

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 340 of 2001

Allahabad this the 9th day of May 2002

Hon'ble Mr.C.S. Chadha, Member (A)
Hon'ble Mr.A.K. Bhatnagar, Member (J)

Sri Jagbandhan Yadav S/o Late Sri Durga Deen Yadav,
R/o 191 A/2, Fatehpur Bichchwa , Tagore Town,
Allahabad.

Applicant

By Advocate Shri B.N. Singh

Versus

1. Union of India through the General Manager(N.R)
Barouda House, New Delhi.
2. Chief Operating Manager(N.R.) Head Quarter
Office.
3. Additional Divisional Rail Manager, N.R., Bikaner.
4. Senior Divisional Operating Manager, (N.R.) Bikaner
Division, Bikaner.

Respondents

By Advocate Shri Prashant Mathur

O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

The applicant was working as an Assistant
Station Master at Kunda Harnamganj Railway Station,
and on 07.05.94 a surprise raid was conducted at that
railway station under the leadership of D.C.M. Lucknow
Ms.Ashma Singh at about 15.30 hours. It has been

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alleged, vide a charge sheet, dated 17.1.96, served on the applicant, that he was found selling tickets when he was not supposed to be on duty and further that he was found guilty of selling and being in possession of tickets shown as already sold, selling fake tickets, shortage of cash at the counter etc. A departmental enquiry was held, the applicant was found guilty and vide an order dated 13.01.1997(annexure-1) he was removed from service. His appeal and revision were both rejected vide orders dated 30.05.2000 and 01.11.2000 (annexures-2 and 3 respectively), hence this O.A. has been filed, challenging the said orders.

2. Some of the important issues raised by the learned counsel for the applicant during the course of arguments before us were:-

(i) Copies of important documents used by the prosecution were not made available to the applicant thus denying him a proper opportunity to defend himself;

(ii) The E.O. was junior in rank to the D.C.M. Lucknow who supervised the 'raid' and therefore the E.O. was under pressure to consider the charges to be proved;

(iii) That all the witnesses in the list of witnesses for the prosecution were not examined and therefore the enquiry had been vitiated;

(iv) That the E.O. and the disciplinary authority failed to appreciate the fact that he was not on duty at the time of the raid,

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he was called from his house to assist with the inspection by a memo sent to him, and that he was 'framed' for some one else's mistake;

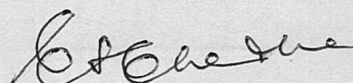
v) That he had asked for the production of an attendance register to prove that he was not on duty but his request was turned down;

(vi) The Enquiry Officer report does not discuss and give clear findings on each charge separately.

3. As regards the most stressed issue out of these, i.e., the non-supply of copies of documents relied upon by the prosecution, an issue on which the counsel for the applicant took more than an hour citing several rulings of the Hon'ble Supreme Court, we are extremely sorry to observe that the learned counsel argued totally against the record before us. We would not be wrong in taking serious exceptions to this attitude of the learned counsel because annexure C.A. V is a receipt, written in the applicants own handwriting, clearly acknowledging:-

"I attended DRM Office BKN BranchD/- 05-6-96 and received all statements, photo stat copies in connection with S.F.S. as per list of documents of S.F.S."

4. We are unable to understand the attitude of the applicant as well as his counsel, when they have not challenged the authenticity of C.A.-V in their rejoinder (how could they - as it was in the

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applicant's own handwriting), and yet the non-supply of such copies formed the main argument before us. We would like to go on record that learned counsels are supposed to assist the court and not mislead it and therefore the learned counsel for the applicant should refrain from arguing totally contrary to admitted facts.

5. The attitude of the applicant has all along been of relying on the untruth, not only in the enquiry but also in the averments made before us. We would like to here dwell on the issue at (iv) in para 2, above i.e., the reason for his presence, at the time of the raid, despite not being on 'official duty'. He has claimed that he was called by his superior by a written requisition sent to him at 15/25 on 07.05.94 filed as annexure-4. Before commenting on the authenticity and reliability of Annexure-4 we would like to quote what the said annexure-4 states:-

"You are required to attend office to help in connection with inspection of Sr.D.C.M. LKKO. Please turn up at once."

This 'requisition' is alleged to have been dispatched at 15/25 by a messenger. Even if it is assumed that the applicant's house was just next to the railway station, it would certainly take some time for the messenger to reach the applicant, the applicant to get ready and arrive at the railway station, then 'count' the tickets and cash and start

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dispensing tickets. In no case less than fifteen minutes would elapse in this process - therefore if really the applicant was to only respond to ann.-4 he would not have been caught red handed with fake tickets, and all, at 15.30 hrs. Moreover let us see what the applicant himself has to say about his 'arrival' at the railway station that day. At page 5 of his 'Statement of Defence' (Ann.A-14), in the second line thereof he states:-

"I came at Station at about 15/20 hrs. and was ready to start booking but at the same time at 15/30 hrs the raid party headed by Smt.Ashma Singh, the then Senior D.C.M. Lko, had arrived at Kunda Harnamganj and I could not sell even a single ticket."

