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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2408/2003

New Delhi, this the 16th day of November, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

Smt. Anita Sharma
Reservation Clerk-II
Northern Railway Reservation Office
IRCA Building, State Entry Road
New Delhi - 110 001.

...Applicant

(By Advocate Sh. B.S. Mainee)

V E R S U S

UNION OF INDIA THROUGH

1. The General Manager
Northern Railway
Baroda House, New Delhi.
2. The Chief Commercial Manager (PM)
Northern Railway
Northern Railway Reservation. Office
IRCA Building, State Entry Raod
New Delhi.
3. The Dy. Chief Commercial Manager (DB)
Northern Railway, Northern Railway Resvn. Office
IRCA Building, State Entry Road, New Delhi.

...Respondents

(By Advocate Sh. Rajender Khatter)

O R D E R

The applicant has impugned the following orders :-

- (I) Order No.MDB/MISC./21/2001 dated 8-2-2002 passed by the Sr. Comml. Manager (DB), Northern Railway, Nor. Rly. Resvn. Office, IRCA Bldg., S.E.Road, New Delhi ;
- (II) Order No.MDB/MISC./21/2001 dated 27-5-2002 passed by the Dy. Chief Comml. Manager (DB), Northern Railway, New Delhi.
- (III) Order No.MDB./Misc./21/2001 dated 24-9-2002 passed by the Chief Comml. Manager (PM), Northern Railway, New Delhi.

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Whereby, respectively, the penalty of reduction to lowest stage in the same time scale of pay for a period of three years without postponing future increments has been imposed on the applicant; the appeal filed by her against the said penalty has been rejected by the appellate authority; and the revision petition as filed by her against the said penalty has also been considered and the penalty has been allowed to stand.

It has been prayed by the applicant that these impugned orders be quashed and that the respondents be directed to restore her pay and refund the amount, which has already been recovered from her pay.

2. The facts of the matter, briefly, are that the applicant, who is an Enquiry-cum-Reservation Clerk Gr. II in the Northern Railway Reservation Office, IRCA Bldg. State Entry Road, New Delhi and who was working as such on 23-10-2001 at counter No.115 during 1000 hrs. to 1600 hrs. shift and was alleged to have committed an act of irregularity inasmuch as she fraudulently kept one bundle of Rs.500/- denomination totaling Rs.50,000/- and misled the Cashier by showing her urgency and got his signature towards receipt of the full amount and thereby she misappropriated the government cash temporarily with malafide intention, was served a chargesheet vide the orders of the respondents dated 4-1-2002, conveying to her that by the said act, she failed to maintain absolute integrity and exhibited lack of devotion to duty and acted in a manner unbecoming of a railway servant and thereby contravened the provisions of Rule 3.1 (i) (ii) (iii) of the Railway Service (Conduct) Rules, 1966.

3. The applicant has argued that the charge levelled against her was based on misunderstanding, misconception and was totally wrong. Accordingly, she submitted a representation on 29-1-2002 explaining that she had deposited the whole amount of cash with the cashier under his clean signature. The applicant has alleged that disciplinary authority has passed the impugned order imposing the said penalty without application of his mind to his representation and that he has based the same on surmises and conjectures without considering the fact that she had deposited the cash with the cashier admittedly under his signature. She has also

alleged that the order passed by the disciplinary authority was a non-speaking and —— non-reasoned order. The applicant has also found fault with the order of the appellate authority on the same ground. She has referred to her earlier request for change of duty of cash on account of ill health of her daughter and to post her to a non-sensitive seat. She has argued that there was no evidence, much less any proof, in support of the charge of temporary embezzlement of cash against her. In the same vein, she has also alleged that revisionary authority has also rejected her revision petition without application of mind in an illegal manner and a non-speaking, and non-reasoned order has been passed by him.

4. The respondents, admitting the fact that the applicant was on duty at 1000 hrs. to 1600 hrs. at counter No.115 and that she closed the counter at 1600 hrs and her day's cash was of Rs.2,18,853/- showing urgency to Sh. Anil Behl, Cashier, got his signature on the slip of Rs.2,18,853/-, but she actually deposited only Rs.1,68,853/-, i.e., Rs.50,000/- less. This was noticed by the Cashier only when he closed the account at 1800 hrs. Accordingly, he informed the CBS (IRCA) and checked the summary of cash and found that a bundle of Rs.500/-, which was in the summary of the applicant, was short. The Cashier along with one Krishan Negi went to the house of the applicant and collected the said amount.

5. Submitting that "the OA is totally mis-conceived inasmuch as the applicant has led this Hon'ble Tribunal to believe that there was no allegation in the notice with regard to the carrying of the govt. cash by her and since the evidence has been brought in but there is no allegation in the notice issued to the applicant for minor penalty. Notices have been issued on this short point." The respondents have taken the position that "no such ground has been taken by the applicant in the OA. It has also been argued on their behalf that the chargesheet clearly stated that the applicant has misappropriated the govt. cash and thus the charge clearly encompassed the illegal action of the applicant". Here again the respondents have mentioned that no such ground has been made out by the applicant and thus the OA is liable to be dismissed on this short ground alone.

6. The respondents have conducted an enquiry into the matter in accordance with law and have claimed that they have not

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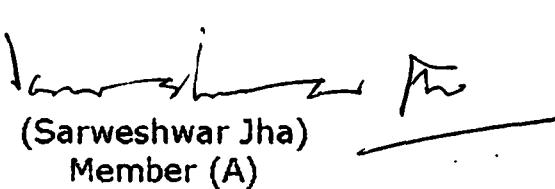
committed any procedural lapse and that their orders are in accordance with law and based on the evidence on record.

7. In the detailed parawise reply, the respondents have asserted that the applicant deposited only Rs.1,68,853/- with the Cashier, fraudulently keeping the remaining amount of Rs.50,000/- with her. They have also affirmed that the penalty has been imposed on the applicant after scrutinizing the gravity of the case.

8. The applicant has filed rejoinder to the counter as submitted by the respondents and have reiterated mostly what have been submitted by her in the OA. There is nothing new in the rejoinder.

9. I have considered the facts of the case as submitted by both the sides and find that the applicant has submitted time and again the fact that she deposited the cash collected by her at the said counter while on duty on 23-10-2001 with the cashier duly receipted by him and that she has not admitted the misappropriation of the govt. cash. She has, however, not contraverted in specific words the details of the incident which have been submitted by the respondents including the fact that somebody had gone with the cashier to her home to recover the bundle of Rs.50,000/- as allegedly taken by her to her home. The least that could have been done by her was to have disputed this aspect of the matter and to have proved it in her favour which she has not done. Also if it is believed, I do not see any reason not to believe, that she took the amount of Rs.50,000/- home, the penalty which has been imposed on her after following the due process of enquiry by the respondents is not too harsh and, therefore, I do not see any unreasonableness in the order in regard to the quantum of punishment, keeping in view the findings of the respondents in the enquiry.

10. Under these circumstances, I do not consider it appropriate to interfere with the orders of the respondents and accordingly the OA is dismissed with no order as to costs.


(Sarweshwar Jha)
Member (A)

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