

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2357/1992

17

New Delhi this the 2nd June 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)  
Hon'ble Shri S.P. Biswas, Member (A)

Shri Narendra Kumar  
ex. Ticket Collector  
Northern Railway  
Railway Station  
Delhi

Resident of WZ-653 Gali No. 18 EF  
Sadh Nagar Part II  
Palam Colony  
New Delhi

Petitioner

(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 Divisional Traffic Superintendent  
Northern Railway  
D.R.M. Office,  
New Delhi

Respondents

(By Advocate: Shri P.S. Mahendru)

O R D E R (Oral)

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case alongwith one Shri Bhram Dutt were jointly proceeded against by a departmental inquiry for the charge of having taken Rs. 20/- in bribe. The respondents had conducted a departmental trap and after appointing an Inquiry Officer the charge report was filed proving the charge against both the persons. By an order dated

7.11.1990, the respondents awarded a punishment of dismissal from service against the petitioners. The appeal filed by the petitioner on 5.3.1991 was dismissed on 3.9.1991 alongwith the appeal of Shri Bhram Dutt and rejected both by a common order. Since this common order indicates the charge against both the persons, this order dated 3.9.1991 is reproduced herebelow:

"Your appeal dt. 5.3.91 has carefully considered by ARM/DLI (Appeleate Authority) who passed the following orders:

I have carefully considered the appeal of Shri Narinder Kumar TCR/DLI I have also gone through the proceedings of DAR enquiry, Enquiry report of EO and other papers connected with the case. After considering the whole evidence on record I find that:

1. Correct procedure has been adopted.

2. It has been alleged that Shri Brahm Dut, TCR/DLI in connivance with Sh. Narinder Kumar, TCR who was on duty at gate No. 6 dishonestly demanded and accepted an illegal gratificationof Rs. 20/- from the decoy passenger, Shri Mohd Amin for allowing him to take unbooked luggage through the gate Rs. 10/- each were shared by both of them. He was further found manning gate No. 6 before his duty time whereas his duty was forthe special squad. He also declared inflated private cash of Rs. 10/- in the private case declaration register.

Shri Narinder Kumar, TCR/DLI while on duty on 24.2.89 in 15 to 23 hrs shift dishonestly permitted Shri Brahm Dutt TCR for unauthorisedly manning gate alongwith him. In sursuance which Shri Brahm Dutt

12

demanded and accepted an illegal gratification of Rs. 20/- from the decoy passenger, Shri Mohd Amin for facilitating him to carry the unbooked luggage through the gate in presence of Shri Harinder Kumar. Further Rs. 10/- each were shared by each of them which were separately recovered from their possession

3. A proper DAR enquiry was held into this case. As per report of EO charges were proved against both and the disciplinary authority on consideration of report of E.O. dismissed them from service. Now both the employees have appealed against the orders of DTS/NDLS.

4. In their appeal both the employees have pointed out that the decoy Sh. Moh. Amin was not produced in the enquiry and so such they could not get reasonable opportunity to prove that the GC notes of Rs. 10/- (decoy money) were not bribe money, but were towards charge demanded by the decoy. Sh. Narinder Kumar stated that Rs. 10/- were part of govt money on account of EFT No. 873290. Both the persons have alleged that the E.O. and D.A. were influenced by vigilance and acted as per instructions from GM (Vig)/NDLS. I have carefully examined all the facts on record. PW-1 has clearly deposed in the enquiry that his endorsement on Ex-P-1 is correct and the statements of the defendants were recorded in his presence.

He further stated that none of the defendants stated that Rs. 10/- recovered from them were exchanged by some one with small notes nor Sh. Narinder Kumar stated that Rs. 10/- was govt. cash of EFT issued by him. This has further been supported by PW-2. No pressure was exerted on the defendant while recording statements in the room of Dy. SS/DLI. Shri Narinder Kumar had accepted before PW-2 in the room of Dy. SS/DLI that Sh. Brahm Dutt had accepted Rs. 20/- from the decoy out of which Rs. 10/- were given to him and balance Rs. 10/- were kept by Sh. Brahm Dutt. The statements of VIs are fully corroborated by the independent witnesses PW-1 and PW-2. The

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points raised by Sh. Brahm Dutt and Narinder Kumar are after though to get rid of the charges. I fully agree with the decision of DTS/NDLS. They have been rightly punished in this case.

