

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 18 day of September 2003.

Hon'ble Maj Gen KK Srivastava, Member A
Hon'ble Mr. AK Bhatnagar, Member J

Original Application no. 722 of 2002
alongwith

Original Application no. 769 of 2002

H.P. Richhariya, S/o Sri Moti Ram,
R/o 594/12, Budh Nagar, Masiha Ganj,
Sipri Bazar, Jhansi.

...Applicant
(in both the OAs)

By Adv : Sri R.K. Nigam

Versus

1. Union of India through General Manager,
Central Railway, Mumbai CST.
2. Divisional Railway Manager (P), Central Railway,
Jhansi.

... Respondents
(in OA no 722/02)

BY Adv : Sri D Awasthi
And

1. Union of India through General Manager,
Central Railway, Mumbai CST.
2. Sri Divisional Commercial Manager,
Central Railway, Jhansi.
3. Additional Divisional Railway Manager (II),
Central Railway, Jhansi.
4. Chief Commercial Manager (Catering) Central Railway,
General Manager's Office, Mumbai CST.

... Respondents
(in OA no. 769/02)

By Adv : Sri Anil Kumar

O R D E R

Hon'ble Maj Gen KK Srivastava, AM.

Both these OA, filed Under Section 19 of the A.T. Act,
1985, have been filed by the same applicant and these are
being decided by a common order. Leading OA being OA no. 769

.....2/-

of 2002.

OA no. 769 of 2002

2. In this OA, the applicant has sought for following reliefs :-

- "i. to issue a writ, order or direction in the nature of Certiorari quashing the impugned orders dated 23.5.2001 (Ann A1) dated 9.8.2001 (Ann AII) and dated 27.2.2002 (Ann AIII);
- ii. issue another writ, order or direction in the nature of Mandamus thereby commanding the respondents to restore the petitioner on his original post or Head Parcel Clerk in the pay scale of Rs. 5000-8000 (RSRP) with all consequential benefits for which a time bound direction is solicited ;
- iii
- iv."

3. The facts, in short, are that the applicant belongs to SC community and was working as Head Parcel Clerk in the respondents establishment. Vigilance wing of the respondents conducted a decoy check and as a result of it the applicant was served with the major penalty charge sheet (SF 5) dated 1.11.1999. Enquiry was conducted and after conclusion of the disciplinary proceedings, the Disciplinary Authority passed the punishment order dated 23.5.2001 (Ann A1) reducing the applicant to the lower grade of service of Sr. APC in the grade of Rs. 4000-6000 for a period of 04 years with cumulative effect, fixing pay of the applicant at the stage of Rs. 4000/-. The applicant filed an appeal before the Appellate Authority and the Appellate Authority rejected the appeal of the applicant by order dated 09.08.2002 (Ann AII). The applicant filed a review petition on 19.9.2001 (Ann AIII) which was also rejected by the order dated 27.2.2002 by the Revisionary Authority. Hence, this OA, which has been contested by the respondents by filing counter affidavit.

4. Sri R.K. Nigam, learned counsel for the applicant submitted that the charge sheet is on the false ground and he has been charged for paltry and negligible amount of Rs. 09/- only. The applicant has been made a victim of irregular action of the vigilance department. The vigilance department heavily relied on the decoy witness Shri Bhim Sain, Parcel Porter, Delhi Junction.

