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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1079/88.

Date of decision: 25.5.1993.

Sh. Surendra Kumar Gaur

Petitioner.

Versus

Union of India through
General Manager,
Northern Railway,
New Delhi & Ors.

Respondents.

CORAM:

THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).
THE HON'BLE MR. J.P. SHARMA, MEMBER(J).

For the Petitioner.

Shri Ashish Kalia, Counsel.

For the Respondents.

Shri R.L. Dhawan, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. I.K. Rasgotra, Member(A))

The applicant while working as Special Ticket examiner in Three Tier Coach No. 7519 of 31 UP Frontier Mail Train on 7th/8th July, 1987 was found to have allowed some passengers to travel unauthorisedly. Some of them were occupying the berths reserved for G.R.P. Escort while others were adjusted on others seats/berths. The total number of passengers so travelling unauthorisedly was found to be 14. The petitioner was served with a minor penalty charge-sheet (S.F-II) on 9.10.1987 on the charge that he allowed 7 passengers sleeper/berths without regularising them in the reservation chart while other 7 were allowed to sit on the berths reserved for G.R.P. Escort. These irregularities came to light during a vigilance check carried out on the Train.

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The petitioner was, therefore, charged for act of omission and commission for failing to maintain absolute integrity and exhibiting lack of devotion to duty, thereby contravening Rule No.3.1(i) and (ii) of the Railway Services (Conduct) Rules, 1966. The learned counsel for the petitioner Shri Ashish Kalia, referred us to Section 109 of the Indian Railway Act, according to which if a passenger travels unauthorisedly in a Railway compartment and he refuses to leave the compartment when asked to do so by the Railway servant, he may be removed from the compartment/berth/seat by the Railway servant authorised to do so or by any other person whom such Railway servant may call to his aid. The case of the petitioner is that he objected the unauthorised entry and occupation of reserved accommodation by these passengers but since they were in complicity with the G.R.P. Escort, they refused to vacate the coach. The learned counsel further drew our attention to the telegraphic Memorandum issued by the petitioner to SHO, GRP Ghaziabad on 7.8.1987 at 21 hours (Annexure 'L' to the rejoinder), which reads as under:

"Please arrange to vacate 3 Tier reserved coach No.7519 of 31 UP date from the unauthorised-unreserved passengers forcibly entered in the reserved coach through corridor and refused to vacate the same, when asked for U/S 109 of the Indian Railway Act."

The learned counsel submitted that the petitioner took all measures to get the reserved coach vacated by unauthorised passengers. For this purpose, he even tried to secure the assistance of S.H.O., G.R.P., Ghaziabad. He further submitted that the petitioner filed a representation against SF.II. He asked for certain true copies of the documents which formed the basis of the S.F.II,



by letter dated 29.10.1987. No documents were supplied by the respondents. Instead the penalty of stoppage of one increment raising his pay from Rs.1290/- to Rs.1330/- due on 1.5.1988 for a period of two years was imposed on him vide order dated 16.11.87. The petitioner submitted an appeal to the A.D.R.M. The same was disposed of vide order dated 5.2.1988.

2. The stand of the respondents is that the coach was checked between Saharanpur and Ambala Cantonment on 8.7.1987 by the Vigilance Staff and it was found that the petitioner had failed to stop the entry of 14 unauthorised passengers, seven of them were found to be travelling on the berths reserved for G.R.P. Escort while remaining 7 were adjusted with other co-passengers. Since seven passengers were sleeping with other co-passengers and the petitioner had not regularised their entry in the coach, there was every reason to believe that the petitioner had allowed them in the coach for some consideration. All the 14 passengers were charged for the Railway fare etc vide Excess Fare Tickets No. 72989 to 72995. Regarding non-supply of documents, it has been stated that there was no document except the simple report of the Vigilance Staff. Non-supply of report of the Vigilance Staff has not caused any prejudice to the petitioner as he was present during the Vigilance Check and the Excess Fare Tickets were made in his presence. It is further brought out that before

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deciding his appeal, the ADRM had asked him to appear for personal hearing on 19.1.1988 but he did not attend the office of the ADRM on that day. Regarding the memorandum issued by the petitioner in terms of Section 109 of the Indian Railway Act, it was brought out that this memorandum was issued on 7.8.1987 whereas the check in question was made on the Train on 7.7.1987. This memorandum is, therefore, not relevant to the issue raised in the O.A. The learned counsel for the petitioner drew our attention to the statements of the passengers recorded at that time. The English version is placed at pages 18 and 19 of the paper book. According to these statements the G.R.P. staff is said to have given the berths for the consideration mentioned therein. However, in the report filed on 9.7.1987 with the D.C.T.I., Delhi by the petitioner, there is no mention that the G.R.P. staff has charged any money from the passengers who were travelling unauthorisedly. Being the incharge of the coach it was his duty to bring these facts to the notice of the superior authorities. Undisputedly, he failed to do so.

3. We have considered the rival contentions and perused the record carefully. We are of the opinion that this being a case of minor penalty imposed under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 it is not mandatory to hold a regular enquiry. The delinquent official is called upon to furnish his explanation which is considered by the competent authority. A personal hearing is also allowed, if considered desirable in the interest of justice. In this case, the petitioner

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did not submit any detailed explanation. He only demanded certain copies of the documents on which S.F.II was based. The petitioner himself was the witness to the incident. The unauthorised passengers were hauled up by the Vigilance Staff in his presence and Railway dues were recovered from them. As such, the plea of non-supply of documents carries no weight. The so called memorandum sent by the petitioner to the S.H.O, G.R.P, Ghaziabad under Section 109 of the Indian Railway Act is not relevant as it was sent in the month following the incident and is an after thought.

4. In view of the above facts and circumstances of the case, we are not inclined to interfere with the penalty imposed by the disciplinary authority and confirmed by the appellate authority. The OA is accordingly dismissed. No costs.

J. P. Sharma
(J.P. SHARMA) 25.5.93
MEMBER(J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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