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CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Allahabad this the 31<sup>st</sup> day of Jan 1996

Hon'ble Dr. R.K. Saxena, Member { J }  
Hon'ble Mr. D. S. Baweja, Member { A }

Original Application No. 527 of 1986

J.C. Sharma, S/o Sri Ved Ram Sharma R/o 8/186A,  
Bhogipura, Agra.

APPLICANT

By Advocate Shri G.C. Bhattacharya.

Versus

1. Divisional Rail Manager, Western Railway, Kota
2. Senior Divisional Commercial Superintendent,  
Western Railway, Kota.
3. Union of India through Secretary, Rail Bhawan  
New Delhi.

RESPONDENTS

By Advocate Shri Ashok Mohiley.

Oritinal Application No. 057 of 1986

J.C. Sharma, S/o Sri Ved Ram Sharma, R/o 8/186 A,  
Bhogipura, Agra.

APPLICANT.

By Advocate Sri G.C. Bhattacharya.

Versus

1. Shri K.K. Singh, Senior Divisional Commercial,  
Superintendent Western Railway, Kota.

RESPONDENT

By Advocate Shri Ashok Mohiley

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By Hon'ble Dr. R.K. Saxena, Member ( J )

These O.A.'s 527/86 and 657/86 have been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The order of punishment dated 12.3.86 (Annexure-5) passed by the disciplinary authority and the order dated 15.7.1986 (Annexure-7) passed by the appellate authority, have been challenged in O.A.527/86; and the order of transfer dated 12.3.1986 (Annexure-2) has been challenged through O.A.No.657/86.

2. The facts as are set out through the pleadings of the parties in brief are that the applicant was posted as Assistant- Reservation-Supervisor, Western Railway at Agra Fort. It is said that the Booking Clerk was not permitted to issue more than 6 tickets for a family. The reason for this restriction appears to be <sup>the</sup> check on the Mal-Practice operating in the issuance of tickets. One circular no.C-443/19/Vol.II (Annexure C.A.-1) dated 13.3.1980 was issued by Divisional-Commercial-Superintendent, Kota permitting Chief-Reservation-Supervisor, Agra Fort and Reservation Supervisor, Kota to allot the number of ~~birth~~ /seats to a party when the demand was more than 6. When Divisional-Commercial-Superintendent, Kota happened to visit the Agra Fort Station, he received complaints of abuse of the power of issuing tickets more than six in number to a particular party. Therefore, a note(Annexure C.A.-2) dated 29.10.1982 was written and directions were given to put up the file whereby the delegation of power to Chief-Reservation-Inspector

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was made. It appears that the said file was put up and thereafter, the circular dated 03.11.1982 Annexure C.A.-3 was issued by the Divisional-Commercial-Superintendent, Kota; and the earlier delegation of authority of issuing more than 6 tickets to one party, was withdrawn with immediate effect. Those powers were then delegated to Station Master, Agra Fort and Senior Superintendent, Kota.

3. It is said that on 01.11.1984 M/s Mansoori and Sons, Ahmedabad approached the booking-window to purchase 18 tickets for Ahmedabad in 5 Up for 17.12.1984. Smt. Rajni Dutta was working as Booking Clerk. She asked the concerned party which wanted to purchase 18 tickets that the permission be obtained from Chief Reservation Inspector or Station Superintendent. The concerned party approached the applicant because the Chief-Reservation-Inspector, according to the applicant, was not then available. The applicant treated himself senior-most, gave permission for the purchase of 18 tickets to the said party. Accordingly, Smt. Rajni Dutta issued the tickets.

4. It appears that Shri S.K. Gupta, Chief Reservation Inspector conducted a check in the Inquiry and Reservation Office of Agra Fort on 20.12.1984 to find out if the bookings of parties was being done in accordance with the rules. While going through the records of 5 Up Mail Coach for 17.12.1984,

he found a party of 18 members of M/s Mansoori and Sons Ahmedabad. He discovered that the tickets were issued by Smt. Rajni Dutta on 01.11.1984 on the endorsement made by the applicant. Since the tickets were issued in violation of the withdrawal of delegation of the powers vide circular dated 03.11.1982, Divisional Commercial Superintendent, Kota, the applicant was charge-sheeted. The memorandum of charge dated 08.4.1985 is annexure-2 of the O.A. The statement of Articles of Charges was attached therewith.

