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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1052 of 1988

Allahabad this the 11th day of June 1995

Hon'ble Dr. R.K. Saxena, Member(J)
Hon'ble Mr. S. Dayal, Member(A)

H.G. Sharma, S/o Shri Shambhoo Nath Sharma, working as
Guard/N.Rly./Bareilly, R/o house no.235 Near Mandir
Kanoon Goyan, Mohalla Bhur Bareilly, district Bareilly.

APPLICANT

By Advocate Shri K.D. Tripathi

Versus

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager/N.Rly./Moradabad.
3. The Sr. Divisional Operating Superintendent, N.Rly. Moradabad.
4. Divisional Operating Superintendent/N.Rly, Moradabad
5. Station Superintendent/N.Rly.Bareilly.

RESPONDENTS

By Advocate Shri P. Mathur.

ORDER

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

The applicant has challenged the orders of punishment (annexure-3) passed by Divisional Commercial Superintendent, Moradabad about removal from service, (Annexure -2) passed by Divisional Operating Superintendent(p), Moradabad on 08.2.88

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modifying the punishment of removal to the reduction in the lowest scale for a period of 3 years with future effect, and Annexure-1 passed on 20.11.1988 by Divisional Railway Manager, Moradabad in review application by upholding the punishment awarded in appeal.

2. The brief facts as are set out in the O.A. and in the Counter-reply are that one Shri Jai Prakash Sharma, resident of Shahdara Delhi was travelling in Syaldah Express on 14.12.1984 and had boarded the train from Sandila. He had 3 tickets no. 19216, 19217 and 19218. When Syaldah Express reached Moradabad, he had to change the train for Shahdara, Delhi. The train no. 55up Bareilly-Delhi Express was about to move from Moradabad station. Shri Jai Prakash, therefore, had no time to go and purchase fresh tickets. He, therefore, approached the applicant who was guard of 55 up. and requested to extend the tickets no. 19216 to 19218 upto Shahdara Delhi. It is said that the applicant took all those 3 tickets from Shri J.P. Sharma and allowed him to travel in the train with direction that he (Jai Prakash) should approach the applicant on the next station. It is also said that the applicant had written on the back of ticket no. 19216 the name of Shri Jai Prakash. On the next station

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Shri J.P. Sharma approached the applicant who demanded Rs.51/- as the charges for extension of ~~the~~ tickets. Shri Sharma gave ^{the said} amount. He was again advised by the applicant to collect the tickets on the next station. Shri Sharma approached the applicant at Pilkhua station where the applicant had handed over three new tickets no.24312, 24313 and 24314 from Pilkhua to Shahdara. Thereupon Shri J.P. Sharma told the applicant that he had requested for extension of tickets which were purchased by him at Sandila, but instead of extending the tickets he was given new tickets indicating as if, Shri Sharma had started the journey from Pilkhua to Shahdara. The applicant advised Shri Sharma to inform, on inquiry, that journey was started from Pilkhua. When Shri Sharma objected to this kind of conduct on the part of the guard, he (Shri Sharma) was pushed out of the cabin of the guard. However, he ~~is~~ continued the journey to Shahdara and ultimately he made a complaint to Chief Vigilance Officer, Northern Railway, Baroda House, New Delhi. It was thereupon that the matter was taken up. Preliminary inquiry was held in which the statement of the applicant was recorded. The applicant was, however, served with a charge-sheet with the following charges:

- "1. Shri H.G. Sharma did not issue any G.C. while permitting 3 passengers holding

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three 2nd Class M/E tickets no. 19216 to 19218 Ex. Sandila to MB. to travel by 55 Up Ex. MB to LSA by making uncalled for remarks on ticket no. 19216 as "3 Jai Prakash DSA" which tentamounts to carriage of 3 without tickets passengers by misusing his official position.

2. Shri H.G. Sharma unauthorisedly recovered due fare Ex. MB. to DSA from above passengers at the rate of @Rs.17/- I.E. Total Rs.51/-.

3. Shri H.G. Sharma arranged 3 tickets no. 24312 to 24314 Ex. PKW to DSA costing Rs.12/- @ Rs.4/- per ticket at PKW to above passengers, thus, cheated the Railway administration by Rs.39/-

Thus, the said Shri H.G. Sharma by his above act of ommission and commission failed to maintain absolute integrity and devotion to duty and thereby contravened rule 3.1(i) and (ii) of Railway Service Conduct Rules, 1969."

