

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD

ORIGINAL APPLICATION NO. 1408 OF 2004

ALLAHABAD THIS THE 22nd DAY OF AUGUST, 2006

HON'BLE MR. A. K. SINGH, MEMBER-A
HON'BLE MR. K. ELANGO, MEMBER-J

Upendra Nath Sharma, S/o Sri Tulsi Ram Sharma, R/o Mohalla New Ishaiice Tola (Behind Khati Baba Mandir) P.O. Sipri Bazar, District Jhansi, U.P., presently working as TTE, under DCM/NCR/Jhansi.

.....Applicant

By Applicant: Shri S.K. Misra.

Versus

1. Union of India through General Manager, N.C.R., Allahabad.
2. Addl. Divisional Railway Manager, North Central Railway, Jhansi Division, Jhansi.
3. The D.R.M., (Commercial), N.C.R., Jhansi.
4. The Sr. Divisional Commercial Manager, N.C.R., Jhansi.
5. Sri S.N. Meena, Chief Ticket Inspector (Detail), N.C.R., Jhansi.

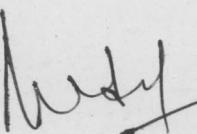
..... Respondents

By Advocate: Sri Anil Kumar

O R D E R

By A.K. Singh, Member-A

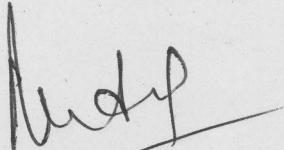
The O.A. 1408 of 2004 has been filed by the applicant Upendra Nath Shamra (address given in the O.A.) against the order dated 17.12.2003 passed by the respondent no.3 namely D.R.M. (C), Jhansi imposing penalty of reduction of pay on the applicant for two years with cumulative effect and



against order dated 25.2.2004 passed by the respondent no.4 (Sr. D.C.M., Jhansi) rejecting his appeal dated 29.1.2004 as well as against order dated 10.5.2004 passed by the respondent no.2 namely Addl. D.R.M., Jhansi rejecting Revision Application dated 21.4.2004. The O.A. is also directed against the inquiry report dated 3.7.2002.

2. The applicant was charge-sheeted vide memorandum dated 8.12.2000 for certain lapses on his part in the performance of his duties, when he was functioning as TTE, N.C.R., Jhansi. The O.A. is based on the following grounds:-

- (a) That the appointment of Enquiry Officer has not been made in accordance with departmental rules.
- (b) The enquiry proceedings are based on surmises and conjunctures.
- (c) That the findings of the enquiry are vague. The Enquiry Officer travelled beyond the allegations in holding that the applicant was not present in the Kanpur-Jhansi Train.
- (d) Enquiry Officer did not permit examination of the materials witnesses despite request made in this regard by the applicant.
- (e) The orders of the disciplinary authority/appellate authority/revisional authority are completely non-speaking.

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(f) Respondents have based their findings on materials, which are no evidence in the eyes of law, and hence the same should not have been relied upon. Since the foundation on which the respondents have based their findings itself was 'no evidence' in the eyes of law, the orders of the disciplinary/appellate/revisional authorities on that basis are consequently illegal and deserve to be quashed and set-aside.

3. Accordingly, the applicant has sought the following relief(s) in the O.A.

"(i) the order of punishment dated 17.12.2003 passed by the disciplinary authority i.e. respondent no.3 (Annexure-1), the appellate order dated 25.2.2004 (Annexure-2) passed by respondent no.4 and order in revision dated 10.5.2004 (Annexure-3) passed by the respondent no.2, be quashed.

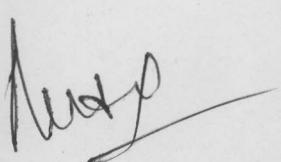
(ii) to set aside the inquiry report dated 3.7.2002 (Annexure-4).

(iii) to direct the respondents to grant all consequential benefits to the applicant such as arrears of salary etc.

