

RESERVED ON 11.03.2014

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 7th of July 2014) *****

Hon'ble Mr. Shashi Prakash, Member (A)
Hon'ble Dr. Murtaza Ali, Member (J)

Original Application No. 1337 of 2008
(U/S 19, Administrative Tribunal Act, 1985)

Gauri Shankar, Aged about 43 years (D.O.B – 5.11.1964), S/o
Shri Braham Deo Yadav, R/o Nai Basti Hiranpur, Sarnath,
Varanasi.

.....Applicant

Advocate for applicant : Shri K.K. Mishra

Versus

1. Union of India through General Manager, North Eastern Railways, Gorakhpur.
2. Divisional Railways Manager, North Eastern Railways, Varanasi.
3. Senior Divisional Personnel Officer, North Eastern Railway, Varanasi.
4. Senior Divisional Commercial Manager, North Eastern Railway, Varanasi.
5. Divisional Commercial Manager, North Eastern Railway, Varanasi.

.....

Respondents

Advocate for Respondents : Shri P. Mathur

ORDER

The present O.A. has been instituted seeking the following main relief:-

"(i) That this Hon'ble Court may graciously be pleased to quash and set aside the impugned order

Sy

dated 4.9.2006 (Annexure A-9) passed by respondent NO. 5 and appellate order dated 9.11.2006 (Annexure A-11) passed by respondent No. 4".

2. In the nut-shell, the facts of the case are that the applicant who joined as Casual Labourer got promoted to the post of Ticket Collector in the year 2005. During the course of his duty as Ticket Collector, he was trapped by some officials of the Vigilance Department on the charge of demanding Rs. 50/- from a decoy for unbooked "Khoya". Thereafter he was placed under suspension w.e.f. 8.4.2005. Suspension order was revoked by an order dated 15.7.2005. After a gap of five months, a major penalty charge-sheet was served on him on 22.8.2005 on the allegation that he had demanded and accepted Rs.50/- as a bribe for carrying one basket-full Khoya from Aurihar Jn. to Mau as well as in possession of Rs.500/- as an excess amount. Despite the clarificatory reply given by the applicant, one Shri P.C. Gaur, Dy. F.A & C.A.O. (Retired) was appointed as an Inquiry Officer on 21.09.2005. In the defence submission submitted by him, the applicant denied the charges levelled against him. Applicant also submitted his Defence Brief under Rule (21) of the Railway Servants (Discipline and Appeal) Rules, 1968. The enquiry report found the Article of charge No.1 as proved and Article of charge NO.2 as unproved. A copy of enquiry report was served upon

Sn

the applicant on 8.5.2006 to submit his representation. In his defence the applicant stated that though he had charged Rs.50/- for the unbooked khoya according to Rules and was on the verge of issuing Excess Fare Ticket (EFT) when he was trapped by Vigilance in violation of Rules 704 and 705 of the Railway Vigilance Manual. Since as required under these Rules, no Gazetted Officer was present at the time of decoy check. On receipt of the reply of the applicant, the Disciplinary Authority (Respondent NO.5) vide order dated 4.9.2006 imposed the punishment of reduction to lower stage in the time scale of pay as a permanent measure. The applicant preferred an appeal to respondent NO. 4 but the same was also rejected by a non-speaking order and clearly demonstrating that non application of mind while passing the appellate order. Aggrieved by the action of the respondent Nos. 3 and 4, the applicant has filed the present O.A.

3. The respondents have filed the counter affidavit and strongly denied all the assertions made in the O.A. by the applicant. It has been stated that statement made by the applicant itself is self serving. It has been stated that it is worthwhile to note that the applicant collected Rs.50/- from the decoy and then took him to the office of Ticket Collector's to issue a receipt in lieu of Rs.50/- paid to him. It has been asserted that the applicant took the money without issuing

81

any receipt nor he proposed to give any receipt for the money he had charged. If the applicant had any intention to issue the receipt, he could have done so on the platform itself as a Ticket Collector's carry excess fare ticket form alongwith themselves. The respondents have accordingly asserted that the claim of the applicant is palpably, fabricated and vexatious. It has also been stated that the defence statement during the enquiry did not adequately meet the findings of enquiry officer and, therefore, the Disciplinary Authority awarded the punishment.