The charge was as under;

"Shri J.C. Sharma while working as ERC AF on 01.11.1984 is charged for "Serious misconduct" in as much as:-

That he permitted a party of 18 members of M/s Mansoori and Sons, Ahmedabad for reservation by 5 Up of 17.12.1984 without being competent to do so.

That he did merely to favour the party for his vested interests.

The above act of malafide is tantamounting to "Serious misconduct" and involves provisions of Rule 3(1) of the Railway Service(Conduct) Rule, 1966."

5. This charge was required to be proved on the basis of the documents which were mentioned in annexure-3 to the charge and list of witnesses in annexure-4 of the said charge. The charge was particularly denied. Accordingly, the inquiry was conducted. Shri R.S. Dixit was made Inquiry Officer and Shri P.N. Sharma had consented to become Defence Helper of the applicant. The witnesses S/ Shri B.K. Gupta Chief Reservation Inspector, Smt. Rajni Dutta, Booking Clerk were examined in support of the charges whereas

the applicant himself and Shri Nepal Singh, Chief Reservation Supervisor appeared in defence. The applicant also submitted written statement of his defence. The Enquiry Officer prepared the report on 27.12.1985 and found that the charge was substantiated. The report of inquiry was submitted to the disciplinary authority which passed the order of punishment(Annexure-5) on 12.3 1986 whereby the applicant was reduced to the post of E.C.R.C. in the scale of Rs.330-560(R) on pay of Rs.330/- per month for the period of 3 years with future effect. The order was challenged in appeal which was rejected vide order dated 15.7.1986 (Annexure-7). Hence, the O.A. 527/86.

6. Since the applicant was punished and reduced to the post of E.C.R.C. on the salary of Rs.330/- per month, the Senior Divisional Commercial Superintendent passed the order on 12.3.1986 whereby the applicant was transferred and posted as E.C.R.C. Kota. This order of transfer was also challenged by incorporating those facts in O.A. 527/86 but, by moving an amendment application, those facts were deleted, and separate O.A.No.657/86 was filed.

7. The grounds taken by the applicant in O.A. 527/86 are that he was competent to discharge the functions of Chief Reservation Inspector who was not present at the time when the party had approached for purchase of 18 tickets which were

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more than 6. His contention is that this power was exercised in view of the circular dated 13.3.1980. The knowledge of circular dated 03.11.1982 whereby the powers earlier given vide circular dated 13.3.80 were withdrawn, was not to the applicant. It is also said that the earlier circular dated 13.3.1980 was issued by the Divisional Commercial Superintendent in compliance with the directions of Railway Board in circular dated 18.2.1980. His contention, therefore, is that the powers which were directed to be delegated by the Railway Board cannot be withdrawn by Divisional Commercial Superintendent vide subsequent circular dated 03.11.1982. It is also the case that the disciplinary authority in the case of the applicant is the Chief-Commercial-Superintendent and, therefore, the issuance of the charge sheet and the recording of order of punishment by Divisional Commercial Superintendent, is illegal. The charge is also alleged to be vague, and therefore, <sup>as</sup> ~~therefore~~, <sup>as</sup> ~~was~~ no evidence in support of the charge. Both the orders of punishment and in appeal are also attacked on the ground that they were non-speaking orders and thus, violated the principle of natural justice. The punishment is said to be disproportionate. Similarly the order of transfer which was stayed by the Tribunal, has also been challenged.

8. The respondents have filed counter-reply through Shri K.K. Singh, Senior-Divisional-Commercial

Superintendent and resisted the claim of the applicant in O.A. 527/86. It is pointed out that the applicant has not exhausted all the remedies particularly the remedy of revision which is provided under the rules.

