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Central Administrative Tribunal
Principal Bench, New Delhi.

Pre-delivery order in OA-2611/2003 is sent herewith for your kind
consideration and concurrence.

With regards,

Thanks. Apne. Some
S. Raju
22/10/07

Chitra Chopra

(Chitra Chopra)
Member(A)
17.10.2007

Hon'ble Mr. Shanker Raju, Member(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2611/2003

New Delhi, this the 23rd day of October, 2007

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)**

Shri Guru Dutt,
S/o Late Shri Ram Saran,
Reservation Clerk (1),
Northern Railway,
IRCA Building,
State Entry Road,
New Delhi.

...Applicant

(By Advocate: Shri B.S. Mainee)

Versus
Union of India: Through

1. The General Manager (Commercial),
Northern Railway, Baroda House,
New Delhi
2. The Chief Commercial Manager/PM,
Reservation Office, Northern Railway,
I.R.C.A Building, State Entry Road,
New Delhi
3. The Sr. Commercial Manager-DB,
Reservation Office,
Northern Railway,
IRCA Building,
State Entry Road,
New Delhi. Respondents

(By Advocates: Shri Rajender Khatter)

ORDER

Hon'ble Mrs. Chitra Chopra, Member (A)

The applicant is aggrieved by the impugned orders dated 9.11.2001, 25.1.2002 and 19.8.2003 vide which penalty of reduction by one stage in the same time scale of pay for a period of six months with cumulative effect was imposed upon him (Annexure A-1) which was upheld by the Appellate Authority vide order dated 25.1.2002 (Annexure A-2). The Revisional Authority vide order 19.8.2002 (Annexure A-4) enhanced the punishment of reduction for a period of two years with cumulative effect.

2. The brief factual matrix transpires as under:-

- i) The applicant while working as Enquiry-cum-Reservation Clerk ('ERC' for short) in Northern Railway, Reservation Office, State Entry Road, New Delhi was issued with a Memorandum of Charge Sheet for major penalty dated 6.10.2000 (Annexure A-5) alleging that he failed to cross mark the cancelled ticket but deposited the same after cancellation. It was also alleged in the charge sheet that the applicant connived in facilitating the misuse of the said cancelled ticket.
- ii) The statement of imputation of misconduct (Annexure A-5 Colly.) mentions that a check was conducted by NE. Railway in Train No.2554 Dn. Ex.NDLS on

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7.12.98 during which two passengers were found having confirmed computerized journey-cum-reservation tickets issued for same day.

iii) During investigation, it was revealed that ticket of passenger whose name appeared in the chart was booked vide PNR No.2119630502 from NDAZ and was active till last movement. Another ticket with same coach number and berth number in same train was booked vide No.211-9621806 by Shri Guru Dutt (applicant) while working on Counter No.112 on 17.11.98 at 15-43 hrs. The requisition of this ticket showed the name of the passenger as Prem Prakash whereas the booking was done in the name of Shri Ram Prakash by the ERC. On verification, no such person was found living at the given address. Same ticket was cancelled by the applicant at 17-44 hrs. on the same day but requisition for the same was not available in the record which either the ERC failed to obtain or intentionally did not deposit in the record with his malafide intention. The imputation also described the allegation that after cancellation the ERC did not cross mark the ticket as a token of cancellation and instead of depositing the same in the record handed over the same



to some tout who further sold it to an innocent passenger. Thus, cancellation of said ticket without requisition, not crossing the cancelled ticket and not depositing the same in the record by the ERC clearly shows his connivance in facilitating the misuse of said PNR Number for his personal monetary gains.

iv) Thereupon, an enquiry was conducted by the Enquiry Officer who submitted his Enquiry report dated 10.5.2001 (Annexure A-11) to the Disciplinary Authority exonerating the applicant from Charge No.3 of connivance in facilitating the misuse of cancelled ticket for his personal monetary gains. While Charge No.1 and No.2 were found partially proved for not putting cross on the cancelled ticket as well as not depositing the same in ROPD record and selling the same to a passenger. The Disciplinary Authority passed an order dated 09.11.2001 (Annexure A-1) affirming the report of the Enquiry Officer and imposed a punishment of reduction by one stage in the same time scale of pay for a period of six months with cumulative effect. The Appellate Authority upheld the punishment vide its order dated 25.01.2002 (Annexure A-2) against which the applicant had filed a revision which was

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rejected vide order dated 19.8.2003 (Annexure A-4) enhancing the punishment of reduction for two years.

