(2019) 12 CAT CK 0026

In the Central Administrative Tribunal

Case No : Original Application No. 2152 Of 2014

Deepika — APPELLANT

Vs

Delhi Metro Rail Corporation Ltd. And Ors — RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Delhi Metro Rail General Rules, 2005 — Rule 12(C)
Delhi Metro Rail Corporation conduct, Discipline And Appeal Rules, 2005 — Rule 4.1(i), 4.1(ii), 4.1(iii)

Citation : (2019) 12 CAT CK 0026

Hon'ble Judges : L. Narasimha Reddy, J;Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Sachin Chauhan, VSR Krishna

Judgement

L. Narasimha Reddy, J

1. The applicant was employed as Customer Relation Assistant (CRA) in Delhi Metro Rail Corporation (DMRC), the 1st respondent. She was issued a charge memo dated 22.02.2013, alleging that she committed irregularities in the context of illegal top-ups in the smart cards of the passengers while functioning at GTBR Station. It was also alleged that she has not issued the receipts of the amount received by her for top-ups of the smart cards and that in course of inspection, sum of Rs.8/- was found in excess. The applicant submitted her explanation, denying the allegations made against her. Not satisfied with that, the Disciplinary Authority (DA) appointed the Inquiry Officer (IO). In its report dated 22.08.2013, the IO held one component of the charge as "proved" and other as not expressly proved. The DA passed the order dated 15.01.2014, imposing the penalty of removal from service. The appeal preferred against the order of removal was rejected on 01.05.2013. Hence this OA.

2. The applicant contends that she performed her duties strictly in accordance with the prescribed procedure and there was no complaint whatever from any customer. She stated that even during the course of a surprise check, nothing

incriminating was found against her and the entire charge is based upon assumptions and doubts.

3. The applicant contends that the IO himself was not clear about the proof of charges and despite that, the punishment of a very serious nature was imposed against her. It is also pleaded that the Appellate Authority (AO) did not examine the matter on merits and has simply dismissed the same.

4. The respondents filed a counter affidavit, opposing the OA. It is stated that the applicant has taken advantage of the technology and has enriched herself by topping up of the cards in her control and custody, with part of the amounts collected from the customers. They have further submitted that the applicant did not explain the excess of Rs.8/- of cash.

5. As regards the nature of punishment, the respondents contend that the applicant was endowed with the duty of handling cash transactions, and any deviation therein deserves to be taken seriously and accordingly, the punishment was imposed.

6. We heard Shri Sachin Chauhan, learned counsel for the applicant and Shri VSR Krishna, learned counsel for the respondents.

7. The applicant joined the service of respondent organization in the year 2009. Charge memo dated 22.02.2013 was issued to her and the following articles of charge were framed against her:-

"Article-1

Ms. Deepika Designation-CRA, Employee No.10157, while working at Customer Care Centre of GTBR station, has indulged in corrupt practices, by garnering illegal money thorugh transactions performed on CSC (Smart Card) of passengers, and hiding the excess illegal case, by multiple top-ups (Add Value Operations) on the Smart Cards performed on the same day, and by retaining the same with herself. This serious misconduct has been found to be committed by her over duration of about 1 month during the year 2013 and during this period she has done such Add Value Operations amounting to Rs.1400/- in different Smart Cards.

By the above mentioned act of serious misconduct and corrupt practices, Ms. Deepika Designation-CRA, Employee no.10157, has violated Rule-12(C) of Delhi Metro Rail General Rules, 2005, and has failed to maintain absolute integrity, devotion to duty and acted in a manner, unbecoming of a public servant.

Article -2

In the course of a surprise check conducted on the CCC of MDTW station on 04.02.2013 at 14:38 hrs, when Ms. Deepika, Designation-CRA, Employee No.10157, was on duty, an excess of Rs.08/- was found with her. Further, it was found that the receipts for transactions/top-ups done on Smart Card were also not issued by her thereby violating instructions issued vide Note No.OCC/Rev/

Insr/BR-IX/01 dated 10.01.2013. She was found in unlawful possession of a bunch of 34 number of transaction receipts that were to be issued to passengers.

