

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 26th day of August 1996.

Original application No. 1045 of 1992.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

U.S.P. Kharwar, S/o late Sri Jhari
Prasad, posted as Head Clerk, C/o
A.D.R.M. office Eastern Railway,
office Chopan, District Sonbhadra.

..... Applicant.

C/A Sri V.K. Jaiswal

Versus

1. Union of India through General Manager, Eastern Railway Calcutta (1) 17 Netaji Subhash Road, Calcutta.
2. Divisional Railway Manager, Eastern Railway, Dhanbad.
3. Sr. Divisional Operating Manager, Eastern Railway, Dhanbad.
4. Divisional Operating Superintendent, Divisional Railway Manager, Dhanbad.

..... Respondents.

C/R Sri A.K. Gaur

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed under Section 19 of the Administrative Tribunals Act, praying for quashing order dated 30.12.91 imposing punishment of removal from service and order dated 16.7.92 of the appellate authority modifying the punishment to reversion.

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2. The brief facts of the case are as follows. The applicant was working as a Head Clerk in the Central Registry Section of the office of General Manager, Eastern Railway Calcutta. The applicant was on sick leave from 7.5.84 to 22.5.84 and resumed duty on 23.4.85. It is reported that a vigilance check was conducted on 14.5.84 by a team of Inspectors of the Vigilance Branch. It is alleged that during the vigilance check, a parallel booking/reservation office was found running in the Central Registry section. The applicant was transferred from Calcutta to Chopan from 26.5.84 and he joined at Chopan. However after a period of 4 1/2 years applicant was issued a major penalty chargesheet dated 5.12.88. Charges levelled against the applicant were as under:-

"Sri U.S.P. Kharwar, Head Clerk, CR/Section/FP used to sell Railway tickets through Sri Sharma to the intending reservists on premium for which the said Sharma was being paid Rs. 10.00 per day for maintaining such illegal business inside the office premises and table and chair of Sri Panna Lall Kharwar (Record Sorter) of the same office was provided by him for continuing such Railway reserved ticket racketeering for his personal gain.

Thus by the above activities Sri U.S.P. Kharwar exposed his lack of absolute integrity and devotion to duty and acted in a manner most unbecoming of a Railway Servant and contravened Rule 3 of Railway Service Conduct Rule 1966."

The inquiry was conducted and the inquiry report was submitted on 20.3.91. The disciplinary authority imposed a penalty of removal from service vide order dated 30.12.91. The applicant filed an application assailing the above referred punishment order through O.A. No. 86/92. This application was dismissed as being premature with an observation that the appellate authority shall dispose of

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the appeal within four months of the receipt of the appeal. The appeal dated 30.1.92 was submitted by the applicant and the same was disposed of vide order dated 6.2.92 by the appellate authority modifying the punishment of removal from service to that of reversion to the post of clerk in grade II. Being aggrieved, this application thereafter has been filed on 29.7.92 challenging the order of punishment of the appellate authority.

3. The main defence put up by the applicant is:-

(a) Disciplinary inquiry had been earlier conducted on the same issue against the major penalty chargesheet dated 4.7.85 issued to Sh. P.K. Talukdar, Office Superintendent who was also alleged to be involved in running of parallel booking cum reservation office in the Central Registry office. The inquiry report submitted on 6.8.86 concluded as under:-

"Since during the course of inquiry it could not be proved that Sri U.S.P. Kharwar, Head Clerk, working in the CR Section under Sri Talukdar had anything to do with the running of a mini reservation-cum-booking office, the charge of active association of Sri Talukdar with this Head Clerk U.S.P. Kharwar was also not proved."