The operative portion of this order reads as under:-

"The third charge has not been held as proved in the D& AR enquiry. The irregularities, as mentioned above committed by you have serious implication and, therefore, the punishment of reduction by one stage in the time scale of pay for a period of two years with cumulative effect awarded by CCM/PM is considered adequate. Therefore, your appeal is rejected."

3. The aforesaid order of rejection gives rise to filing of the present OA.

4. In the counter affidavit, filed by the respondents, while rebutting the averments made in the OA, it has been submitted that the applicant Shri Guru Dutt, E& RC was assigned to work in Counter NO.112 at IRCA/Reservation Complex, New Delhi on 17.11.1998 in evening shift. He had issued sleeper class ticket vide PNR No.211/9621806, Ex. New Delhi to DEOS, dated 7.12.1998 and cancelled the ticket in the same shift without any requisition slip. He has not cross-marked the original ticket and passed on to tout for personal gain. The tout sold the same PNR/ticket to innocent passenger which was separated by the checking staff of N.E. Railway during course of checking.

5. It is submitted that the enquiry has been done in accordance with the rules and the impugned orders have been passed after carefully examining the evidence on record and there is no infirmity

in the impugned orders considering the gravity of charges which were duly proved during enquiry. It is also submitted that the statement of the passenger as recorded by the TTE was cited as relied upon documents as the statement was authenticated by the TTE , it was not necessary to mention the passenger as witness in the case. It is also submitted that the train was checked by the NE Railway and whatever documents are supplied, were made available to the applicant during the course of enquiry. The enquiry has been conducted taking into consideration all the relevant facts on record and has been conducted in accordance with the rules and regulation.

6. It is further submitted that it is mandatory that the journey-cum-reservation ticket in original should be cross marked after cancellation to prevent fraudulent use by the unauthorized persons.

7. The Revisional Authority after considering the details of the case and seriousness of the charges, enhanced the penalty from reduction of one stage in time scale of pay for six months with cumulative effect to reduction for a period of two years with cumulative effect.

8. In view of the submissions made above, the applicant is not entitled to any relief.

9. In the rejoinder affidavit, the applicant while reiterating the submissions made in the OA has submitted that the most important document i.e. Cancelled Tickets Deposit Register, Cancelled Tickets,

requisition slip for reservation of tickets and the working chart were not made available and the officer in whose office these documents were available did not issue clear certificate in accordance with the rules about the whereabouts of the said documents. The original documents were not shown inspite of repeated request of the applicant.

10. We have heard the rival contentions of both the parties and perused the material on record.

11. A perusal of the inquiry report (Annexure A-11) shows that out of the three charges leveled against the applicant Charge-1 and Charge-2 were found to be partially proved and Charge-3 was not proved. The charges are reproduced as below:-

"1) That he cancelled a ticket vide PNR No.2119621806 ex.NDLS to DEOS without requisition and failed to cross mark the ticket as a token of having cancelled the same with his malafide intention.

2) He failed to deposit the said ticket after cancellation as ROPD and instead passed on to some tout who further sold the same to an innocent passenger.

3) That he was connived in facilitating the misuse of ticket PNR number 2119621806 of T.No.2554, dt.07.12.98 ex. NDLS to DEOS for his personal monetary gains."

12. The only prosecution witness was Shri Dalbir Singh, CVI who supported the stand of the prosecution. As against this, it is important to see the statement of Shri B.L.Rao , Chief Reservation

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Supervisor (CRS). It would be useful to reproduce the relevant para of the statement:-

**"5.1 .Statement of Sh.B.L.Rao,
CRS/IRCA/NDLS as D.W.**

This DW stated that he is working as CRS/IRCA since Oct.86 and explained that in manual reservation, if ticket was cancelled then all particulars were endorsed on the back side of the ticket and cross marked but in computerized ticket, all particulars are available and there is no need to write anything on the original ticket or cross marking the same and all the cancelled tickets are deposited as cash, which are checked by the booking staff deputed for this job along with ROPD statements. He further stated that if there is any discrepancy/missing of tickets, a debit is raised against the ERC concerned. This DW had seen Ex.D-2, item No.4 and Ex.D-4 (ten pages) and confirmed that neither any debit was raised nor any error sheet was received against the CO for his working on 17.11.98."