6. He is proved a liar by his own admission as on the one hand he claims to have left for the station some time after 15/25 as a result of receiving the requisition at annexure-4, but on the other seems to have arrived there even 5 minutes before the requisition is purported to have been written, i.e.at 15/20 hrs.!! On the one hand it is claimed that Smt.Ashma Singh came on a 'surprise raid' at 15.30 and on the other Annexure-4 purports to claim that the person knew of the 'inspection' before ^{hand,} and at least 5 minutes before the D.C.M arrived!! Further, if the person who wrote annexure-4 knew before hand that D.C.M. was to come for 'inspection' at 15/30 hrs., he would perhaps ^{have} asked all his staff one day before to be present and not sent a requisition in writing (we wonder how he got the time to think of writing a requisition in such a haste) just five minutes before she arrived. The lies of the applicant

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are proved further by yet another statement of his. On the one hand he claimed, as shown above, that he was called to help in the inspection, and on the other in third para on page 5 of his Statement of Defence (Annexure A-14) he claims that he was called because Shri S.N. Singh A.S.M who was on duty from 14/30 to 22 hours on 7.5.94 did not come on duty due to illness and therefore he was asked to 'help' in sale of tickets from 14/30 hrs. If he was required for helping in sale of tickets from 14/30 hrs. the requisition purported to be sent to him would not be sent at 15/25 hrs but much before 14/30 hrs. and would not mention that he was required to help in connection with inspection! The requisition at annexure-4 does not mention that the applicant was required to perform the duties of ASM S.N. Singh who was ill. They say liars have no legs to stand on, and in this case the applicant has proved this saying as he has made several different shifting stands to 'explain' his presence at the ticket booking window at the time of the raid. In fact he was not supposed to be there and this fact was one of the important charges against him. It had been alleged that in order to make money by selling fake tickets etc. he was at the railway station, without justification, without it being his duty at that time. We therefore come to the unhesitant conclusion that the applicant has been lying, and has not approached us with clean hands. There are a large number of cases in which Hon'ble High Courts have ruled that any person who does not approach the

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Court with clean hands, deserves no relief from the Court. In this case the applicant has clearly lied to us about non-receipt of copies of documents relied upon by the prosecution and further that he was called to the Railway Station through Annexure-4, which itself quite evidently is fake and forged, perhaps concocted with the connivance of his superior who was in all probability involved in the racket of sale of fake tickets. In view of the above we feel the applicant does not deserve any sympathy or relief from us and we may dismiss his O.A. merely on this count. However, we would like to examine the merits of the other arguments put forth on his behalf.

7. The mere leading of the raid party by the D.C.M., Lucknow, and the E.O. being junior to her does not in any way prejudice the enquiry unless any direct pressure is alleged and proved. If the Sr.D.C.M. led a 'raid' then it is not possible for an officer even senior to her to conduct the departmental enquiry. We find no merit in this argument of the applicant as he was given due opportunity to defend himself and no irregularity committed by the E.O. under pressure has been shown.

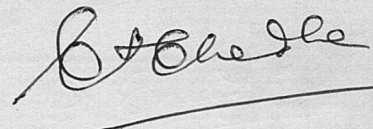
8. The non examination of a few of the prosecution witnesses cannot be, merely by the fact of such failure itself, ~~examined~~ considered to have caused prejudice, unless the applicant can show that the dropped witnesses would have proved

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something in his favour. If the prosecution feels that only some of the witnesses have been able to bring home the charges without doubt it ^{of its own} can certainly drop some witnesses. The applicant has nowhere averred how their non-examination has prejudiced his defence and therefore this objection is without any merit.

9. The non production of the attendance register as asked for by the applicant in his defence does not in any way jeopardise his case, -though we feel that the Enquiry Officer should have recorded reasons clearly for not examining that record. By that attendance register all the applicant would have tried to show was, whose duty was it at the time of the 'raid' or before it. All this is irrelevant in the light of his own admission of his presence, but with shifting explanations for the same.


10. The objection that the Enquiry Officer has not discussed clearly each charge clearly in his enquiry report is without any basis. A perusal of the Enquiry Officer's report at annexure A-15 shows that it is in quite detail and each charge has been discussed at length. We do, however, feel that the report could have been better worded and better reasoned but the lack of these is perhaps due to the poor command of the Enquiry Officer over the English language, rather than any design and lack of will to be clear on the charges or...pg.9/-



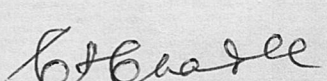
or findings. The orders are also all very well reasoned and we find no reason to interfere with them.

11. In the circumstances discussed above, we are sorry to opine that the applicant has not approached this Tribunal with clean hands, has made false statements on oath, and therefore deserves no sympathy or relief from us. The O.A. has no merit and therefore deserves to be dismissed. The O.A. is dismissed with ^{to} these grave observations and he should consider himself lucky that we are not recommending his prosecution for perjury, as he is already facing criminal prosecution for sale of fake railway tickets and other criminal misdemeanour.

12. No order as to costs.


Member (J)

/M.M./


Member (A)