5. Learned counsel for the applicant argued that the entire enquiry has been vitiated as the decoy witness Sri Bhim Sain, Parcel Porter, Delhi Junction has not been examined and cross-examined inspite of the fact that in order to ensure that the decoy witness ^{had attended} ~~detained~~ the enquiry, the enquiry was fixed at ~~Delhi~~. Investigating Inspectors (Vigilance) Railway Board Sri V.K. Aggarwal and Sri H.S. Kapoor are not independent witnesses and they are the agencies of the vigilance and their evidence is of no value. Besides, another witness Sri K.M. Meena, Sr. Catg. Inspector, is also not independent witness. The respondents have not cited or produced any single public witness in the Court of ~~Investigation~~ or enquiry. Therefore, the charge sheet is not based on any material evidence. The EO arriving at a conclusion without examining decoy witness is not permissible under law. It is a laid down law under Rule 9 of the Railway Servant (Discipline & Appeal) Rules 1968 that any statement taken ^{in behind} ~~being~~ back of the charged official and used against him to arrive at certain conclusion without authentication cannot be read in evidence. The EO based his findings on ⁱⁿ ~~superfluous~~ ^{and} imaginary evidence and therefore, such an enquiry is not reliable. Learned counsel for the applicant further submitted that the charge sheet was issued by the Divisional Commercial Manager (TC) Jhansi while the punishment order has been signed by Senior Divisional Commercial Manager. The Appellate Authority as well as Revisionary Authority did not consider

the points raised by the applicant and the points raised by the applicants have not been dealt with in the impugned appellate order and revision order. It can easily be surmised that the Appellate Authority as well as Revisionary Authority did not apply their minds while deciding the appeal as well as revision petition.

6. Learned counsel for the applicant has relied upon the following judgments:-

- i. Shri Bal Kishan Vs. Union of India & Ors.
ATR 1987 (1) CAT 208
- ii. Dharam Bir Singh Vs. Delhi Administration & Ors
(1994) 26 ATC 322
- iii. DRK Reddy Vs. Union of India & Ors decided on
6.7.2001 by Hyderabad Bench in OA no. 1407 of 1999

Relying upon the above judgments, the learned counsel for the applicant submitted that to prove the check or trap it is the rule of caution that at least the punch witness should be an independent witness to lend ^W ^W ^W corroboration to the evidence of different witness.

6. Resisting the claim of the applicant, learned counsel for the respondents submitted that due opportunity was given to the applicant at every stage according to law. The applicant was found responsible for demanding Rs. 10/- and accepting Rs. 09/- illegally from a ~~consignee~~ decoy. After the issue of charge sheet the applicant appeared for preliminary enquiry and when the applicant pleaded not guilty a full fledged enquiry was conducted and evidence of PW I, Sri V.K. Aggarwal, PW II Sri HS Kapoor and PW III Sri KM Meena were recorded by the EO. These witnesses were cross examined by the defence counsel. The enquiry report was submitted on 22.11.2000 in which the EO has specifically mentioned that shri Bhim Sain

PW IV did not attend the enquiry after passing of 5th occasion, therefore he was dropped. It has been specifically mentioned by the PW I and PW II that after conducting raid excess money was recovered from Government cash of the applicant, the same was witnessed by independent witness Sri Ashutosh Mishra and, therefore, the grounds taken by the applicant have no substance. The applicant has admitted about his conversation with the decoy consignee.

7. Learned counsel for the respondents further submitted that raid was conducted as per rule and there is no illegality in conducting the same. The enquiry has been conducted as per rules after giving due opportunity to the parties to consider material evidence ~~and the cost~~. The punishment awarded to the applicant for accepting illegal gratification is adequate in view of the seriousness of the matter.

8. We have heard learned counsel for the parties, considered their submissions and perused the record.

9. Learned counsel for the applicant has confined his arguments basically on the following points :-

- i. the decoy consignee was not examined or cross examined during enquiry,
- ii. charge sheet and punishment orders have been issued by different authorities,
- iii. there has been no independent witness in the enquiry.

As regards the point No.1 and 3 are concerned, we do not find much of substance in it. We agree with the contention of the respondents that Sri Bhem Sain, the decoy consignee did not attend the enquiry even on the fifth occasion and, therefore, he was dropped. The respondents could not force the decoy consignee to be present in the enquiry. What is important in this connection is whether there was any

independent witness or not. True that Sri V.K. Aggarwal and Sri HS Kapoor the Investigating Inspector (Vigilance) Railway Board could not be treated as independent witnesses but Sri KM Meena was certainly an independent witness. Beside from the perusal of R-I and R-II to the counter affidavit, we find that on 1.9.1999 Sri Ashutosh Mishra, ACPs, Jhansi did give a statement that as against Rs.92/-, Rs.101/- ^{applicants} were recovered from the Govt. cash in ~~his~~ possession. During the arguments, learned counsel for the applicant submitted that the applicant did not take the money and while he was busy with the work the decoy consignee put some money in the applicant's drawer. This is something which cannot be believed. It is also not possible that ~~an~~ outsider could ^h ^{gain} access to the drawer of the applicant without his consent to put extra cash therein.

