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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No.219/2004

New Delhi, this the 25th day of July, 2005

**HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Shri Ishwar Dass,
S/o late Shri Singh Raj,
Head Booking Clerk,
Northern Railway,
Under Sr. Station Manager,
Delhi.

-Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India: Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Chief Traffic Manager,
Northern Railway,
D.R.M. Office,
State Entry Road,
New Delhi.

-Respondents

(By Advocate Shri A.P. Sahai)

1. To be referred to the Reporters or not? YES / NO Yes
2. To be circulated to outlying Benches? YES / NO Yes

S. Raju
(Shanker Raju)
Member (J)

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ORDER

Mr. Shanker Raju, Hon'ble Member (J):

Applicant impugns respondents' order dated 7.2.2003, imposing upon him a major penalty of reduction of pay by two stages for two years with cumulative effect. He has also assailed

an order passed on 25.7.2003 in appeal, reducing the punishment by one stage for a period of one year and orders passed on 7.10.2003 in revision, upholding the punishment.

2. Applicant while working as Head Booking Clerk on 6.3.2001 has been proceeded against in a major penalty on the allegation of short of Rs.101/- in Government cash and also selling old altered tickets fraudulently. One of the passengers, Sanjay Kumar to whom allegedly forged tickets had been sold, his statement was recorded in the preliminary investigation and was cited as a witness to establish the charge.

3. The aforesaid witness had been contacted through post on the given address but as the notice remained undelivered with the consent of the defence not to cite him as a witness and to rely his testimony the witness was dropped.

4. On examination of certain witnesses on prosecution and on submission of brief statements whereas the enquiry officer (EO) has not established charge No.1 against applicant, charge No.2 has been proved on pre-ponderance of probabilities with the following observations:

"The defence side in their defence brief have pleaded that tkts. Of SPJ were exchanged by some miscreants in view of instances quoted vide defence documents marked as Ex.D-2 to Ex.D-6. In the instance case their plea has no weight as the passenger concerned (PW-4) has deposed that after leaving the counter his tkts. were checked by some body who was examined the tkts. of all most passengers of C.N.11. It means that relevant time it was there general view of passengers that counter clerk at C.No.11 was issuing forged tkts. to passengers deposed by W1. It is mentioned in Ex.P-4 that tkt. of passenger was checked at stage when

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he was standing on the counter for complaining to CO at C.No.11. At the stage when the passenger had already in mind that tickets issued by CO as forged then there is no value of checking of tkts. by Home guard. About the tkts. of KGG the defence side in their defence brief has pleaded that passenger came to CO to take refund of KGG tkts. As discussed & concluded for these tkts. the plea of defence has no reason to be accepted. The defence side has taken that statement of passengers were recorded on dictation of Vig. team. Both the CO and PW-3 vide their statements have been cross-examined by VI concerned on the statement of passengers and they have accepted said statements in their statement. There remains no question that statements recorded on dictation. The defence side has taken further plea that Ex.C-1 obviously indicates that Sh. Sanjay Kumar was not a genuine passenger as such he gave fictitious address. The plea of defence side is not specific and has taken otherwise. The address as shown by the passenger vide Ex.P-3/I has confirmed by the postal authority as genuine. It can't be denied according to Ex.P-3/I that the passenger belongs to labour class and he recorded address of owner of house. In case of labour class the change of residence is normal. Hence plea of defence is not correct. The statement of passengers have confirmed by PW-4, PW-3 & CO in their statements hence the genuineness of the statement of Sh. Sanjay Kumar can't be denied.

The discussion made on basis of statements complaints and statement of CO which confirmed by P-3 and the evidence oral or documentary to support except the statement of Sh. Biri Singh BS and the statements of CO which he changed frequently and depositions of PWs. The preponderance of probability of two tkts. of KGG and two tkts. of SPJ as forgedly issued by CO can't be denied.

8. CONCLUSION & FINDINGS.

8.1 In view of oral, documentary evidence available on record & considering the defence submitted by CO, the findings are as under:

- i) Charge No.1 not proved.
- ii) Charge No.2 proved on the basis of preponderance of probability."

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5. The disciplinary authority (DA) on receipt of the representation against the enquiry report by recording the following observations imposed the punishment:

"I have gone through the case files, charges relied upon documents, inquiry officer's report, your representation on the inquiry report and points brought out in personal hearing with an open mind and without prejudice. After going through the entire case, I find that:-

Though you could not explain even in the inquiry about the shortage of Rs.101/- in Govt. cash yet in view of failure of vigilance citing the relevant documents as relied upon documents, you have been given benefit of doubt by the Inquiry Officer and I agree with him that Charge No.1 stands not proved due to lack of documentary evidence.