9. It is also contended that no doubt, the Chief-Reservation-Inspector, Agra Fort and Reservation Supervisor, Kota were authorised to allot to a party more than 6 berths vide order dated 13.3.1980 Annexure C.A.-1 but, the said authority was withdrawn by the Divisional Commercial Superintendent vide subsequent circular dated 03.11.1982. Despite, the withdrawal of allotment of seats more than 6 in number, the applicant who was working as Inquiry and Reservation Clerk on 01.11.1984 permitted 18 members of the party of M/s Mansoori and Sons for reservation in 5 Up for 17.12.1984 without being competent to do so. It is alleged that it was done to favour a party for vested interest and thus, this conduct of the applicant tantamounts to serious misconduct and violated rule 3(1)(i) of Railway Servants (Conduct) Rules, 1966. It is also contended that the inquiry was held and when the charges were found established, the applicant was punished and was reverted to the post of Assistant-Reservation Supervisor at Rs.330/- in the grade of Rs.330-560/- for 3 years. It is also averred that the order of punishment and upholding the same in appeal, were passed by the competent authority and

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suffered from no illegality. The respondents have also come with the plea that Senior-Divisional Commerical Superintendent, Kota is competent to issue charge-sheet and to award punishment. The applicant, it is asserted, was given ~~excess~~ <sup>access</sup> to all the documents and the copies thereof were also furnished to him. He was also given every opportunity to defend himself. The application is said to be devoid of merits.

10. The applicant filed rejoinder, reiterating the facts which were mentioned in the O.A.. By way of misc-application, he has filed the copy of circular no.80 T.G.I./200/4 dated 11.2.1980 whereby it was emphasised that Supervisors should be delegated with the powers to authorise the number of births/seats to be allotted to a party when the demand is for more than 6.

11. The counter-reply has also been filed in O.A.657/86 in which the order of transfer was ~~not~~ challenged. The contention of the respondents is that the applicant was not entitled for any relief. The applicant had not exhausted all the remedies available. It is also averred that the applicant is a Central Government employee and under the service conditions, he is liable to be transferred anywhere in India. The applicant in the case was posted as Enquiry-cum-Reservation Clerk, Kota in the existing vacancy and the transfer was made in public interest. It is also pleaded

that the transfer of an employee from one station to other is <sup>the</sup> discretion of the Government and in this case the Railway Administration had to decide on consideration of the exigency of the matter as to whether a particular employee should be sent. The respondents have also come out with the case that the Tribunal or Court will not sit in appeal over exigencies of business in public interest and to decide if the transfer can be avoided. Thus, the O.A. has been opposed by the respondents.

12. We have heard the learned counsel for the parties and have perused the record. including the inquiry file.

13. The applicant has come with the contention that the charge-sheet which has been served on him is vague in as much as that the reservation of more than 6 persons to M/s Mansoori and Sons, Ahmedabad which was permitted by the applicant, was alleged for the vested interest but, nothing was mentioned as to what that vested interest was. The perusal of the charge which has been brought on record by the applicant through Annexure-2 runs in 3 paras. The first para says that he (applicant) permitted a party of 18 members of M/s Mansoori and Sons, Ahmedabad for reservation by 5 Up of 17.12.1984 without being competent to do so. The second para says that this was done merely to favour the party for his vested interests. The third

para says that the above action of malafide ~~est~~ amounts to serious misconduct and involves provisions of Rule 3(1)(i) of Railway Service(Conduct) Rules, 1966.

Reading of the charge indicates that paras 1 and 3 are quite clear and no vagueness can be attached thereto. Learned counsel for the applicant also does not say anything about these two paras. His contention is that vagueness is with respect to para 2 in which vested interest, without expounding the same, has been mentioned. Before we come to the conclusion if the charge is really vague, we should understand the meaning of vagueness.

This question had came up before their Lordships of Supreme Court in the case "Surath Chandra Chakravarti Vs. State of West Bengal A.I.R. 1971 Supreme Court 752" in which the observation made by their Lordships was in the words;

"If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projection his own imaginations, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence."

14. The scrutiny of the paras of the charge as given earlier, if made through this observation & of vagueness, we find that there is absolutely no vagueness in the charge. The factual position which has been stated is in para no.1 and it

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clearly says that the applicant had permitted a party of 18 members for reservation when he was not competent to do so. The second para simply says that it was done to favour a party for his vested interests. It is true that the term vested interest has not been elaborated but the factual position of the charge is quite clear and the applicant cannot be left in any <sup>unc</sup>ertainty about defending himself of the said charge. We are, therefore, unable to accept the contention of the applicant on this account.

