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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

* Regn. No. O.A. 1550 of 1988

Date of decision March 27, 1990

Shri Roshan Lal

... Applicant

-Versus-

Union of India & Others

... Respondents

CORAM : HON'BLE SHRI P. C. JAIN, MEMBER (A)

HON'BLE SHRI J. P. SHARMA, MEMBER (J)

For the applicant

... Shri B. S. Maine, Advocate

For the respondents

... Shri S. N. Sikka, Advocate.

1. Whether Reporters of local papers may be allowed to see the Judgment? X
2. To be referred to the Reporter or not? X
3. Whether their Lordships wish to see the fair copy of the Judgment? X
4. To be circulated to all Benches of the Tribunal? X

(Signature)
(P. C. Jain)
Member (A)

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Shri Roshan Lal Applicant

Vs.

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CORAM: Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the applicant ... Shri B.S. Mainee, Advocate

For the respondents ... Shri S.N. Sikka, Advocate

(Judgement of the Bench delivered by
Hon'ble Shri J.P. Sharma, Member (J)).

The applicant, Senior Clerk, Northern Railway, Jullundur, moved the application under Section 19 of the Administrative Tribunals Act, 1985, assailing the order of Divisional Railway Manager, Northern Railway dated 9.8.87 and appellate order of Sr. D.C.S., Northern Railway, Ferozepur (Punjab) dated 12.2.88 giving concurrent finding of guilt on the charges framed against the applicant. The applicant was awarded a penalty of reduction to the minimum of grade Rs. 1200-2040 for a period of two years without future effect.

2. The facts of the case ^{are} that the applicant, while posted as Booking Clerk, Jullundur Railway Station, was apprehended by Vigilance Inspector on 9.7.83 while on duty between 8.00 hrs to 16 hrs and was charge-sheeted.

3. The Article of Charges (Annexure A-3) were framed against the applicant, as lacking in integrity as follows:—

(a) Shri Roshan Lal, kept three IIInd Class Tickets No. 76368

to 76370 ex-Ludhiana to Ambala in his tube on which he has granted refund.

(b) Shri Roshan Lal mis-appropriated Govt. cash of Rs. 1/50 the clarkage charges of IInd Class aforesaid tickets and his failure to account for the same in D.T.C. book on 9.9.83.

(c) Shri Roshan Lal demanded and collected Rs. 5/- per ticket illegally over and above the fare on IInd M/E tickets No. 12922 to 12931 with super fast charges tickets No. 15921, 15922, 15925 to 15932 ex. Ludhiana to PNBE. against the correct fare of Rs. 80/- he illegally charged Rs. 5/- extra per ticket for ten tickets total Rs. 50/-.

4. The applicant denied the charges and filed the reply (Annexure A-4) contending that he has been falsely implicated.

5. Shri M.P.Sharma was appointed as Enquiry Officer who proceeded with the enquiry and gave the finding (Annexure A-9) that charge No. 1 and 2 are not proved and charge No. 3 is proved on preponderance of probabilities. The Disciplinary Authority with Sr. D.C.S., Ferozepur, however, disagreeing with the findings dated 15.3.85 on charge No. 3, communicated to the applicant that he has been exonerated of all the charges framed against him by order dated 27.3.85.

6. Divisional Railway Manager, Ferozepur, reviewed the order passed by Sr. D.C.S., Ferozepur dated 27.3.85 and issued show cause notice (Annexure A-7) as to why the penalty of removal from service be not imposed.

7. The applicant requested Divisional Railway Manager to furnish him the findings of the Enquiry Officer and the speaking order of Sr. D.C.S. Ferozepur which was ~~not~~ given to the applicant

but the detail enquiry officer's report was not given. However, the applicant submitted the reply (Annexure A-10), Divisional Railway Manager, Ferozepur by the order (Annexure A-1) dated 29.7.87 held the applicant guilty of all the charges framed and imposed the penalty of reducing the applicant to minimum of the scale of Rs. 1200-2040 for a period of two years without any future effect.

8. The applicant preferred the appeal (Annexure A-11) to the Chief Commercial Superintendent, New Delhi, who dismissed the same by a short order which was communicated by Sr. D.C.S., Ferozepur by letter dated 12.2.88 (Annexure A-2).