This inquiry was conducted by a senior scale officer. In view of categorical findings in this first inquiry with regard to alleged involvement of the applicant in running of parallel booking cum reservation office, in the inquiry report against the applicant evidence and findings arrived in the inquiry report dated 6.8.86 has not been considered in terms of the provision of Rule 9 (24) of Railway Servants (Discipline and Appeal) Rules 1968. No

reasons have been recorded as to why the findings are different from the earlier report and what substantial evidence has come to the notice which was not available at the time of earlier inquiry.^(b) The inquiry was conducted by Sh. A.K. Ganguli who was the Chief Vigilance Inspector prior to his being nominated as inquiry officer and therefore he was not free from bias and prejudice against the applicant. (c) The findings of the inquiry officer are based on mere circumstantial evidence and not corroborated by any direct evidence. Three witnesses were listed from the prosecution side in the chargesheet but only two witness were examined and the third vital witness who is an outsider did not come for the inquiry. The other two key witness who are the outsiders Sh. P.N. Sharma and Chandan Gosh were not listed as the witnesses though the statement of the outsider witnesses recorded at the time of the vigilance raid have been relied upon by the inquiry officer ^{without} these witnesses being cross examined during the inquiry. This is therefore a case of no evidence. (d) Since the applicant was working as a Head Clerk, a person not below the rank of Senior Divisional Operating Superintendent ^{should} ^{in respect of} could have conducted the disciplinary work and as the whole proceedings are vitiated. (e) Chargesheet was issued after ^{tard} more than four years of the alleged surprise. No statement of the applicant was recorded at any time. This has caused prejudice. (f) The order passed by the disciplinary authority dated 30.12.91 does not give any reasons for acceptance of findings of the inquiry officer and therefore is a non speaking order ^{with} and lack application of mind. The appellate authority order has also been passed without application of mind and the same is illegal and perverse and against the principles of natural justice.

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4. The respondents in the counter have strongly refuted the averments made by the applicant. It is submitted that Sh. A.K. Ganguli was nominated as a inquiry officer and did not act as a disciplinary authority. The Divisional Operating Superintendent was the competent disciplinary authority keeping in view the post being held by the applicant at the time of issue of chargesheet. The chargesheet issued to Sh. P.K. Talukdar, office Superintendent and the inquiry report of which was submitted on 6.8.86 was an independent inquiry and having no links with the inquiry conducted against the applicant on specific charges. Therefore linking it with the earlier inquiry has no relevance as the inquiry against the applicant was conducted in respect of the charges levelled against Sh. Talukdar and did not cover the conduct of the applicant. Therefore the allegation of the applicant that the earlier inquiry report should have been referred to by the inquiry officer in his report against the applicant is not tenable. Disciplinary authority has passed order after considering the inquiry report and all the witnesses. The appellate order also shows the application of mind as the punishment has been modified. The three outsiders namely Sh. P.N. Sharma, ^{Sambhu Saha} Sh. C. Ghosh and Sh. Ray have categorically stated in their statement recorded at the time of vigilance check in the presence of Sh. Talukdar Office Superintendent of the involvement of the applicant though the listed outside witness did not turn up at the time of inquiry inspite of efforts made. Sh. Talukdar who was produced as a defence witness has confirmed during the inquiry that the statements of the outsiders was recorded in his presence. Therefore these statements can be relied upon. The respondents have sought the support of the following judgement, for their

contentions of the judgement of Hon'ble Supreme Court
State Bank of India Versus Samarendra Kishore Endow
(1194) 27 ATC 149.

5. Heard the learned counsel for the parties. The applicant has filed rejoinder to the counter affidavit. We have given careful thought to the material placed on the record and the pleadings made during the hearing.

6. The grounds taken by the applicant in support of his prayer for reliefs in the application, rejoinder and reiterated during hearing are detailed in para 3 above. The thrust of the arguments is that this is a case of no evidence. In addition to this, some other infirmities have been averred. We will consider these first before deliberating on the core issues.

7. The applicant has made a pleading that in view of the categorical findings with regard to non involvement of the applicant in the alleged running of the parallel booking cum reservation office in the inquiry conducted in the chargesheet issued to Sh. P.K. Talukdar Office Superintendent on the same issue, the subsequent inquiry cannot supersede these findings. Further the applicant has also pleaded that the inquiry officer has not made any reference to the first inquiry with regard to evidence already recorded and this is in violation of Rule 19 (24). In our opinion these contentions of the applicant are not tenable. The chargesheet was issued to Sh. Takuldar with reference

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to specific charges against him and the inquiry was conducted to inquire into the charges against him. The conduct of the applicant was not covered in these charges and thus the first inquiry. ^{was independent} The inquiry in case of the applicant which is termed as second subsequent inquiry by the applicant has been conducted for the specific charges levelled against the applicant. The two inquiries have therefore no relation with each other. Further Rule 9 (24) does not apply in the present case as this covers the situation of change ^{the} in inquiry officer in the same inquiry where some proceedings have been already completed. In consideration of these observations, we are unable to find any merit in these submissions.

