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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2698/1999

New Delhi, this 13th day of July, 2000

Hon'ble Justice Shri V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Vijay Kumar Mago
9-D/3, NPL Colony
New Rajinder Nagar, New Delhi-60 .. Applicant

(By Shri V.Shekhar, Advocate)

versus

1. Director General
Counsel of Scientific & Industrial Research
Anusandhan Bhavan
Rafi Marg, New Delhi
2. Director
National Physical Laboratory
Dr. K.S.Krishnan Marg
New Delhi .. Respondents

(By Shri Kapil Sharma, Advocate)

ORDER(oral)

By Reddy, J. -

While the applicant was working as Technician Grade VIII in National Physical Laboratory, a unit of CSIR, a departmental enquiry was initiated against him under rule 14 of CCS(CCA) Rules, 1965 vide memorandum dated 18.2.96. The allegation against him was that he has defrauded the department in an amount of Rs.389 by claiming fictitious TA for himself for not travelling by AC II-tier from New Delhi to Jammu in Jammu Tawi Express on 3.12.92. Applicant having denied the allegation, an Enquiry Officer (EO, for short) was appointed who, after enquiry, found that the charge was proved. The disciplinary authority (DA, for short) considering the material against the applicant and agreeing with the findings of the EO imposed the punishment of compulsory retirement vide impugned dated 17.5.99. The appeal filed by the applicant was eventually rejected. The

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present OA therefore is for setting aside the order of DA. As the appeal was disposed of subsequently, after filing of the OA, on 12.1.2000, the counsel for the applicant also challenges the appellate order.

2. Learned counsel for the applicant contends that there was undue delay in initiating the proceedings against the applicant. The contention of the counsel is that though the applicant made the claim on 17.5.93, the charge-sheet was issued on 18.2.96.

3. Learned counsel for the respondents however submits that the DA has considered this aspect and has stated clearly in his order how the delay occurred in this case. We have perused the order of the DA. It was stated that the actual enquiry of the case started in 1993 itself. It was also found that the applicant submitted TA claim regarding extension of tour by two days on 20.7.94 which also contributed to the delay in the enquiry. The delay caused therefore was explained by the DA. It is submitted that the charge sheet was issued in 1996 after receiving necessary documents from CSIR and the EO conducted the enquiry in November, ^A1998 hence the delay of conducting the enquiry was attributable to the charged officer himself as he demanded that the office should get the so called daily conductor receipt sheet authenticated due to which the enquiry had to be kept in abeyance for about six months. Since the delay in this case has been properly explained, it will not vitiate the enquiry proceedings.

[Signature]

4. It is next contended by the learned counsel that there was no evidence to establish the charge and the applicant should have been exonerated. The finding that the applicant failed to produce any certificates to authenticate the documents amounted to shifting of the responsibility on the applicant to establish the charge. It is contended that the burden is always upon the prosecution to prove its case and failure on the part of the applicant to authenticate the documents relied upon by him cannot be a ground to hold that the charge was established.

5. The learned counsel for the respondents however submits that it was for the applicant to prove the case set up by him and hence the EO has rightly held that the applicant has failed to establish his case.

6. We have given careful consideration to the pleadings and contentions. The gravamen of the charge is that the applicant travelled in ordinary II class but he claimed and obtained TA stating that he travelled by II-Tier AC from Delhi to Jammu. Applicant in defence of the charge stated that though he boarded the train with ordinary II class he converted it into II-Tier AC with the permission of the Conductor in the train after paying difference of ticket value and hence he claimed for travel in II-tier AC. Thus there is no dispute as regards the travel of the applicant in II class (ordinary). The dispute is whether the applicant converted the ordinary II class ticket into II-tier AC after he boarded the train. The prosecution to disprove the case of the applicant has filed Exhibit 6 and

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Exhibit 7. Exhibit 6 is the document to show that there was no booking in the name of the applicant in II AC class. Exhibit 7 is the document to show that no passenger can travel without getting reservation in the reserved compartment whether in 1st AC, IInd AC, 1st class, Chair Car or sleeper class. Thus the burden was shifted on the applicant to prove that he travelled by II AC. In order to prove that he travelled by II AC, he has relied upon the "conductor's daily history sheet" for the month of December, 1992. He has also filed II class ticket. But he has not examined any witness in support of his case that he travelled by II AC or that he converted his ticket into II AC. Conductor's daily history was not authenticated as it was neither stamped nor sealed by the concerned authority of the Railway. It was only a copy of the conductor's daily sheet. It is true, as contended by the learned counsel for the applicant, that the prosecution itself has undertaken the task of getting it authenticated if the deposit of Rs.750 is made by the applicant. Eventually the deposit was not made by the applicant. Hence it remains unauthenticated. Thus for the purpose of authentication the enquiry was held for more than six months. It would have been easier for the applicant to get the document authenticated or ^b apply for a fresh copy duly certified. For whatever reasons, the applicant has failed to do so. Thus no valid document has been filed by the applicant in support of his case.

7. The crucial document in this case is also not filed by the applicant i.e. receipt issued by the conductor in token of having received excess amount for travel in

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II AC. It is the case of the applicant that he had lost the receipt. This aspect was considered by the EO and found against the applicant. The EO has analysed the facts and the material in this case and found that the department has proved its case by exhibits 6 and 7 that the applicant failed to produce any substantial evidence to prove that he had travelled by II AC by converting the ordinary II class ticket and therefore concluded that the charge was established against him. The DA has considered very elaborately the entire material in this case and given cogent and valid reasons in coming to the conclusion agreeing with the findings of the EO that the applicant was guilty of the charge. Hence it is not possible for us, in exercising the judicial review jurisdiction, to interfere with the findings.

8. The last contention is about the severity of the penalty. Learned counsel for the applicant contends that the penalty of compulsory retirement is too harsh, as the amount involved was only Rs.389/-. Applicant submits that even in cases where the amount is more than Rs.2000, under similar circumstances lower penalty was imposed like reduction in increment. The DA however has considered the aspect of penalty and found that the applicant will not be fit person to be retained in service as he claimed bogus TA claim. The appellate authority also considered this aspect regarding the severity of the penalty. He has stated that the misconduct indulged by the applicant was very serious and reflected on his integrity. Accordingly the punishment imposed by the DA was confirmed. Law is well settled that the Tribunal cannot interfere with the

penalty imposed by the DA unless it was wholly unreasonable and shocking. In cases of fraud and misappropriation of government funds, the quantum of the amount involved is not a valid factor to go into the proportionality of penalty. The charges of fraud or misappropriation are very serious charges reflecting on the integrity of the delinquent. It is well recognised that penalty should also serve as deterrent to others as day-in and day-out government servants would be dealing with public funds. We do not find any warrant to interfere with the penalty.

9. The OA is therefore dismissed. No costs.

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(Smt. Shanta Shastri)
Member(A)

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman(J)

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