IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7741 OF 2007
WITH
CIVIL APPLICATION NO. 1232 OF 2013

1. Union of India
Through General Manager,
Central Railway,
Headquarters Officer
Mumbai CST,
Mumbai 400 001

2. The Senior Divisional Commercial
Manager, Central Railways,
Mumbai Division,
CST Mumbai … Petitioners

Versus

1. K. S. Shashidharan,
Junior Parcel Clerk,
Lokmanya Tilak Terminus,
Central Railways, Kurla East, Mumbai,
Residing at B/7, 410, Veena Nagar,
Marg, Mulund (west),
Mumbai … Respondent

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Mr. Suresh Kumar for the Petitioners.
Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy for Respondent and Applicant in civil application.

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CORAM : A. S. OKA AND M. S. SONAK, JJ.

RESERVED ON : 30th AUGUST, 2018.
PRONOUNCED ON : 27th SEPTEMBER, 2018.

JUDGMENT [PER SHRI M. S. SONAK, J.] :

1. Heard learned Counsel for the parties.

2. The challenge in this petition is to the order dated 10th April, 2007 made by the Central Administrative Tribunal (CAT) allowing Original Application No. 491 of 2005 instituted by the respondent-Junior Parcel Clerk, questioning the penalty of reversion to initial grade for a period of five years with cumulative effect and loss of seniority.

3. The respondent was served with a charge memorandum dated 6th June, 2001 while he was working as a Booking Supervisor at Thane Central Railway Station, alleging the following:-

I. Overcharging the decoy passenger by Rs.5/-.

II. Detection of excess of Rs.15/- in the Rly. Cash.

III. Detection of Rs. 310/- found unclaimed inside the booking office.

4. The Inquiring Officer in his report dated 2nd September, 2002 held the charges as framed may not be held as proved, but there was evidence on record to prove overcharging one Shri

Tabrak by Rs.10/- and shortage of Rs.85/- in railway cash. Based upon such report, the disciplinary authority imposed penalty of compulsory retirement upon the respondent. The appellate authority however, reduced the penalty from compulsory retirement to that of reversion to initial grade for a period of five years with cumulative effect and loss of seniority. The respondent's revision petition was rejected by the revisional authority.

5. The respondent, then instituted Original Application No. 491 of 2005 before the CAT. By the impugned order dated 10th April, 2007 the CAT has set aside the penalty imposed upon the respondent and directed the petitioners to restore the respondent to his original position as Booking Supervisor with all consequential benefits. The CAT, in impugned order has basically held that there was breach of Explanation (I) to Rule 9(25) of the Railway Servants (Discipline and Appeal) Rules, 1968 (said rules).

6. The explanation (I) to Rule 9(25) of the said rules reads as follows:-

> *"(i) If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge:*
>
> *Provided that the findings on such article of charge shall not be recorded unless the Railway servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charges.*"

7. In order that the aforesaid explanation is attracted, the inquiring authority must form an opinion that the proceedings of the inquiry established an article of charge different from the original articles of charge. The inquiring authority will then be competent to record its findings on such different article of charge subject to either of the following :

(i) The railway servant admits the facts on which such article of charge is based; or

(ii) The railway servant has reasonable opportunity of defending himself against such article of charge.

8. In the present case, the CAT in its impugned order has held that the articles of charge held as established by the inquiring

authority are different from the original articles of charge framed against the respondent. The CAT has then proceeded to hold that since such different articles of charge were neither admitted by the respondent nor was the respondent given reasonable opportunity for defending himself against such different articles of charge, there is breach of Rule 9(25) of the said rules, thereby vitiating the penalty imposed upon the respondent.

9. As noted earlier, charge memorandum dated 6th June, 2001 served upon the respondent *interalia* comprises the following:-

(i) Statement of article of charge (Annexure-I).

(ii) Statement of imputation of misconduct/misbehaviour in support of article of charges (Annexure-II).

(iii) List of documents by which the articles of charge are proposed to be sustained (Annexure-III).

(iv) List of witnesses by whom articles of charge are proposed to be sustained (annexure-IV).