3. On the service of the memorandum of charges, the applicant demanded photostat copies of the statement of the witnesses and inspection of the original documents. It appears that the D.C.S. Moradabad appointed Shri N.S. Mathur as Inquiry Officer. The inquiry started in its usual manner and the witnesses were summoned to support the facts of the case. The Inquiry Officer had fixed the inquiry for evidence on 03.4.87, 05.5.87 and 10.7.87. The witnesses did not turn up. Not only that Shri J.P. Sharma who was the complainant in the case, had refused to appear before the Inquiry Officer but,pg.5/-

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Shri Jag Mohan Sharma, Vigilance Inspector also failed^{to} appear. The statement of the applicant was, however, recorded. The Inquiry Officer submitted his report on 09.8.1987, holding that the charges levelled against the applicant were not proved.

4. When this report reached the disciplinary authority i.e. Divisional Commercial Superintendent, he did not agree^d with the view of the Inquiry Officer. The reasons given by the disciplinary authority were that charge no.1 was established from the admission of the applicant himself. The charge no.2 was deem^ed to have been established from the conduct of the applicant and charge no. 3 was found established from the investigation report of the Vigilance-Inspector. Thus, disagreeing with the Inquiry Officer and holding the view that the charges were established, he passed the impugned order (Annexure-2) whereby the penalty of removal from service was passed which was made effective from 25.11.1987. This order of punishment, as pointed out earlier was modified to reduction in the lowest scale for 3 years with future effect. When review application was moved, the order passed in appeal was upheld. Hence, this O.A.

5. The respondents contested the case through the counter-reply of Shri D.P. Pandey

Senior Divisional Operating Superintendent. It is contended that even if, the facts as given by the applicant are taken to be correct, he had committed mis-conduct by taking the tickets from the passengers and by not issuing guard certificate. It is also averred that Shri H.G. Sharma, the applicant failed to make any efforts to get the tickets extended at halting station enroute. The mis-conduct was also committed ^{when} ~~that~~ the applicant allowed the passenger to take back the tickets without realising the railway dues and unauthorisedly permitted the passengers to travel without any authority from Moradabad. The validity and legality of the orders of punishment passed by the disciplinary authority, appellate authority and reviewing authority has been defended. It is also contended that the ^{application} ~~applicant~~ is mis-conceived and is liable to be rejected.

6. The applicant filed rejoinder in reply to the counter-reply and reiterated the facts as were mentioned in the O.A.

7. We have heard the learned counsel to the applicant and the respondents. The record including the file of the departmental inquiry has also been perused.

8. It has been argued on behalf of the

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applicant that it is a case of no evidence but, the disciplinary authority has passed the order of punishment by removing the applicant from service. We have gone through, as pointed out earlier, the report of the Inquiry Officer. It is quite clear from the said report that the inquiry was fixed on 3 dates namely 03.4.1987 05.5.1987 and 10.7.1987 but, no witness had turned up in support of the charges. The Inquiry Officer wrote in the report that the letter of Shri Jag Mohan Sharma, Vigilance Officer was received by him, showing his inability to attend the inquiry. It is further elaborated by the Inquiry Officer that the Vigilance Inspector was not an eye witness of any of the facts and thus, his evidence was of hearsay nature. Similarly was the conduct of the complainant Shri Jai Prakash Sharma who refused to attend the inquiry and informed the Inquiry Officer that he would not be benefited any more by the said inquiry. However, the statement of the applicant in his defence was recorded on 10.7.1987. The Inquiry Officer had given in writing to the applicant that the case was closed for the prosecution and he (applicant) was required to submit his statement of defence. The applicant has also brought on record Annexure-12 dated 21.9.1987 which reads that the disciplinary authority (Divisional Operating Superintendent), had directed that

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the inquiry being² held at Shahdara and due weightage should be given to the passenger who made the complaint. The applicant was, therefore, informed that his inquiry would continue and the date, time and place shall be communicated. It shows that the inquiry against the applicant was conducted in an arbitrary manner. Either, the Inquiry Officer should not have closed the case on 10.7.1987 and should not have directed the applicant to submit his defence or he ought to have refused to comply with the directions of the disciplinary authority as pointed out in Annexure-12. What appears from Annexure-12 is that the Inquiry Officer was not taking the inquiry in a free and fair manner and it was the reason that after the evidence was closed, he again opened the inquiry although no evidence was produced^{and brought} on record.

