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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1982 OF 2003

New Delhi, this the 25th day of February, 2004

HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Whajuddin,
S/o Shri Quazi Turabuddin,
TTE Northern Railway,
New Delhi

....Applicant

(By Advocate : Shri S.K.Sawhney)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Additional Divisional Railway Manager(OP),
Northern Railway,
DRM Office,
New Delhi.
3. Senior Divisional Commercial Manager,
Northern Railway,
DRM Office,
New Delhi.
4. Divisional Commercial Manager,
Northern Railway,
DRM Office,
New Delhi.

.....Respondents

(By Advocate : Shri R.L.Dhawan)

ORDER

SHRI R.K.UPADHYAYA, ADMINISTRATIVE MEMBER:-

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed challenging the orders of the Disciplinary Authority dated 20.9.,2000 (Annexure-A1), Appellate Authority dated 10.5.2001 (Annexure-A2) and Revisionary Authority dated 17.10.2001(Annexure-A3) in pursuance of issue of charge sheet dated 26.11.98 (Annexure-A5).

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2. The applicant while working as Head T.T.E was issued chargesheet dated 26.11.98 (Annexure-A5) in which the following charges were levelled against him:-

"Article No.1

That Sh.Whajuddin while posted and functioning as Head TTE, Northern Railway, New Delhi during the year 1998 failed to maintain absolute integrity and devotion to duty in as much as he while being incharge of A.C. Coaches from Ludhiana to Jammu Tawi in Train No.2471 on 6.7.98 did not issue EFTs, to passengers whom he had permitted to board the AC-II tier coaches and did not record the names/ticket no. of the passengers to travelling in the AC-II tier coaches.

Article No.2

That above said Sh.Whajuddin, Head TTE, Northern Railway while being Incharge of AC Coaches from Ludhiana to Jammu Tawi in train No.2471 on 6.7.98 had an amount of Rs.3840/- purported to be collected by Sh. S.N.Gupta, Head TTE during the course of surprise check by the CBI.

Thus, by the acts above said Sh.Whajuddin, Head TTE failed to maintained absolute integrity and devotion to duty and contravened provisions of Rule No.3.1 (i) (ii) (iii) of the Railway Services (Conduct) Rules,1966."

3. Since the applicant denied the charges, an Enquiry Officer was appointed who submitted his report dated 27.7.2003 (Annexure-A6). Regarding Charge no.1, the Enquiry Officer observed as follows:

"The fact that the C.O. had been booked to perform duty in train No.2471 on 6.7.98 Ex. NDLS to Jammu Tawi and that he took over charge of upper class coaches from Shri S.N.Gupta due to his sudden illness and detrainig at Ludhiana, is evident from the JTR (Ex. P-8) submitted by the CTI/NDLS. The surprise check memo Ex. P-2 and admission of the C.O. during his examination by I.O. It is also established from the surprise check memo Ex.P-2 and deposition of different PWs as discussed above and not disputed by the

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defence, that the passengers had not been given their tickets for availability of their journey from 2nd Class to AC-2T class till the time of CBI check though they had been permitted by the C.O. Ex. LDH and JRC respectively and the amount of difference of fare collected from them, the C.O./Defence version that he allowed both of the parties to travel in 2A coach at JRC is not supported by any evidence and the EFT No.044556 and 57 were prepared by another TTE Shri Rajesh Kud in charge of coach NO.S-1, S-2 & S-3 from his EFT book though the C.O. had his own EFT book with him. From the composition charts submitted by CTI/NDLS(Ex.P-8) it is evident that SS/Shri Hari Singh, STE of coach No.S-9 & S-10 and S.K.Dhar of coach No.S-3, S-4, S-5 were quite near to the coaches which were being looked after by him (C.O.) then Shri Rajesh Kud who was at the farther end and there seemed no reason for the C.O. to entrust that job to Shri Kud if unavoidable due to compelling circumstances. Though both the passengers and the independent witness Shri kakkar and the Pantary boy to whom the EFT foils given by Shri Rajesh Kud have not been examined in the enquiry by the defence due to their attendance to give. Direct evidence of the C.O.'s stand that he could not issue, the EFT's immediately to the passengers due to his being busy in adjusting passengers of A-1 coach due to non-functioning of A-2 is also not supported by any firm evidence showing that A-2 is also not supported by any firm evidence showing that the C.O. had no time from Ludhiana tillto do the job or ensure that the EFT' had been delivered to the passengers from whom he collected fare. It is logically to accept that the C.O. should have issued EFT in favour of the passengers when he collected fare from them and allowed to travel in upper class from which he obviously failed to it.

Keeping in view the above discussion, the charge is thus proved."

4. So far as Charge No.2 is concerned, the conclusion and finding of the Enquiry Officer was that the same stands proved without malafide intention." The Disciplinary Authority in his order dated 20.9.2000 (Annexure-A1) has observed that on 6.7.1998, the applicant was manning Sleeper Coach Nos.-S/6 & S/8 of Train No.2471 Ex. from Delhi to Jammu Tawi. Since

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one Shri S.N.Gupta, Hd. TTE/New Delhi, who was working as Conductor of A.C. Coaches of the train fell sick and detained at Ludhiana, the charge of AC Coaches was handed over to applicant being next seniormost in the train. It was further noticed by the Disciplinary Authority that two couples were allowed to travel by the applicant in 2 AC coach upto JAT on the authority of second sleeper tickets. The applicant collected the difference of ticket fare from the passengers but did not issue Excess fare Tickets (EFTs) to the passengers. The EFTs were issued only "when the CBI raided the train at CHKB". These EFTs were issued from the book of one Shri Rajesh kud, another TTE of sleeper class. The Disciplinary Authority concluded that but for the CBI check, the applicant intended to pocket the money. Accordingly, the Disciplinary Authority imposed the punishment of dismissal from service.

