

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(32)

OA No. 716/92

New Delhi, this the 6th day of November, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

In the matter of:

S.N.Srivastava
son of Sh. Dwarka Pal
Railway Station
Bhiwani (Haryana).
R/o RZ 693 Palam Colony,
New Delhi.
(By Advocate: Sh. V.P.Sharma)

.... Applicant

Vs.

1. Union of India
through the General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Bikaner.

3. The Additional Divisional Railway Manager,
Northern Railway,
Bikaner.
(By Advocate: Sh. R.L.Dhawan)

.... Respondents

O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J)

This OA is directed against the order dated 2.5.91 (Annexure A-1) passed by Resp. No.4 by which punishment of compulsory retirement from service has been awarded to the applicant, as also the charge sheet dated 13.10.88 (Annexure A-11) issued by Senior DCS, Northern Railway, Bikaner on which the final order ibid was passed. The applicant further assails the report of the Enquiry Officer, as at Annexure A-3, holding the applicant guilty of misconduct.

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2. The applicant who was at the relevant time working as a Goods Clerk at Bhiwani in the State of Haryana was initially served with a charge sheet in the year 1986 on the following allegations:-

That the applicant while functioning as Goods Clerk, Bhiwani received initially an amount of Rs.300/- and later on a further amount of Rs.15,000/- from one Sh. Inder Singh, complainant for securing the selection of his nephew Sh. Mehar Singh in the Railways as Assistant Station Master. But the applicant neither got him selected nor returned the said amount.

3. The said charge sheet was, however, withdrawn on 17.11.86 by an order a copy of which is annexed as A-19 to the OA. On the same set of facts a fresh charge sheet was served upon the applicant on 15.9.98, but the same was again withdrawn by the DCS, Bikaner vide the order dated 13.10.88 and on the same day a fresh charge sheet was served upon the applicant which formed the basis for the impugned order of punishment dated 2.5.91.

4. The first ground taken by the applicant in assailing the impugned punishment order is that since the earlier charge sheets ~~had~~ been withdrawn a fresh charge sheet on the same set of facts could not have been validly issued nor any disciplinary enquiry held on the basis of such a charge sheet.

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5. Another point raised by the applicant is that the documents relied upon by the prosecution were not furnished to the applicant even though he had made specific request for it.

6. Thirdly, it is stated that the case was one of no evidence and that the Enquiry Officer as also the disciplinary authority fell into error in recording the finding against the applicant. It needs to be mentioned here that so far as the first part of the charge viz. taking of Rs.300/- on the first occasion is concerned, the Enquiry Officer has held that this charge is not proved.

7. It is also contended by the applicant that the alleged incident did not relate to the official position of the applicant as it was not his job to secure employment for anybody, and that, therefore, a disciplinary enquiry in respect of this charge could not have been held.

8. Lastly, it is contended that there was great delay in serving the charge sheet upon the applicant on 13.10.88 relating to an incident that had allegedly taken place in the year 1982.

9. The respondents have contested the claim of the applicant on several grounds, the first of them being that the allegations against the applicant did constitute misconduct, in that, under the Railway Servants (Conduct) Rules the applicant was required to maintain integrity not only in relation to his official duties but also in his

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personal life. It is also stated that there was really no delay in serving the charge sheet upon the applicant as the first charge sheet was served in 1986 itself.

10. On the question of withdrawal of the earlier charge sheets and serving of a fresh charge sheet the respondents have taken the plea that while withdrawing the earlier charge sheets the respondents had reserved the right to serve fresh charge sheets as the earlier charge sheets had been withdrawn only on technical grounds. In this regard the respondents have referred to the contents of the letter/order dated 13.10.88 in which it is specifically stated that a fresh charge sheet was being issued. Similarly, in the letter dated 17.11.86 withdrawing the earlier charge sheet dated 29.5.86 it was stated that the said charge sheet was withdrawn "pending further communication from this office".

11. In reply to the applicant's contention regarding non-furnishing of copies the respondents have taken the plea that the applicant had admittedly inspected the documents and had also taken the necessary extracts of the documents relied upon by the respondents and that, therefore, there was no need to supply certified copies as requested by the applicant. In this regard, the applicant was by the communication dated 11.6.86 informed that since he had already inspected the records and had taken the necessary extracts there was no merit in his request that he should be given certified copies or photostat copies.

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12. The respondents have emphatically denied that there was no evidence connecting the applicant with the alleged misconduct. According to them a number of witnesses had appeared before the Enquiry Officer and from their depositions the charge of accepting Rs.15,000/- from Sh. Inder Singh was proved.

13. We have heard the learned counsel for the parties at length and have also perused the material on record.

14. We may first deal with the question as to whether after the withdrawal of the earlier charge sheet a fresh charge sheet on the same set of facts could have been issued and disciplinary enquiry held on such charge sheet. In this regard, as already mentioned, the plea taken by the respondents is that the earlier charge sheets were withdrawn only on technical grounds. On one occasion the charge sheet was withdrawn because some witness mentioned in the list of witnesses was to be deleted. We find that in the letter dated 17.11.86 it has been specifically mentioned that the charge sheet issued on 29.5.86 is being withdrawn pending further communication from the divisional office. This clearly indicates that the charge sheet was not finally withdrawn and that the matter of holding the enquiry or issuing fresh charge sheet was pending for consideration. Similarly, in the letter dated 13.10.88 by which the second charge sheet was withdrawn it has been clearly mentioned that a fresh "charge sheet was being issued"; and as a matter of fact a fresh charge sheet was issued on that date itself. In view of the above facts and circumstances we must hold

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that at no time was the charge sheet finally withdrawn nor was a decision taken not to proceed against the applicant. On the contrary, the respondents had while withdrawing the earlier charge sheets reserved to themselves the right to issue a fresh charge sheet after removing the technical defects. In this view of the matter the issuance of the charge sheet dated 13.10.88 cannot be held to be vitiated.

