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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.498 of 1989

This 9th day of March, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Ved Prakash Sharma,
S/o Shri Mishri Lal Sharma,
Booking Clerk,
Nizamuddin Railway Station,
Northern Railway,
New Delhi.

Applicant

By Advocate: Shri B.S. Mainee

VERSUS

1. Union of India, through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Norther Railway,
Straight Entry Road,
New Delhi.

Respondents

By Advocate: Shri O.P. Kshatriya

O R D E R

(By Hon'ble Mr. B.K. Singh, M(A))

This O.A. No.489/89 has been directed against the impugned orders No.Vig/44/88-Comm1.I/8 dated 19.9.88 passed by the Divisional Traffic Superintendent (Annexure A-1) and No. 941-E/25/XVIII/ADM/82 dated 13.1.89 passed by the Divisional Personnel Officer, New Delhi (Annexure A-2). The applicant was appointed as a Booking Clerk on 30.4.80 in the scale of pay of Rs.975-1540. While working at Delhi Railway Station, the applicant was served with a memo of charge-sheet for major penalty vide order No.44/88/Comm1.I/8A dated 17.3.88. The statement of article of charges on the basis of which he was proceeded is that he exchanged a 100 rupee GC note tendered by a passenger for the purpose of ticket for 'Bhuj' into a GC note of Rs.50/- and thus

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attempted to pocket Rs.50/- of the passenger and thus failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant thereby contravening Rule 3.1 (i) , (ii) and (iii) of Railway Service (Conduct) Rules 1966. The ~~memo~~^{of} chargesheet served on him is annexed as Annexure A-3 of the paper-book.

2. The applicant submitted his show-cause denying the charge levelled against him. The Inquiry Officer was appointed and the inquiry was held by Shri S.N. Vatsa, nominated by the competent authority. The Inquiry Officer conducted the inquiry following the procedures laid down under Rule 9 and 10 of the Railway Servants (Discipline & Appeal) Rules, 1968. In the light of examination and cross-examination of the witnesses and the admission of the ~~applicant~~ in his own writing, the I.O. held the charge proved against him. The Divisional Traffic Superintendent, agreeing with the findings of the I.O., imposed a penalty reducing the applicant to the lower post i.e. from Sr. Booking Clerk (Rs.1200-2030) to Booking Clerk (Rs.975-1540) for one year without cumulative effect. A copy of the inquiry report was also annexed along with the said notice.

3. The prayer made in the O.A. is for setting aside the punishment orders (annexure A-1) and also the transfer orders (annexure A-2).

4. A notice was issued to the respondents who filed a reply and contested the application opposing the grant of reliefs prayed for.

5. We heard the learned counsels, Shri B.S. Maine for the applicant and Shri O.P. Kshatriya for the respondents. In his arguments, the learned counsel Shri Maine said that the applicant was not provided opportunity to defend himself and thus there was denial of principles of natural justice. He said that the copies

of the documents wanted by the applicant were not supplied to him by the respondents. He also said that the statement in writing of the applicant was under duress since the P.G. Cell staff wanted the same from him.

6. The admitted facts in this case are that Shri Ved Prakash Sharma, the applicant, was working on Counter No.3 on 14.2.88 in the Second Class Booking Office. At about 1230 hours one passenger named Ismila complained to the Grievance Cell staff that the booking clerk at Counter No.3 has charged Rs.50/- in excess from him while issuing 3 II class tickets for Bhuj, by exchanging his GC note of 100/- into GC Note of Rs.50/-. The staff on duty, Shri Darshan Kumar Rajput, reservation clerk working in Grievance Cell noted his complaint at page 65 of the 'Tatkal Samadhan Pustak'. A person of the Vigilance who was available there took the complainant and Shri Darshan Kumar Rajput to booking office to verify the fact. The passenger was requested to identify the booking clerk concerned. The passenger, Ismila identified one Ved Prakash Sharma, Booking Clerk concerned. He was confronted with the BC before Darshan Kumar Rajput and Tara Chand, Booking Supervisor on duty. The passenger categorically stated before them that he had given two GC notes of 100 rupees each to the BC for purchase of three tickets. The BC demanded Rs.25/- more being fare of one ticket as Rs.75/-. The passenger again gave him GC note of Rs.100/-. The BC issued him three tickets bearing No.15614, 15 and 16 and returned Rs.25 only. When the passenger, Ismila demanded Rs.50/- more as the balance, the BC told him that he had given him GC note of Rs.50/- and not of GC note of Rs.100/-. On hearing the complaint of the passenger, Ved Prakash Sharma stated that in his opinion the passenger had given him GC note of Rs.50/-. He further stated that there might be a mistake on his part as he was performing double duty. He, however, returned Rs.50/- to the passenger after satisfying himself before Darshan Kumar Rajput and Tara Chand, Booking Supervisor on duty who took everything in writing from the booking clerk and also verified the facts in writing.