10. The statement of articles of charge (Annexure-I), in its article I had stated that the respondent charged the decoy passenger by Rs.5/- on sale of a ticket II M/exp. Ticket (ART)

No.17321833 ex. Thane to Gorakhpur. However, this is required to be read alongwith the statement of imputation of misconduct/misbehaviour in support of the articles of charge at annexure-II. In the statement of imputations, it was clearly stated that in the course of vigilance check, one passenger came forward complaining that the respondent took Rs.10/- excess from him on issuance of a II M./Exp. Ticket No.17321809 Ex. Thane to Basti. The details of the alleged interactions between said passenger and the respondent, in the presence of the vigilance officer are clearly stated in the statement of imputation of respondent's misconduct/misbehaviour in support of the articles of charge.

11. For convenience of reference, the portion of the statement of imputation of misconduct/misbehaviour in support of the article I of the charge against the respondent is extracted below:-

> *"Meanwhile during the course of vigilance check one passenger came forward complaining that the booking clerkShri K. Shashidharan took Rs. 10/- excess from him on issuance of a II M./Exp. Ticket No.17321809 Ex. Thane to Basti Complainant gave his complaint to Vigilance team. He stated that when he demanded a ticket from the booking clerk. The booking clerk demanded Rs. 242/- from him*

accordingly complainant paid. But when he saw the ticket after issuing it. The passenger asked the booking clerk that the cost of the said ticket is only Rs. 232/- whilst the booking clerk demanded and accepted Rs.242/- from him and accordingly the passenger insisted to return Rs.10/- taken excess by booking clerk but the booking clerk refused to pay the same."

12. From the conjoint reading of the statement of articles of charge at annexture-I and the statement of imputation of misconduct/misbehaviour in support such article of charge at annexure-II, it is quite clear that the charge that the respondent took Rs.10/- excess from a passenger for issuance of a II M./Exp. Ticket No.17321809 Ex. Thane to Basti was very much part and parcel of Article-I of the charge framed against the respondent.

13. The CAT has not interfered with the penalty imposed upon the respondent on the ground that there was no evidence before the inquiring authority to sustain such a charge of recovering excess amount from the passenger concerned. The CAT has interfered with the penalty on the basis that the inquiring authority has recorded a finding on an article of charge different from the original article of charge.

14. According to us, this is not at all correct, since the statement of articles of charge and the statements of imputation of misconduct/misbehaviour in support of the article of charge had to be read in a conjoint manner. Upon such conjoint reading, it was quite clear that the charge of recovering excess amount from the passenger, was very much a part and parcel and Article-I of the charge levelled against the respondent. In such a situation, there could arise no breach of Rule 9(25) of the said rules.

15. The record also indicates that the respondent did file a response to the charge memorandum, which, as noted earlier, comprise both annexures I and II, conjoint reading of which, makes it clear that the charge of excess recovery from a passenger, was very much a part of the original charge framed against the respondent. This is therefore, not some case of denial of reasonable opportunity to the respondent or any case of breach of Rule 9(25) of the said rules.

16. Insofar as Article-II of the statement of articles of charge is concerned, no doubt, the allegation against the respondent was that an excess amount of Rs.15/- was detected in the railway cash

which he was responsible to maintain. By way of defense, however, the respondent pleaded that he had been given Rs.100/- by the railway authorities at the commencement of the day. Accepting such defense, the respondent was offered an opportunity to explain the fate of Rs.85/-, which ought to have been available with the respondent, on the basis of his own defense that Rs.100/- had been given to him by the railway authorities at the commencement of the day. Since, despite opportunity, the respondent was unable to explain as to why there was a shortage of Rs.85/- at the railway cash, the inquiring authority returned a finding as regards the shortage.

17. The finding returned by the inquiring authority in relation to Article-II of the charge is not entirely in variance with the charge as set out in the statement of articles of charge which is to be read alongwith the statement of imputation of misconduct/misbehaviour in support of such charge. In fact, the statement of imputation sets out in sufficient details the manner in which railway cash is to be maintained by booking supervisors. In defense to the charge that excess cash of Rs.15/- was found, the respondent pointed out that an amount of Rs.100/- had been

given to him at the commencement of the day by the railway authorities. The acceptance of such defense, interalia raised the issue of the consequent shortage of Rs.85/- in the railway cash. Since, the respondent was insistent that his defense be accepted, the respondent was also required to explain the shortage of Rs.85/-.

