

Central Administrative Tribunal, Principal Bench

OA No.1975/93

New Delhi, this 30th day of July, 1999

(b)

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Pramod Prakash
Head Parcel Clerk
Railway Station, Northern Railway
Meerut Cantt

... Applicant

(By Shri B.S. Maine, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway, Baroda House
New Delhi

2. Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi

... Respondents

(By Shri R.P. Aggarwal, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a Luggage Inspector under the respondents is aggrieved by A-1 and A-2 orders dated 15.9.92 and 24.8.93 issued by the disciplinary and appellate authorities respectively. By A-1, applicant has been held guilty for demanding Rs.30 as illegal gratification for expeditious loading of the decoy's parcel ex-New Delhi to Allahabad. Consequently, he has been awarded the punishment of reduction of his salary in the time scale from Rs.1680 to Rs.1640 for one year with cumulative effect. And by A-2 the appellate authority has rejected applicant's appeal against the orders passed by Divisional Commercial Manager, i.e. the disciplinary authority.

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2. The applicant was initially appointed as a Parcel Clerk in the Railways and was promoted subsequently as Luggage Inspector in the grade of Rs.1400-2300. While working as Luggage Inspector, a memorandum of charge-sheet dated 19.10.90 was served upon the applicant for the alleged illegal demand of Rs.30, though indirectly, for expeditious loading of decoy parcel ex-New Delhi to Allahabad. (7)

3. The applicant has challenged the impugned orders and the punishment on the basis of the following grounds. That the disciplinary authority has failed to follow the procedures laid down for conducting raids as stipulated in para 705 of the Vigilance Manual issued by the Railoway Board. That Shri Rais, who was the key witness was not examined inspite of repeated requests of the applicant. That with the denial of opportunity of cross-examination of the material witness, the applicant's defence has been adversely affected. To add strength to his argument in this respect, applicant cited the orders of this Tribunal in the case of P.N.Mukherji vs. UOI ATJ 1993(1) 56.

4. Again, since Shri Rais was the author of the statement on the basis of which the present case has been made out against the applicant, the said statement should have been produced for the purpose of cross-examination. Respondents have thus violated the principles laid down by this Tribunal in the case of P.S.Gopala Pillai Vs. UOI SLJ 1993(1) 172. The orders of the discliplinary and appellate authorities are not speaking orders and without any application of mind.

5. In the counter, respondents have submitted that it was not considered necessary by the EO to call Shri Rais as witness during the course of the enquiry. In case the

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applicant felt necessary, he could have produced him as his defence witness. Respondents would contend that all the opportunities were afforded to the applicant in course of the enquiry proceedings.

(8)

6. We have heard the learned counsel for the parties and perused the records made available to us.

7. In the face of rival contentions, we are only to adjudicate if there has been any illegal infirmity in the conduct of disciplinary proceedings.

We find that under Section 705 of the Railway Board Vigilance Manner (Method of Investigation in Railway Board's office and Railways, Chapter VII), procedures for conducting departmental raids have been laid down. It is stipulated therein that investigating officer/inspector should arrange two gazetted officers from the Railways to act as independent witnesses as far as possible. In exceptional circumstances, where two gazetted officers are not available immediately, services of non-gazetted staff can be utilised. We find that in the present case, the witnesses were of the Vigilance Department itself. The possibility of biased attitude in such a situation cannot be ruled out. Since Shri Rais was the material witness and his statement was taken as the basis for issuing the charge-memo, it was necessary to cross-examine this witness during the course of the proceedings to ensure that the applicant had all the opportunities to defend himself. In fact the EO had commented on the failure of the respondents in not making Shri Rais available who was the key witness. That apart, in para 8.15 the EO has observed as under:

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"These all show that decoy check was neither properly arranged nor the charge sheet was properly prepared and amendments were made later on at inquiry stage"

(9)

We find that the disposal of the appellate orders suffers from illegality. The order mentions that:

"The charge stand partly proved. The allegations are quite serious involving collection of unaccounted money from consignors in the parcel office. The penalty imposed reduction in pay by one stage for one year with cumulative effect is very much in order. In fact this would normally be a case for imposing enhanced penalty"

8. It is evident that while disposing of the appellate order, the Divisional Commercial Supdt. has not applied his mind to the requirements of Rule 22(c) of the Railway Servants (Disciplinary & Appeal) Rules, 1968.

9. The order bears the head of sphinx. It does not convey the reasons for such a decision. A system of governance, based on the rule of law, reckons no decision without recording reasons behind it. The reasons behind any administrative orders, having civil consequences, are supposed to be made clear to the applicant as well as to the court/Tribunal exercising judicial review over administrative orders. While examining the need for general principle of law requiring an administrative authority to record reasons for its decision, the apex court in a constitution bench in the case of **S.M.Mukherjee vs. UOI** 1990(5) SLR 8 held that:

"It must be concluded that except in cases where the appeal has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial authority is required to record its reasons for its decision. Unfortunately A-1 order lacks the reasons for the decision reached"

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(10)

10. In the instant case, the impugned orders passed by the respondents have obviously been issued by them totally in violation of the extant rules on the subject and these cannot be sustained in the eyes of law and regulations prescribed by the respondent-Railways.

11. We find that our views get support from the decision of the Hon'ble Supreme Court in the case of R.P. Bhat Vs. UOI & Ors. AIR 1996 SC 149. That was the case where the appellate order therein was passed by Director General and the said order was set aside by the apex court and the respondents were directed to dispose of the appeal afresh after applying their mind to the regulations of Rule 27(2) corresponding rule in that organisation. The same situation prevails here. The rule which has been violated by the appellate authority in the present case is as regards 22(c) of Railway Servants (D&A) Rules, as aforequoted.

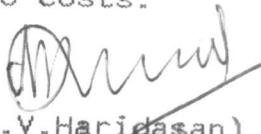
12. For the reasons aforementioned, we allow this application with the following directins:

(i) Annexure A-1 and A-2 orders shall stand set aside;

(ii) Applicant's salary in the scale of Rs.1400-2300 (RPS) reduced to Rs.1640 from 1680 shall be restored with all consequential benefits

(iii) There shall be no order as to costs.


(S.P. Biswas)
Member (A)


(A.V. Haridasan)
Vice-Chairman (J)

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