



W.P.No.15844 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	09.03.2023
PRONOUNCED ON	23.03.2023

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI
and
THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

W.P.No.15844 of 2022

A.Arumugam

...Petitioner.

Vs.

- 1.Union of India represented by
The Senior Divisional Commercial Manager,
Southern Railway, Chennai Division,
Park Town, Chennai – 600 003.
 - 2.The Additional Divisional Railway Manager/II,
Southern Railway, Chennai Division,
Park Town, Chennai – 600 003.
 - 3.The Chief Commercial Manager,
(Catering & Passenger Services)
Southern Railway HQ, Park Town,
Chennai – 600 003.
 - 4.The Additional General Manager,
Southern Railway HQ, Park Town,
Chennai 600 003.
 - 5.The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai – 600 104.
- ...Respondents.



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for records relating to the fifth respondent's order made in O.A.No.310/00855 of 2013 dated 18.09.2019, to quash the same and consequently direct the respondents 1 to 4 to forthwith reinstate the petitioner into Railway Service with all consequential benefits both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.A.Kumaraguru

ORDER

(Order of the Court was delivered by V.LAKSHMINARAYANAN,J.)

This writ petitioner challenges the order of the Central Administrative Tribunal in dismissing the application filed in O.A.No.310/00855/2013 dated 18.09.2019.

2. The case of the petitioner is that he was appointed as a Ticket Collector on 17.10.1979. While working as Chief Ticketing Inspector at Arakkonam Junction of Southern Railway's, he was issued with a major penalty charge memo bearing No.M/Con/C/1536 dated 03.02.2011, the contents of the charge memo are here under:-

Statement of Articles of Charges Framed Against Shri A. Arumugam, CT/AJJ (THEN CTI/SL/ED).

Sri A.Arumugam, CTI/AJJ (then CTI/SL/ED), PF.No.04315420 while working by Train No.6327 on 10/11.1.10 and manning A-1, B-1 & B2 Coaches had failed to maintain absolute integrity, show devotion to duty and acted in a manner unbecoming of Railway Servant in that he had committed the



following irregularities.

(a). He had demanded and collected Rs.500/- from Sri.C.Vijay, Technician, Gr.III/C&W/TPJ, allotted berth No.48 of B-1 Coach and issued EFT No.014666 for Rs.456/- but not returned the balance amount of Rs.44/- to him. Thus, he retained the balance for his personal gains.

(b). He had also demanded Rs.500/- from Sri.R.Suresh, Technician, Gr.III/C&W/TPJ holding II M/E ticket No.479053804 ex MAS-ED and permitted him to occupy berth No.47 of B-1 Coach.

(c). He had not collected the railway dues of Rs.390/- from Sri R. Suresh, Technician, Gr.III/C&W/TPJ holding II M/E ticket No.479053084 ex MAS-ED and permitted him to occupy berth No.47 of B-1 Coach.

(d). He had also permitted four passengers holding II M/E ticket No.479053205 ex MAS-ED to occupy berth Nos.5,7,13 & berth No.3 in A-1 Coach after SA without collecting railway dues of Rs.1850/- from them.

(e). He had inflated his personal cash as Rs.618/- against actual amount of Rs.200/- and thus he had excess cash of Rs.418/-.

(f). He had not made entries in the Train working chart for the allotments made by him.

3. Pursuant to this charge memo one K.Moorthy, Senior Enquiry Officer/Southern Railway was appointed as “Inquiry Officer”. The Inquiry Officer submitted a report stating that Charge (b) was “partly proved” and other charges were “proved”. The second respondent/The Additional Divisional Railway Manager/II imposed a penalty of “Removal from Railway



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Service”. Being aggrieved of the penalty, the petitioner filed a statutory appeal on 13.04.2012 under Rule 18 of Railway Servants (Discipline & Appeal) Rules, 1968 before the 3rd respondent. The appeal was turned down. A further revision was preferred under Rule 25 of the aforesaid Rules which was also ended in dismissal.

4. Challenging these orders, the writ petitioner filed O.A.No.855 of 2013. The OA was also dismissed. Aggrieved by which he has filed the present writ petition.

5. The Learned Counsel for the petitioner would argue that when there is disagreement between the Disciplinary Authority and the Enquiry Officer on the second Charge (b), he ought to have entered into given reasons for such disagreement and should have communicated the same to the writ petitioner along with the copy of the report of the Inquiry Officer. He alleged the violations of the principles of Natural Justice and had not been taken note by any of the parties. He further contended that as per Rule 9 (21) of the Railway Servants (D & A) Rules 1968, the Inquiry Officer ought to have called upon him explaining the circumstances and that having not been complied with, the Enquiry is vitiated and consequently, the entire proceeding has to be set aside.



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6. Finally he would argue that the authorities had taken into consideration the previous conduct of the petitioner and imposed the punishment, therefore, the order is vitiated.

