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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2049/96

New Delhi, this 25th day of April, 2000

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

Awadesh Kumar Singh
Senior Ticket Collector
Northern Railway, Hardoi(UP) .. Applicant
(By Shri S.K. Gupta, Advocate)

versus

Union of India, through

1. Secretary
Railway Board
Rail Bhavan, New Delhi
2. General Manager
Northern Railway
Baroda House, New Delhi
3. Addl. DRM, Northern Railway
Moradabad Dn.
4. Sr. Divn. Commercial Manager
Northern Railway, Moradabad .. Respondents

(By Shri Rajeev Bansal, Advocate)

ORDER(oral)

By Reddy, J. -

The applicant who was working at the ~~relevant point~~ ^{Station} of time as Ticket Collector at Hardoi ~~Division~~ was charge-sheeted on the allegation that he had accepted illegal gratification of Rs.17/- from a passenger Shri Vijay Kumar Sharma when the applicant was not on duty (off duty). After an enquiry held by the enquiry officer (EO, for short), the disciplinary authority (DA, for short) agreeing with the findings of the EO passed the impugned order in December, 1992, imposing a penalty of withholding increment to which the applicant was entitled to as on 1.2.93, for a period of ~~2~~ years postponing his future increments. His appeal was

✓ ② Corrected with ~~Ans~~
order dated 26.6.2000

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rejected and the revision filed by the applicant was also dismissed as time-barred. The present OA is filed aggrieved by the above order of penalty.

2. It is contended by the learned counsel for the applicant that there is no evidence in this case. The complainant who was the main witness has not been examined during the DE in support of the charge, hence the entire enquiry is vitiated.

3. Learned counsel for the respondents submits that though the complainant has not been examined there is sufficient material on record in support of the charge against the applicant, hence the enquiry cannot be held as vitiated.

4. We have given careful consideration to the pleadings as well as the arguments advanced by the learned counsel on either side.

5. The charge against the applicant is that he checked the passenger in his off duty and accepted illegal gratification of Rs.17 from the said passenger Shri Sharma instead of levying excess fare for his ticketless travel. Applicant denied the charge stating that the Vigilance Inspector Shri Mishra wanted to save Shri Sonkar who was the ticket collector on duty and asked him to put his signature on the statement prepared by Shri. Mishra. The applicant declined to sign but at the insistence of Shri Misra, he signed on it only to save Shri Sonkar. But he totally denied the charge and stated that his signature was taken under duress. Out of 5 witnesses, the EO examined only two persons namely



Shri Misra and Sant Ram, Head Ticket Collector. It is not the evidence of the two witnesses that they had seen the applicant either checking the passenger or receiving the amount of Rs. 17/-.

6. We have perused the EO's report but we do not find the EO having relied upon the evidence of these two witnesses in support of charge. In the analysis of evidence of EO it is stated that Sant Ram disassociated himself from any evidence which was likely to go against the applicant.

7. In the present case, in our view, the passenger is the crucial witness who is the complainant against the applicant. There is no reason why he has not been examined. It is clear from the EO's report that he was present during DE on earlier occasion on 9.3.92 but he could not be examined as the defence helper was not available. The letter signed by him which was marked as Ex.C-2 and C-1 were relied upon. This letter which was addressed to EO does not throw any light upon the charge against the applicant. It only stated that cooked up evidence could not be taken cognisance of. The passenger is the crucial witness in this case and the entire ^{case} ~~witness~~ would depend upon his deposition that the applicant has demanded and accepted money from him. EO should have taken all steps to procure his presence and examine him. No such attempt has been stated to have been made by the EO. In our view, when the witness is available no reliance could be placed on the letter and the previous statement said to have been made by him.

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8. Learned counsel for the applicant relies upon the judgement in the case of Hardwari Lal Vs. State of UP & Ors. JT 1999(8) SC 418, where the learned judges clearly held that it was necessary to examine the complainant who was the main witness in the case. It is also held that the impact of the testimony of the complainant cannot be brushed aside. In the instant case the only material evidence in support of the charge against the applicant was the passenger/complainant. The EO should have examined him and no reasons were assigned by him for not procuring his presence who is the main witness. We do not find any ~~other~~ evidence on record in support of the charge. We are, therefore, of the view that ~~there is no evidence in the case to support the charge.~~ ^{of} ~~the~~ ^{to} ~~case~~ ^{to} ~~support the charge.~~ The contention of the learned counsel for the applicant has therefore to be accepted.

9. The impugned order is set aside. The OA is accordingly allowed. No costs.

Shanta F

(Smt. Shanta Shastry)
Member(A)

Dr. Jayalalaji

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

/gtv/