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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1525/2004

New Delhi, this the 13 October, 2006

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)
Hon'ble Mr.N.D.Dayal, Member (A)

Shri Vinod Kumar Batra,
S/o Late Shri Krishan Chand.
Head Parcel Clerk (A),
Northern Railway, Ambala Cantt.
R/o 1028-A, Mulap Nagar,
Ambala City.
(By advocate: Shri B.S.Mainee)

...Applicant.

Versus

Union of India through :

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Ambala Cantt.
3. The Enquiry Officer,
(Headquarters) (Vigilance),
Northern Railway,
Divisional Railway Manager's Office,
State Entry Road, New Delhi.

...Respondents.

(By Advocate: Shri Rajinder Khatter)

O R D E R

By Mr. N.D. Dayal:

We have heard the learned counsel for both sides and perused the pleadings.

2. The applicant, who was initially appointed as Coaching Clerk on compassionate grounds in 1982, later became Senior Parcel Clerk and was further promoted as Head Parcel Clerk. Subsequently, while working as Head Booking Clerk at Railway Station Mandi Govindgarh, a charge-sheet dated 20.11.2001 containing the following charges was issued to him under Rule 9 of the RS (D & A) Rules, 1968:

“Article of charges misconduct / mishaviour on basis of which action under D & AR Rules is to be taken against Shri Vinod Kumar, HBC/GVG.

Shri Vinod Kumar while posted and working as HBC at Mandi Govindgarh (GVG) on 29.9.2001 was subjected to a Vigilance check. During his working as HBC/GVG on 29.9.2001 in the shift 8.00 hrs to 16.00 hrs. Shri Vinod Kumar committed following irregularities, misconduct when detected by Vigilance team:

Article-I Shri Vinod Kumar, HBC/GVG demanded and accepted Rs.335/- for 2 ½ tickets ex. GVG to SPN (Shahjahanpur) from decoy passenger against actual fare of Rs.310/-.

Thus, Rs.25/- were charged in excess by Shri Vinod Kumar from decoy passenger in illegal way for his monetary gains.

Article-II Shri Vinod Kumar, HBC/GVG produced Govt. cash available with him on his counter as Rs.6764/- which was compared with DTC summary which was showing Govt. cash as Rs.6786/-. Thus, shortage in govt. cash was found to the tune of Rs.22/- which was made deliberately by HBC for the purpose to adjust the illegal money earned by him.

By the above act of omission and commission Shri Vinod Kumar, HBC/GVG failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner of unbecoming of a Railway Servant, thereby contravened the provision of Rule 3, 1 (i), (ii) and (iii) of Railway Service Conduct Rules, 1966."

3. The applicant denied the charges and an inquiry was held. In the inquiry report, Charge No.1 was held as partially proved while Charge No.2 was found proved with the following observation:

"Charge-2

Against this charge, the CO's version that Rs.22/- was short in booking inspite of the fact that it is allowed in normal routine, but not in the viq. check. Since the ~~first~~ charge was of overcharging and if it was so then there should have been EIB and not SIB. The deliberately created shortage cannot be ruled out, but for that too evidence should exist. Thus this charge stands substantiated to the extent that there was shortage of Rs.22/- in the govt. cash of the CO."

4. The applicant submitted his representation against the inquiry report on 26.11.2002. The disciplinary authority by its order dated 19.12.2002 found that Charge No.1 regarding demand and acceptance of Rs.335/- from the decoy passenger was not sustainable and the correct fare of Rs. 310/- was taken from him. The decoy did not clearly remember the actual transaction. It was further noted that the recovery of excess money was made from the applicant due to mistake of decoy passenger who had left the money on the counter. Besides, the shadow witness had stated that he could not see the transaction and hear the conversation between the applicant and the decoy. The inquiry report also said that the demand and acceptance were not clearly proved. Therefore, the disciplinary authority held that mere recovery of decoy money is not an evidence of demand and acceptance and therefore Charge No.1 is not proved.

5. With regard to Charge No.2, it was observed in the order of the disciplinary authority that since the first charge was regarding overcharging of money, so there

should have been excess balance and not shortage of Rs.22/- in Government cash. Therefore, the applicant was responsible merely for not maintaining Government cash. As such a penalty of reduction of pay by one step in same scale with cumulative effect for one year was imposed upon the applicant for negligence of duties. The appellate authority turned down the appeal of the applicant against the penalty with the following order dated 03.7.2003 "Appeal regretted after a thought in depth study." Thereafter, the applicant preferred a review application and the reviewing authority by its order dated 5.1.2004 did not hold either of the charges as having been established and extended to him benefit of doubt on both counts. Yet, keeping in view the promotional prospects of the applicant, on humanitarian grounds, reduced the penalty from the period of one year to six months.

