

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 12TH DAY OF DECEMBER, 2000

Original Application No.1207 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

Nathi Singh, son of Lala Ram, a/a 59 years

House No.552-A Mohalipur

Near Kotwali, District Mathura, retired

as T.C. Central Railway, Agra.

... Applicant

(By Adv: Shri Bashist Tewari)

Versus

1. Union of India through the General Manager
Central Railway, Bombay
2. Senior D.C.M,
Central Railway,
Jhansi.
3. D.C.S Coaching,
Jhansi.

... Respondents

(By Adv: Shri A.K.Gaur)

O R D E R (Reserved)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

By this application u/s 19 of A.T.Act 1985 the applicant has challenged the order of punishment of reduction to lower post of Ticket Collector Grade service in the scale of Rs.260-400(RS) permanently.

The facts of the case are that applicant Nathi Singh at the relevant time was serving as T.T.E in Central Railway. On 12.1.1980 he was manning Three Tier Coach No.7197 of Train no.16(GT) Express between New Delhi and Jhansi. Disciplinary proceedings were initiated against him for the following two charges.

(1) wilfully and knowing to be dishonest and against the extant orders did not allot berth Nos.58,60 and 64 which fell vacant due to non turn-up of booked passengers to the wait listed passengers provided seat in the "Sitting bay" against the berth No. 1 to 8 in the said coach.

(2) Allotted berth Nos. 58,60 and 64 to non-wait listed passengers over ~~book~~ing the priority of wait listed passengers provided seat in the Sitting bay, by accepting illegal gratification.

The applicant submitted his written statement denying the charges on 8.2.1982. The Enquiry Officer Shri S.K. Srivastava submitted the inquiry report dated 31.5.1985 with the conclusion that charge no.1 is proved and charge no.II is proved on the basis of pre-ponderance of probabilities which are very high in this case. The Punishing Authority agreed with the conclusion of the Enquiry Officer and passed the order of punishment as indicated above. Appeal of the applicant was however dismissed on 18.12.1985. The applicant filed OA 137 of 1988 in this Tribunal which was disposed of finally on 6.7.1992 with the following order:-

"Accordingly, the Appellate Order dated 24.2.1986 is quashed and application is allowed in part. The Appellate Authority is directed to give personal hearing to the applicant and decide his appeal taking into consideration the pleas taken by the applicant within a period of two months from the date of communication of this order."

The Appellate Authority may entertain the written arguments of the applicant. The application is disposed of with the above terms. No order as to costs."

The Appellate Authority in pursuance of the order of this Tribunal dated 6.7.1992 again considered the appeal and dismissed the same by order dated 12.7.1993 and maintained the punishment awarded.

We have heard Shri Bashist Tewari, learned counsel for the applicant and Shri A.K.Gaur learned counsel appearing for the respondents and perused the record.

The learned counsel for the applicant has submitted that the copy of the complaint and preliminary inquiry was not given to the applicant and as such the principles of natural justice have been violated. For this submission applicant has relied on following judgements:

- (1) Kotwal Singh Rawat Vs. Union of India and Ors
1984 UPLBEC 621(DB)
- (2) State of Uttar Pradesh Vs. Mohd. Sharif
1982 SCC(L&S) pg 253 = (1982) 2 SCC 376

Learned counsel has further submitted that the listed witnesses Mr. S.D. Barabathre TTE/NGP was not examined and cross-examined by the applicant. As such the DAR is ^upaid in the eye of law. For this submission reliance has been placed on the judgement of Hon'ble Supreme Court in case of 'Hardwari Lal Vs. State of U.P. and others' 2000 Supreme Court Cases(L&S)85.

Lastly, it has been submitted that non-listed witnesses were allowed to examine in the DAR which is not permissible. Reliance has been placed in Case of 'State of U.P. & Ors Vs. Jaggoo' 1971 SCC pg47. Para(16).

Shri A.K.Gaur, on the other hand, submitted that question of supplying preliminary inquiry report in the present case

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did not arise as no preliminary inquiry was conducted. Learned counsel has further submitted that applicant has failed to show any prejudice caused to him for non supply of the documents. The allegations are vague and uncertain. It is further submitted that the applicant participated in the inquiry, cross-examined the witnesses and no prejudice has been caused to him in any manner. The Enquiry Officer based his conclusions mainly on the documentary evidence available on the record which was fully in the knowledge of the applicant. The learned counsel for the respondents has placed reliance in judgement of Hon'ble Supreme Court in a case of State of Tamil Nadu vs. Thiru K.V. Perumal and Others 1996 SCC(L&S)1280.

