

(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration No. 997 of 1986 (T).

R.N.Pathak - - - vs - - - Union of India & others.

Hon'ble Justice Mr. S.Zaheer Hasan, Vice Chairman.

Hon'ble Mr. Ajay Johri, Member(A).

(Delivered by Hon. S.Zaheer Hasan, V.C.)

This Writ Petition No. 9090 of 1980 under Article 226 of the Constitution pending in the Hon'ble High Court of Judicature at Allahabad, has been transferred to this Tribunal under Section 19 of the Administrative Tribunals Act (No. 13 of 1986).

In the year 1951 R.N.Pathak, to be referred as the petitioner, was appointed as Guard Grade 'C' in Northern Railway. He was promoted in 1970, and at the time of occurrence he was working as Guard Grade 'B'. On 22.4.1975 the petitioner was working as Guard in Train No. 2 ATD, and on that day one passenger, named, Ganga Ram Sharma, approached the petitioner and said that he could not purchase ticket. Thereupon he was made to sit in the Guard's van and the petitioner took Rs. 1.40 from him without issuing any receipt/certificate in lieu thereof, and in this way he pocketed the money by denying its acceptance when he was confronted by the Vigilance Inspectors who saw Ganga Ram Sharma travelling in that van. Due to this

harassment and denial Ganga Ram Sharma had to pay Rs. 1.40 for the second time under protest. On the same day the petitioner took Rs. 10/- from Smt. Kela Devi for preparing a ticket at Danwar Station when he was informed about her inability to purchase the ticket. In this case also he did not issue any receipt etc. and denied the payment of money to have been made to him by the said lady, with the result that she had to pay Rs. 16/- again. It was further alleged that on examination of the Guard Certificate Book used by the petitioner from 24.12.1974 to 22.4.1975 it appeared that he failed to ensure realisation of Railway dues which tantamount to leakage of Railway revenue. In ~~connection with~~ ^{support of} the aforesaid three charges a departmental inquiry was held. The Disciplinary Authority in its order dated 9.7.1979 held that all the witnesses including the complainant Ganga Ram Sharma ~~had~~ changed their version by saying that the original statements were given by them out of fear and under pressure by the Vigilance Inspectors. It may be added at this stage that the Vigilance Inspectors happened to reach there and they recorded the statements of various persons, but they were not eye witnesses. The disciplinary authority further observed that the original statements of all the witnesses given during the preliminary inquiry conducted by the Vigilance Inspectors were examined by it and it was of the impression that those statements were given without fear and pressure. It was further of opinion that it had not come across with any case in which the Vigilance Inspectors acted in an

unlawful manner to extract certain statements. The disciplinary authority was further of opinion that departmental inquiry was not a judicial inquiry and the employee cannot be allowed to hold the interest of the Organisation to ransom by distorting facts and by winning over witnesses. There was unmistakable evidence that various witnesses had changed their version for some reason or the other. The disciplinary authority was of the view that charges no. 1 and 2 were proved against the petitioner. So, it awarded the petitioner a penalty of reduction to the post of Guard Grade 'C' from Guard Grade 'B' with immediate effect. On 16.7.1980 the appeal of the petitioner was dismissed with the observation that the officers holding the departmental inquiry were under no obligation to follow rules of evidence as laid down in the Evidence Act or the procedure prescribed in the Criminal Procedure Code. The appellate authority was of the view that the petitioner had been indulging in nefarious activities all along, but it was only on a particular day that he was nabbed. The appellate authority further held, "The overwhelming weight of evidence of the aggrieved passengers is clearly against the employee. The punishment stands." Aggrieved by this order, the petitioner filed the present writ petition in the Hon'ble High Court on 22.10.1980 which, as stated above, has been transferred to this Tribunal.