I agree with the Inquiry Officer that this charge stands proved on preponderance of probability. I do not agree with your contention that this charge has been proved on assumption and presumption. Your act of keeping the tickets with you and thereafter calling the passenger claiming refund inside left scope for you for manipulation. You should have called your supervisor, who should have collected the ticket from the passengers. Both the passengers who were given forged tickets had purchased the tickets from you give credence to the charge. As such I hold your guilty of this charge.

Hence in view of the above facts and in the interest of justice, I have decided to impose upon you the punishment of reduction of pay by two steps from Rs.5600/- in the same scale of Grade Rs.5000-8000 for a period of two years with cumulative effect."

6. On appeal, taking a lenient view the punishment was reduced, which was affirmed in revising, giving rise to the present OA.

7. Learned counsel for applicant Shri B.S. Mainee contends that in the light of the decision of the Apex Court in **Kuldeep Singh v. The Commissioner of Police & Ors.**, JT 1998 (8) SC 603, one Sanjay Kumar whose statement was recorded and was

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not produced in the enquiry and was dropped by the EO his complaint statement was relied upon by EO without his examination and on the charge pertaining to Sanjay Kumar, DA imposed the punishment which cannot be done and is in violation of principles of natural justice, depriving applicant an opportunity to rebut his testimony and to defend effectively.

8. Shri Maine further states that Vigilance Inspector has conducted the raid in violation of Rules 704 and 705 of Vigilance Manual by not associating two independent witnesses which is an illegality goes to the root:

9. Learned counsel further states that the present is a case of 'no evidence' and the defence of applicant has not been considered inasmuch as all the Booking Clerks at Delhi, numbering 126 sent to the Senior Divisional Manager (Commercial) a representation whereby it has been demonstrated and apprised that though genuine tickets are issued from the booking office, yet unscrupulous and anti-social persons replaced the old tickets by defrauding the papers and as such fresh tickets are refunded and in this view of the matter it is stated that a complaint has been made by the General Manager to the Commissioner of Police and also a FIR was also lodged. In the above view drop it is stated that though applicant had issued genuine tickets, one passenger Sudhir Kumar without getting it checked from someone his ticket has been replaced and fraudulent tickets were shown to him, information of which was apprised to Biri Singh, as such for want of any legal

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evidence to conclusively point towards the guilt of applicant conclusion of the EO when it is clearly written that there is no clear cut evidence, oral or documentary, pre-ponderance of probabilities cannot be resorted to, as taking the test of common reasonable prudent man the findings would not have been arrived at as there is no proof or evidence that the fraudulent altered tickets have been issued by applicant. Mere suspicion and surmises cannot take the place of proof.

10. On the other hand, learned counsel for respondents Shri A.P. Sahai vehemently opposed the contentions and stated that applicant has been punished as there is evidence of passenger to whom tickets have been issued to the effect that applicant has issued the fabricated tickets.

11. Learned counsel further states that in the matter of departmental enquiry and in a judicial review Court would not interfere in the matter of evidence and would not substitute its view. If there is some evidence adequacy or reliability of evidence cannot be permitted to be canvassed. It is also stated that correctness of charge cannot be gone into in a judicial review by the Tribunal. The learned counsel has relied upon the following decisions of the Apex Court to buttress his plea:

- i) Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759;
- ii) R.S. Saini v. State of Punjab and Others, (1999) 8 SCC 90.
- iii) Lalit Popli v. Canara Bank and Others, (2003) 3 SCC 583.

12. We have carefully considered the rival contentions of the parties and perused the material on record.

13. It is trite law that departmental proceedings when assailed before the Court, in a judicial review the finding of fact and re-appraisal of evidence is not to be interfered with. Court cannot act as an appellate authority to go into the sufficiency or adequacy of evidence. Correctness of charge is impermissible to be dealt with. The only scope for interference is when applying the test of a reasonable common prudent man finding cannot be arrived at by that standard. An illegality of procedure depriving effective hearing in violation of principles of natural justice is also a scope for interference with the disciplinary proceedings. The case law cited by the learned counsel for applicant lay the aforesaid ratio. However, in **Popli's** case (supra) if there is some evidence to reasonably support the conclusion of the enquiring authority the Court is precluded from coming to an independent finding but where the evidence produced does not link the charged officer with the misconduct then finding based on suspicion, surmises and conjectures cannot be sustained in law. Moreover, suspicion cannot take the place of proof as held by the Apex Court in **Union of India v. H.C. Goel**, AIR 1964 SC 364.