9. We would also like to point out that Sri V.K. Agarwal PW I, Sri HS Kapoor PW II and Sri KM Meena PW III were cross examined by the defence counsel. Sri KM. Meena PW III from all standards is an independent witness and, therefore, the applicant cannot take the plea that no independent witness was examined during the enquiry.

10. Another point raised by the applicant is that the charge sheet and the punishment order have been issued by the different authorities. In view of the averment of the respondents in para 20 of their counter affidavit we do not find that any illegality has been committed. The charge sheet was initially given by the Divisional Commercial Manager (TC) Jhansi as the applicant was working in the grade of ~~.....~~ Rs.5000-8000 as per schedule of power. Divisional Commercial Manager was the Disciplinary Authority but due to revision of schedule of power under DAR, the power was vested with Senior Divisional Commercial Manager and, therefore, the punishment order was correctly issued by the Senior Divisional Commercial Manager.

11. The applicant was afforded full opportunity to defend himself. He participated in the enquiry and, therefore, in our view there has been no violation of principle of natural justice and there is no good ground for us to interfere in this matter. The case law cited by the applicant's counsel are easily distinguishable and will not be helpful to the applicant. The O.A fails and is liable to be dismissed.

OA 722 of 2002.

12. In this O.A. the applicant has challenged the transfer order dated 21.05.2002 on the ground that the order of transfer from Jhansi to Nagpur is stigmatic and punitive and therefore, it is a case of double jeopardy. Learned counsel for the applicant submitted that the transfer order has to be simple administrative order and not punitive.

13. ^hOpposing the claim of the applicant, sri D Awasthi, learned counsel for the respondents submitted that Railway Board instructions exist for inter-divisional transfers and there is no illegality in transferring the applicant from Jhansi to Nagpur. The transfer of the applicant has been done following the rules on the subject in over all interest of administration. Relying on the judgment of Hon'ble Supreme Court in case of State of MP Vs SS Kaurav 1995 SC 666., Learned counsel for the respondents submitted that the transfer is an ^hincident ^hof service.

14. We have perused the transfer order. Para 2 of the impugned transfer order dated 21.05.2002 (Ann A1) reads as under:-

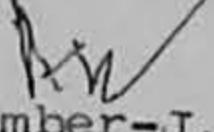
"Sri HP Richariya, HPC, Gr.Rs.5000-8000 (RPS). JHS, who was under reversion in Gr. Rs.4000-6000 (RSRP) for 4 years with cumulative effect from 01.07.2001 is now transferred in the same pay and grade and posted in NGP, division in the interest of administration".

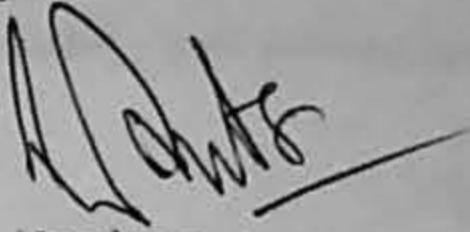
8.

From the above we have no hesitation to hold that the order is stigmatic and cannot stand in the eyes of law. Therefore, the impugned transfer order is liable to be quashed.

15. To sum up, both the O.As are disposed of finally. OA 769 of 2002 is dismissed being devoid of merit with no cost. O.A 722 of 2002 is allowed. The impugned transfer order dated 21.05.2002 is quashed. However, liberty is given to the respondents to pass fresh order if considered necessary in accordance with law.

16. There shall be no order as to costs.


Member-J.


Member-A.

/pc/