13. While discussing the evidence in respect of Charge-1, the Inquiry Officer has observed that requisition form was not produced in evidence and has not been made available. The Inquiry Officer, therefore, observed that without affording opportunity to the Charged Officer it is not just and proper to establish the charge of not procuring the requisition form. Hence he found the charge substantiated to the extent that the applicant failed to cross the ticket.

14. Again in respect of Charge-2, it does not emerge clearly that who is responsible for ROPD. The Enquiry Officer states that

“Legally, the CO cannot be held responsible and some system is

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failing but at the same time he cannot escape as the ticket had slipped only due to the fact that the CO had not crossed it otherwise who would have accepted this ticket had it been crossed."

15. Charge-3, viz conniving in misusing the said ticket was not found to be proved.

16. Applicant was initially awarded penalty of reduction by one stage in the same time scale of pay for a period of six months with cumulative effect by the Disciplinary Authority (Annexure A-1). On appeal this penalty was upheld (Annexure A-2). The applicant was given show cause notice dated 18.2.2002 (Annexure A-16) regarding enhancement of punishment. Applicant gave reply to show cause notice. In his representation dated 6.3.2002 (Annexure A-17), the applicant had reiterated his earlier submission to the effect that the original ticket had neither been produced in the inquiry nor had the photocopy been authenticated by any authority and at no stages the applicant was shown the original ticket. Further, the applicant had been insisting upon the production of the original RUDs and the Enquiry Officer had been requesting the GM/Vig. for supply of original RUDs but the same was not supplied and the inquiry was completed without production of the original papers. Non production of original ticket and other relevant document i.e. cancelled ticket deposit register etc. have deprived the applicant a reasonable opportunity to effectively defend his case in terms of

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Hon'ble Supreme Court decision in **Hardwari Lal Vs. State of U.P. & Ors.** (ATJ 2000(1) 244).

17. The applicant had challenged the genuineness of the RUDs as writers/cutodian/supplier of RUDs were not cited as PWs. Hence, the RUDs had no legal value as none of the writer/supplier of RUDs had appeared as PW to prove the genuineness of the documents.

18. As per procedure, cancelled tickets were deposited with the Cashier treating them as cash and entered in cancelled Ticket Deposit Register. These are checked with ROPD statement by the Booking Staff and if any ticket is short, a memo is issued to RC concerned and debit is raised for the short. Neither any debit was raised against the applicant nor any error sheet was received from Dy.CAO. Applicant had also requested for personal hearing but the opportunity was not given to him.

19. On a careful consideration of the facts and circumstances of the case, we are of the view that even the basis for partially proving Charge No.1 and No.2 is questionable and as observed by the Inquiry Officer himself that there is confusion about the procedure regarding deposit of tickets and that "some system is failing". We also find that the Appellate Authority as well as Revisional Authority have not addressed the issues raised by the applicant in his representation and also as contended by the applicant that most of the original documents including the tickets have not been produced.

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It is settled law that in the matter of disciplinary proceeding a person should be afforded full and fair opportunity and even as far as supply of documents is concerned, no prejudice should be caused. Hon'ble Supreme Court in **M.V. Bijlani Vs. U.O.I.** (2006(3)SLR 105) has held that it is incumbent upon the Appellate Authority to minutely go into the contentions raised by the applicant. However, this has not been done by the Appellate & Revisionary Authorities.

20. Keeping in view the above facts and circumstances of the case, we allow the OA by setting aside the impugned orders. However, this would not preclude the respondents to proceed against the applicant, if so advised, in accordance with law. No orders as to costs.

Chitra Chopra
(CHITRA CHOPRA)
MEMBER (A)

S. Raju
(SHANKER RAJU)
MEMBER(J)

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