

2

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

....

Regn. No. OA-333 of 1987

Date of decision: 5.9.1990

Shri Babu Ram

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri S.K. Bisaria, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents.

CORAM

Hon'ble Justice Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgement of Bench pronounced by Hon'ble  
Shri B.C. Mathur, Vice-Chairman.)

The present application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by Shri Babu Ram, Goods Porter, Central Railways, against the impugned orders dated 3.10.1985 issued by the Divisional Commercial Superintendent, Jhansi, imposing a penalty reducing the applicant to the lower grade of Goods Porter and order dated 17.12.85 issued by the same authority where his appeal has been rejected by the Senior D.C.S. Jhansi.

2. Brief facts of the case, as stated by the applicant, are that he joined Class IV service on 26.11.55 and was promoted in the grade of Rs. 210-270 in the cadre of 1st Class Coach Attendant with headquarters at Agra Cantt. In 1983, his basic pay was Rs. 255/- plus allowances. On 12.6.83, the applicant was on duty in a 1st Class coach. During the course of the journey, one Shri V.K. Varshney, a passenger, lodged a complaint at the instance of Shri Chaturvedi, Vigilance Inspector, to the effect that he had been charged some extra amount by the applicant while converting his ticket from 2nd class to 1st class at Raja-ki-Mandi station. On the basis of this complaint, the appli-

(b)

cant was placed under suspension on 11.8.83, but the order of suspension was revoked on 8.12.83 and a charge-sheet was issued to him on the same day. A departmental enquiry was conducted by Shri T.S. Aneja who submitted his report on 30.8.85 holding the applicant guilty. The applicant was reverted from the grade of Rs. 210.270 to Rs. 196-232 and his basic pay was reduced from Rs. 255/- to Rs. -196.00. The appeal of the applicant was rejected vide orders dated 17.12.85. During the enquiry, the applicant submitted a representation to the Enquiry Officer, to call Shri V.K. Varshney, the passenger who had made the complaint, and Shri R.N. Sharma, TTE, who had prepared the money receipt for the ticket. He also wanted Shri Ramji Lal Sharma, F.C.A. Agra Cantt, to be called as witness. None of them appeared as witness during the course of the enquiry.

The applicant submits that the whole case is based on the statement of Shri V.K. Varshney, the passenger who had lodged a complaint with Shri Chaturvedi. The statement of Shri Varshney was recorded by Shri Chaturvedi, Vigilance Inspector, behind the back of the applicant who was denied the opportunity to cross examine the complainant during the enquiry thus vitiating the enquiry being in contravention of the principles of natural justice. The applicant submits that neither the Enquiry Officer has given any reasons about the findings in his enquiry report while holding him guilty, nor the appellate authority has applied its mind and that the punishment given to the applicant is too harsh and disproportionate to the mischief. He has prayed that the impugned orders reverting him to be quashed.

3. The applicant has filed a copy of the statement given by the passenger, Shri V.K. Varshney, to the Vigilance Inspector, in which it has been stated that the applicant had told him to pay some extra amount for the allotment <sup>of a berth</sup> if he so wanted and that he was told to go ahead. The case of the applicant is that he has been wrongly implicated by the Vigilance Inspector. He never told the passenger that there was no seat available nor was he responsible for issuing any receipt which was done by the T.T.E. During the enquiry itself, the applicant

Ba

had asked the Enquiry Officer in writing to call for the attendance of the complainant as the whole case was based on his complaint only. According to him, Shri RN Sharma, T.T.E./<sup>who</sup> prepared the receipt and Shri Ramji Lal Sharma, FCA Agra Cantt, should have been called to tender their evidence, but none was called during the enquiry and that the Enquiry Officer has considered the statements of Shri R.N. Sharma, T.T.E. and Shri V.K. Varshney dated 12.6.83 while coming to his findings. It is clear from the list of documents considered by the Enquiry Officer, which have been annexed with his Enquiry Report, that he came to the findings relying on statements made without the knowledge of the applicant and without affording him <sup>an opportunity</sup> to cross examine the witnesses whose statements have been relied upon by the Enquiry Officer <sup>this</sup> and is clearly violative of rules of natural justice.