9. The applicant challenged the order of Divisional Railway Manager, Ferozepur and Chief Commercial Superintendent (Annexure A-1 and A-2) on the ground that the copy of the report of the Enquiry Officer was not given to him inspite of written request; that the order passed by Divisional Railway Manager, Ferozepur, the Reviewing Authority, is not substantiated on the basis of the evidence on record; the appellate authority Chief Commercial Superintendent, New Delhi, did not at all apply its mind and the order communicated to him on 12.2.88 has no discussion of evidence; that a false case of vigilance was registered against him; and that the main witnesses from whom it is alleged that a sum of Rs.5/- of each IIInd Class ticket from Ludhiana to Ambala has been taken extra, has not been examined.

10. The respondents contested the application and said that the report of the Enquiry Officer Shri M.P. Sharma showed that the charge No. 3, was established and Disciplinary Authority Sr. D.C.S., Ferozepur wrongly exonerated the applicant. The Reviewing Authority passed a speaking order and the Appellate Authority upheld the

same. There is no illegality in the orders passed and the penalty has been rightly imposed on the applicant.

11. We have heard the learned counsel for the parties at length, and perused the record of the case. It is a ~~xx~~ fact that with the applicant was not furnished/ the report of Enquiry Officer after the penalty was imposed by the Reviewing Authority ^{and so} ~~there is clear~~ violation of sub-clause 2 of Rule 12 of the Railway Servants (Discipline and Appeal) Rules, 1968. The authority of Prem Nath K. Sharma Vs. Union of India, Full Bench and the circular issued by Railway Board on 10.11.89 (copy filed during arguments) affirm the requirement of furnishing copy of the report of Enquiry Officer prospective] to the charged officer.

12. The order of the Appellate Authority (Annexure A-2) ~~xx~~ on its face is not a speaking or reasoned order. The Appellate Authority in this case, Chief Commercial Superintendent, New Delhi, only affirmed the punishment awarded by the Reviewing Authority without discussing or analysing the facts and evidence recorded by Enquiry Officer. In the present case, it was all the more necessary as the Disciplinary Authority Sr. D.C.S, Ferozepur had exonerated the charged officer of all the charges framed against him. This view has been expressly laid down in Ram Chandra Vs. Union of India ATR-1986-(2)-252.

13. On the charge No. 3 the passenger who was refunded excess amount charged Rs. 50/- for ten tickets ^{from} Ludhiana to Ambala has not been examined as there is no evidence that the passenger was told the fare/ Rs. 85/- instead of Rs. 80/-. The examination of the complainant was necessary and the authority ATR-1989-(1)-29 and ATLT-1987-(1)- 392 have been relied upon.

This fact also was considered in favour of the applicant by the Disciplinary Authority, Sr. D.C.S, Ferozepur. The Reviewing Authority only placed reliance on the fact that Rs. 50/- were refunded by the applicant but did not notice the fact that in the cash box the Vigilance Inspector did not count the cash.

14. The learned counsel for the respondents, however, referred to A.T.L.T 1987-(2)-56 Meera Motia Vs. Union of India used words as to show that the appellate authority had considered the whole matter "then that amount to the application of mind. However, in the present case the facts are different inasmuch as the Disciplinary Authority had completely exonerated the charged officer.

15. Considering all the facts and law on the point the impugned orders Annexure A-1 and A-2 because of the grounds taken by the applicant and the reasons given above, cannot stand and are liable to be set-aside.

16. In Ram Budh Vs. Union of India reported in ATLT-1987-(2)-531, the case was remanded for fresh enquiry on the Articles of charges against the charged officer.

17. The application is, therefore allowed and the penalty imposed on the applicant by the impugned orders Annexure A-1 and A-2 is quashed and the applicant shall be entitled to all consequential pendulate and future benefits. The respondents, however, can proceed again, if so desire, on the same charges against the applicant. The parties shall bear their own costs.

J. P. SHARMA

(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)

MEMBER (A)

Pronounced in open court.

(P.C. Jain) Member (A) 27.3.90.