate authority (respondent no. 4) and the Revisional Authority (respondent no. 2) through equally non speaking and mechanical orders. The applicant has further alleged that the orders are based on the enquiry report where allegation no. 2 (excess cash found with the applicant) has been found to be proved though the basic allegation no. 1 (of having allowed unauthorized passengers) has not been proved. The applicant has prayed for quashing of the orders of punishment dated 26.05.2014 (Annexure A/5), the order in appeal dated 09.10.2014 (Annexure A/6) and the Revisional Authority's order dated 12.11.2015 (which was conveyed to him vide letter dated 10.05.2016, Annexure A/7) and also the enquiry report dated 28.11.2013(Annexure A/3). He has also prayed for restoring the pay of the applicant and all consequential benefits.

2. The respondents have denied the claim of the applicant. They have stated that the applicant was found to have indulged in gross misconduct while working as Sr. Ticket Examiner and performing his duty in train no. 12310 (Rajdhani Exp.) on 13.03.2011. It was found by a joint team of CBI and Vigilance of EC Railway that two unauthorised passengers were travelling in his coach. It was also found that he was in possession of Rs. 5000/- in excess of allowable cash for which he had no convincing

explanation. The applicant has been punished after proper enquiry and his appeal and revision have been considered and disposed of. The applicant has been given sufficient opportunity to defend himself but he could not give a convincing explanation for the possession of excess cash. The respondents have prayed for dismissing the OA with costs.

3. We have gone through the pleadings and heard the learned counsels of both the parties. The order of punishment is reproduced below:-

“ The undersigned has gone through your reply dated 13.01.2014 and decided under:-

After going through the entire file and especially the enquiry report, it can be declared that though charge 1 cannot be conclusively proved charge 2 has been proved. Hence, Shri Vishal's involvement cannot be ruled out and hence his three increments are withheld for three years with cumulative effect.

Under Rule 18 of Railway Servants (DA) Rules, 1968, appeal against these order lies to Addl. Divisional Railway Manager, EC Railway, Danapur provided:-

1. The appeal is submitted through proper channel within 45 days from receipt of this order.
2. The appeal does not contain improper or disrespectful language.”

We also reproduce here the order passed in the appeal:-

“ I have gone through the appeal of charged official dated 09.07.2014 and has applied my mind to all the facts on record. The plea of charged official that the excess personal cash was taken by him from two unauthorised persons who forcibly entered his coach and he was about to issue EFT to these passengers when he was called in to cabin is not convincing, looking to the circumstantial evidences. The charged official could have issued EFT and then could have gone in to cabin or he could have returned the cash to the passengers and taken cash after issue of EFT. So the punishment imposed withstands.”

The order passed in revision is also produced below:

“पहला दोष साबित न हो सका किन्तु दूसरा दोष साबित किया जा सका अतः आप उस हद तक दोषी हैं | अतः वरी मंडल बाणिज्य प्रबंधक द्वारा लगाया गया दंड उचित पाया गया और मंडल रेल प्रबंधक ने श्री उसे उचित पाया | अतः सभी कागजात का अबलोकन पर दिया गया दंड में परिवर्तन की कोई गुन्जाईस नहीं है | यह बिना भैदभाव के हैं |”

4. A mere reading of these orders will support the applicant's case that these orders, especially the original punishment order, is apparently non-speaking and is based on a surmise. Declaring that "though charge 1 cannot be conclusively proved charge 2 has been proved" and hence, "Shri Vishal's involvement cannot be ruled out" and his three increments were withheld for three years with cumulative effect. It is, obviously, not the right way to inflict a major punishment in a quasi-judicial matter. Such a glaring error by the Disciplinary Authority cannot be corrected by adding some reasoning at the Appellate Authority's level. Hence, we have no option but to quash the order of punishment dated 26.05.2014 and the subsequent orders in appeal and revision. Without going further into the merits of the case, we remit the case back to the Disciplinary Authority to decide the matter afresh with a reasoned and speaking order within a period of three months of receipt of this order. We are not, at present, getting into the enquiry report since the Disciplinary Authority would be at liberty to examine it and come to his own reasoned conclusion about whether this enquiry report is sufficient to impose any punishment. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member