

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.747/95

New Delhi this the 16/16 day of January 1997.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr. R.K.Ahooja, Member (A)

Raj Pal Singh
Son of Shri Deshraj Singh
R/o House No.J-281/7A Vijay Colony
New Usmanpur
Third Pushta, Delhi - 110 053. ...Applicant.
(By Advocate: Mr O.P.Gupta) Versus

Union of India through

1. General Manager
Northern Railway
Baroda House
New Delhi
2. The Divisional Railway Manager
Northern Railway, DRM Office
Paharganj, New Delhi. ...Respondents.

(By Advocate: Mr B.K.Agarwal)

O R D E R

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

This application is directed against order dated 8.8.94 of the Divisional Traffic Manager, New Delhi removing the applicant from service and the order dated 18.10.94 rejecting his appeal against the order of removal and the order dated 10.4.95 rejecting his review application. The facts of the case can be briefly stated as follows:

The applicant while working as Booking Clerk under the Chief Booking Superintendent, New Delhi was placed under suspension by order dated 13.1.92 of the Senior Project Manager. He was, thereafter, served a charge-sheet (SF-5) dated 7.2.92. The statement of articles of charges against the applicant contained

(Signature)

in Annexure A-I reads as follows:

"Shri Rajpal Singh while working as Booking Clerk at Modi Nagar during 1986 committed following misconduct in as much that:-

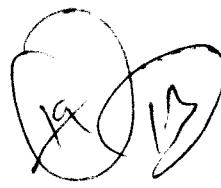
1. He did not prepare the passenger foil of II H/E BPT 150118 dated 1.9.86, 150162 dated 28.9.86, 150196 dated 10.10.86 and 577689 dated 21.10.86 in carbon paper with ulterior motive.
2. He prepared the passenger foils of above BPTS for different amount as shown in Accounts foil with a view to misappropriate government cash for Rs. 358/-.
3. He prepared passenger foils of the BPT No.150118 dated 1.9.86, 150162 dated 28.9.86, 150196 dated 18.10.86 and 577689 dated 12.10.86 for different destination as shown in Accounts foil of the above BPTs.
4. He issued passenger foil of the above BPTs for adults while in the Accounts foil of the same BPTs he showed to be issued for child and monetary limit of BPTs (Passenger foil) exceeds than the prescribed.

By the above act he committed a fraud with Railway to misappropriate government cash and thus failed to maintain devotion to duty, absolute integrity and acted in a manner unbecoming of a railway servant contravening rule 3.1 (i) (ii) & (iii) of the Railway Services Conduct Rule, 1966."

The Enquiry Officer commenced the proceedings on 22.1.1993. The applicant denied the charges. On 22.1.93, the applicant made a written request for making available the following documents which were to be considered to be absolutely essential for defending himself effectively at the enquiry:

1. DTC Book of September 1986 and October 1986 wherein the disputed BPTs might have been accountd for at Modi Nagar alongwith the original record foils H BPT no.150118, 150162, 150196, 577689 of September & October 1986 of Modi Nagar.
2. Station copy of the E/sheet No.TA/DK7/CG/L/LCB/Int-Check/Ru 86 of 26.2.87 and E/Sheet No.TA/DKZ/CGL/LCB/Intcheck/Ru/86 of 25.3.87 alleged to have been issued to Modi Nagar Station pertaining to the debits against the aforesaid BPTs.

(Signature)



3. Admission of the debits by Shri Raj Pal Singh, BC pertaining to the aforesaid BPTs in the concerned E/Sheet or otherwise if any.
4. Record copy of the money receipts (SN 43) which must have been issued to Shri Raj Pal Singh/BC/MDNR while making payment for the debits against the aforesaid BPTs as alleged.
5. Complaint/report/statement in whatever form it may be, of the investigation VI as well as other VI against Shri Raj Pal Singh BC/MDNR.
6. Case file including the notation sheets as dealt with by the disciplinary authority before the issue of chargesheet in question to him.

These documents were not supplied to the applicant on the ground that they were burnt by the agitators during the Anti-Mandal Commission Agitation on 26.9.90. In the written statement submitted by the applicant, he had stated that he did not prepare the Blank Paper Tickets (BPTs) in question, that Shri Gilotra, another booking clerk and Shri Sita Ram, Chief Booking Clerk, were also present on duty on the dates the disputed BPTs were prepared, that the BPTs in question might have been issued by Shri Gilotra and that the applicant had to attend to the brake van of the passenger trains and had to receive the parcels meant for Modinagar in addition to booking of tickets and that the BPTs might have been issued in his absence at the counter. At the enquiry, two witnesses mentioned at the annexure not to the memo of charges were examined and only the Chief Vigilance Inspector Shri Ram Kishore who completed the preliminary enquiry was examined in support of the charges. In addition to examining the applicant on his side, one witness Shri Vishwa Nath was also examined in defence. The enquiry officer submitted his report holding the charges against the applicant proved, which was accepted by the disciplinary authority who passed the impugned order at Annexure A-1 dated 8.8.94 finding the applicant guilty and removing the applicant from service as penalty. The applicant was aggrieved by the fact that he was not given the additional documents to enable him to put up an effective defence and that the disciplinary authority held him guilty without any evidence. His appeal was rejected by order dated 18.10.94

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which was not signed by the appellate authority but somebody for DRM. His revision petition also met with the same fate and this order was also signed for DRM by somebody. The applicant has assailed the impugned orders on various grounds. The applicant has raised the ground that the officer who issued the charge-sheet has no competence to do so and many other technical grounds. The impugned orders are mainly challenged on two grounds namely (a) the enquiry proceedings were vitiated for violation of principles of natural justice as the applicant was deprived of a reasonable opportunity to defend himself by not supplying to him the documents which were essential for a proper defence being put up (b) the finding of the enquiry officer which was accepted by the disciplinary authority is perverse as it is not supported by any evidence at all. The appellate and revisional orders are impugned on the ground of non-application of mind and that these orders are signed not by proper authority but by unauthorised persons for the competent authority.