4. In regard to the issue raised about the non-presence of the Gazetted Officer as per paras 704 and 705, it has been asserted by respondent that this is not necessary. What is only required is preparation of a joint note before the independent witness. In the present case, Shri Sanjay Pandey, Khalasi was the independent witness who made a statement regarding the conversation between Shri Raj Mani Tripathi and the applicant, which proved that the applicant had demanded Rs.50/- for the unbooked Khoya. The appellate authority after considering the entire evidence borne out on the record of the disciplinary proceedings decided the appeal of the applicant on perfectly legal and valid grounds. In view of the facts as brought out above, the averment made by the applicant in the O.A. are devoid of substance.

84

5. Shri K.K. Mishra, learned counsel for the applicant mainly relied on three arguments in support of the claim of the applicant.

(i) In the first place he advanced the arguments that the applicant acted in the bonafide manner by demanding Rs.50/- which was the freight to be charged for carrying of the unbooked Khoya from Aurihar Jn. to Mau. He genuinely wanted to issue the E.F.T and for that purpose he proceeded to the ticket collector's office. The thrust of applicant's argument is that the applicant was not allowed to issue E.F.T by the Vigilance Team which was present in the Ticket Collector's Office. He submitted that the entire exercise appeared to be a conspiracy on the part of vigilance staff to trap him and place him in difficulty. He argued that this charge brought against him is totally fabricated.

(ii) The second point raised by the learned counsel for the applicant that the decoy check was carried out entirely by the members of vigilance team which was in violation of the

Sn

mandatory provisions laid down in Rules 704 and 705 of the Railway Vigilance Manual. These provisions specifically provide for presence of two Gazetted Officers at the time of decoy check and in the present case no Gazetted Officer was present. On this account itself, the exercise of decoy check was vitiated. In this regard, the learned counsel relied upon the case of ***Moni Shankar Vs. Union of India and another (2008) 3 S.C.C. 484.***

- (iii) The third point relied upon by the learned counsel for the applicant was that the order of the appellate authority is totally non-speaking and does not meet the requirements as laid down by the Hon'ble Apex Court in the case of ***Ram Chandra Vs. Union of India and Ors. 1986 A.T.C Vol 1 page 47*** as well as the case of ***Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and others (2006) 4 Supreme Court Cases 713.***

6. Concluding his arguments, learned counsel for the applicant stated that on the above three grounds as mentioned above there is strong case for setting aside the

Sn

impugned orders of disciplinary authority and appellate authority dated 4.9.2006 and 9.11.2006.

7. Shri P. Mathur learned counsel for the respondents questioned the sequence of facts as enunciated by the learned counsel for the applicant in his first point. He argued that since the Ticket Collector's are normally required to carry the EFT forms with themselves, there was no reason on the part of the applicant to have taken the decoy to the Ticket Collector's office. He could have issued the same as and when he received the payment.

8. Regarding the second point raised by the learned counsel for the respondents questioned the assertions made by the learned counsel for the applicant that under the Vigilance Manual during the decoy check the presence of two Gazetted Officer is mandatory. He stated that vigilance manual is only in the nature of guidelines and does not have a binding force. In the instant case the khalasi who acted as a decoy was an independent witness and heard the conversation between the applicant and over-heard the relevant conversation. He also argued that the orders passed by the Disciplinary Authority as well as the Appellate Authority have been passed after due application of mind and do not suffer from any infirmity. Hence, the O.A. deserves to be dismissed.

SM

9. Heard learned counsel for the parties and perused the pleadings. In regard to the first point raised by the learned counsel for the applicant it is seen that the allegation against the applicant is that he had demanded for Rs.50/- as freight charges for carrying unbooked 'Khoya' from Aurihar Jn. to Mau and collected the money and did not issue the E.F.T as was required. The defence of applicant is that he proposed to issue E.F.T in Ticket Collector's office and asked the decoy to come there. However, on reaching Ticket Collector's office the vigilance team present there allegedly trapped him. This averment has been rebutted by the respondents stating that the applicant being a Ticket Collector should have been carrying a E.F.T. Form Book and have issued the E.F.T. immediately on the spot after realization of the freight. It is evident that there are two versions regarding the sequence of events in the matter. However, if we examine the facts of the case as mentioned above of both the parties, it would be seen that the freight amount of Rs.50/- was demanded from the decoy, who was a Khalasi in the Vigilance Department. It is the fact that the preponderance of probability on this point would appear to the effect that since the Vigilance Department had wanted to prove the case against the applicant, the decoy would not have deliberately ~~been~~ obtained the E.F.T. at the time of payment and led the applicant to the Ticket Collector's Office where the Vigilance team was waiting for the purpose of framing the applicant. Though it is true that Ticket Collectors should invariably issue the E.F.T on immediate

SN

realization of demand but given the peculiar situation as in the case the failure on the part of the applicant to issue E.F.T. could have occurred in all probability because the person from whom the demand was made, was not a passenger but a vigilance employee, who might have led him to T.C's office where he was trapped. As there are two different versions regarding the sequence of events, it is difficult to arrive at a conclusive finding on its basis, it is necessary to travel beyond this defence of the applicant.