5. On appeal, the Appellate Authority considering the facts of the case and argument advanced by the applicant observed as follows:-

"However, the punishment awarded by the Disciplinary Authority of 'Dismissal from Service' is on higher side. Such punishment is normally awarded in case of decoy checks or where the C.O. is trapped and caught red handed. In this case the irregularities committed by you are proved and the circumstances points towards malafide intention.

In view of this, I am of the view that stiff and deterrent punishment should be awarded to you, but at the same time you should get a chance to improve your working and performance.

20/3/2013

Accordingly, your punishment is reduced to "Reduction to Lower Post & Grade i.e. TTE of Grade Rs.4000-6000 for a period of five years of TTE i.e. .Rs. 4000-6000.

The period from 'Dismissal from Service' to joining of duty is treated as leave, if due."

6. The revisionary authority did not find any merit in the revision petition and upheld the punishment given by the Appellate Authority as per his order dated 17.10.2001 (Annexure-A3). It is stated by the applicant that the orders of the disciplinary authority were in breach of Rule 10(5) of the Railway Servants(D & A) Rules. It is further stated that the Appellate Authority did not act in accordance with the provisions of Rule 22(2) of Railway Servants (Disciplinary & Appeals) Rules,1968. The learned counsel of the applicant stated that these rules require the Disciplinary Authority as well as the Appellate Authority/Revisionary Authority to examine the facts of the case and give findings on each submission raised by the applicant. In view of the fact that the orders of the Disciplinary Authority as well as the Appellate Authority and Revisionary Authority are not in conformity with these rules, the same should be quashed. It has been further pointed out by the applicant's learned counsel that there was no malafide intention if the applicant asked his colleague to issue EFTs. The delay in giving EFTs to the passengers was not with any malafide intention. The learned counsel of the applicant invited attention to para 4.11 of the OA wherein the factual position regarding the preparation of EFTs by Shri Rajesh Kud, TTE has been stated. In that case, the Enquiry Officer in his findings dated 14.8.2000 has observed

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that "the prosecution failed to bring any evidence that the said Rajesh Kud prepared the tickets after the surprise check." The learned counsel of the applicant stated that this is a case of no evidence. In any case, an inference can be drawn against the Disciplinary Authority as well as the Appellate Authority/revisionary authority's order that these are not in conformity with the rules. Therefore, this Tribunal should go through the submissions and hold that this is a case of "no evidence". The learned counsel of the applicant invited attention to Charge No.2 regarding which the Appellate Authority has stated that " the other charge of excess money of Rs.3840/- has no malafide as the same was given by Mr. Gupta, who had detained en route due to health reason." Therefore, only one charge survives against the applicant for consideration. According to the applicant, the Enquiry Officer has wrongly held the charge as proved. The relevant record of railways including reservation-chart was not produced. Even the key witnesses like the Pantry boy and other witnesses were not examined. Therefore, the order of the Disciplinary Authority deserves to be quashed and set aside.

7. It was clarified by the learned counsel of the applicant that the applicant had filed memorial to the President of India on 22.2.2002 (Annexure-A4). Since there was no response, the same was withdrawn and the applicant has filed this present original application.

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8. The respondents have opposed the OA. It was stated by the learned counsel of the respondents that the duties of the applicant included issue EFTs as soon as the passengers entered the compartment. It is an admitted fact that the applicant had collected money but had not issued the EFTs. The EFTs were sent to the passengers subsequently after they were issued by another TTE Shri Rajesh Kud. According to him, the punishment awarded is in accordance with the provisions of the Railways Rules and the same calls for no interference by this Tribunal.

9. After hearing the learned counsel of the parties and after perusing the materials available on record, it is noticed that the applicant was Incharge of AC A1, A2 and A S-3 coaches. It is undisputed that certain passengers were allowed by the applicant in the AC coaches but the EFTs were not issued immediately. In any case, the same were never issued by the applicant. There is enough material on record to show that the charges levelled against the applicant relating to non-issue of EFTs by him have substantially been proved. When the CBI's check started, two couples were found travelling in AC coaches on Second Class Tickets. On enquiry, both have stated that they had paid excess fare amount but the EFTs had not been issued. Subsequently, a Pantry boy brought the EFTs issued by one Shri Rajesh Kud. The Enquiry Officer has properly discussed the evidence and reasons for his conclusion regarding Charge No.1 which has been reproduced earlier. The explanation given by the applicant as to why he had made a request to Shri Rajesh Kud TTE was that the

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some of his relatives were travelling in S-5 coach and, therefore, he was near the AC coach. This could be an afterthought also. If the applicant wanted to examine the key witnesses, he should have produced them as his witnesses. This Tribunal cannot go into the sufficiency or otherwise of the evidence. We cannot reappraise the evidence placed before the disciplinary authority. We find that the Appellate Authority dealt with all the contentions of the applicant. He has also gone into the proportionality of punishment.

10. Considering the entire facts of this case, we do not find any justification to interfere with the orders of the departmental authorities. Therefore, this OA is dismissed without any order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(KULDIP SINGH)
JUDICIAL MEMBER

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