

In the Central Administrative Tribunal

Principal Bench: New Delhi

1. OA No. 677/86

Date of decision: 3.9.1992

Shri A.S. Phalora

...Applicant/Petitioner

Versus

Senior Divisional Commercial
Superintendent & Others.

...Respondents

2. OA 677/86

Shri M.L. Verma

...Applicant/Petitioner

Versus

Senior Divisional Commercial
Superintendent & Others.

...Respondents

Coram:-

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble MR. I.K. Rasgotra, Administrative Member

For the Applicant

Shri B.S. Charya, Counsel.

For the Respondents

Shri M.L. Verma, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member(A))

OA No.633/86

Shri A.S. Phalora has filed the above Application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order No.C/85/Genl/13/DAB/GK dated 4.11.1985 passed by the disciplinary authority, imposing the penalty of withholding of next increment due on 1.1.1986 for a period of one year and order of the appellate authority No.C/85/Genl/13/DAR/GK dated 26.2.1986 confirming the order of the disciplinary authority.

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OA 677/86

The second case has been filed by Shri M.L. Verma, under Section 19 of the Administrative Tribunals Act, 1985. He is aggrieved by Order No.C/85-/Genl/13/DAR/GK dated 4.11.1985 of the disciplinary authority, imposing the penalty of withholding of next increment, normally due on 1.1.1986, for a period of two years and order of the appellate authority No.C/86/13/DAR/GK dated 8.8.1986, confirming the penalty imposed by the disciplinary authority.

2. As the above Applications raise identical issues of law and of fact, we propose to deal with them through this common judgement.

3. The facts of the case briefly are that the applicants while working as Travelling Ticket Examiners (TTE for short) were booked to work 6 Up train, Punjab Mail from New Delhi to Jhansi on 29.03.1985. They have allegedly detrained enroute without completing their beat. They were placed under suspension on anonymous or pseudonymous complaints w.e.f. 1.4.1985. The suspension was revoked w.e.f. 25.4.1985. They were served a charge memo on 9.8.1985 on the following charge:-

"....while working as TTI waiting details as NDLS Lobby during March '85 failed to perform his duty as COR on 6 Up dated 29-3-85 ex NDLS to JHS and got down enroute without

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completing his beat upto JHS. Thus the said irregular working on the part of.....TTI, AGC tantamounts to neglect of duty."

The applicants submitted their defence to the competent authority through proper channel. But the disciplinary authority without taking into consideration the reply filed by the applicant in OA 633/86 inflicted the penalty of stoppage of next increment for a period of one year and next increment for a period of two years in the case of Shri M.L. Verma, applicant in OA 677/86 after considering his explanation. The appellate authority is said to have rejected their respective appeals without application of mind and without giving any reasons and confirmed the respective penalties imposed on them. The thrust of the defence of the applicant in OA 633/86 is that the disciplinary authority imposed the penalty without taking into consideration the defence statement/explanation submitted by him. Both the applicants contend that the charge framed against them was vague and baseless, as it does not specify as to where they got down enroute. They further contend that they completed their beat upto Jhansi and signed in the sign 'off' register in the presence of Chief Ticket Inspector (Lobby), Jhansi, who is the custodian of the said register. They have prayed that the impugned orders dated 4.11.1985 and 26.2.1986 in

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the case of Shri A.S. Phalora, OA No.633/86 and impugned orders dated 4.11.1985 and 8.8.1986 in the case of Shri M.L. Verma, applicant in OA No.677/86 be quashed and set aside and respondents directed to release the difference of arrears with consequential benefits including promotion to the post of Chief Ticket Inspector grade Rs.700-900 to them.

5. The respondents in their counter-affidavit have taken the stand that appropriate opportunity was afforded to the applicants and only after following the due process of law they were punished. They affirm that both the applicants failed to work the train upto Jhansi and left the train enroute. Since they were detailed to work as COR they were required to submit amended chart at Jhansi but they failed to do so nor did they deposit the cash at Jhansi. They have also cited S/Shri J.S. Rahi, TTE Jhansi, D.R. Yadav, Head TTE Jhansi and witnessed the absence from duty by the said two TTEs. The applicants were placed under suspension for not performing their duty. The suspension was, however, revoked and they were served a charge memo under S.F.11 for neglect of their duty. They further submit that Shri A.S. Phalora, applicant in OA 633/86 failed to submit his explanation in reply to S.F. 11 and, therefore,

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ex-parte decision was taken by the disciplinary authority in accordance with Discipline and Appeal Rules. The appeal filed was disposed of by the competent authority, ADRM in accordance with the Rules. In the case of Shri M.L. Verma, applicant in OA-677/86 while identical grounds have been given by the respondents, they submit that the applicant in OA 677/86 had submitted his explanation on 1.10.1985 which was found to be unsatisfactory and accordingly the disciplinary authority taking all relevant facts into consideration imposed a higher penalty of withholding of next increment for two years (N.C.) vide order dated 4.11.1985.