8. The applicant has also raised the issue of the competence of the disciplinary authority. The averments made are vague. It is not indicated as to who is the competent disciplinary authority. The respondents have refuted the averment in para 14 of the counter stating that Divisional Operating Superintendent was the competent authority. The applicant in the rejoinder has denied while replying to para 14 and reiterated the averment made in the application. The applicant has not brought on record any documentary evidence as to who is the appointing authority for the post held by him at the time chargesheet was issued to him. In the absence of any details furnished by the applicant, we are not in a position to determine whether any infirmity in the proceedings has been caused due to this.

9. The next infirmity in the proceedings pointed out is with regard to nomination of the inquiry officer.

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The applicant has stated that inquiry officer was earlier working as Chief Vigilance Inspector and therefore was not free from bias and prejudice because the investigation of the case and the chargesheet was framed by the vigilance Department. If the applicant had any apprehension of bias and prejudice by the inquiry officer, then he should have made application to the appropriate authority requesting for change of the inquiry officer. The applicant has not averred whether he made any such an application at any time after nomination of the inquiry officer or during the proceedings of the inquiry. We have also gone through the appeal made by the applicant at annexure-7 and no such plea has been taken. In view of these facts, we are unable to accept this contention.

10. The applicant has assailed the impugned orders of disciplinary and appellate authority being non speaking orders. We have gone through these orders. The disciplinary authority has passed the order endorsing the findings of the inquiry officer after carefully going through the same. It is also mentioned that the representation dated 8.4.91 of the applicant has also been considered. We are therefore of the opinion that the order indicates application of mind and is a speaking order. As regards the appellate order, Rule 22 (2) of Railway Servants (Discipline and Appeal) Rules 1968 in express terms requires the appellate authority to record its findings on the three aspects stated therein. On going through the order, we find that it does not cover findings on the three aspects as required. No reference is made to the important issues raised in the appeal which refers to these aspects. This order does not

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give even a hint that the appeal of the applicant had been considered by the appellate order. The order appears to have ^{been} passed in a mechanical way endorsing the orders of disciplinary authority. We are of the view that the appellate order suffers from serious infirmities in not disposing of the appeal in accordance with the established provisions of law. In view of this, the appellate order deserves to be set aside.

11. Now we come to the arguments advanced by the applicant that the findings are based in the circumstantial evidence not corroborated by any direct evidence and this is a case of no evidence. It is well settled that if the findings of the disciplinary authority were based on some evidence, the court/Tribunal would not reappreciate the facts and evidence and substitute its own findings. If some witnesses have supported the charge, there is no ground to interfere. Keeping in view this well settled law, we would have not gone into the evidence and reappreciated the same. However the applicant has made a strong plea of ~~the~~ no evidence and considering the facts and circumstances as detailed subsequently, we are of the opinion that this contention of the applicant merits consideration. Some salient observations with regard to facts of the evidence which has been relied upon by the inquiry officer needs to be detailed first. Statements of ^{three} these outside witnesses viz S/Sh. P.N. Sharma, Sambhu Saha and Chandan Chosh have been indicated ^{as} ~~upon~~ the relied upon documents in the charge-sheet. Out of this, only Sambhu Saha had been cited as a

prosecution witness and even he also did not appear before the inquiry officer. The other three prosecution witnesses were the vigilance inspector S/Sh. A.K. Roy CVI, A.N. Moitra VI and B.D. Bandhopadhyay CVI. The raid was carried out by Sh. A.N. Moitra on a source information and all the statements were recorded by him. However he was also not presented before the inquiry officer though listed as one of the prosecution witnesses. Thus none of the cited prosecution witnesses who were primarily involved in the raid did not appear in the inquiry and the applicant thus had no chance to cross-examine them. Inspite of these facts, the inquiry officer has placed reliance on the statement of three outside witnesses as a circumstantial evidence to prove the charge.