14. A Division Bench of the Apex Court in **Sher Bahadur v. Union of India**, 2002 SCC (L&S) 1028 held as follows:

"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence,

however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

15. In **Kuldeep Singh's** case (supra) as regards interference in the disciplinary proceedings, the following observations have been made:

"8. The findings, recorded in a domestic enquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in **State of Andhra Pradesh v. Sree Rama Rao**, 1964 2 LLJ 150 = AIR 1963 SC 1723 = 1964 (3) SCR 25, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision

was followed in **Central Bank of India v. Prakash Chand Jain**, 1969 2 LLJ 377 (SC) = AIR 1969 SC 983 and **Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors.**, 1976 Labour & Industrial Cases 4 (SC) = AIR 1976 SC 98 = 1976 (2) SCR 280 = (1976) 1 SCC 518. In **Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and Others**, AIR 1984 SC 1805 = 1985 (1) SCR 866 = (1984) 4 SCC 635, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever, compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

16. If one has regard to the above, even on evidence, which is thoroughly unreliable and no reasonable prudent man would act upon it, the order passed relying on it is a perverse order.

17. Apart from above legal plea we find that in a preliminary enquiry held before holding a disciplinary proceeding against applicant one Sanjay Kumar who has allegedly complained of issuance of forged tickets by applicant his statement was

recorded vide Exhibit P-3/I. The aforesaid statement was incorporated as part of the memorandum and this witness was listed as a witness. Though the aforesaid witness was not legally served, as the postal communication came back undelivered and the EO with the consent of the defence dropped this witness, yet the testimony of this witness has been relied upon by the EO and the DA while imposing punishment upon applicant categorically relied upon the allegation made by this passenger and his testimony to hold that he has been issued forged tickets which had been purchased from applicant, the conclusion of the DA regarding charge No.2 is inseparable as it not only includes alleged charge of forged tickets to Sanjay Kumar and Sudhir Kumar as well.

18. It is trite law that if an earlier statement of witness against which no opportunity of rebuttal has been accorded to a delinquent official if brought on record and treated as a piece of evidence on denial of cross examination to the concerned, the statement cannot be relied upon. The following observations in **Kuldeep Singh's** case (supra) fortify our view:

"32. Apart from the above, Rule 16 (3) has to be considered in the light of the provisions contained in Article 311 (2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311 (2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down

by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness."

19. As a material which has been relied upon by the authorities against which applicant has not been afforded a reasonable opportunity to defend, reliance on such a statement to hold applicant guilty is an infraction to the principles of natural justice and also laid down procedure by the Railway Board.

20. Moreover, we find that though applicant has taken a defence that certain unscrupulous and anti social persons were operational in substituting the forged tickets ad for which several documents have been produced before the EO, yet in the discussion this defence has not been considered. It is incumbent upon the EO not only to discuss the prosecution but also the defence evidence. As this has not been done, applicant has been greatly prejudiced.

21. Though we are not re-appraising the evidence or seeing its adequacy, yet agreeing with the EO that there is no clear cut evidence, oral or documentary, or testimony to support the charge, the statement of Biri Singh does not implicate applicant in any manner and statement of Sudhir Kumar, the passenger, where he states that his earlier statement was recorded at the dictate of the Vigilance, moreover the fact that he has shown his ticket to an outsider whose identity has not been established there is no conclusive evidence pointing out towards applicant's misconduct of issuance of forged tickets. Moreover, the bonafide



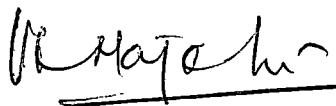
of applicant is apparent from the fact that when Vigilance has raided the booking office he was not in possession of the forged tickets and this matter was ⁱⁿ apprised before hand to the Supervisory Officer.

22. Taking a test of a reasonable common prudent man in the wake of the fact that there were several instances of substitution of forged tickets and refund of genuine tickets by unscrupulous and anti social elements the evidence come-forth could not have been appreciated by a common prudent man to have conclusively proved the charge against applicant. As such, finding based on suspicion, surmises and presumption of guilt, is perverse.

23. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Applicant is entitled to all consequential benefits. No costs.


(SHANKER RAJU)
Member (J)
25/7/05

'San.'


(V.K. MAJOTRA)
Vice-Chairman(A)