By the above mentioned act of serious misconduct and negligence of duty Ms. Deepika Designation-CRA, Employee no.10157, has violated rule 4.1(i), (ii) & (iii) of DMRC conduct, Discipline and Appeal Rules, 2005, and has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant. "

8. The gist of the 1st article of charge is that the applicant garnered money through illegal transactions performed on Contact less Smart Card (CSC) and the value of such operations by January, 2013 was treated as Rs.1400/-. In the 2nd article of charge, it is alleged that (a) the applicant did not issue the receipts for the amount received by her and

(b) the amount received of Rs.8/- was found excess in cash box. The applicant denied the charges framed against her. In the inquiry, two officials of the respondent organization were examined. This is not a case in which any complaint was made by any passenger stating that the smart card held by him was not topped-up to the level of money tendered by him, to the applicant. The respondents conducted a surprise check and on the basis of the data collected from the Ticket Operating Machines (TOM) handled by the applicant, it was presumed that: (a) there were multiple transactions on certain smart cards on different dates and that the applicant was the beneficiary thereof. The particulars thereof were furnished in a relied upon document. From the fact that there were multiple transactions on different cards that took place on 13.01.2013, 15.01.2013 and 25.01.2013, it was presumed that it was not a genuine transaction and the applicant is the beneficiary thereof.

9. There would have been strength in the allegation in case the person, who is the beneficiary of the card, was traced and examined. Further, there was no complaint from any passenger, alleging that the applicant did not top-up the card for the value of money tendered by him. It is true that in the absence of any such compliant also, the respondents can conduct the surprise check. In such instance, the proof must be clear and beyond any doubt. If one gives the scope for any presumption, it would become very difficult to come to a definite conclusion.

10. In his report, the IO observed that there was no prohibition against multiple top-ups till January, 2013 and instructions in this behalf were issued only on 14.02.2013. The relevant paragraph reads as under:-

"During the examination, the CO pointed out that there was no circular/ instruction regarding the prohibition of multiple Add Value at the time of issuing charge sheet. The fact is that there was no instruction regarding prohibition of multiple add value transaction till the date of inspection on 04.02.2013. A note No.-OCC/Rev/Inst/Misc./Feb/2013/01 dated 14.02.2013 regarding prohibition of Add value cancellation and multiple add value in smart card was issued on

14.02.2013, placed at CP-74, before issue of major penalty memorandum."

11. Coming to the 2nd article of charge, the allegation is not that the applicant did not generate the receipts at all. On the other hand, many receipts were found to be available at the relevant place. In the rush, many passengers may not take the receipts, even if offered. The applicant can be an accused of any misconduct, if only there was any complaint in this behalf directly or indirectly. The recovery of Rs.8/- is said to be on account of non-availability of the change in the form of coins. The conclusion of the inquiry is that the substantial part of the charge was held not proved and other part as proved. The Disciplinary Authority was required to take note of this, in the context of choosing the penalty. The order of penalty is so cryptic that hardly any word was said about the gravity of the charges or otherwise. The AA also did not analyse the issue, except that has taken note of the various stages in the proceedings.

12. One course open to us is to set aside the impugned order and to require the respondents to pass fresh orders. Five years have elapsed since the applicant was removed from service. We prima facie find that the charges held proved against the applicant are not so serious as to warrant imposition of penalty of removal. The interest of the respondents can be protected by modifying the punishment to be commensurate with the charge held proved and direct reinstatement of the applicant without back wages. When the same was proposed, we did not receive any serious objection from either side. The matter can be given quietus at this stage, instead of prolonging it.

13. We, therefore, allow the OA and set aside the impugned orders. The order of punishment passed by the DA shall be modified to one of the imposition of reduction of pay by one increment, to be in force for a period of one year, without any future effect upon the pay structure of the applicant. The respondents shall reinstate the applicant within a period of four weeks from the date of receipt of a copy of this order and the applicant shall not be entitled to any back wages.

There shall be no order as to costs.