10. The second argument raised by the learned counsel for the applicant is that the entire exercise was not a decoy check which has to be carried out in accordance with provisions outlined in Rule 704 and 705 of the Railway Vigilance Manual, 1999. This argument prima facie appears to have strength. The respondents have tried to explain away this defence by stating that the decoy Shri Sanjay Pandey, who was vigilance Khalasi was an independent witness and it is his presence during the decoy check should meet the requirement of Railway Vigilance Manual. By their own admission, the respondents have admitted that Shri Sanjay Pandey was the Khalasi in the vigilance department. He, therefore, cannot be treated as an independent witness. Such a witness ought to have been outside the vigilance department. As the entire decoy check was carried out by the team comprising wholly of vigilance officers with no independent witness, it was clearly violative of the provisions of Rules 704 and 705. The

Sn

Hon'ble Apex Court in the case of **Moni Shankar Vs. Union of India and Ors** (supra) has held that guidelines issued in Rule 704 and 705 have to be substantially complied in conduct of decoy check. They cannot be totally ignored. On account of the above, the exercise carried out by the vigilance appears to be more in nature of a frame up than a decoy check carried out in accordance with letter and spirit ^{of the} prescribed guidelines.

11. The third argument advanced by the learned counsel for the applicant is that the order of the Appellate Authority dated 9.11.2006 is totally non-speaking and does not address the issues which had been raised by the applicant in his appeal. It merely says that the charge of demanding Rs.50/- from the decoy stands proved and, therefore, the appeal has been rejected. The order of the Appellate Authority is reproduced below:-

"मैने कर्मचारी के विरुद्ध जारी आरोप पत्र जॉच रिपोर्ट दिये गये दण्ड के विरुद्ध कर्मचारी की अपील एवं सम्पूर्ण केस का अवलोकन किया। कर्मचारी द्वारा डिक्वाय से रुपये 50/- की माँग की गयी थी एवं लिया गया, जिसकी पुष्टि जॉच में जॉच अधिकारी द्वारा भी की गयी है।

इस प्रकार अवैध रूप से पैसा लेना एक गम्भीर अनियमितता है। अनुशासनिक अधिकारी द्वारा दिया दण्ड, आरोप की गम्भीरता के अनुरूप है जिसमें कमी किये जाने का औचित्य नहीं है। दिया गया दण्ड यथावत रहेगा।"

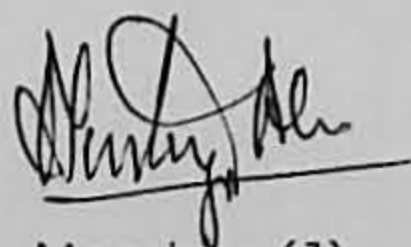
12. A perusal of the above order of the Appellate Authority on the face of it is clearly non-speaking and indicative of non

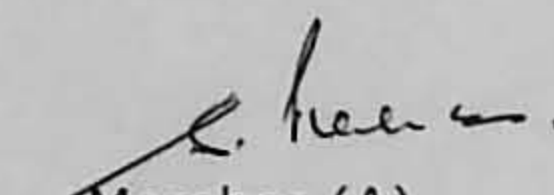
61

application of mind. The order also ^{seems} ~~seems~~ contrary to the ratio laid down by the Hon'ble Apex Court in the cases mentioned in para 5 (iii) and hence suffers from severe infirmity.

13. In view of the facts and circumstances stated above, we find that there is considerable strength in the arguments advanced by the learned counsel for the applicant and accordingly the appellate order dated 9.11.2006 (Annexure A-11) is set aside and the matter is remitted to the Appellate Authority for reconsidering the appeal of the applicant in the light of the ratio laid down in the case of **Ram Chandra** (supra), **Narendra Mohan Arya** (supra) and Moni Shanker (supra) by a reasoned and speaking order. This exercise shall be completed by the Appellate Authority within a period of three months from the date of receipt of a certified copy of this order.

14. With the above direction, the O.A. is accordingly disposed of. No order as to costs.


Member (J)


Member (A)

Manish/-