

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 01st day of APRIL 2005

Original Application No. 560 of 2000.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

P.K. Tiwari, S/o Late Sri P.N. Tiwari,
R/o House No. 56, Bahadurganj,
ALLAHABAD.

..... Applicant

By Adv : Sri B.B. Sirohi, Sri M.K. Kushwaha
& Ms M. Kushwaha

V E R S U S

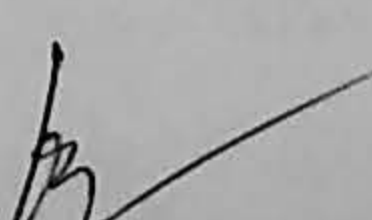
1. Union of India through Ministry of Railways,
Rail Bhawan, NEW DELHI.
2. General Manager, Northern Railway,
Baroda House, NEW DELHI.
3. Senior Divisional Commercial Manager,
ALLAHABAD.
4. Divisional Railway Manager, Northern
Railway, Allahabad.
5. Additional Divisional Railway Manager,
Allahabad. Respondents

By Adv : Sri A.K. Gaur

O R D E R

By K.B.S. Rajan, JM

Against disciplinary proceedings, the applicant
has approached the Tribunal with the following
prayer:-



- "a. That the Hon'ble Tribunal may quash the appellate order dated 30.11.1999 and the two orders of punishment dated 15.10.1998 and 30.4.1998.
- b. That the applicant be paid full salary for the wrongful deduction on account of order dated 30.11.1999.
- c. That to pass such other and further orders as may be deemed fit and proper."

2. The charge is 'non-cooperation attitude' with the vigilance Inspector and the same together with the imputation of the charge is as under:-

"No. CS/DCM/97/49

STATEMENT OF ARTICLES OF CHARGE FRAMED
AGAINST SRI P.K. TIWARI, HD.
TTE/ALLD.

While working as Hd. TTE in train no. 5004 on 27.3.97 he committed the following irregularities that:

He has shown non-cooperation attitude with the Vigilance Inspector to avoid checking of Ist Class Coach in Train No. 5004 on 27.3.97 (Ex Ald to CNB) with malafide intention.

By the above act of omission and commission Sh. P.K. Tiwari, HD. TTE/Ald, failed to maintain absolute integrity exhibited lack of devotion to duty and acted in a manner unbecoming of a Rly. Servant thereby contravened Rule No. 3. 1(i), (ii) & (iii) of Railway service Conduct Rules 1966.

Sd/-

Divl. Comml. Manager
N. Rly., Allahabad"

STATEMENT OF IMPUTATION OF MISCONDUCT/OR
MISBEHAVIOUR ON THE BASIS OF WHICH ACTION
IS PROPOSED TO BE TAKEN AGAINST SRI P.K.
TIWARI, HD. TTE/ALD

While working as such on 27.3.97 in Train No. 5004, he has committed the following irregularities in as such as :

That he has manning the Ist class Coach in Train No. 5004 on 27.3.97 between Ald to CNB. The vigilance Inspector who was



travelling in the same coach has seen that TTE has taken some money from the two passengers and left without issuing any receipt upto 11.20 Hr. The VI has introduced himself to the TTE and asked him to hand over his EFT book to check the coach and cash. But, he has shown non-cooperative attitude and did not hand over his EFT. The VI then approached a fellow passenger Sri Baij Nath Prasad, PWI/BSB to record his witness regarding non-cooperative attitude by the TTE. The TTE then prepared a EFT ticket for the passenger, Sh. Baij Nath Prasad, has recorded his witness, Sri P.K. Tiwari was called in vigilance Branch, Baroda House on 17.6.97 who has not accepted the charge of non-cooperation as per his statement dt. 17.6.97. Thus, Sh. P.K. Tiwari, Hd. TTE is held responsible for non-cooperation with the checking authority with malafide intention.

Sd/-
Divl. Comml. Manager,
N. Rly., Allahabad."