2. Respondents have filed a reply statement in which they contend that the enquiry was held in conformity with the rules and that the applicant has no legitimate grievance. Regarding the allegation that the additional documents which were absolutely essential for putting up a proper evidence were not supplied to him though demanded, this has been admitted by the respondents but they contend that the documents could not be supplied to the applicant as they were burnt during the anti-Mandal agitation.

3. We have carefully gone through the pleadings and other materials on record and have heard the learned counsel appearing for the parties. Learned counsel for the respondents made available for us the entire file relating to disciplinary proceedings. We have gone through that also.

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4. The argument of the learned counsel for the applicant that the applicant has been denied a reasonable opportunity to defend himself as the respondents did not supply to him the documents which he required for putting up a proper defence has considerable force. The charge relates to preparation of BPTs different from what is contained in the account foil and misappropriation of cash amounting to Rs. 358. The account foil and DTC book of September 1986 and October 1986 and other documents required by the applicant in his letter dated 7.2.92 were undoubtedly important documents which would have been necessary for the applicant to put up an effective defence. The respondents cannot be found fault with non-supply of these documents, for, these documents were not available having been destroyed during the Anti-Mandal agitation; but the fact remains that non-supply of these documents to the applicant, may be for reasons beyond the control of the respondents, has resulted in deprival of a reasonable opportunity to the applicant to put forth an effective defence. The enquiry authority did not hold that these documents were neither relevant nor essential for putting up an effective defence. Therefore, we are of the considered view that the applicant in this case having been denied a reasonable opportunity to defend himself, the disciplinary proceedings stand vitiated.

5. The case of the applicant that the finding of the enquiry authority which has been accepted by the disciplinary authority that the applicant is guilty of the charges is totally perverse as it was reached without any evidence in support thereof also has considerable force. The applicant has in his written statement of defence categorically denied to have prepared the BPTs in question and has stated that the same might have been prepared by the other booking clerk. He has also stated that the amount alleged to have been misappropriated had been made good by Mr Gilotra, the other booking clerk. Though names of three witnesses, M.D.Khan, Ram Kishore & R.R.Gautam were shown in the list of witnesses (Annexure A-4) to the memo of charges), at the enquiry, only Ram Kishore was examined. Mr

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R.R.Gautam, Station Superintendent, Modinagar who would have been in a position to state as to whether the alleged BPTs were actually prepared by the applicant or whether Mr Gilotra made good the sum of Rs. 358 has not been examined at the enquiry. The reason stated was that the witnesses having been transferred out to some other station did not appear. The same was the reason stated for non-appearance of Shri M.D.Khan, Shri Ram Kishore, the only witness examined in support of the charges is the Vigilance Inspector who completed the preliminary enquiry. This witness had not seen the applicant preparing the BPTs. He did not even record the Ex.P.2 statement of the applicant during the preliminary investigation. It was recorded by M.D.Khan. In this statement also, the applicant has not admitted that he prepared the BPTs in question but actually he has denied to have prepared the BPTs. Ram Kishore is the only witness examined in support of the charges. Ram Kishore, the Vigilance Inspector who completed the preliminary investigation has stated that the BPTs appear to have been written in a hand-writing similar to that of the applicant. The enquiry officer comparing the hand-writings in Ex.P-2 with those in the accounts and the BPTs held that the BPTs must have been prepared by the applicant. The applicant had claimed that the disputed hand-writing might be sent for examination by experts, but this was not done. Merely on a comparison of the hand-writing by the enquiry officer, he held that it was the applicant who prepared the BPTs in question. Apart from that, there is no evidence at all to conclude that the applicant is guilty of the charges. The disciplinary authority accepted the finding and held that the applicant guilty and imposed on the applicant the penalty of removal from service. We are of the view that any reasonable person will not conclude by a mere comparison of hand-writings with naked eye without the help of an expert that the disputed BPTs was prepared by the applicant just because in his view the hand-writings there resembled

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the hand-writings of the applicant in Ex.P.2. The fact that the applicant in his statement Ex.P-2 admitted that the BPTs related to the days on which he was on duty does not permit an inference being drawn that it was prepared by him. Therefore, the finding that the applicant is guilty of misconduct is found to be perverse and unsustainable. The appellate and revisional orders are devoid of application of mind and are signed by incompetent persons. As per the rules, the statutory duty of disposing of appeals and revisions should be performed by concerned authorities and orders thereon should be made under their own hand and seal. This was not done in this case.

6. In the light of what is stated above, we find that the impugned orders are liable to be struck down ~~and~~ and that the applicant is entitled to consequential relief.

7. In the result, the application is allowed. The impugned orders are set aside and the respondents are directed to reinstate the applicant in service forthwith with all consequential benefits. The above directions shall be complied with by the respondents within one month from the date of receipt of this order.

R.K.Ahooja
(R.K.Ahooja)
Member (A)

A.V.Haridasan
(A.V.Haridasan)
Vice Chairman (J)

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