

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

O.A. No. 1132/2000

~~ALLAHABAD~~ ~~LUCKNOW~~ this the 9th day of ~~Feb.~~ ^{March}, 2007.

Hon. Mr. Justice Khem Karan, Vice Chairman.

Hon. Mr. P.K. Chatterjee, Member (A)

Chandra Mohan Pandey, son of late B.K. Pandey, resident of Ward No. 23, House No. 226, New Colony Chakiwa District Deoria, presently working as Booking Clerk, North Eastern Railway Baliya.

Applicant.

By Advocate Shri S.K. Om

Vs.

1. Union of India through the General Manager, North Eastern Railway Gorakhpur.
2. Additional Railway Manager, North Eastern Railway Varanasi.
3. Senior Divisional Commercial Manager, North Eastern Railway, Varanasi.
4. Divisional Commercial Manager, North Eastern Railway Varanasi.

Respondents

By Advocate Shri K.P. Singh.

Order

By Hon. Mr. Justice Khem Karan, Vice Chairman.

1. The applicant is praying for quashing the order dated 22.10.97 (Annexure 9), order dated 2.4.98 (Annexure 10) and order dated 15.7.98 (Annexure 12) and for commanding the respondents to regularize his salary in the grade of Rs. 1200-2040 and pay entire arrears as if the order dated 22.10.97 and other subsequent order had not been passed.
2. It appears from the perusal of the averments made in the O.A. and the material placed on record that on 29.3.95, in between 1230 AM to 8.30 A.M while he was working as Booking Clerk, at Thave Junction, of the Railways, the Vigilance Inspector,

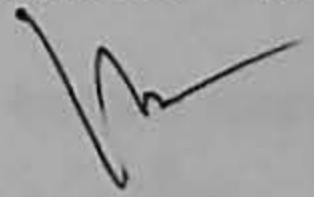
accompanied by some other official made surprise check at the Booking Window where the applicant was at work. The Vigilance Inspector asked him to declare his personal money and the money in his pockets. It is alleged that the applicant left the window and ran away and after a short while came back. It was found that he was having government money to the tune of Rs. 4,000/- whereas it should have been Rs. 4,024/- and in this way, there was a shortage. The authorities subjected him to formal disciplinary proceedings by issuing a memo of charges under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The applicant denied the charges and enquiry was held. During the course of enquiry, oral and documentary evidence was received and on evaluation of all this material, the enquiry officer Shri R.S. Yadav found the charges proved. The applicant was served with the copy of enquiry report together with the show cause notice and he submitted his reply and thereafter, the disciplinary authority imposed a penalty of reduction by one stage in the scale of Rs. 1200-2040 for a period of 3 ½ years. He preferred an appeal against this punishment order dated 22.10.97, which was dismissed vide order dated 2.4.98 (Annexure-10). It appears that he filed a Review petition, which the A.D.R.M., Varanasi rejected vide his order dated 15.7.98 (Annexure 12). The applicant is challenging all these three orders, on the grounds inter alia that the enquiry report dated 12.8.97 is perverse being contrary to the material adduced during the course of enquiry; that evidence of the Vigilance Inspector was inconsistent and was not reliable; that evidence of vigilance Khalasi who claimed to have seen the applicant putting something in his pocket, was highly unreliable as



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when the window was closed, he had no occasion to see the applicant inside the window putting cash in his pocket; that the Assistant Station Master on duty being a material witness was not examined and that the impugned orders are non-speaking. It has also been said that the appellate authority did not give any opportunity of hearing to the applicant before passing the impugned order dated 2.4.98. It has also been said that the authorities lost sight of the fact that the applicant, was performing his duty for such unduly long period and so there was nothing abnormal if he left window to attend to the natural call and his going to attend the natural call was wrongly misinterpreted as running away from the window on finding surprise inspection by the Vigilance Inspector.

3. In their reply, the respondents have tried to say that on 29.3.95, at the time of surprise inspection by Vigilance Inspector, the applicant was asked to show the Government cash (Sale proceeds of the tickets) and the tickets and the money lying in his pocket so as to ascertain whether there was any deficiency or shortage of tickets, but he did not respond to the instructions of the vigilance Officer and left the cash counter and went towards northern side of the Platform without showing the money or the ticket which were in his pocket and this was clearly a misconduct. They say that on receiving major penalty charge sheet dated 9.11.95, on 28.11.95, he failed to submit his defence note till 29.11.95 and therefore, the authorities were left with no option but to nominate an enquiry officer to enquiry into the matter. It is said that during the course of enquiry, statement of Vigilance Inspector Shri A.K. Srivastava and Vigilance Khalasi Shri Shanker were

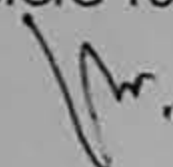


recorded and the applicant was given full opportunity to cross-examine them. It is said in para 14 that the enquiry officer sent notices to Shri Sita Parsed Dubey, Station Master to come and give his statement but he did not turn up. It is also said that the show cause notice together with the copy of enquiry report dated 12.8.97 were sent to the applicant which he received on 28.10.97 and he sent the defence note dated 12.9.97. Reference to evidence of R.K. Ram is also made, to substantiate the charges. They have tried to justify all the three orders.