18. This is also not a case where no opportunity was offered to the respondent to explain such a shortage in the course of the inquiry. Despite offer of reasonable opportunity to explain such shortage, since, no proper explanation was forthcoming from the respondent, the inquiring authority returned a finding on the aspect of shortage of Rs.85/- in the railway cash, which the respondent was duty bound to maintain. In such circumstances, it cannot be said that there was any breach of Rule 9(25) of the said rules, even insofar as Article-II of the charge memorandum was concerned.

19. Thus, in the facts of the present case, it cannot be said that there was any serious breach of the provisions in Rule 9(25) of the said rules. In the first place, there was no substantial variance

between the articles of charge and what was ultimately held as proved against the respondent. Secondly, even assuming that there was some variance, it is apparent reasonable opportunity offered to the respondent, which opportunity was duly availed up by the respondent. In such circumstances, the CAT was not justified in interfering with the penalty imposed on the ground that there was breach of the provisions contained in Rule 9(25) of the said rules.

20. As noted earlier, there was no challenge on the ground that the findings recorded by the inquiring authority were vitiated by perversity. From the perusal of the inquiry report, it cannot be said that the findings recorded by the inquiring authority were based on no evidence or on inadmissible evidence. The vigilance officers in whose presence the passenger had complained about recovery of excess amount of Rs.10/- by the respondent were examined in the inquiry proceedings. They had clearly deposed that the complaint of such overcharging was made in their presence. The inquiry report also notes that the respondent himself signed on the complaint made by the passenger as regards overcharging. Only defense raised by the respondent was that he

put his signature on the complaint as per the instructions given to him by his superiors fearing that he might be victimised in case of refusal. The inquiring authority has considered, but not accepted such a defense.

21. The finding returned by the inquiring on the issue of cash shortage of Rs.85/- is also back-backed the evidence on record. In fact, as corollary to the respondent's defense that the railway authorities had given him Rs.100/- at the commencement of the day, the respondent was required to explain the fate of the balance amount of Rs.85/- after accounting the amount of Rs.15/- which was found with the respondent at the time when he was checked. The finding therefore cannot be regarded as a perverse finding.

22. The penalty of compulsory retirement which was originally imposed upon the respondent was reduced to the penalty of reversion to initial grade for a period of five years with cumulative effect and loss of seniority. Accordingly, there is no dis-proportionality as such involved in the ultimate penalty imposed upon the respondent.

23. The CAT, it appears, interfered with the penalty imposed upon the respondent by superficially concluding that there was total variance between the articles of charge levelled against the respondent and the articles of charge ultimately held as proved against the respondent. In fact, as noted above, upon conjoint reading of the articles of charge (Annexure-I), alongwith statement of imputations (Annexure-II) it was quite clear that there was no substantial variance. In any case, the material on record establishes that the respondent was offered and has even availed reasonable opportunity to defend the charges, held as proved by the inquiring authority.

24. This was certainly not some case of total denial of reasonable opportunity. Even if the complaint of the respondent is to be considered, then, the same sound in the arena of denial of adequate opportunity. In ***State Bank of Patiala Vs. S. K. Sharma - (1996) 3 SCC 364***, the Apex Court has made a distinction between cases involving "*no* opportunity" as opposed to "*no adequate* opportunity". The Apex Court has held that in the later cases, violation of principles of natural justice must be examined

on the touchstone of prejudice. In the present case, the respondent had not demonstrated any serious prejudice. Therefore, on the basis of some allegations of technical breaches in compliance of principles of natural justice, the CAT was not justified in interfering with the findings recorded by the disciplinary authorities. The scope of the jurisdiction exercised by the tribunal in matters of judicial review with findings recorded by disciplinary authorities, is quite limited. The tribunal cannot, in the exercise of such limited jurisdiction, usurp any appellate jurisdiction.

25. For all aforesaid reasons we set aside the impugned order dated 10th April, 2007 and make the rule absolute in terms of prayer clause (a) of the petition.

26. In view of above order, pending civil application does not survive and is disposed of.

(M. S. SONAK, J.) **(A. S. OKA, J.)**

Shridhar Marutirao Sutar
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