(iv) to issue any other direction or order as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

4. The respondents on their part have opposed the O.A. on the following grounds:

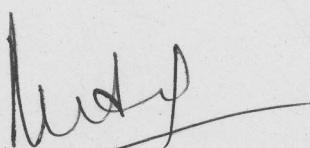
(i) That the applicant was correctly charge-sheeted on the basis of report received from the concerned COR.



(ii) That the appointment of Enquiry Officer Sri S.N. Meena CTI(D) was as per rules. SF-7 was issued and served to the applicant and he never raised any objections against the same. On the other hand, he effectively participated in the inquiry proceedings.

(iii) Although the applicant had signed the lobby register on 14/15.7.2000, but he did not turn up on his duty in Train no. 9167 Dn. dated 14/15.7.2000 for monitoring the coaches. He was also not seen between Jhansi and CNB to the COR and other staff on duty in the aforesaid Train. The applicant after signing the lobby register at Jhansi on 14/15.7.2000 did not proceed for CNB in the aforesaid Train for monitoring coaches assigned to him. He also did not surrender their chart to COR Sri R.K. Goswami at CNB on 15.7.2000 to prove his presence. It is necessary under the rules for a TTE to submit amended coach chart statement to the COR on duty as well as to outgoing COR/TTE for onward journey. These serious irregularities came to the knowledge of the Railway authorities during the course of Preliminary inquiry. The inquiry clearly suggested that the applicant was not present on duty in Train no. 9167 Dn, on 14/15.7.2000 between Jhansi-CNB.

(iv) As per report of Sri R.K. Goswami, coaches allotted to the applicant namely S-1 and S-2 were manned by Sri Ashish Rajoria and not by him. He was not present on duty between Jhansi-CNB in Train no. 9167 on 14/15.7.2000. Sri R.K. Goswami has



confirmed these facts before the Enquiry Officer.

(v) That the applicant himself had made a written request on 24.9.2001 to the Enquiry Officer to drop examination of second defence witness Sri Ashish Rajoria, TTE. Accordingly, the Enquiry Officer dropped the name of Sri Ashish Rajoria as a witness during the enquiry proceedings.

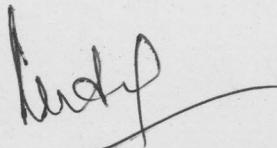
(vi) That COR team no. 68 had informed CTI (D), Jhansi namely Sri S.N. Meena vide letter dated 17.7.2000 that applicant did not turn up for his duties on Train no. 9167 Dn.

(vii) After getting information from CTI (D) namely Sri S.N. Meena, the Disciplinary authority appointed him as Enquiry Officer for conducting open inquiry proceedings. Applicant participated in the inquiry proceedings without any protest. As such, he cannot raise this fact at this stage.

(viii) That the applicant has failed to show that Sri S.N. Meena, CTI (D) was prejudiced with him in any manner.

(ix) That the inquiry proceedings were properly conducted and in accordance with the departmental rules and that a copy of the same was also provided to the applicant for his comments.

(x) That orders of punishment on conclusion of the proceedings, as well as at the appellate and revisional stage, were passed with full application of mind on the part of authorities concerned and on



considering the inquiry report of the Enquiry Officer and on independent appraisal of evidences cited therein.

5. On the basis of the above, respondents submit that O.A., in question, is devoid of any merit and hence they pray for its dismissal.

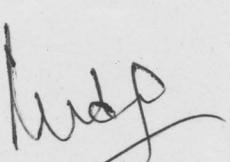
6. Opportunity for personal hearing was extended to the applicant as well as respondents on 31.7.2006. The applicant was represented by Advocate Sri S.K. Misra, while respondents were represented by Sri Anil Kumar, Advocate. In their oral submissions, the learned counsels reiterated their arguments as above.

7. We have given our anxious consideration to the submissions made across the bar on behalf of the applicant as well as respondents and have also perused the records.

