

**Central Administrative Tribunal  
Principal Bench**

**OA No. 847/2003**

New Delhi, this the 24<sup>th</sup> day of May, 2005

**HON'BLE MR. SHANKAR RAJU, MEMBER (J)**  
**HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

Rajesh Sharma s/o Sh. R.S. Sharma,  
R/o 3/9, Pan Dariba, Near Gupta Hotel,  
Aligarh Jn. Aligarh (UP).

...Applicant

(By Advocate: Shri Yogesh Sharma)

-versus-

1. Union of India through  
The General manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. The Addl. Divisional Railway Manager,  
Northern Railway, Allahabad Division,  
Allahabad.
3. The ~~Dr.~~ Divil. Commercial Manager,  
DRM's office, Northern Railway,  
Allahabad Division, Allahabad.
4. The Divisional Commercial Manager,  
DRM's office, Northern Railway,  
Allahabad Division, Allahabad.

...Respondents

(By Advocate: Shri Rajinder Khattar)

**ORDER (ORAL)**

**By Mr. Shankar Raju, Member (J):**

Applicant impugns respondents' order dated 4.6.2002 whereby he has been imposed an enhanced penalty of reduction in the time scale of pay in Grade of Rs. 3200-4900 (RPS) by three stages for a period of five years with cumulative effect. He has also assailed the order passed on 4.4.2001 whereby a punishment in original for reduction in the time

scale of pay in the grade of Rs. 3200-4900 (RPS) by three stages for a period of three years with cumulative effect was inflicted. He has also assailed another order dated 27.3.2003 passed by the revisional authority whereby the original punishment imposed upon the applicant vide order dated 4.4.2001 was restored.

2. While working as Booking Clerk, applicant was issued with a major penalty charge-sheet (SF5) under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on the ground of demanding and accepting Rs. 30 in excess from the decoy passenger and recovery of Rs. 5/- excess in Govt. cash and for manipulating the Govt. cash to hide his illegally earned money.

3. No Presenting Officer was appointed rather Enquiry Officer acted as a Presenting Officer and thereafter on prosecution evidence and defence of the applicant, in the enquiry report charges Nos. 1 and 2 were established but charge relating to manipulating the record to hide his illegally earned money has not been proved.

4. Against a major punishment imposed, an appeal was preferred. However, a show cause notice under Rule 25 of the Rules was issued but vide order dated 4.6.2002 the punishment was enhanced. This enhanced penalty was, however, set aside and the original punishment was restored in revision.

5. Number of legal pleas have been taken by the learned counsel of the applicant but, at the outset, it is contended that in the light of Rule 9 (9) (c) of the Rules and relevant Railway Board's instructions, it is for the disciplinary authority to appoint the Presenting Officer but in the present

case the Enquiry Officer has acted as a prosecutor by acting as a Presenting Officer to present the case on behalf of the Railway Administration and this shows his biased attitude as he was not independent.

6. Learned counsel states that out of 8 DWs, only two DWs have been examined and for the remaining witnesses, no reasons have been assigned to disallow them.

7. On the merit of the case, it is stated that whereas the charge of accepting the amount in excess and recovery of the money is belied by non-establishment of the charge with regard to manipulating the record to hide his illegally earned money, hence, the findings is contrary.

8. On the other hand, respondents' counsel vehemently opposed the contentions and relied upon the decision of the Apex Court in the **Principal Secretary A.P. vs. S.M. Adi Narain**, 2005 (1) SLJ (SC) 505, to contend that correctness of charge cannot be gone into by the Tribunal in judicial review. On merits also, it is stated that there is no infirmity in the conduct of the enquiry and the punishment is proportionate to the charge.

9. We have carefully considered the rival considerations of the parties and the decision of the Division Bench of Madhya Pradesh High Court in **Union of India vs. Mohd. Naseem Siddiquie**, 2005 (1) ATJ 147, where in a railway case, functioning of the Presenting Officer was discharged by the Enquiry Officer, the following observations have been made:

h "9. A domestic inquiry must be held by an unbiased person who is unconnected with the

incident so that he can be impartial and objective in deciding the subject matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor given an impression of bias. Where the Inquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Inquiry Officer is in position of a Judge or Adjudicator. The Presenting Officer is in the position of a Judge or Prosecutor. If the enquiry officer acts as a Presenting Officer, then it would amount to Judge acting as the Prosecutor. When the inquiry officer conducts the examination-in-chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross-examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority, evidently, the Inquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Inquiry Officer does not have an open mind."

10. On the other ground, we find that as per Rule 9.19 when an application for defence witness is presented, in the light of the Railway Board's letter dated 2.5.1970, it is incumbent upon the railway authorities to examine all the witnesses produced and it would not be correct to refuse examination of such witnesses on any account. In the present case, it is seen that out of eight witnesses only 2 witnesses were allowed to be examined and for want of any reason defence of the applicant has been greatly prejudiced, which is certainly a denial of reasonably opportunity to him.

11. Moreover, we find that once the applicant has not been found guilty of manipulating the government cash to hide his illegally earned money then the very charge of demand and acceptance of money and recovery of Rs. 5 in excess is belied on the face of it and is contrary to findings.

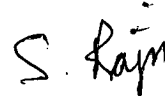
12. However, we will not go into the correctness of the charges but leaving other legal <sup>4</sup>grounds, we are satisfied that the enquiry is vitiated on account of gross miscarriage of justice and violation of principles of natural justice, which has caused prejudiced to the applicant.

13. In the result, for the foregoing reasons, O.A. is allowed. Impugned orders are set aside. Applicant is entitled to all the consequential benefits.



**(S.K. Malhotra)**

Member (A)



**(Shankar Raju)**

Member (J)

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