15. Learned counsel for the applicant also drew our attention towards the fact that the basis of the charge is that the earlier delegation of powers of reservation being permitted to a party for more than 6 tickets and was given by circular letter dated 13.3.1980, was withdrawn by subsequent circular dated 03.11.1982. Our attention has also been drawn towards the copy of wire no.80 T.G.I./200/4 dated 11.2.1980 which has been brought on record by way of misc.application no.224/88. In this wire which was issued to all Divisional Railway Managers of Western Railway by the Headquarter, it was suggested that the supervisors <sup>who</sup> ~~were ever~~ provided in the office, should be delegated with the powers to authorise the number of births/ seats to be allotted to a party when the demand is for more than 6. It was on this suggestion of the Railway Board that the delegation of powers to Chief Reservation

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Inspector, Agra Fort and Reservation Supervisors, Kota was made by circular dated 13.3.1980. The learned counsel for the applicant, therefore, argues that the delegation of powers vide circular dated 13.3.1980 was on the directions of the Railway Board and withdrawl thereof subsequently vide order dated 03.11.1982, was illegal. We are unable to agree with this argument. First ground is that the Railway Board has not delegated the powers. There was a suggestion and suggestion of the superior authority <sup>is</sup> generally taken as an order but, if that suggestion or order has not been complied with, or has been retracted, ~~any~~ <sup>any</sup> person like the applicant can have no locus standi <sup>to</sup> challenge the non-observance of the ~~law~~ <sup>law</sup>. In our opinion, it was the suggestion of the Railway Board and if the subordinate authority or authorities failed to continue with the suggested way of working, it was ~~not~~ <sup>and</sup> Railway Board which could have taken action and not the applicant who ~~may~~ tried to take shelter behind it. The second ground is that the power of authorising purchase of tickets more than 6 in number by one party, was made by the Senior-Divisional-Commercial-Superintendent Kota and that delegation was only to Chief Reservation Inspector, Agra Fort. The reservation supervisors or the Enquiry-cum-Reservation Clerk or Assistant Supervisor was never authorised to exercise the said power. It was, therefore, not open to the applicant to take the plea that he was competent to permit purchase of 18 tickets.

*The learned Counsel for the applicant  
contends that that the authority to allow purchase  
..... pg. 13/-*

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more than 6 in number was ~~made~~ <sup>given</sup> by Senior Divisional Commercial Superintendent whereas the withdrawal of the said power vide circular dated 03.11.1982, was made by Divisional Commercial Superintendent who is not equivalent to Senior Divisional Commercial Superintendent and thus, the withdrawal cannot be made by the Divisional Commercial Superintendent. Learned counsel for the respondents contends that the Senior Divisional Commercial Superintendent and Divisional Commercial Superintendent exercise the same powers and therefore, there is no illegality in withdrawing through circular dated 03.11.1982, the earlier circular dated 13.3.80. The question of exercising the same powers by Deputy-Commissioner of Delhi Police and Additional Deputy Commissioner of Police came up <sup>of Supreme Court</sup> for consideration before their Lordships in the case "Ram Kishan Vs. Union of India and Ors. J.T. 1995 7 S.C. 43" and their Lordships held the view that in light of Section 19 of the General Clauses Act, 1887 <sup>of</sup> that the power if exercised by the Additional Deputy Commissioner of Police, Delhi there was no illegality. Section 19 of General Clause Act lays down;

\* 19 Official Chiefs and subordinates.

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of expressing that a law relating to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior."

In view of this, provision of General  
..... pg. 14/-

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Clause Act and the law laid down by their Lordships of Hon'ble Supreme Court, we hold that if the delegation of powers which was made by the Senior Divisional Commercial Superintendent and was withdrawn by Divisional Commercial Superintendent, there is no illegality and the applicant cannot take any benefit of it.