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7. It was also admitted ^{that} the applicant while returning Rs.50/- to the said passenger, wrote in his admission that the correct position will come to light only after checking the cash and he was returning Rs.50/- due to P.G. Staff. During the course of inquiry all these witnesses were examined and cross-examined by the delinquent employee on which the I.O. proved the charge against the applicant. The passenger also submitted a complaint to the Vigilance Inspector which he got recorded through Chander Pal MBC/DLI as the passenger was illiterate. During the course of inquiry the charge could not be rebutted by the applicant even though he was provided the assistance of a helper. Thus the charge of pocketing Rs.50/- of the passenger by exchanging GC note of Rs.100 into GC note of Rs.50/- stood proved.

8. We have perused the records of the case. The Disciplinary Authority in the present case accepted the findings of the I.O. and imposed a penalty of reduction in grade from Rs.1200-2040 to Rs.975-1540 for one year without cumulative effect. The applicant filed an appeal which was also rejected by the appellate authority.

9. It is not a case of 'no evidence' as alleged by the learned counsel for the applicant. It is only after thorough departmental inquiry that a report was submitted by the I.O. and the Disciplinary Authority applied his mind and agreeing with the findings of the I.O. imposed the penalty mentioned above. The applicant during the course of inquiry was afforded full opportunity to state his case. The requirements of principles of natural justice are that the article of charges should be clear-cut and not vague and that the applicant should be given opportunity to state his case and that the I.O. should submit a clear report after discussing the evidence available with him and that the Disciplinary Authority should pass a speaking order. The procedure laid down in Rule 9 and 10 of Railway Servants (D&A) Rules 1968 have been followed by the respondents to the hilt. Thus

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we do not find any flaw in the departmental proceedings conducted by the respondents. There is no denial of principles of natural justice. It is only after a detailed inquiry and examination and cross-examination of witnesses and oral and written submissions of the applicant that he was found guilty and the charges levelled against him were found proved and the Disciplinary Authority passed orders on the basis of facts and circumstances of the case.

10. The Appellate Authority rejected the appeal of the applicant. Since he agreed with the findings of the Disciplinary Authority, he was ^{not} required to record any reasons. The averments of the applicant in his appeal were not convincing and this is the reason why the appellate authority agreed with the Disciplinary Authority and rejected the appeal. It is true that the applicant was transferred to Nizamuddin Railway Station as booking clerk as after his reversion he was declared a surplus staff at Delhi Rly. Station. This was due to functional requirement and in exigencies of public service and no malafide was involved in this. The applicant was firstly transferred to Meerut but subsequently the orders were withdrawn on 18.10.89 when it was found that a vacancy was available at Nizamuddin Rly. Station. The O.A. filed by the applicant against his transfer orders has also been disposed ^{of} by the Single Bench of this Tribunal on 18.10.89 on this count.

11. The learned counsel for the applicant cited the following rulings in support of his contentions:-

(i) ATLT 1990 CAT (1) 31, Madal Lal Talwar Vs. Union of India:

This ruling has no application to the present case because it deals with reckoning of seniority and regularisation of ad hoc appointments.

(ii) ATJ 1991 (2) 580, Hari Giri Vs. Union of India in OA No.206/91 decided on 16.7.91 by Principal Bench:

In this case a departmental inquiry was initiated after 17 years and the key witness was not examined and as such this was set aside. This ruling also cannot be applied to the instant case since the inquiry started within stipulated time and the appellate

authority decided the appeal as per the rules and procedure laid down in the Railway Servants (D&A) Rules. The complainant, Ismila, was a passenger and was not made a key witness. The key witness was the railway official, DK Rajput. The vital witnesses were Shri Rajput who was examined as PW1, Tara Chand, Booking Supervisor and Chander Pal who wrote the statement of the complainant, read it out and then got the whole thing verified since the complainant was illiterate. It has nowhere been said that the passenger belonged to Delhi and his address by the PG Cell could not have been recorded and he would have gone to Bhuj in the State of Gujarat. His examination was ^{not} considered necessary because the applicant himself had given in writing that he might have made a mistake. He, however, added in his statement that the real fact will come out only after verification of the cash. He also admitted that he might have made a mistake because he was doing double duty. the facts of the case cited before us and the that of the present case are different and the legal issues involved are also different.