8. The following principles enunciated by the Apex Court in the departmental disciplinary proceedings shall be the touch stone of the present case.

(i) The inquiry in its true nature is quasi-judicial. It is manifest from the very nature of the inquiry that the approach to the material placed before the Enquiry Officer should be judicial (**Jagarnath Prasad Sharma Vs. State of U.P. (1962 1 SCR 151)**).

(ii) Principle of natural justice will be fully followed. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual



against the arbitrary procedure that may be adopted by a judicial/ quasi-judicial/, administrative authority while making an order affecting these rights. These rules are intended to prevent such authorities from doing injustice. (**Canara Bank Vs. Debasis Das (2003) 4 SCC 557 at page 570**).

(iii) ".....In the departmental proceedings the standard of proof is one of preponderance of probabilities." (**Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd (1999) 3 SCC 679**).

(iv) The Enquiry authority shall not take into account any extraneous matter in arriving at the findings

(v) Punishment imposed is not excessive or shockingly dis-proportionate to the gravity of the charges held as proved (**B.C. Chaturvedi Vs. U.O.I. (JT 1995(8) SC 65)**.

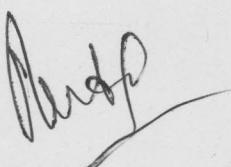
9. A perusal of the inquiry proceedings suggests that the same have been conducted in violation of the basic and fundamental principles of natural justice which are two fold in nature (i) No person will be a Judge in his own case and (ii) No one will be condemned unheard.

10. In the present case, the preliminary enquiry was conducted by the Chief Ticket Examiner (D) Sri S.N. Meena. There is no dispute on this point. It is on record that the initial enquiry against the applicant commenced with a remark as well as explanation called by Sri S.N. Meena, CTE (D) from Sri R.K. Goswami, COR, which reads as under:-

"COR Sri R.K. Goswami kindly explain that Sri U.N. Sharma worked By 9165 JHS/CNB or not".

Mudp

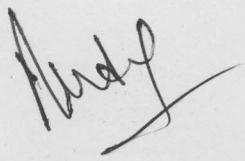
11. Thereafter Sri S.N. Meena completed the initial inquiry against the applicant and accordingly sent his preliminary enquiry report to higher authorities namely Sri D.K. Pande, Divisional Commercial Manager(Commercial) who is respondent no.3 in the O.A. Sri D.K. Pande, Divisional Commercial Supdt., Jhansi is the Disciplinary Authority of the applicant in this case. In pursuance of the aforementioned preliminary enquiry report, the applicant was served with a Memorandum of Charge-sheet dated 8.12.2000 (SF-5) by respondent no.3. It is an established law that no person can be a Judge in his own case. This is also the basic principle of natural justice. In appointing the original investigating authority as the Enquiry Officer, as in this case, this basic and foundational principle of natural justice has been violated which has resulted into miscarriage of justice in this case. The entire inquiry proceedings on this basis, consequently stand completely vitiated and hence not maintainable in law. The orders of punishment of reduction of pay in the same Time Scale for two years with cumulative effect dated 17.12.2003 and all subsequent orders including the order in appeal dated 25.2.2004 and order in revision dated 21.4.2004 of respondents nos. 4 and 2 respectively on that basis, accordingly deserve to be quashed and set-aside.



12. In the second place, the findings of the Enquiry Officer are clearly vague. In his final inquiry report dated 3.7.2002, the Enquiry Officer has based his inquiry report largely on the basis of the exclusive oral testimony of Sri R.K. Goswami, COR, on the material date and time. But he has not taken the testimony of Sri Vinay Yadav, another Co-TTE, who was on duty in the same Train, on the material date and time, and who was allotted Coach no. S-9 and S-10. In his oral testimony dated 24.9.2001, Sri Vinay Yadav has testified that Sri U.N. Sharma was on duty in Coach No. S-1 & S-2 in the aforesaid Train from Jhansi to Kanpur. He has also testified that Sri U.N. Sharma and Sri R.K. Goswami had heated arguments twice in course of the aforesaid journey from Jhansi to Kanpur. He has also rejected the story that Sri U.N. Sharma had visited or stayed in the Railway Rest house at Kanpur station. He also testified to the fact that he had accompanied him upto Vijay Nagar after reaching Kanpur, on completion of duty.

