

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2495 of 1996

New Delhi, this 05th day of April, 2000

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

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S/o Shri Ram Dayal
C/o Mohanlal, 4034, Baghichi Ram Chandra
Opp. Sr. Sec. Govt. Boys School, Paharganj
New Delhi-55. ... Applicant

(By Shri H.P. Chakravorti)

versus

1. The Union of India, through
The Chairman
Railway Board
Principal Secretary to Govt. of India
Ministry of Railways
Rail Bhawan, New Delhi.
2. Shri V.K. Doorwar
Assistant Commercial Manager, Jhansi
Central Railway now working at DRM's Office
Bhopal (M.P.)
3. Shri V.K. Shukla
Assistant Commercial Manager, Jhansi
Central Railway DRM's Office, Jhansi.
4. Shri Suresh Kumar
Divisional Commercial Manager
(General), Central Railway
Jhansi. ... Respondents

(By Shri B.S. Jain, Advocate)

ORDER(oral)

By Reddy, J.

The applicant while working as Ticket Collector during 1993, was alleged to have demanded and accepted Rs.25/- as illegal money from a ticketless passenger without issuing any receipt. On the above allegation which has been denied by the applicant, an enquiry has been conducted and the enquiry officer, after considering the evidence of witnesses and other material, found that the above charge was not

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established. The disciplinary authority thereupon supplied a copy of the enquiry officer's report to the applicant and upon consideration of the explanation submitted by the applicant, passed the impugned order dated 6/14.11.1995, dismissing the applicant from service. The applicant filed an appeal which was rejected by an order dated 18.12.1995. The applicant filed further revision petition to the Senior D.C.M. but before it was disposed of, the applicant filed the present OA questioning the orders of dismissal from service.

2. It is now stated by the applicant that subsequently the revisional authority was disposed of the revision by order dated 12.8.1997, reducing the punishment of dismissal from service to that of reduction to the post of Goods Porter in the grade Rs.750-940 (RPS) fixing pay at Rs.750/- for a period of five years with cumulative effect. Consequently, the applicant moved MA No.2426/99 for amendment of the OA By an order dated 17.12.1999 it was directed that the said MA would be considered at the time of final hearing of the OA.

3. Since the impugned order in the OA prior to the amendment has been substantially altered by the revisional order, the OA has to be amended suitably. Accordingly the MA is allowed.



4. It is contended by the learned counsel for the applicant Shri H.P.Chakravorty that the impugned orders are vitiated in that the enquiry officer, having exonerated the applicant and the disciplinary authority ^{having} sought to disagree with the findings of the enquiry officer, should have recorded the reasons for his disagreement and the same should have been communicated to the applicant giving him an opportunity to explain. In the instant case it is argued that no reasons for disagreement have been recorded or communicated to the applicant.

5. The learned counsel for the respondents however refutes the contentions and submits that the enquiry was properly conducted and there was no error in the proceedings. The respondents have also taken a preliminary objection that this Tribunal has no jurisdiction to entertain the OA. It is contended that as the applicant has not furnished any documentary proof as to his residence at Delhi and as the applicant was earlier employed at Jhansi from where he was dismissed from service, the Tribunal has no territorial jurisdiction to decide the matter. The learned counsel for the respondents also relies upon the judgement in UOI and Ors vs. Dudh Nath Prasad 2000 SCC(L&S)236 where the meaning of the expression "ordinary resident" under Ss.20(1), 20(1-A) and 20(7) of

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Representation of the People Act, 1950 a reference to the disqualification for contesting the election to Rajya Sabha, was considered. Their Lordships have held that the concept of 'domicile' with reference to change of nationality or change of domicile from one country to another, cannot be imported in the present case. Moreover, 'domicile and residence' are relative concepts and have to be understood in the context in which they are used, having regard to the nature and purpose of the statute in which these words are used.

6. It is true that the applicant was employed in Jhansi. After his dismissal it was stated by the applicant that he was residing at New Delhi and he has also given the Door No., Street No. etc. at Delhi. Under Rule 6 of CAT (Procedure) Rules 1987, the place of filing application is the place where the applicant is ordinarily "residing at the time of filing of the application." It was nowhere brought out in the counter that he was not an ordinary resident of Delhi. In the absence of any material placed before us, we have to accept the averment that the applicant was residing at the time of filing the OA, at Delhi. Normally, the meaning of "ordinarily residing" occurred in Rule 6 has to be literally interpreted to confer jurisdiction to the Tribunal. The burden of showing that the

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applicant is not a resident of Delhi and that he has given the address at Delhi only for the purpose of conferring jurisdiction to the Tribunal lies heavily on the respondents. The respondents, in the instant case failed to discharge the same. The applicant has been dismissed from service and was no longer in Jhansi. In the circumstances, the objection regarding jurisdiction is rejected.

7. We have considered the pleadings as well as the contentions advanced on either side.

8. The only allegation against the applicant was that he had accepted Rs.25/- from a ticketless passenger without giving receipt. The enquiry officer has conducted the enquiry but found that the charge was not established. The enquiry officer submitted his report to the disciplinary authority. Thereafter the impugned order was passed by the disciplinary authority which is reproduced below:

"Sub: Major penalty case against
Shri M.L.Kushwaha, T.C. JHS.

I have carefully considered your representation dated Nil in reply to the charge memorandum No.P-19/3417/VC/CON. dated 18.8.93 issued by ACM JHS. I do not find your representation to be satisfactory and I hold you guilty of Articles of charge/imputation of misconduct/misbehaviour as shown in the charge memorandum levelled against you. I have decided to impose upon you the penalty of "Dismissal from Service". You are, therefore,



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dismissed from service with immediate effect. Under Rules 18 & 19 of RS(D & A) Rules 1968, an appeal against these orders lies to DCM JHS."

9. From a perusal of the above order it is clear that the disciplinary authority having considered the representation made by the applicant to the enquiry officer's report, found held that the applicant was guilty of the misconduct without giving reasons for disagreement with the findings of the enquiry officer. He neither discussed the evidence on record nor examined any more witnesses or assigned any reason for coming to his conclusion. He has also not even stated how he disposed of the representation made by the applicant. Since the applicant was found not responsible for the charge, the applicant could have no real grievance against the enquiry report. We do not find from the record of the case that ^{any} ~~no~~ reasons for disagreement have been recorded. But disciplinary authority came to the conclusion that the applicant was guilty of the charges contrary to the findings of the enquiry officer.

10. In Punjab National Bank & Ors Vs Kunj Behari Misra (1998) 7SCC 84 it is held that whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, before it records its own findings on such charge, it must record its reasons for such disagreement and give opportunity of hearing to the delinquent officer before it records its

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findings. The principles of natural justice require the authority to take a final decision and give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer. In fact in Rule 10 Sub Clause(3) of RS(D&A) Rules, 1968 a clear provision is made for recording reasons of disagreement. No such reasons have been recorded by the disciplinary authority and the question of communicating the same did not arise. The revisional authority also has not considered this aspect, but reduced the punishment as stated supra. Since the enquiry itself is vitiated in view of violation of the principles of natural justice the orders are liable to be set aside. Accordingly we set aside the impugned orders. Since the matter relates to 1993, we do not find it appropriate to remand the matter to disciplinary authority for fresh enquiry. The applicant is allowed all consequential benefits. The OA is accordingly allowed. No order as to costs.

Shanta
(Mrs. Shanta Shastri)
Member(A)

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

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