

In the Central Administrative Tribunal

Principal Bench: New Delhi

1. OA No.633/86

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 Tribunal's 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 autho-

rity 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 detained enroute

without completing their beat. They were placed

under suspension on anonymous or pseudonymous comp-

laints 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 The suspension was revoked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 state-

ment/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

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/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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Vice-Chairman (J)

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