(iii) AIR 1955 SC 202 decided by Hon'ble CJ, P.V. Gajendra Gadkar, K.N. Wanchoo, K.C. DAS and Raghubar Dayal, JJ

This is a criminal case and in this case 40 persons were accused in a murder case and they were sentenced to death and the orders of death sentence were confirmed by the Allahabad High Court. The accused in appeal came to the Hon'ble SC and the aforesaid Criminal Appeal was decided by the CJ with his three companion judges upholding the death sentence against all except in case of petitioners No.9, 11 and 16 where the death sentence was converted into life imprisonment. This ruling has absolutely no application to the present case.

(iv) AIR 1959 SC 51, Habib Mohd. Vs. Mukerjee:

This is also in regard to a criminal case where the effect of non-examination of a witness and the inference drawn from it under Evidence Act 1872 were considered by the Hon'ble Supreme Court and certain observations were made. It deals with Cr.P.C. and the Evidence Act. These are applicable only in regard to

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criminal case and are not applicable to the cases decided by the Tribunal. The facts of the case are different and ratio established in that particular case will hold good only for trial in criminal cases.

(v) SC ATR 1986 (2) decided by AP Sen, BC Ray, JJ in Civil Appeal No.162/86 decided on 2.5.86:

This case, Ram Chander Vs. Union of India & Ors., related to Rule 22(2) of Railway Servants (D&A) Rules 1968. This particular judgment of the Supreme Court has examined the effect of 42nd amendment where the right of representation against proposed punishment has been taken away and as such affording of adequate opportunity to a delinquent has become necessary. In that judgment it was shown that the appellate authority did not apply his mind under rule 22(2). ~~and the Hon'ble Supreme Court did~~ The Supreme Court in Som Dutta Vs. Union of India delivered by the Constitution Bench in 1969, stated that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implications there is no legal application for the appellate authority or a Tribunal which passes a quasi judicial review should give reasons for its decision. There is no general principle or any rule of natural justice that a statutory tribunal or an appellate authority should always and in every case give reasons in support his decision. The Hon'ble Supreme Court also quoted the case of Tara Chand Khatri Vs. Municipal Corporation, Delhi (1977) and MP Industries Ltd. Vs. Union of India (1966) where it was laid down that "ordinarily the appellate or revisional authority shall give its own reasons." But in a case of affirmance with the competent authority he may not record reasons. In view of the second opportunity having been taken away, the principles of natural justice have to be observed meticulously. The principles of natural justice have become necessary. It has become now imperative to provide adequate opportunity to the delinquent employee to state his case and to

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defend himself because now only two remedies are open to him:

- (i) appropriate departmental inquiry giving full opportunity, the passing of reasoned order by the competent authority and the disposal of appeal by the appellate authority; and
- (ii) a judicial review if the delinquent employee is still aggrieved.

In this particular case the Supreme Court remitted the case to the Railway Board to hear the appeal and to pass fresh reasoned orders. The facts and circumstances of the present case and that of the case quoted above are completely different and therefore this ruling also cannot apply to the instant case.

In the present case the applicant himself had admitted before DK Rajput and Tara Chand when confronted by them with the complainant that he might have made a mistake in exchanging a 100 rupee note for a 50 rupee note and he subsequently handed over Rs.50/- to the complainant. This transaction was complete. His statements were also verified by the officials of Public Grievance Cell. The complaint was also recorded in writing. In view of this, even the statement of the applicant that the real fact will come out from the verification of cash, cannot be accepted. It was always possible to manipulate the cash. The contention of the learned counsel for the applicant that this statement he gave under duress is not accepted. It was a voluntary statement and not under duress. Forgetfulness due to double duty work was already one of the excuses taken by the applicant while giving statement in writing.

The confession of the accused person in a criminal case is only admissible if it is recorded under Section 164 of Cr.P.C. Admission by a delinquent employee has to be considered by the Disciplinary Authority while going through the findings of the I.O. where the statements of the prosecution and their cross examination have been recorded. A disciplinary proceeding is not

a criminal trial. The standard of proof required in a disciplinary departmental proceedings is that of preponderance on probability and not beyond reasonable doubt as is the case in a criminal trial. A finding cannot be characterised as perverse or unsupported if the materials are sufficient to draw a reasonable inference about the misconduct. Where materials are sufficient a conclusion of misconduct can be inferred from it, it cannot be questioned. The Tribunal is neither expected to appreciate evidence nor it is expected to sit as an appellate authority. The Hon'ble Supreme Court has also held that it is none of the business of the Courts to look into the quantum of punishment.

In view of the facts and circumstances of the case, we do not find any merit in the O.A. and the same is dismissed as such leaving the parties to bear their own costs.

(B.K. Singh)
Member (A)

J.P. Sharma
(J.P. Sharma)
Member (J)