

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1878/1999

New Delhi, this the 30th day of November, 2000

HON'BLE SHRI JUSTICE RAJAGOPALA REDDY, VC(J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Gauri Prasad,
S/o Shri Komal
Ticket Collector
Northern Railway
Railway Station
Delhi Applicant
(Advocate : Shri B.S. Mainee)

Versus

1. Union of India, Through
The General Manager,
Northern Railway,
Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway
State Entry Road
New Delhi
3. The Station Superintendent
Northern Railway,
Railway Station,
Delhi Respondents
(Advocate : Shri R.P. Aggarwal)

O R D E R (ORAL)

By Shri Justice V. Rajagopala Reddy, V.C.(J)

While the applicant was working as Ticket Collector he was charge-sheeted for major penalty on 7.11.1999 allegations that he has unlawfully collected Rs.50/- from a passenger. As the charge was found established, the disciplinary authority awarded the penalty of reducing him in rank to the Parcel Porter permanently by order dated 5.7.1999 which has been affirmed by the appellate authority in its order dated 5.8.1999, which is now under challenge in this OA. The learned counsel, Mr. Mainee appearing for the applicant states that as the key witness, the passenger, who paid the money having not been

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examined, it vitiated the entire enquiry. The orders of the disciplinary authority as well as appellate authority are liable to be set aside as they have not assigned any reasons to their decision.

2. Heard the counsel for the applicant and the Respondent. We have given careful consideration to the arguments advanced by the learned counsel. The allegation in this case is that the applicant had collected Rs.50/- from one passenger who was travelling with his wife and 2 minor children. One of the children was over 12 years of age. When the passenger got down the train the applicant (Ticket Collector) demanded for the payment of penalty for the child at Rs.144/- as the difference in the full ticket, but the passenger paid only Rs.50/- and went away which the applicant pocketed. The vigilance Inspector who was one of the Prosecution Witnesses caught the applicant red handed and also recorded statement of the passenger "Exhibit P-3". 3 witnesses were examined in the case for prosecution. It is however, seen that the passenger was not examined. It is therefore contended by the learned counsel for applicant that the passenger being an independent and also principal witness in this case, he should have been examined. The contention of Respondents is that his presence could not be procured. Hence the Enquiry Officer considered the statement of passenger Exhibit P-3 on which the applicant had endorsed his signature. Learned counsel relied upon Sarla Devi Vs Police ATR 1992(I)CAT 648 where it was said that non examination of the case of the complainant vitiated the disciplinary proceedings and that the evidence of eye

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witness was not taken into account while passing the orders of dismissal. The passenger is neither the complainant nor the crucial witness in this case. He is an accomplice in the case whose evidence is not credible at all. Merely because other 3 witnesses are Police witnesses it cannot be said that their evidences cannot be given any credit to. It is well settled that rules of evidence under the Evidence Act as are applicable in a criminal trial cannot be applied in the departmental proceedings. The veracity of each witness depends upon his credibility which in turn has to be gone into by the E.O. in the appreciation of his evidence. We cannot discredit such witness relied upon by the Enquiry Officer.

3. We come to the next question whether the order of disciplinary authority or the appellate authority are non-speaking orders. The Enquiry Officer has given his findings after considering the entire evidence on record. In that event in our view it is not necessary for him to assign reasons as has agreed with the findings of the E.O. in passing the order. However, this will not apply to the Appellate Authority. The Appellate Authority's order is as under:

"Under rule 22(2) of RS(D&A) Rules -1968, Sr DCM/NDLS has carefully considered your appeal and passed the following orders:-

"I have gone through the appeal of the employee and find that, no new fact have been brought out by him, which warrant any reduction in the punishment upon him. Hence, this appeal is regretted."

This is for your information."

4. The appeal is a valuable right available for officer. All the facts of the case are at large before him. He should therefore, consider the pleas of the appellant and validity of the disciplinary authority's order including to the propriety of the quantum of penalty. The appellate order, in the instant case, is a verity non-speaking order. No reasons are assigned whatsoever in support of the conclusions to reject the appeal. The order is therefore, void and is liable to be quashed. The OA is accordingly partly allowed, remitting the case to the appellate authority to dispose of the appeal in the light of the judgement, within a period of three months on receipt of this order. Since we find that the appellate authority was not cautious in passing the impugned order, we impose costs of Rs. 5,000/- (Rupees Five Thousand only) against him to be paid personally.

(Gowindan S Tampi)
Member(A)

(V Rajagopala Reddy)
VC(J)

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