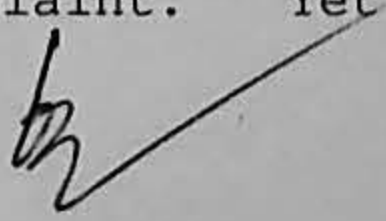
3. To inquire the above charge, an inquiry Officer was appointed who had given his report, vide Annexure 5 to the OA and according to the report, the charge stood "proved". The applicant had furnished his representation after receipt of a copy of the inquiry report. The Disciplinary authority had, on the basis of the inquiry report, passed an order of penalty of "Reduction in the same grade of pay by three stages for a period of five years permanently" vide order dated 30-04-1998 at Annexure

4. As a logical sequence, the applicant filed an appeal dated 22-06-1998 which was considered by the appellate authority, who had chosen to reduce the penalty to "Reduction in the same grade of pay permanently by three stages, for three years."



Order dated 15-10-1998 (Annexure II) refers. This has resulted in the applicant further making a revision petition before the Revision Authority who, by order dated 30-11-1999 reduced the penalty still further i.e. *Reduction to next lower stage in the same time scale for three years with cumulative effect.*" Order at Annexure A-1 refers.


5. The applicant has assailed all the aforesaid three orders on many grounds the prime of which was that the entire proceedings have been vitiated by complete violation of principles of natural justice. The applicant contends that the sole eye witness for the alleged incident is P.W. 2, Shri Baij Nath Prasad, who is a railway servant and whom the applicant never saw. In order to prove that he was in the train at the time the alleged incident took place, the applicant required the I.O. to direct the presenting officer to produce necessary movement order for PW 2 for that day to travel in that train. This has not been acceded to. According to the applicant the prosecution miserably failed to prove the presence of PW 2 at the time of the alleged incident. When this vital point was placed before the Appellate authority in the appeal, the appellate authority instead of considering the extent of violation of principles of natural justice tangentially goes to state that if the applicant wanted to proceed against PW2, he could well make a complaint. Yet another contention of the applicant



is that the Disciplinary authority or others never considered the defence witness and thus, the entire inquiry is vitiated. The applicant further contended that the revision authority was in complete error in holding that the charge of non cooperation was proved, while he held that the charge of not issuing the EFT had not been proved, for, when the charge of non issue of EFT stand not proved, it is inconceivable that the applicant did not cooperate with the Vigilance.

6. The respondents only stated that there is no infraction of any principles of natural justice and it would be seen that from the penalty of reduction by five stages for three years, it has been reduced to next stage for three years with cumulative effect and thus, there is no scope for interference by the judiciary.


7. Arguments were heard and the proceedings perused. When an individual is subjected to a disciplinary proceeding, there are certain documents which the prosecution would like to rely upon and needless to mention that a list of such of the documents as relied upon would be reflected as an annexure to the Charge sheet itself and the individual is entitled to copy of each such document or at least he would be allowed to inspect such records. There are occasions where, the individual, in order to disprove a charge may need certain

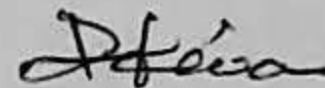


documents which, depending upon the exact relevance, the authority should make available. Of course, not all the documents which are called for should be made available, but certainly the relevant documents are to be made available. In the instant case, PW2 is the sole independent witness and as per the version of the applicant he never traveled in the train at all. However, the said witness stated that he was traveling and his version before the I.O. was taken to have the charge of non cooperation proved. Here exactly is the violation of principles of natural justice. The applicant rightly called for a copy of the movement order of the said PW 2 which the I.O. or the Presenting Officer did not make available. Such vital document, if not made available, would vitiate the inquiry. In the case of *State of T.N. v. Thiru K.V. Perumal*, (1996) 5 SCC 474, the Apex Court has indicated the extent of duty vested with the authorities. It has been observed therein, "**Their duty is only to supply relevant documents** and not each and every document asked for by the delinquent officer/employee." (emphasis supplied) This having not been followed, there is a clear violation of principles of natural justice. Had the presence of PW2 not been there, obviously, the entire case of the prosecution crumbles to the ground. The appellate authority or for that matter the Revisional authority too did not consider this vital aspect.



8. In the end, the OA succeeds. The impugned orders dated 30.11.1999, 15.10.98 and 30.4.1998 (Annexure Nos. 1, 2 and 3 respectively) are quashed and set aside. The respondents are directed to work out the pay and allowances of the applicant as if no penalty has been imposed and shall make the payment of the arrears arising therefrom within a period of three months from the date of receipt of certified copy of this order. No cost.


MEMBER-J


MEMBER-A

GIRISH/-