16. The applicant has also come with the argument that the Chief Commercial Superintendent was the disciplinary authority and thus, issuance of the charge-sheet by the Divisional Commercial Superintendent and also imposition of penalty by him, was illegal. In this connection, the learned counsel referred to Schedule I of the Railway Servants(Discipline and Appeal) Rules, 1968. We have carefully examined the different schedules given in the rules. Schedule I is related to the railway servants who are either posted at Railway Board's office or Research Design and Standard Organisation or Indian Railway institutes etc. Schedule II deals with the disciplinary powers and powers of suspension of different grades of Railway officers/ Senior Supervisors in respect of non-gazetted staff of Zonal Railways, Chittaranjan Locomotive Works, Diesel Locomotive Works, Integral Coach Factory and Metro Projects(Railways). According to this schedule, power of issuance of charge-sheet and of punishment can be exercised by the Divisional Commercial Superintendent so far as the employees of Group C and D are concerned. Thus, we do not find

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any force in this argument as well.

17. The contention of the learned counsel for the applicant is that there was no evidence in support of the charge. In order to ascertain this fact, the scrutiny of the evidence shall be necessitated. In this case, we would like to mention that the applicant has admitted that the ~~promotion~~ <sup>permission</sup> of purchase of 18 tickets to M/s Mansoori and Sons was given by him. The explanation offered by him is that the Chief-Reservation-Inspector was not available and that he was the seniormost Assistant Supervisor at that time. He, therefore, on approaching the party permitted the said party to purchase 18 tickets. Even if no other ~~witnesses~~ <sup>had</sup> said anything, though Smt. Rajni Dutta ~~had~~ stated about this fact, this admission of the applicant is itself sufficient to establish the charge. The evidence of witnesses is needed only when the charge is denied. In this case, this fact that M/s Mansoori and Sons, Ahmedabad was permitted to purchase 18 tickets by the applicant, is admitted to him and thus, this fact requires no other supporting evidence. Learned counsel for the applicant further argues that the applicant had no knowledge of the withdrawal of the powers given to Chief-Reservation Inspector, Agra Fort vide circular dated 03.11.1982. This fact has been dealt with by the Enquiry Officer elaborately and that finding was accepted by the disciplinary authority as well. Smt. Rajni Dutta on being approached by M/s Mansoori and Sons, had asked the party to obtain permission from Senior Superintendent

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of the station. This fact goes to show that the withdrawal of the powers of the Chief Reservation Inspector was <sup>in</sup> knowledge of the booking staff. As such, this plea is of no help to the applicant.

18. Learned counsel argues that the order of punishment and the order in appeal are not speaking ones and thus, they are not sustainable in law. The disciplinary authority based its order on the detailed inquiry report which runs into 10 pages and he has also discussed all the relevant points. Thus, it cannot be said that the impugned order of punishment is non-speaking one. As regard the appellate order which it has also discussed the facts <sup>precisely</sup> and also observed about favouritism which was the conclusion of the Enquiry Officer. It was, thereafter that the appeal was rejected. When detailed order is passed by the disciplinary authority, the appellate authority, unless disagreeing on certain points, is not required to give detailed reasons for upholding the order of punishment. Thus, there is no force in this argument as well.

19. The respondents have raised the point that the applicant <sup>has not</sup> exhausted the remedy of revision and thus, this application was not maintainable. The Rule 25 was amended in the year 1989 whereby the remedy of revision was made available. This is the case prior to the said amendment and, therefore,

the plea taken by the respondents is not acceptable.  
Besides, a petition which was filed in the year 1986, cannot be ~~sent~~ <sup>thrown back</sup> after about 10 years on the ground that remedy of revision was not exhausted. We, therefore, reject this plea.

20. On the consideration of the facts and circumstances of the case, we come to the conclusion that there is no merit in O.A.527/86 and it is dismissed.

21. So far as the O.A. 657/86 is concerned, it is filed to challenge the order of transfer. This order of transfer was not passed as a penalty but, when the applicant was reverted to the post of Enquiry-cum-Reservation Clerk and that vacancy was available only at Kota and not at Agra, the transfer was necessitated. There is no allegation that the transfer was made by way of punishment or was against the provisions of law or was made with malafide intention. Unless any of these 3 grounds is shown, the Tribunal shall not interfere with the order of transfer. We are of the view that there is no ground to interfere with the said order of transfer. We, therefore, also dismissed the O.A.No.657/86. The stay which was granted earlier, stands vacated.

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22. The result of the above discussions  
is that O.A. 527/86 and O.A. 657/86 are dismissed.  
No order as to costs.

S. Bhureji  
Member ( S )

P. Dandekar  
Member ( J )

/M.M./