4. The applicant has filed Rejoinder reiterating the grounds taken in the O.A.

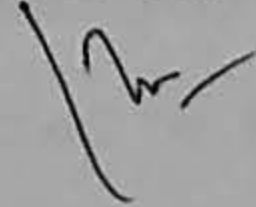
5. We have heard Shri S.K. Om appearing for the applicant and Shri K.P. Singh for the respondents and have perused the pleadings and the documents annexed thereto.

6. The first submission of Shri Om is that the evidence led during the course of enquiry is not reliable and so the finding of guilty is not correct. The learned counsel has said that evidence of vigilance Khalasi that he saw the applicant keeping something in his pocket and then moving away from the seat to another direction is highly incredible because he himself admits that window was closed. Shri Om says that if the window was closed, as stated by Shankar, Vigilance Khalasi, then how could he see the applicant inside the room putting ticket or money in his pocket. The learned counsel has taken us through the copy of statement dated 17.9.96 of Shankar, Vigilance Khalasi (R-1) so as to highlight that witness clearly conceded that while he was at the booking window, the shutters were closed. He says that the finding that the applicant kept something in his pocket before running



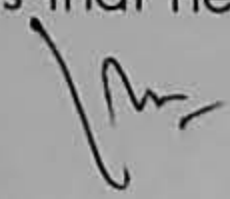
away to a different direction is not sustainable in view of clear cut submission of Shanker that window as closed. Shri Om has also tried to say that the finding that the applicant, on arrival of the Vigilance team hurriedly put certain things in his pocket and ran away, is based on evidence of vigilance Khalasi only and the Vigilance Inspector had himself not seen him putting those things in his pocket. The learned counsel has also taken us through enquiry report (Annexure 6) so as to say that the assessment made by the enquiry officer is faulty and no prudent man could have relied on the evidence, for recording a finding that the applicant left booking window and came back after a short while. The learned counsel for the respondents has submitted that this Tribunal is not sitting in appeal over the conclusion drawn by the enquiry officer or over the punishment order passed by the disciplinary authority, so it will not be within its power to re-evaluate the overall documentary evidence with a view to ascertain whether the finding of fact is correct or incorrect. He says that whether the evidence of the vigilance Inspector or vigilance Khalasi is believable or not, cannot be looked into here unless it is shown that the same is inherently incredible. The learned counsel is categorical in his submission that adequacy or otherwise of the material for recording such a finding of guilt can also not be looked into in these proceedings.

7. We find ourselves in full agreement with Shri K.P. Singh, the learned counsel for the respondents on the point that the Court or the Tribunal will not be justified in re-evaluating or re-appreciating the material on which the finding of guilt is based on. It is for the disciplinary authority and if the appeal is preferred, for the



appellate authority to evaluate the evidence led in support of charges. This Tribunal is not an appellate forum so as to see whether evidence of vigilance Inspector or vigilance Khalasi or for that matter of any other witness examined during the course of enquiry is believable or not. It is not the case where it can be said that the finding of guilt is based on no evidence. Reliability of evidence cannot be the ground for attacking the finding of guilt. After having gone through the papers annexed to the pleadings including the enquiry report, we do not find any force in this submission of Shri Shri S.K. Om.

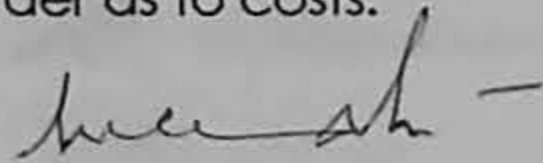
8. Shri S.K. Om has next argued that the impugned order as well as the appellate order are non speaking, mechanical and cryptic, so deserve to be quashed. The disciplinary authority has recorded that he has gone through the charges defence etc. and he is of the view that the charge that the applicant left the booking window at the time of surprise inspection is established. What Shri Om argues is that the authority has not exhibited in this order that it has considered the evidence or the points raised by the applicant, so, it has to be termed as mechanical. According to him, some more discussion should have been there. We think that the impugned order dated 22.10.97 cannot be said to be non speaking or cryptic. When the disciplinary authority was agreeing with the enquiry officer, and when it was specifying the misconduct so proved, nothing more was needed except the punishment part. It was not necessary for him to record an exhaustive order of punishment. So, the impugned order cannot be said to be bad in law for the reasons stated by Shri Om. Moreover, the applicant himself indirectly admits that he left the



booking window on seeing the vigilance inspector. He says that he had left to attend a natural call whereas the department says that he had left the booking window with a view to save himself from being searched or accounting the cash and tickets. Etc. It is surprising that the applicant felt call of nature at the moment he saw the vigilance team at his window.

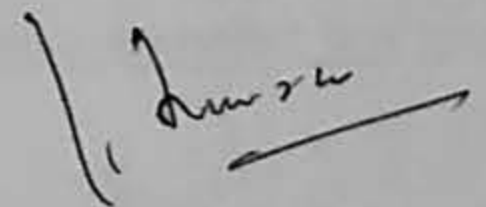
9. Shri Om has criticized the appellate order dated 2.4.98 by saying that the same is non speaking. It is true that the appellate order is not happily worded, but this defect stands cured by revisional order dated 15.7.98. That authority heard the applicant in person and after taking into consideration everything he concluded that the applicant was guilty and the punishment was proper. So, the impugned orders cannot be interfered with on the ground that the same are non-speaking or mechanical.

10. We are of the view that the O.A. is devoid of merit and deserves to be dismissed and it is accordingly dismissed with no order as to costs.



Member (A)

s.a.



Vice Chairman