9. Even if, this aspect is kept aside, the question arises² whether there is any iota of evidence in support of the charges. We have already discussed that not a single word was written in the name of the statement of the witnesses. Also there is nothing on record which may point out that any documentary evidence was added² in support of either of the charges. The result was that the Inquiry Officer prepared the report and sent to the disciplinary authority holding that the charges were not established.

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turn from this stage. The disciplinary authority did not agree with the Inquiry Officer and recorded finding of punishment against the applicant. The reasons given by the disciplinary authority in his own word are:

"I do not agree with the findings of the Inquiry Officer for the reasons stated below:-

1. First charge against Shri H.B. Sharma is that he did not issue GC to 3 passengers holding 2nd class M/E ticket. Ex. Sandila to ME. is clearly proved against the employee. He accepted this fact that he allowed them to travel during course of inquiry.
2. The charge no.2 against the employee was that he recovered due fare Rs.51/- Ex. MB. to DSA in unauthorised way is also proved against the employee on the basis of circumstantial evidence. Any passenger who had travelled without ticket will never lodge the complaint against a railway employee who gives help in this act. He has not lost anything and had no enmity against the employee. Then why should he lodge a complaint against this staff. Thus, it appears true that he was cheated by Shri H.G. Sharma.
3. Charge no. 3 is also proved against the employee as per the investigation report of V.I.(S.N. 12 to 20).

Thus, all the three charges are proved against Shri H.G. Sharma, keeping in view the gravity of the charges which held proved against Shri H.G. Sharma he is held responsible to defame the image of Rly. in general public/passengers.

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He is not found fit to remain in service and he is awarded punishment of removal from his service. May issue punishment order accordingly*

11. The order as referred to above speaks that the disciplinary authority had taken certain facts which never came before the Inquiry Officer, into consideration. The best person to support first charge was Shri Jai Prakash Sharma who failed to appear and to make any deposition before the Inquiry Officer yet the conclusion that charge has ~~not~~ been established, was drawn by the disciplinary authority. Similarly, charge no.2 deals with receiving the amount of Rs.51/- which fact~~s~~ has not been stated by any witness before the Inquiry Officer. Again the charge was found established. So far as the charge no.3 is concerned, the stand taken by the disciplinary authority is that investigation had revealed those facts. It was on the basis of that investigation report, the charge was found established, although the Vigilance Inspector, who had conducted investigation, did not appear before the Inquiry Officer. The sum and substance^{of 2} above discussion^{is} is that the disciplinary authority had relied upon the facts and circumstances which were never put by any of the witnesses before the Inquiry Officer but, were recorded by the Vigilance Inspector during preliminary inquiry and that too^{at} at the back of the applicant.

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12. The question, therefore, arises whether ^{the} such evidence is legal evidence and can be relied upon. Their Lordships of Supreme Court in the case "State of Andhra Pradesh and Others Vs. S. Sree Rama Rao A.I.R. 1963, 1723" held that even in the departmental inquiries where the departmental authorities are sole judges of facts, there must be some legal evidence to base their findings. It would be proper to ^{quote} ~~use~~ the relevant observations in para 7 of the judgement. It reads:

"The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

13. The dictum in Sree Rama Rao's case is

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that the departmental authorities are the sole judge of the facts, if, there is legal evidence on which the findings could be based. The question then arises as to what is the legal evidence. The definition of 'judicial evidence' and 'evidence in relation to law' has been given in 'Sarkar's Law of Evidence (13th Edition 1981)' at page 27. For defining these terms, Commentary of Best on 'evidence, judicial evidence' has been referred to. Here 'judicial evidence' has been defined as evidence received by Courts of Justice in proof or disproof of facts, the existence of which comes in question before them. Judicial evidence is species of the genus 'evidence' and is for the most part nothing more than natural evidence restrained or modified by rules of positive law. 'Evidence in relation to law' according to Tay (11th Edition page 1) includes all legal means, exclusive of mere arguments which tend to prove or disprove any fact, the truth of which is submitted to judicial investigation. This term and the word proof are often used as synonyms; but the latter is applied by accurate logicians, rather to the effect of evidence than to evidence itself. Thus, the perusal of the definition of the terms 'judicial evidence' and 'evidence in law' makes it quite clear that the facts must be proved in a legal manner, as they are proved in the Court of Justice. A statement which is recorded at the back of the person facing inquiry or even if, he is present but, cross-examination is prohibited or

