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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.400 of 1986

Jawahar Lal Applicant

Versus

Union of India & Others Respondents.

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

31 ✓ This is a petition under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioner Jawahar Lal has challenged the punishment order dated 1.1.1986 removing him from service w.e.f. 2.1.1986 and the appellate order dated 11.7.86 rejecting his appeal.

2. The grounds of challenge are :-

- (a)- Both the orders are non-speaking orders.
- (b)- Copies of documents were not supplied to him and witnesses found using the pass were not produced nor copies of their statements given. Thus he was denied reasonable opportunities.
- (c)- The punishment order is arbitrary.

He has therefore prayed for setting aside the punishment order dated 1.1.86 and the appellate order dated 11.7.86 and for holding that he continues in the service of the respondents and is entitled to receive full pay and allowances and any other reliefs.

3. The petitioner's case is that he was chargesheeted for failure to maintain absolute devotion and integrity inasmuch as a privilege pass issued in his favour was caught being misused by some-body else on 25.3.83. He thus violated Railway Service Conduct Rules 1968 - Rules 3(i) & (iii). According to him he had lost the pass, which was issued to him on 5.2.83. He had lodged a report with the G.R.P. Allahabad about the loss of the pass. Yet the enquiry Officer held the charge proved against him.

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4. The respondents case is that during the course of a surprise check on 156 DN Tinsukhia Mail on 25.3.83 by a special Squad from the Railway Board it was detected that a lady Shanti Devi was travelling alongwith another man on the privilege pass issued in favour of the petitioner. The other male passenger was not the petitioner but was R.P. Shukla, Advocate. This incident happened between 5 & 5.30 in the morning. The F.I.R. lodged by the petitioner for the loss of the pass was at 20.30 hrs. on 25.3.83. Thus the lodging of the F.I.R. regarding the loss of the pass was after thought perhaps after he got information about the incident. According to the respondents the punishment order, if read as a whole, will be found to be a speaking and well reasoned order. The respondents have repelled the plea taken

by the petitioner that there has been any denial of opportunities. The petitioner never asked for the examination of Shanti Devi and Shri Shukla or the special squad, as a matter of fact the petitioner has given in writing that he had no grievance regarding the enquiry proceedings. The Enquiry Officer had considered and weighed all material on record and gave his finding with due care.

5. The petitioner has enclosed a copy of the statement of Article of charges framed(Encl-I). It reads :-

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" Sri Jawahar Lal Fitter failed to maintain absolute devotion and integrity inasmuch as that IIInd class Privilege Pass No.454498 dated 5.2.83 issued in his favour and family was caught being misused in course of preventive checks by T.Is of the special squad Railway Board by 156 DN Tinsukhia Mail between Allahabad and Patna on 25.3.83.

This act of Sri Jawahar Lal Fitter violated " Railway Service Conduct Rules 1966 - 3(i)&(iii)

The statement of imputation and misconduct on the basis of which the Article of charge was framed reads :-

"As reported by G.M./Vigilance/NDLS for misuse of privilege pass No.454498 dated 5.2.83 issued in favour and detected by Preventive Check by T.Is of the Spl.Squad

Railway Board by 156 DN Tinsukhia Mail between Alld-PNBE on 25.3.83. This he violated Railway Service Conduct Rules 1966 Article 3(i) & (iii). "

The statement of imputation and misconduct says "misuse of privilege pass."

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6. The "misuse of Railway Passes" has been given in Railways Establishment Manual Bahri Brothers Page 706. The misuse can be of various kinds. A person may be travelling on expired date pass, he may be travelling on somebody else's pass, he may be using a pass on a route for which it is not admissible etc. Passes are not transferable and are to be used by the persons in whose favour they are issued. Special care has to be taken that they are not lost. In case of a loss the pass may go in authorized hands leading to fraudulent use for which the pass holder may become liable to punishment. In case of loss a report has to be made to the police. Deterrent punishments have been suggested for misuse of passes. They may take the form of dismissal or removal or reduction depending upon the seriousness of the offence. Penalties have been prescribed for loss and fraudulent use of passes.

7. The petitioner was taken up for alleged misuse of the pass. He had not misused it himself. He says that he lost the pass. He can be held liable to misuse if he had deliberately given the pass to

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the unauthorised travellers who were found travelling on it. The 'Article of charges' framed say that the pass issued in his favour was caught being misused in course of Preventive Check. His responsibility has not been spelled out in the chargesheet. According to the Railway Discipline and Appeal Rules, 1968 the substance of the imputations of misconduct or misbehaviour has to be drawn up into definite distinct articles of charges. These would include all relevant facts including any admission or confession made by the Railway Servant. We do not find such a situation here. The petitioner responsibility for misuse has to be spelt out. For our satisfaction we have also perused the enquiry report filed by the respondents (Page 8 of counter affidavit). The person caught using the pass has said that she got the pass from Shri J.N. Malviya, ACS. The Enquiry Officer ~~00010~~ has made no comments on this statement. He had ultimately concluded that the pass was in fraudulent use instead of having been lost. There is no finding that the petitioner has been squarely held guilty of giving the pass to the lady.

8. It is the responsibility of the Disciplinary authority to act on the findings after it forms an opinion that the penalty warranted is within its competence, it may act on the evidence on record or

may recall and examine any of witnesses if it is necessary in the interest of justice and may impose such penalty in accordance with rules. The Disciplinary authority has to peruse the report in all its aspects and also apply its mind on each point before taking a decision. Before issuing an order he must see that reasonable opportunity has been given, natural justice has been ensured, the quantum of punishment has been considered and the decision should be based on merits and not on basis of certain instructions constricting the scope of application of mind by the Disciplinary authority. There should be a fair exercise of the mind and all aspects of the charge and case. We find that all these ingredients ~~are not present in the punishment order.~~ *No witness was examined & their statement taken behind the back of the delinquent have been relied upon.* We have already commented on the vagueness of the charge.

9. Under the circumstances we quash the punishment order. The respondents will be at liberty to institute de novo proceedings against the petitioner keeping in view our observations and the requirement of rules and law. Under the circumstances the appellate order does not exist.

10. The petition is disposed of accordingly. Parties will bear their own costs.


V.C.


A.M.

Dated the 24th April, 1987

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