6. The applicants have filed rejoinder in their respective cases.

7. We have heard the learned counsel for both the parties and considered the matter carefully. In view of the stand taken by the applicants and the respondents we considered it expedient to direct the respondents to file the relevant records e.g. the "sign off" register and the relevant file, dealing with the disciplinary proceedings vide order dated 1.11.1991. When the case came up on 10.7.92 the learned proxy counsel for the respondents filed an affidavit without the records. She was again directed to file the records during the course of the day and the matter was ordered to be listed on 17.7.1992. On 17.7.1992, the learned proxy counsel

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for the respondents filed another affidavit stating that records of the case are not traceable despite all efforts having been made by the department. We observed that the affidavit was signed by the Chief Ticket Inspector, Jhansi, who is not the competent authority for authenticating/signing such judicial documents. It was in these circumstances that the Court took serious view of the conduct of the respondents, first by denying the availability ^{of} records to the Court for proper adjudication of the matter and secondly for filing an affidavit in the Court by a party who is not authorised to do so and came to the conclusion that such a conduct is tantamount to wilful disobedience of the order passed by the Tribunal. The Registrar was, therefore, directed to issue suo moto notice of contempt under the Contempt of Courts Act, 1971 to the D.R.M., Central Railway, Jhansi by name with the direction that he should remain present before the Court on 28.8.92 in the afternoon.

When the matter came up on 28.8.92 for disposal of the Contempt Petition the learned counsel Shri H.K. Gangwani who was present for the alleged contemner Shri V.K. Aggarwal, D.R.M. Jhansi, submitted that Shri V.K. Aggarwal was present in the Court and that he submits an unconditional apology. In the affidavit filed by Shri V.K. Aggarwal he not only tendered unconditional and unqualified apology to the Court for the inconvenience caused but also undertook

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to fix the responsibility on the erring officials. He further stated that due to efflux of time it has become increasingly difficult to locate the records despite all efforts having been made. After considering the matter carefully, we accepted the unconditional and unqualified apology, duly taking note of the undertaking that steps were being taken to fix the responsibility on the erring officials and discharged the notice for contempt. It was further clarified that in the circumstances, explained by the D.R.M., Jhansi for non-availability of the records, we have no alternative but to draw adverse inference.

8. Thus, the position that emerges in this case is that while the applicants assert that they had signed the 'sign off' register, the respondents have not been able to produce the records to substantiate their contention that this was not so and in fact the petitioners had not completed their duty upto Jhansi. Faced with this situation and in the absence of records, we are compelled to draw adverse inference and accordingly set-aside and quash the orders of the respondents, imposing the punishment of stoppage of one increment for a period of one year in the case of Shri A.S. Phalora, applicant in OA 633/86 and order of the appellate authority dated 26.2.1986, confirming the order of the disciplinary authority and order imposing the penalty of withholding of next increment for a period of two years on Shri M.L. Verma, applicant in OA-677/86 dated 4.11.85/ and order of the


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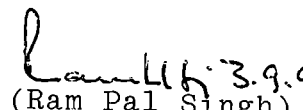
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appellate authority dated 8.8.1986, confirming the penalty imposed by the disciplinary authority. We further direct that the applicants shall be paid incremental amount and that they will be progressed in the relevant scale of pay normally as if such punishments had not been inflicted on them. We observe that the applicant in OA 633/86 was due to retire from service on attaining the age of superannuation in March, 1987. In his case, therefore, it will be necessary to revise the pension and other retirement benefits. Ordered accordingly.

The above orders shall be carried out with utmost expedition but preferably within four months from the date of communication. No costs.


(I.K. Rasgotra)
Member(A) 03/09/1992


(Ram Pal Singh)
Vice-Chairman (J)

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