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not done of a witness or witnesses, ^{such} statement cannot be relied upon when ^{he} chooses ^{to} not to appear before the Inquiry Officer. The delinquent employee is definitely deprived of the right of ~~the~~ cross-examination and to put his defence to those witnesses. It would amount ^{violation of} denial of fair play and principle of natural justice. In the present case before us, the witnesses particularly the complainant Shri-J.P. Sharma and the Vigilance Inspector Jag Mohan Sharma have not put in appearance before the Inquiry Officer yet. Their previous statements recorded during preliminary inquiry, were relied upon and believed.

14. In this connection, learned counsel to the respondents vehemently argued that the statement which was recorded during the preliminary inquiry can be acted upon. For the reasons which were given above and by giving the definition of legal evidence, we are unable to agree with this argument. We are clearly of the view that the statements which were recorded during preliminary inquiry without a chance of cross-examination being given, cannot be relied upon.

15. The learned counsel to the respondents also contended that there is vast distinction between an accused and a delinquent employee. His contention is also to the effect that the rigours of law

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which give privilege and protection to an accused, cannot be allowed in the case of the delinquent employee. Here again we fail to appreciate the argument advanced, because the cardinal principles of natural justice are one and the same every where and they cannot be diluted now and then. The Patna High Court in the case 'Madheshwardhari Singh and Others Vs. State of Bihar A.I.R. 1986 Patna 324' had held that the speedy trial is a fundamental right. In our view, the disciplinary proceedings to some extent may be equated with the trial procedure in a criminal case. Their Lordships of Supreme Court in the case 'Board of Trustees, Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, 1983 SCC(L&S) 61' had made similar observation while defining the scope of Article 21. To quote:

"And this view was taken as flowing from Article 21 which mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. Where therefore the outcome of the departmental inquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words of Chapter II of Bhagwad-Gita;

'Sambhavitasya Cha Kirti Marnadati Richyate!'

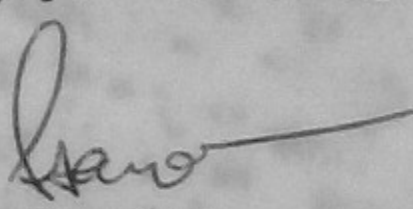
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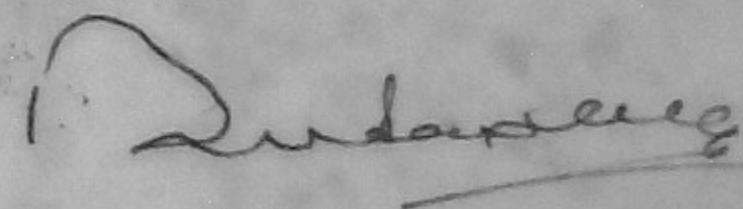
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16. This observations makes it quite clear that the fair procedure should be adopted even in departmental inquiries. By relying upon the statement, recorded at the back of the applicant during the preliminary inquiry and without examining the writer of that statement, is not recognised in our system and could be unfair and in violation of the principle of natural justice, if such a statement is relied upon and acted upon.

17. The above discussion leads to the conclusion that there was no evidence to substantiate the charges against the applicant in the inquiry and the disciplinary authority has relied upon the statements which were not capable of being accepted by any legal norm. The result, therefore, is that it is a case of no evidence and the punishment which was awarded by the disciplinary authority and was modified by the appellate authority which was subsequently confirmed by the reviewing authority, is not sustainable in law. Thus, all these orders of punishment are quashed.

18. The applicant has already retired, during the pendency of the case. He shall, however, be entitled for consequential benefits on quashment of the orders of punishment. The application is disposed of accordingly. No order as to costs.


Member (A)


Member (J)