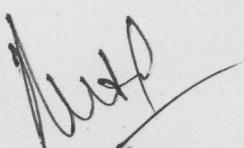
13. Under the circumstances and in view of rejection of this material evidence on record, the Enquiry Officer was under legal obligation to record the reasons for rejecting such a vital and material evidence on record. He has not done so.

14. More-over the only reason advanced by Sri R.K. Goswami in his oral testimony dated 23.9.2001 in



support his say is that Sri U.N. Sharma was not present on duty in the aforesaid Train on the material date is that Sri U.N. Sharma did not take lunch or dinner with him and that he could not notice his presence in the aforesaid compartment. It is quite likely that Sri U.N. Sharma might of have alighted from the Train at a particular station for taking Tea or any other refreshment at the material time. When another important member of the team testifies his presence on duty, it was not correct on the part of the Enquiry Officer to have gone exclusively by the oral testimony of a biased witness who had heated arguments with the applicant in course of duty on the material date and time. Hence, the Enquiry report cannot be stated to be impartial and fair.

15. Last of all, we find that the order of punishment dated 17.12.2003 passed by the Disciplinary Authority namely the Divisional Commercial Supdt., Jhansi is clearly non-speaking. So is the case with order in appeal of the appellate authority dated 25.2.2004 i.e. respondent no.4 namely Sr. Divisional Commercial Supdt., Jhansi. The order in revision dated 10.5.2004 of respondent no.2 namely Additional Divisional Railway Manager, Jhansi is equally non-speaking. No reasons are recorded by these authorities for taking their respective decisions.

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16. Consequently, the orders, in question, suggest a clear non-application of mind on the part of these authorities. As held by the Apex Court in a number of judgments a non-speaking order is not an order in the eye of law. Hence the orders, in question, are not sustainable in law and deserve to be quashed and set-aside.

17. On the basis of the above, we come to the conclusion that all the three orders, referred to above, passed by disciplinary/appellate/revisional authorities as well as inquiry report dated 3.7.2002 are not sustainable in law and deserve to be quashed and set-aside. Normally we would have likely to grant liberty to the applicant to initiate denovo proceedings in the matter, but on consideration of the fact that the disciplinary proceedings, in question, were initiated nearly four years ago and the applicant has considerably suffered during the material period, an order for a fresh inquiry shall no-doubt result into further miscarriage of justice in the case. Hence, we would like to lay the proceedings in this case to rest in the interest of justice. Accordingly, we pass -- the following orders:-

(1) We quash and set-aside the following orders of Respondent nos. 2, 3,& 4 for the above mentioned reasons:-

(i) Order of punishment passed by the Disciplinary Authority dated 17.12.2000 ~~2003~~.

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namely Divisional Commercial Manager, Jhansi.

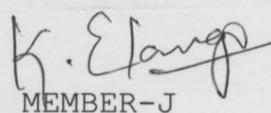
(ii) Order in appeal dated 25.2.2004 passed by the Sr. Divisional Commercial Manager, Jhansi.

(iii) Order in Revision dated 10.5.2004 passed by the Additional Divisional Railway Manager, Jhansi.

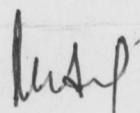
(2) The inquiry report dated 3.7.2002 on the basis of which the above mentioned orders have been passed, is also quashed and set-aside due to reasons already recorded above.

(3) We also direct the respondents to provide all consequential benefits to the applicant including arrears of salary, promotion in the next higher grade in his turn etc., if the applicant is otherwise eligible for the same.

(4) The parties will bear their own costs.



MEMBER-J



MEMBER-A

GIRISH/-