12. Keeping in view the facts and circumstances detailed above in para 11, the main issue to be determined is whether reliance could be placed on the statement of outsiders who did not appear during the inquiry. The respondents have contended that no judicial inference is called for if the findings are based on some evidence seeking support from the judgement of Hon'ble Supreme Court State Bank of India Vs. Samrendra Kishore Endow and Oths. (1994) 27 ATC 149. We are in respectful agreement with what is held in this judgement. We are of the view however that the finding of the inquiry officer based on the reliance of these statements as circumstantial evidence is not an evidence sustainable in the eye of the law. These statements have been recorded at the back of the applicant as he was not present in the office when raid was carried out by the Vigilance Inspector. The applicant also did not have any opportunity to cross examine them during inquiry. Out of the three statements as relied upon documents, Sh. P.N. Sharma and Sh. Chandan Ghosh were not listed as prosecution witnesses. In fact Sh. P.N. Sharma was the vital witness who stated that he was engaged by the applicant for running the mini booking cum reservation office. It is really astonishing that the disciplinary authority chose not to

include Sh. P.N. Sharma and Chandan Ghosh as prosecution witnesses when their statements recorded by the Vigilance Inspector have been relied upon. On query raised with regard to the exclusion of these witnesses, the learned counsel for the applicant was not in a position to throw any light on this aspect. It is also significant to observe that the raid was carried out by Sh. A.N. Mitra Vigilance Inspector and he was listed as prosecution witness. However he has not appeared before the inquiry. We are unable to find any averment in the counter disclosing the reasons as to why he did not appear. Being from the Department, there should have been no administrative impediment in producing him as a prosecution witness, until and unless there were other considerations with the disciplinary authority to avoid his appearance before the inquiry officer. Cross examination of the outside witnesses and the concerned Vigilance Inspector would have afforded opportunity to the applicant to ^{defend his case} cross examine them as their statements only provided sufficient ground to believe as stated in the chargesheet that the applicant was maintaining mini booking cum reservation office. We may also note that no statement of the applicant was recorded when he joined back after sick leave by the Vigilance Branch with regard to the statements given by the outsiders. We are unable to appreciate that how the applicant was expected to know that there was a raid in his absence and he has been alleged to be running mini booking cum reservation business in his office. This is all the more surprising that the chargesheet had been issued after more than 4 1/2 years and he was not issued chargesheet while Sh. Talukdar Office Superintendent was chargesheeted in 1985 for the same

involvement. No explanation has been offered by the respondents for this delay except that criminal case was in progress. This contention is not tenable as applicant's name does not feature in the FIR lodged by the Department. Further the tickets and cash were found from the drawer of the table of the another employee. Thus there is no direct evidence against the employee except the statements of three outsiders. It is agreed that the departmental proceedings are not strictly governed by the rules of evidence. Reliance on the statement of the witnesses recorded before framing the charges could be placed for the departmental inquiry if the statements were recorded in the presence of the delinquent employee or the witnesses were produced during the inquiry. However it is not the situation in the present case as deliberated above. The cross examination of the three outsiders was vital as they had named the applicant for running the mini booking cum reservation office. The mere taking the name in the ^{and Cross examination} statement with no direct evidence cannot form the evidence which could be relied upon straightway. In view of these considerations we have no hesitation in coming to the conclusion that the inquiry officer and the disciplinary authority have gone wrong in placing reliance on the statement of the outsiders as circumstantial evidence. We are, therefore, in agreement with the contention of the applicant that it is a case of no evidence.

13. From the analysis done above, we have concluded that the appellate order is not a speaking order and deserves to be quashed. Further findings of the inquiry officer are not based on the evidence which could be

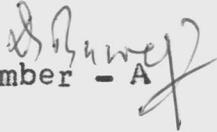
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relied upon and therefore this is a case of no evidence.

In view of this the impugned punishment orders are not sustainable in law and deserves to be quashed.

14. In ^{the} light of the discussions above, the application is allowed. The impugned orders dated 30.12.91 of the disciplinary authority which merges with the order dated 16.7.92 of the appellate authority are quashed. The applicant shall be entitled to all the consequential benefits on quashing the punishment order.

No order as to costs.


Member - A


Member - J

Arvind.