7. Mr.Thirumalaiswamy, learned Standing Counsel, while rebutting the arguments submitted that the respondents had received an information that some ticket travelling examiners, working in Air Conditioned Coaches in Train bearing No.6327, Korba Trivandrum Express were either collecting more than penal fare or after such collection were not issuing the receipts for the same. The amounts collected from the passengers, as the penal fare, were pocketed by these ticketing travelling examiners. Therefore, the respondents decided to conduct surprise check and planted Trap Witnesses, in order to find out the state of affairs. They found out irregularities and consequently issued charge memo. On receipt of reply, a detailed enquiry was conducted. On receipt of the report and after complying with all the requirements, as per rules, the Disciplinary Authority found the petitioner guilty of the various misconducts and ordered his removal from service.

8. He added that the Appellate Authority applied its mind and concurred with the findings of the Disciplinary Authority. However on punishment, taking a sympathetic view, he ordered compassionate pension of



2/3rd and gratuity under Rule 65 of Railway Services (Pension) Rules 1993.

Against the order passed by the Appellate Authority, a revision had been preferred which came to be dismissed on 30.12.2012. He would state that the Disciplinary Authority did not differ from the enquiry officer and therefore, there is no question of recording any disagreement. With respect to the argument on Rule 9 (21), he would state that the said provision was complied on the argument that the past conduct and being referred to service and incidents, he submitted that it was taken into consideration for the purpose of quantum of punishment rather than awarding a penalty.

9. We carefully considered the submissions of the learned Counsel for the Petitioner and for the Respondent. We have gone through the records in particular, the orders of the various authorities below and that of the Central Administrative Tribunal.

10. We are not in agreement with the learned Counsel for the Petitioner that the mandatory provision of 9 (21) were not complied. Reference may here be made to the enquiry report. It reads:-

“ While answering the mandatory questions, the charged official stated that he did not have any defence documents/witnesses. He stated that he still denied the charges and did not offer himself to be examined as a witness in his own case and preferred to submit his written defence brief by way of defence. Though the charged official



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was given opportunity to explain the circumstances appearing the evidence against him under Rule 9 (21) of Railway Servants D&A Rules, 1968 he has preferred to explain the circumstances only in his written defence brief and the same was agreed to. The Presenting Officer was directed to submit his written brief in quadruplicate on or before 29.10.2011 with a copy direct to charged official under clear acknowledgement and the charged official was directed to submit his written defence brief in quadruplicate duly signed in all pages on or before 10.11.2011. The Presenting Officer submitted his written brief on 28.11.2011 and the Charged Official submitted his written defence brief on 05.12.2011.”

11. The state of affairs, which occurred during the enquiry, has been recorded. This shows that not only 9 (21) complied in letter but in spirit. Therefore, the statement of the learned Counsel for the Petitioner that the judgment in ***Moni Shankar Vs. Union of India reported in 2008 (3) SCC 484*** which held Rule 9 (21) is mandatory was not followed is erroneous.

12. On the second submission, the Disciplinary Authority should have given reasons for disagreement with the views of the enquiry officer and should have proceeded accordingly is equally baseless.

13. It is on record that the Inquiry Officer found Charge (b) to be "proved to the extent that the applicant had permitted Shri.R.Suresh and 4 passengers to occupy berth Nos.5,7,13 and berth No.3 in A-1 coach". This finding was not differed to by the Disciplinary Authority. Concurring with the same, he confirmed the finding. When the Disciplinary Authority agrees



with the enquiry officer, no occasion arises for him to record the reasons.

WEB COPY 14. On the last point that the Appellate Authority had taken into account the past service record, we are in agreement with the order of the Tribunal that the Appellate Authority is not prohibited from taking into consideration the past service or history of a charged officer for the purpose of imposing penalty. The Appellate Authority, had in fact taken a lenient view than that taken by the Disciplinary Authority. Taking into consideration the past service of the writ petitioner, he had granted compassionate provision of 2/3rd and gratuity as is admissible under Rule 65 of the Railway Service Pensions Rules 1993.

15. The reference to the writ petitioner's past service, has in fact gone in his favour. He is no way prejudiced by the action of the Appellate Authority. No other points have been urged therefore, we are of the view that the writ petition should fail and it is accordingly dismissed.

16. The Learned Counsel for the Petitioner requested us to modify the punishment of removal with that of compulsory retirement. Here is the case where the petitioner had permitted persons to unauthorizedly use the premium Air Conditioned Coaches. Apart from that, he had permitted one Suresh and others to occupy the said berths unauthorizedly. In addition, the



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difference of penal charge levelled on the passengers was pocketed. The employer has lost confidence in him and an order of removal from service had been passed. This punishment had been tempered with mercy by the Appellate Authority by granting 2/3rd pension and gratuity. Any further sympathy would be to give discount to the dishonesty. We are not inclined to do so.

17. Considering the fact that the petitioner has retired from service and he is a senior citizen, we are not imposing any costs on him. This writ petition stands dismissed. No Costs.

(V.M.V.,J) (V.L.N.,J)

23.03.2023

Index : Yes/No
Speaking : Yes/No
Neutral Citation Case : Yes/No
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V.M.VELUMANI,J
and
V.LAKSHMINARAYANAN,J
nst

To:

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10/11



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5. The Registrar,
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Pre-Delivery Order in

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