We have considered the submissions of the counsel for the parties. Alongwith the memo of charge applicant was supplied following material and the names of witnesses were also provided:-

LIST OF DOCUMENTS CONSIDERED IN THE INQUIRY

- (1) II-J Tkt No.05072 EXNDLS toCBK and EFT No.553715 dt.12.1.81 for Rs.6/25 alongwith the statement of Shri Abdul Khader, occupant of berth No.58.
- (2) II KFT No.910352 dt.12.1.1981 ExMTJ toGDR and EFT No.553714 dt.12.1.1981 for Rs.6/75 along with the statement of Shri M.Ogam Raj, occupant of berth no.64
- (3) II EFT No.910353 dt.12.1.1981 ExMTJ to GDR and EFT No.553714 dt. 12.1.1981 for Rs.6/25 alongwith the statement of Shri J,Mahendra Tiwari, occupant of berth no.60.
- (4) memo dated 13.1.1981 to Shri S.D.Barabathre TTE/NGP to allot 2 berths to w/L passengers in sitting bay.
- (5) Statement dated 13.1.1981 of wait-listed passenger in sitting bay in 2 pagers
- (6) Original amended chart for the SectionNDLS to JHS, JHS to ET and chart of wait-listed passengers provided sitting accommodation in 3 tier Coach No.7197 in 3 pages.

LIST OF WITNESSES EXAMINED IN THE ENQUIRY.

- (1) Shri K.G.Krishna Murthy, Investigating Inspector (Vigilance), Railway Board, new Delhi.
- (2) Shri S.D.Barabathre, TTE/NGP

Applicant by a letter dated 2.2.1982(Annexure A4) requested for the documents ^{namely u} reservation charts of the Coaches (3tiers) of 16UP to determine the actual position of the vacant berths. He also requested to supply a copy of the report of Vigilance Inspector. No other document was asked for by the applicant. From the list of documents it is clear that original amended chart for the sections New Delhi to Jhansi and Jhansi to Ittarsi and chart of wait listed passengers provided sitting accommodation in 3 tier coach No.7197 in 3 pages was supplied to the applicant. Thus, the demand of the applicant regarding the chart was not justified. From the report of the Enquiry officer it appears that Shri Krishna Murthy I.I.(Vig) Railway Board was examined as witness during the inquiry. He was cross-examined by the applicant. In the inquiry report no other witness is mentioned. The Enquiry officer has proceeded with the observation that since no prosecution witness has ^{been u} examined to testify the allegations of the demand of acceptance of illegal gratification for making allotment of berths nos 58,60 & 64, ^{As} such this allegation cannot be substantiated. The report of the Enquiry officer is based on the documents which were supplied to the applicant. Thus, the applicant has not been ^{prejudiced u} ~~purchased~~ in any manner. The non-examination of Mr.Barabathre,TTE was also in consequential as he had only accommodated two passengers in his coach on request.

In the circumstances the case law relied on by the learned counsel for the applicant is not applicable in the present case. The case against the applicant was decided mainly on the basis of the documentary evidence and admitted position. Applicant in his reply admitted giving berth nos 58,60 & 64 which had fallen vacant due to non-turn up of booked passengers, to such passengers who were holding current tickets. He ignored the claim of the wait-listed passengers who were entitled to be accommodated on priority basis. Thus,

in our opinion no prejudice has been caused to the applicant in any manner. Hon'ble Supreme Court in case of 'Thiru K.V.Perumal and Others(Supra) relying on its previous judgement State Bank of Patiala Vs. S.K.Sharma (1996) 3 SCC pg 364 = 1996 SCC (L&S) 717 held in para 4 as under:-


" The Tribunal seems to be under impression that the inquiry Officer/disciplinary authority is bound to supply each and every document that may be asked for by the delinquent officer/employee. It is wrong there. Their duty is only to supply relevant documents and not each and every document asked for by the delinquent officer/employee. In this case the respondent had asked for certain documents. The Registrar to whom the request was made, called upon to specify the relevance of each and every document asked for by him. It is not brought to our notice that the respondent did so. The Tribunal too has not gone into the question nor has it expressed any opinion whether the documents asked for were indeed relevant and whether their non-supply has prejudiced the respondent's case. The test to be applied in this behalf has been set out by this Court in State Bank of Patiala Vs.S.K.Sharma. It was the duty of the respondent to point out how each and every document was relevant to the charges or to the enquiry being held against him and whether and how their non-supply has prejudiced his case. Equally, it is the duty of the Tribunal to record a finding whether any relevant documents were not supplied and whether such non-supply has prejudiced the defendant's case. Since this has not been done by the Tribunal in this matter, it has to go back for a rehearing."

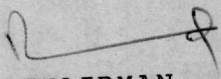
The view expressed by the Hon'ble Supreme Court in the aforesaid case is squarely applicable in the facts of the present case. Applicant though made an application for the documents but he failed to show how prejudice has been caused

to him for non supply of the documents. The Enquiry officer considered the entire material in detail and found the applicant guilty of the charges levelled against him. For second charge he found the applicant guilty on pre-ponderance of the evidence. There was no apparent justifiable reason on the part of the applicant to allot three seats to the current passengers ignoring the claim of the waitlisted passengers. The conclusion is fully justified from the material on record. We do not find any good ground justifying our interference with the punishment awarded to the applicant who has already retired from service.

For the reasons stated above this application is dismissed having no merits.

However, there will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: ^{12th} December, 2000

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