15. The learned counsel for the applicants has in support of his contention that the principles of natural justice have been contravened in this case relied upon the judgment of the Apex Court in **Kashi Nath Dikshit vs. UOI and Others** decided on 15.5.86 by the Apex Court and reported in ATR 1986 (2) SC 186. We have gone through the aforesaid judgment and find that while holding the view that refusal to supply copies of statements would amount to denial of reasonable opportunity it was further observed that an opportunity to the delinquent official to inspect the documents and take notes would be sufficient compliance with the principles of natural justice. However, on the facts of that case it was held that since the delinquent official's requests to extract with the help of a stenographer the relevant portions of the voluminous documents relied upon by the prosecution in that case had been refused this would amount to denial of reasonable opportunity to defend himself. In the instant case the applicant had admittedly inspected the documents and had also taken the necessary extracts. At no time did the applicant seek the assistance of a Stenographer to take extracts from the documents. On the other hand he insisted upon furnishing of certified copies of the statements and other documents which request was refused

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by the Enquiry Officer. In our view the request was rightly refused by the Enquiry Officer. We further find no evidence of the fact that non-furnishing of the certified copies has caused any prejudice to the applicant in the instant case.

16. It is also now well-settled that mere delay in serving the charge sheet does not necessarily vitiate the disciplinary proceedings. In considering the question of delay the gravity of the charge is also to be considered. In the instant case the first charge sheet was served in 1986 itself. Thus, it was not a case of inordinate delay. Furthermore, the charge against the applicant was a grave one as he was alleged to have accepted Rs.15,000/- as illegal gratification promising the complainant to get his nephew appointed in the Railways as Assistant Station Master. For these reasons the applicant's contention regarding delay does not appear to be sustainable.

17. Next, it is vehemently argued by the learned counsel for the applicant that accepting money for helping somebody to seek employment in the Railways was in no way connected with the official duties of the applicant and that therefore the charge against him could not be sustained. We are afraid, we find this contention also to be devoid of merit. Under the Railway Servants (Conduct) Rules a Railway employee is required to maintain absolute integrity even in his personal life. Therefore, acceptance of money for a purpose which itself is illegal would certainly constitute contravention of the Conduct Rules. This is particularly so in view of the fact that

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the applicant was an office bearer of the Railway Men's Union. We are, therefore, convinced that the allegations in the charge sheet do constitute misconduct in respect of which disciplinary proceedings could have been validly held.

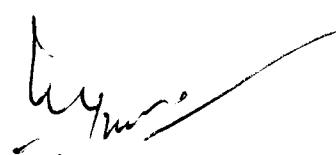
18. The learned counsel for the applicant has taken us through the report of the Enquiry Officer and the depositions of some of the witnesses in a bid to buttress his arguments that this case was one of no evidence. We have carefully gone through the depositions of the witnesses and the report of the Enquiry Officer and find ourselves unable to agree with the contention of the applicant's counsel. Not only the complainant in the case but also other witnesses have supported the version of the prosecution against the applicant and have stated that the applicant did accept money with a promise that he would get the nephew of the complainant appointed as Assistant Station Master for which he had already applied before the concerned Railway Recruitment Authority. There are, no doubt, some contradictions and discrepancies in the depositions of the witnesses, as pointed out by the learned counsel for the applicant, but this Tribunal in exercise of the powers of the judicial review cannot go into all these questions, as the Tribunal is not sitting in appeal over the findings recorded by the Enquiry Officer and accepted by the disciplinary authority. The jurisdiction of the Tribunal extends only to the extent of finding out whether the procedure laid down by the rules has been followed and whether the findings of the Enquiry Officer and the disciplinary authority are based upon some evidence, howsoever insufficient the same may be. It is only in a

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case where the Tribunal finds that there is no evidence at all on which the findings are founded that the Tribunal can interfere. In the instant case we find that there is some evidence connecting the applicant with the commission of the alleged act of misconduct. Even if on the same evidence some other conclusion could be possibly drawn it would not be open to us to substitute those findings for the findings recorded by the Enquiry Officer.

19. Even if the Court or the Tribunal finds that an order passed imposing a punishment on an employee consequent upon a disciplinary enquiry is in violation of some rule/regulation/statutory provision governing such enquiries the Court or the Tribunal should not set aside such order and should first enquire whether the provision violated is of a substantive nature or whether it is only procedural in character. This is the view taken by the Hon'ble Supreme Court in **State of Patiala and Others vs. S.K.Sharma** reported in JT 1996 (3) SC 722. It has been further held by the Apex Court in the judgment (supra) that violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or an order passed. According to the Apex Court it is only where such a violation has prejudiced the delinquent officer in defending himself properly that the Court/Tribunal should interfere. Examining the facts and circumstances of the instant case on the touch-stone of the principle laid down by the Apex Court in State Bank of Patiala case (supra) we find that there has been no real prejudice caused to the applicant as he appears to have been given adequate opportunity to defend himself which opportunity he has availed of.



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20. In view of all that has been held and discussed above we find no merit in this OA. We accordingly dismiss the same, leaving the parties to bear their own costs.


(S.P. BISWAS)
Member (A)

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(T.N. BHAT)
Member (J)

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