4. The respondents in their reply have stated that the findings of the Enquiry Officer cannot be interfered with by the court. The applicant accepted money illegally from the passenger and as such law took its own course and that the Tribunal should not interfere in the punishment awarded by the competent authority. The application has also been filed late. According to the respondents, the applicant while working as Coach Attendant had taken a sum of Rs. 190.00 from a passenger, Shri V.K. Varshney, and gave him a receipt for Rs. 166.50 <sup>in fare</sup> being the difference between first class and second class keeping the balance Rs. 23.50 with him as illegal money, but this was detected at the time of vigilance check and the applicant was placed under suspension w.e.f. 11.8.83. The suspension orders were revoked on 8.12.83 and Major Penalty Memorandum was issued against him for this serious irregularity. The applicant was not supposed to accept any amount from the passenger and the passenger should have been directed to <sup>the</sup> TTE on duty to prepare a receipt for difference of fare between the first class and second class. As the charge was of a serious nature of

accepting illegal gratification, a departmental enquiry was ordered in his case. The Enquiry Officer established the charge in his enquiry report that the applicant accepted Rs. 23.50 as illegal money from the passenger and on a vigilance check this amount was got deposited in the Railway earnings and the applicant himself deposited the extra amount of Rs. 23.50 in the Railway earnings. The disciplinary authority considered the enquiry report and it being a case of acceptance of illegal gratification decided to revert him to the post of a Goods Porter in a lower grade. His appeal was also rejected.

5. The learned counsel for the respondents, Shri M.L. Verma, cited a number of court cases to say that the Tribunal is not an appellate authority and should not substitute its judgment over the judgment of the disciplinary and appellate authorities and that it is not necessary to produce all the witnesses who may be asked for by a delinquent officer. The learned counsel for the applicant also cited a few cases that the disciplinary authority and the appellate authority must apply their minds to the entire evidence and pass speaking orders and that the evidence where an officer has not been given full opportunity to defend himself by cross-examining the relevant witnesses would be bad in law.

6. We have gone through the pleadings and given careful consideration to the arguments by the learned counsel. The principles relating to departmental enquiries are so well settled that we do not think it necessary to examine the various cases cited by the learned counsel. Nor do we intend to examine the evidence or to go into the question whether the punishment was out of proportion or adequate. However, we have to see that the rules of natural justice are followed. We feel that it would have been desirable if the complainant, Shri Varshney, and the T.T.E. who made out a receipt had been called as witnesses and allowed

Dr

a

to be cross-examined by the applicant. But in case the Enquiry Officer did not consider their examination necessary, he should not have taken into consideration the statements of the passenger Shri V.K. Varshney dated 12.6.83 and of the T.T.E., Shri R.N. Sharma, dated 18.7.83. These statements have great relevance in the present enquiry and if they were to be considered, an opportunity should have been given to the applicant to cross-examine the witnesses who made these statements. Consideration of documents in a departmental enquiry without giving an opportunity to a delinquent official to challenge the same by cross-examining the persons who made the statements is, in our opinion, against the rules of natural justice and bad in law. We also find that the impugned orders dated 3.10.85 by the disciplinary authority do not indicate anywhere that he accepts the findings of the Enquiry Officer and that what has been stated is that the disciplinary authority has considered the Enquiry Report and findings submitted by him and that he holds the applicant guilty of the charges of misconduct mentioned in the memorandum. The disciplinary authority then imposes the penalty of reduction to a lower post without stating anything about the various charges. He appears to have mechanically passed these orders without even stating that he agrees with the findings of the Enquiry Officer. The appellate order dated 17.12.85 is also a non-speaking order. It merely says that the appeal of the applicant has been considered by the Sr. D.C.S. Jhansi and he has decided not to change the penalty imposed by the D.C.S. (Cog) Jhansi in this case. Even in the appellate order there is no mention that the Sr. D.C.S. has considered the case, and that he agrees with the findings of the Enquiry Officer. We feel that these are a serious lacuna in the procedure followed in this departmental enquiry which vitiates the whole enquiry. Under the circumstances, we are of the opinion / that the impugned orders reverting the applicant from the post of 1st Class Coach Attendant to that of Goods Porter should be quashed and we order accordingly.

Bar

10

: 6 :

7. In the circumstances, the application is allowed. We direct that the respondents should pay the arrears of salary on account of reduction of the applicant's pay within a period of three months from the date of receipt of these orders. There will be no orders as to cost.

*B.C. Mathur*  
5.9.91

(B.C. Mathur)

Vice-Chairman

*Amitav Banerji*  
5.9.91

(Amitav Banerji)

Chairman