6. The learned counsel for the applicant has argued that the disciplinary authority had clearly held Charge No.1 as not proved. In so far as Charge No.2 was concerned, it was not misconduct at all as deficiency in cash in the Booking Office occurs from time to time because of innumerable transactions and is, therefore, governed by the instruction in Para 710 of the Railway Commercial Manual extracted at page 38-A of the pleadings which states as follows:

"710. Deficiency in cash to be made good. Deficiency in cash should be made good, at once, by the staff from private cash and a suitable remark, viz., " Rupees..... paid from private cash by " made both in the daily trains cash-cum-summary book and cash remittance note. If the amount involved is heavy the matter should be investigated fully. In all such cases, a report should be made to the Divisional Office and the Traffic Accounts Office showing the result of investigations. An excess represents the amount erroneously collected from the traveling public and should on no account be utilized to cover any deficiency in collections by some previous train or shift."

7. Thus it is contended that excess/shortage of small amount of cash is accounted for on a day-to-day basis and is not a misconduct or negligence of duty attracting punishment. The order of the appellate authority is a cryptic and non-speaking order. The applicant further relies upon ATR 1986 (2) SC 252 to assail the appellate order as no personal hearing was given nor any reasons have been indicated in the order. The reviewing authority, inspite of having given the applicant benefit of doubt and not having found the charges to be established, yet

imposed a penalty by which increment was withheld and the applicant permanently deprived by cumulative effect. It is submitted by the counsel for the applicant that not only is this unfair and unjust but also unsustainable in law that such a penalty be imposed despite having extended the benefit of doubt to the applicant on both charges. Besides, deficiency in the declared private cash was not the subject matter of the charge-sheet. Further, there was also no charge of negligence against the applicant.

8. The applicant has, therefore, prayed for the following relief:

“8.1 That the Hon’ble Tribunal may be graciously pleased to allow this application and quash the impugned order dated 19.12.2002 passed by the disciplinary authority, the order dated 3.7.2003 passed by the appellate authority and the final order dated 5.1.2004 passed by the Revisionary authority and also the Enquiry Officer’s report (Annexure A-4) submitted by the Enquiry Officer which was in violation of the Statutory Rules and the settled principle of law.

8.2 That any other or further relief which the Hon’ble Tribunal may deem fit and proper on the facts and in the circumstances of the case may kindly be awarded in favour of the applicant.

8.3 That the cost of the proceedings may kindly be granted in favour of the applicant.”

9. The respondents have opposed the prayer of the applicant in their reply to which a rejoinder has been filed. The counsel for the respondents vehemently argued, by and large, emphasizing the grounds taken in the reply, to contend that the disciplinary proceedings could not be faulted and the punishment has been imposed keeping in view the gravity of the offence. The counsel stated that powers of judicial review are limited and the evidence could not be re-appreciated by the Court. It was also submitted that the appellate order had merged with the order of the reviewing authority.

10. In view of above it was felt that both the orders of the disciplinary authority and the appellate authority had since merged with the order passed by the reviewing authority. As such, the question to be answered in this case is whether having extended the benefit of doubt in respect of both the charges against the applicant, the reviewing authority could have still upheld the penalty imposed upon the applicant even though reduced from one year to a six month’s period. The counsel for the respondents assured that he would submit the case law which would establish that the orders passed by the reviewing authority did not suffer

from any infirmity or illegality. However, no document or judgement in this regard has been given by the counsel for the respondents.

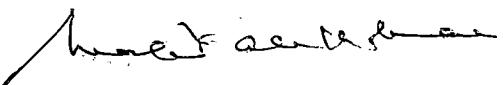
11. It is commonly understood that such benefit of doubt is in the nature of a concession that a person is innocent although doubt exists. In criminal law where the standard of proof is beyond reasonable doubt, benefit of doubt is taken to imply that the guilt of the petitioner has not been established. In the case of Jagmohan Lal v. State of Punjab and Others, AIR 1967 Punjab 422, recorded by the CAT, Principal Bench, New Delhi in their order dated 24.12.2004 in OA 596 and batch of 2004 and OA 2987 batch of 2003 (2005 (1) ATJ 201), the Punjab and Haryana High Court held as under:

The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honorable acquittal. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court the accused is acquitted."

12. In departmental proceedings where the less exacting standards based on the principle of preponderance of probability hold the field, if benefit of doubt is granted, keeping the above ratio in view there is no reason why charges should be treated as having been ^{proved} calling for any punishment. We are therefore not persuaded that the reviewing authority could reasonably treat the case of the applicant, after extending benefit of doubt on both articles of charge, as one that would merit any punishment. In the result, the application succeeds. The impugned orders are set aside with consequential benefits to the applicant. There shall be no orders as to costs.


(N.D. Dayal)
Member (A)

/kdr/


(M.A. Khan)
Vice-Chairman(J)