

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/708/2017

Dated: 23.04.2019

Between:

Mahesh Chulki,
S/o. L.D. Chulki,
Aged about 39 years,
Occ: Parcel Supervisor,
Aurangabad Railway Station,
South Cental Railway,
Nanded Division,
Maharashtra ó 431 005.

í Applicant

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1. Union of India rep. by
General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.

2. The Divisional Railway Manager,
South Central Railway,
Nanded Division,
Nanded, Maharashtra.

3. The Senior Divisional Commercial Manager,
South Central Railway,
Nanded Division,
Nanded, Maharashtra.

... Respondents

Counsel for the applicant : Mr. M.C. Jacob
Counsel for the respondents : Mrs. Vijaya Sagi, SC for Railways

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (J)
Hon'ble Mr. B.V. Sudhakar, Member (A)

ORAL ORDER

[Per Hon'ble Mr. Justice R. Kantha Rao, Member (J)]

The applicant is a Booking Clerk in South Central Railway, Secunderabad Division. A major penalty charge memo dated 29.01.2014 was issued to him with the following charges:

That the said Sri Mahesh Chulki, CBC/ PTU while working as BSR has committed a serious misconduct in that during the inspection of CCM/ PM/SC, it was noticed that UTS tickets & ticket rolls were kept on the floor were partially damaged by rats, even though there is space in almaries. The act of CE while working as supervisor did not keep the ticket stock under safe custody highly irregular towards his duties.

Thus Sri Mahesh Chulki, CBC/ PTU has failed to maintain devotion to duty and has acted in manner of unbecoming of a Railway Servant and thereby contravened the provision of Rule No.3(1)(ii) & (iii) of Railway Servants (Conduct) Rules, 1966.

2. In response thereto, the applicant submitted a defence statement on 22.12.2014 denying the charges. After receiving the defence statement, the 3rd respondent, without appointing any Inquiry Officer to conduct the inquiry, imposed the penalty of reduction to lower post i.e. from CBC in pay band/ pay scale of Rs.9300-34800/- + Grade Pay of Rs.4200/- to Sr. BC in pay band/ pay scale of Rs.5200-20200/- + Grade Pay of Rs.2800/-, duly fixing his pay in the pay band at Rs.11,870/- for a period of 18 months with cumulative effect and without loss of seniority. Feeling aggrieved, the applicant filed O.A. No.35/2015 before this Tribunal. The Tribunal vide order dated 2.2.2015, set aside the penalty order and directed the respondents to proceed with the inquiry as per rules.

3. After the order was passed by the Tribunal, permitting the department to conduct a fresh inquiry as per rules, an Inquiry Officer was appointed. Before the Inquiry Officer, no witnesses were examined. The Inquiry Officer, without compelling the presence of the witnesses of the department, closed the inquiry. A copy of the inquiry report was served on the applicant and his defence statement was called for. The applicant submitted defence statement. The Inquiry Officer has drawn up a report recording a finding that the charges against the applicant have not been proved and forwarded the same to the Disciplinary Authority to take further steps as per rules.

4. The Disciplinary Authority, on receiving the report, expressed the view that though the applicant reported sick on 4.5.2013, he performed duty till 3.12.2013 but failed to maintain ticket stock which resulted in damage to some ticket rolls. Arriving at the said opinion, the disciplinary authority, by order dated 26.7.2017, dropped the major penalty charge sheet against the applicant, converting the same into minor penalty and imposed a penalty of withholding three annual increments with cumulative effect and loss of seniority. The said penalty order has again been challenged in the present O.A. by the applicant.

5. The respondents filed reply statement stating that the applicant is guilty of dereliction of duties and, therefore, he was rightly imposed with the penalty by order dated 26.7.2017. In the alternative, they contended that if the Tribunal comes to the conclusion that the inquiry was not properly conducted and the penalty order is unsustainable in

law, the matter may be remitted back to the Disciplinary Authority for initiating inquiry afresh against the applicant.

6. We heard Sri M.C. Jacob, learned counsel appearing for the applicant and Smt. Vijaya Sagi, learned Standing Counsel for the respondents.

7. At the outset, we would like to state that though the disciplinary authority is entitled to disagree with the findings recorded by the Inquiry Officer, the said disagreement must be based on some evidence and for such disagreement, the Disciplinary Authority has to record reasons. Under Rule 10 of Railway Servants (Discipline & Appeal) Rules, after considering the inquiry report, if the Disciplinary Authority is of the opinion that any witness is necessary in the interest of justice to be examined, he may recall the said witness and examine him or else, he may remit the case to the inquiring authority for further evidence and report. In the instant case, obviously, no witnesses were examined by the department to prove the charge levelled against the applicant. Therefore, this is a case of no evidence. When it is a case of no evidence, it is obligatory on the part of the Disciplinary Authority, if he is not satisfied with the manner in which the inquiry was conducted, to remit the case to the inquiring authority for further inquiry, by recording reasons. In this case, knowing fully well that there is no evidence against the applicant, the Disciplinary Authority expressed the view that the applicant is in clear dereliction of duties. For the disagreement absolutely there is no basis for the Disciplinary Authority in arriving at a conclusion that the applicant is guilty of the charges

levelled against him. Further, in the event of disagreement and taking a decision to impose a minor penalty against the applicant, it is obligatory on the part of the Disciplinary Authority to send the inquiry report to the applicant with disagreement note. Therefore, in the instant case, obviously the Disciplinary Authority did not follow any procedure while disagreeing with the Inquiry Officer's report.

8. Further, again without following the procedure, without there being any evidence, the Disciplinary Authority imposed a major penalty and mentioned in his order that it is a minor penalty. Imposing a punishment of stoppage of three increments with cumulative effect, affecting the career of the applicant, is a major penalty, which the Disciplinary Authority should not have imposed, without any proper evidence in the course of the inquiry held against the applicant. Therefore, the penalty order passed against the applicant is unsustainable in law and is liable to be set aside in the present O.A.

9. We are not persuaded by argument of the learned Standing Counsel for the respondents to issue a direction to the Disciplinary Authority to initiate fresh inquiry against the applicant. From the facts which have been stated hereinabove, it is obvious that initially a major penalty was imposed without following the procedure, and without conducting any inquiry. Even after the direction given the Tribunal in the earlier O.A., the Disciplinary Authority, in violation of the procedure under Railway Servants (Disciplinary & Appeal) Rules, imposed a major penalty in a case where there is no evidence against the applicant. For the fault of the department in not following the

procedure to conduct inquiry, the applicant shall not be made to face the inquiries repeatedly. Further, the defence of the applicant is that the tickets in respect of which charges have been framed, have become invalid and they are liable for destruction. No contra evidence to the statement of the applicant has been let in by the department. Therefore, we are of the considered view that the applicant shall not be subjected to a fresh inquiry. Consequently, the penalty order dated 26.7.2017 passed by the 3rd respondent against the applicant is set aside. The O.A. is allowed without any order as to costs.

(B.V. SUDHAKAR)
MEMBER (A)

(JUSTICE R. KANTHA RAO)
MEMBER (J)

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