

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.1753/2008**

% Reserved on: 5th August, 2008
Date of Decision: 5th September, 2008

Union of India
Through

1. The General Manager
Northern Railway
Baroda House
New Delhi
2. The Sr. Divisional Commercial Manager
Northern Railway
Divisional Office
New Delhi
3. The Divisional Traffic Manager
Northern Railway
DRM's Office
State Entry Road
New Delhi

...Petitioners

Through : Mr.T. Mahipal, Adv.

Versus

Sh. Mithlesh Kumar
S/o Sh. M.P. Verma
Enquiry-cum-Reservation Clerk
CTE Office/DRM Office
Northern Railway.

...Respondent

Through : Ms. Meenu Mainee, Adv.

CORAM :-

**THE HON'BLE MR.JUSTICE MADAN B. LOKUR
THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J.R. MIDHA, J.

The Petitioner has assailed the order dated 14th September, 2007 passed by the learned Central Administrative Tribunal whereby the Tribunal has quashed the order of major penalty of reduction of pay of the Respondent by two stages for a period of three years with cumulative effect.

The Petitioner issued Memorandum dated 6th August, 1988 to the Respondent, who was working as Enquiry-cum-Reservation Clerk, on the allegation that he issued 21 reserved tickets to one person, named Harish Singh Rawat, employee of Jyoti Travels, Wazirpura, Delhi on 30.5.1997. The second charge was that he issued 173 tickets against 145 requisition slips on the same date.

The Inquiry Officer absolved the Respondent in respect of charge No.2. With respect to charge No.1, the Enquiry Officer held the same to be partly proved to the extent that the Respondent generated 21 PNRs continuously. However, the Enquiry Officer recorded in his findings that more than one PNR could have been generated if there was no rush on the Counter during that period. The Enquiry Officer further recorded that the Vigilance Team had not received any complaint from any passenger that the Respondent had accepted more than one requisition form from one person. It was further recorded that the Respondent was not examined by the Vigilance Team during investigation. There was no oral evidence to prove that the Respondent had accepted more than one form from one person. The Vigilance Team had also not enquired whether there was any queue/waiting at the relevant time. The Enquiry Officer gave a clear finding that there was no positive evidence to record that the Respondent had taken more than one requisition form from one person when other persons were in queue. The relevant portion of the report of the Enquiry Officer is reproduced below:-

“In view of the discussion above and the document produced in the Enquiry shows that 21 PNR’s which were recovered from Sh. Rawat were

generated by the C.O. in continuation from the period 17.51 to 18.06 hrs. and (14 PNR) and 19.22 hrs, 19.26 hrs (7 PNR's) the possibility cannot be ruled out that these PNR's generated by accepting more than one requisition from one person at a time which may be due to no rush on the counter during this period as vigilance team has not received any complaint from any passenger that the C.O. has accepted more than one requisition form one person. Moreover, the C.O. was not examined by the vigilance inspector during investigation and asked how he generated 21 PNR to one person as stated by Shri Rawat in his statement that he himself taken 21 PNR's from counter no.128 which was manned by the C.O. There is no oral evidence on record to prove that the C.O. accepted more than one form from one person but the DTC summary (Ex. P- 3) shows that the tickets recovered from Shri Rawat issued in continuity on the counter of the C.O., which may be due to no rush on the counter and person have produced his requisition one by one due to no passenger on the counter. Moreover, the vigilance team has not taken queue position and recorded statement of any passenger stating the queue at the time of check at 19.30 hrs. that the C.O. had taken more than one from i.e., 7 requisition forms from one passengers at 19.22 hrs. to 19.28 hrs. for preparation of 7 tickets Ex. P-1(i) to Ex.P – 1 (viii), which could delay in preparation it is not possible to prepare seven tickets & 15 tickets at a time of one passenger on separate requisition passengers in case of other passengers standing in queue.

In view of the discussion above, there is no positive evidence on record that the C.O. had taken more than one requisition form from one person when the other persons were in queue but the C.O. cannot escape from the responsibility that he generated PNR continuously against the tickets found with Shri Rawat. Hence, the charge is partly proved.”

The effect of the aforesaid findings is that the charge against the Respondent was not proved. However, it is surprising that the Enquiry Officer, after recording the above findings, concluded that the charge was partly proved. It appears that the Disciplinary Authority also did not apply its mind on the aforesaid findings of the Enquiry Officer and imposed major penalty on the Respondent in a mechanical manner.

We are of the view that the charge against the Respondent was not proved. The Enquiry Officer has given clear finding in favour of the Respondent. The Enquiry Officer has clearly recorded in his findings that there has been no evidence as to the position of the queue or rush at the counter and there had been no complaint from any passenger that the Respondent had accepted more than one requisition form from one person.

The punishment imposed on the Respondent has been rightly quashed by the learned Tribunal. This is not a fit case for interference in exercise of writ jurisdiction. We, therefore, dismiss this writ petition.

(J.R. MIDHA)
JUDGE

(MADAN B. LOKUR)
JUDGE

September 5, 2008
s.pal