17

5. In view of the above I do not find any reason to reduce the penalty. The appeal is, therefore, rejected!"

2. The learned counsel for the petitioner submitted that even though it was a trap case the respondents have not followed the procedure prescribed under the Manual Chapter 4 Para 705 provided for departmental traps. Para 705 has laid down an additional procedure for departmental trap and the same is reproduced herebelow:

#### 705 Departmental Traps

For Departmental Traps, the following instructions in addition to those contained under paras 704 are to be followed---

(a) The Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. HoweverP in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilised.

(b) The decoy will present the money which he will give to the defaulting officers/employees as bribe money on demand. A memo should be prepared by the Investigating Officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the G.C. notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the Investigating Officer/Inspector. Another memo, for returning the G.C. notes to the decoy will be prepared for making over the G.C. notes to the

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delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and Investigating Officer/Inspector. The independent witnesses will take up position at such a place where from they can see the transaction and also here the conversation between the decoy and the delinquent, with a view to satisfy themselves that the money was demanded, given accepted as bribe - a fact to which they will be depositing in the departmental proceeding at a later date. After the money has been passed on, the Investigating Officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, Railway and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope."

3. It is submitted on behalf of the petitioner that para 705 of Chapter 4 of the Manual requires the presence of the independent witnesses and during the Inquiry no independent witnesses were produced; only the vigilance officer appeared as witness. The contention is that in the absence of independent witnesses as provided under the rules, the entire proceedings are vitiated for want of evidence from an independent witness. The case is to be treated not as a trap case but a case with no evidence. It is further stated that these independent witnesses in accordance with the rules are the only material witnesses according

to the petitioner. He cited a number of decisions showing that in the absence of material witnesses produced during the inquiry proceeding, the entire proceeding is liable to be quashed as one coinducted without affording effective opportunity of hearing to the petitioner.

4. It was also pointed out by the petitioner that the inquiry held against both the petitioner as well as against Shri Bhram Dutt was a joint inquiry and a common order was passed and the appeal was disposed of by a common order. It was stated at the Bar that Shri Bhram Dutt on appeal has been reinstated and he continues to work. In view of the fact that one of the accused in the joint inquiry is already reinstated in appeal, it may be a fit case for the respondej\*ts to reconsider the case of the petitioner also.

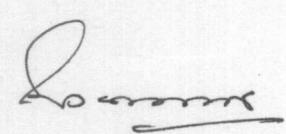
5. We have considered the pleadings and the arguments of both the parties and we are of the opinion that the disciplinary proceedings solely relying on the evidence of the Vigilance Officer, cannot be said to be an inquiry fully in accordance with the rules. Absence of the independent witnesses has vitiated the proceedings. In any event the punishment of dismissal from service awarded by the respondents does not commensurate with the misconduct alleged viz., receiving Rs. 10/-

out of the total Rs. 20/- of the alleged bribe money, in the circumstances of the present case.

20

6. In view of this fact and especially in view of the fact that the co-accused has been reinstated in service, and taking notice of the fact that the review petition is still pending before the Reviewing Authority, the Reviewing Authority is directed to dispose of the review petition in the light of the findings and observations given hereinabove within two months from today. In the event the Reviewing Authority decides to reinstate the petitioner in the same manner as the order passed in the case of Shri Bhram Dutt, it would only be fit and proper case to grant the same benefits to the petitioner as has been given to Shri Bhram Dutt.

7. With these observations and directions, this O.A. is disposed of with no order as to costs.

  
(S.P. Biswas)  
Member (A)

  
(Dr. Jose P. Verghese)  
Vice Chairman (J)

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