We are concerned with charges no. 1 and 2 only which were pressed before us at the time of arguments. It is said that on the aforesaid date the petitioner took Rs. 1.40 from Ganga Ram Sharma and Rs. 10/- from Kela Devi, but did not issue the necessary certificate etc. These persons could not purchase tickets. It is said

that they informed the Guard and he took the aforesaid money from them but did not issue the required certificate. Some Vigilance Inspectors happened to reach there. They recorded the statements of these two passengers and some other witnesses. The statement of the Guard was also recorded and he denied having received the aforesaid amounts. As regards Smt. Kela Devi, it is said that she and her son were the only eye witnesses. None of them was produced during the departmental inquiry. So far as the payment made by Ganga Ram Sharma is concerned, there was no eye witness except the complainant Sharma who was produced during the departmental inquiry; but he stated that he did not pay the money as alleged. The disciplinary authority as well as the appellate authority were of the view that the Evidence Act was not applicable, and, therefore, it was immaterial that no eye-witness supported the prosecution version during the departmental inquiry. They relied upon the various statements recorded by the Vigilance Inspectors and also the statements of the three Vigilance Inspectors recorded during the departmental proceedings. It may be repeated x that these three Vigilance Inspectors were not the eye-witnesses. To sum up, there was no eye-witness account before the Inquiry Officer to prove that the money was accepted as alleged. He simply relied upon various statements made by various persons including the two complainants during the preliminary inquiry conducted by the Vigilance Inspectors. The high standard of proof required in a criminal case for proving the charge beyond reasonable doubt does not apply to departmental proceedings. If there is some evidence in support of the charge, the courts are reluctant to reappraise the evidence because they do not sit in appeal. But there

should be some legal evidence in support of the charge. Of course, proof beyond reasonable doubt should not be insisted upon still the proof should be capable of scrutiny and should stand the test of reasonableness consistent with human conduct and probabilities. ^{The} ~~Basic principles of evidence can't be brushed aside~~ findings should be supported with legal evidence. In the case of S.D.Bhardawaj vs. Union of India and others 1982(2) All India Service Law Journal page 515, it was held that the statements of witnesses recorded during the preliminary inquiry cannot be read by inquiry officer. In that case the Inquiry Officer took into consideration the evidence which was never recorded during the inquiry proceedings. Statements of witnesses recorded during the preliminary inquiry at the back of the applicant was taken into consideration by the Inquiry Officer. So, it was observed by the learned Judge that there was no evidence before the Inquiry Officer on the basis of which he could come to the conclusion that the charge was proved because he could not read those statements as evidence. As already observed, no eye witness stated during the departmental inquiry that the petitioner accepted the two amounts as illegal gratification, and so, the finding could not be based on the statements recorded during the inquiry made by the Vigilance Inspectors. There is nothing to show that Kela Devi or her son are dead or could not be produced. The fact is that they were not produced during the departmental inquiry. No other witness was cited regarding Ganga Ram Sharma's case. Mr. Sharma did not support the prosecution case during the departmental inquiry. All the circumstances taken together

does not lead to irresistible conclusion that Mr.

Sharma was won over by the petitioner. This case is ~~not~~

~~such~~ ^{such} of a nature that the petitioner should be punished simply on the ground that Shri Sharma made two different statements at two different stages. His statement made before the Vigilance Inspector cannot be looked into.

It cannot be said with reasonable certainty that his statement recorded during the departmental inquiry is false. In short there was no direct evidence to prove the charge and in this way it was a case of no evidence before the Inquiry Officer, and the findings are vitiated on the aforesaid ground. So, the order of ~~removal~~ ^{reduction 27.9.7.79} as well as the order in appeal are bad in law and are ^{21.11.86} liable to be quashed.

This application (Writ Petition No. 9090 of 1980) ~~reduction~~ is allowed, and the order of ~~removal~~ dated 9.7.1979 ^{dated 26.7.1980 21.11.86} and the order/dismissing the appeal are quashed. The petitioner will be entitled to all the consequential benefits permissible under the law and the rules. Parties to bear their own costs.

Yours
October 28th, 1986. Vice Chairman.

अजय ग्रीष्मी

Member (A).