

Central Administrative Tribunal, Principal Bench

Original Application No.61 of 1997

New Delhi, this the 25th day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri V.K.Majotra, Member (A)

S.Kar, S/o late Sh. Nityananda Kar, R/o
H.No.133, Block-C, New Ashok Nagar, Delhi-96
working as Reservation Clerk, NOIDA public
reservation System Sector 29, NOIDA. - Applicant

(By Advocate Shri J.K.Bali)

Versus

1. General Manager, Northern Railway, Baroda
House, New Delhi.
2. Divisional Railway Manager, Delhi
Division, Northern Railway State Entry
Road, New Delhi.
3. Chief Commercial Manager (General),
Northern Railway, Baroda House, New Delhi - Respondents

(By Advocate S/Shri P.M.Ahlawat & P.S.Mahendru))

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant was working as Inquiry and Reservation Clerk in the Northern Railway Reservation Office IRCA building, New Delhi. On 3.8.1988 he was manning counter no.5 with Shri Mohd.Islam, Coaching Clerk as his helper. A team of vigilance inspectors conducted a decoy check. Consequently, a memo dated 5.10.1988 (Annexure-A-4) was issued to the applicant by the Assistant Manager, Programming, for major penalty. The enquiry officer concluded in enquiry report at Annexure-A-7, that (a) the aspect of demand of money is not proved, and (b) the aspect of acceptance of excess money by the charged official is proved. The DTM Delhi as disciplinary authority after service of the enquiry report on the applicant and receiving applicant's representation dated 15.3.1993 (Annexure-A-8) passed order dated 25.6.1993 (Annexure-A-1) holding the

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applicant guilty of accepting money for allotting berths and imposed penalty of reduction to the lowest stage in pay in the same time scale for a period of one year with postponement of future increments. The applicant's appeal was also rejected vide order dated 13.4.1994 (Annexure-A-2). The Chief Commercial Manager (CCM), too, rejected applicant's prayer for cancellation of the punishment in revision vide order dated nil (Annexure-A-3) received by the applicant on 12.6.1996. The applicant has assailed the above three orders on the ground that the enquiry was not held properly; important witnesses were dispensed with; there was no transaction between the applicant and the decoy; the aspect of demand of money has not been proved; it has not been proved that the money was accepted by him for giving any favour to the decoy; the finding of the enquiry officer is not supported by any evidence on record; and the evidence which has been taken into consideration was not on record. The applicant has sought quashing of the impugned orders with all consequential benefits and direction to the respondents to treat the period of his suspension from 19.8.1988 to 19.9.1988 as period spent on duty for all purposes; and to pay to the applicant the difference between the emoluments due to him and the subsistence allowance paid to him during suspension.

2. The respondents have submitted that the charge against the applicant was that while manning counter no.5 at current reservation counter, in connivance with Shri Mohd.Islam, Coaching Clerk, assisting him on his counter, he demanded and accepted Rs.20/- as illegal

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gratification for allotment of two berths in 16 Up (GT Express) Ex-New Delhi to Madras in addition to the Railway fare due in the name of Shri and Smt.K.K.Ramadevan in 2nd Class III Tier sleeper for 3.8.1988. The respondents have stated that the examination of four witnesses was not dispensed with arbitrarily. That had been done with the consent of the applicant. Shri Ramadevan and Shri S.A.Rahim, prosecution witnesses did not turn up to depose before the enquiry officer. Shri M.K.Sharma and Shri K.E.Moses, I.I. Vigilance, Railway Board also did not appear. Their repeated non-appearance compelled the enquiry officer to dispense with these witnesses. The amount of Rs.20/- which was accepted by the applicant as illegal gratification was recovered from his cash earnings. The applicant has filed a rejoinder as well.

3. We have heard the learned counsel of both parties and carefully gone through the record available on file.

4. The learned counsel for the applicant has contended that Annexure-4 contains the list of witnesses in the enquiry. PW 4 Shri Ramdevan was the decoy and PW5 Shri S.A.Rahim was the independent witness but both of them were not examined in the enquiry. In this view of the matter, it has been turned into a case of no evidence. He drew our attention to the finding of the enquiry officer that the aspect of demand of money has not been proved. He further stated that there is nothing on record in the enquiry to prove that the other aspect of acceptance of money has been proved from any evidence on record. According to the applicant's counsel whereas Annexure-A-1 and Annexure-A-2 are

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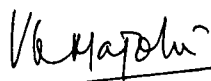
mechanical orders, even order in revision is also non-speaking. In appeal, the applicant has not been given a personal hearing and the order was passed without dealing with the contentions raised by the applicant. The learned counsel relied on Union of India Vs. H.C.Goel, 1964 (4) SCR 718 and State of Assam Vs. Mohan Chandra Kalita, AIR 1972 SC 2535. As per the former case, the charges have to be proved only on legally admissible evidence, and as per the latter the applicant had not authorised collection or connived with anyone for acceptance of money as illegal gratification. Therefore, the charges cannot be held proved against the applicant.

5. The learned counsel of the respondents stated that the transaction had taken place between the decoy and Shri Mohd. Islam - the applicant's helper, who was in connivance with the applicant in accepting money as illegal gratification for allotment of berths. According to the respondents' counsel certain PWs were given up in the enquiry with the consent of the applicant. Therefore, he cannot be allowed to raise the point that certain witnesses were not examined in the enquiry. They have further maintained that the revisional authority has dealt each and every contention of the applicant raised by him in the revision. The applicant had signed on the seizure memo (Annexure-A-13) prepared by the decoy team. They refuted the contention of the applicant that he was not given any personal hearing. As a matter of fact, the revisional authority had given him a personal hearing. The applicant has not denied acceptance of money anywhere. The money was taken from the decoy by the applicant's helper within

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applicant's knowledge and was put into applicant's drawer. Normally, on checking the excess money found would be pocketed by the applicant, who is incharge of the counter and the drawer. The respondents' counsel has stated that the applicant has admitted that Shri Islam had taken money from the decoy and put the same in the drawer. The respondents' case is that whereas the aspect of demand of money has not been proved in the enquiry, the aspect of acceptance of excess money has been proved. From the enquiry report, we find that whereas some PWs were dispensed with by the enquiry officer with the consent of the applicant, there is sufficient material on record to prove that money was paid by the decoy to applicant's helper who was in connivance with the helper. The points raised by the applicant against the enquiry report, the penalty order and the order in appeal, have been clearly dealt with by the revisional authority in the revisional order which has been passed on affording of opportunity of hearing to the applicant. We are also of the view that in a disciplinary proceedings what is looked for is the preponderance of probabilities and not requirement of stricter proof as required in a criminal trial. In our view the authorities have not committed any procedural irregularity in the enquiry and have come to the correct findings while imposing the penalty in question. In the light of the above reasons, we do not find any justification to interfere with the impugned orders.

6. In the result, the OA is dismissed. No costs.



(V.K. Majotra)
Member (A)

rkv.



(Smt. Lakshmi Swaminathan)
Member (J)