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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 277 OF 1987.
~~K.A. No.~~

DATE OF DECISION 12.7.1988

SHRI S.C. MODI Petitioner

MR. B.S. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s.

MR. B.R. KYADA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

Shri S.C. Modi,
6 Junction Plot,
Rajkot.

.....Applicant

(Advocate Shri B.S. Shah)

Versus

1. Union of India,
through The General Manager,
Western Railway,
Church Gate,
Bombay.
2. The Divisional Commercial Superintendent,
Kothi Compound,
Western Railway,
Western Railway Office,
Rajkot.

.....Respondents

(Advocate Shri B.R. Kyada)

J U D G M E N T

O.A.No.277/87

Date : 12-07-1988

Per : Hon'ble Mr. P.M. Joshi : Judicial Member

In this application, filed under section 19 of the Administrative Tribunals Act, 1985, on 9.6.1987, the petitioner Shri S.C. Modi of Rajkot, has questioned the validity of the action of the Respondents-Railway Administration, who confirmed in appeal the order of the disciplinary authority (D.C.S. Rajkot) dated 10.9.1986 whereby he was removed from the service. He has challenged the departmental proceedings on the grounds inter-alia that his services are terminated without following the procedure of law and in arbitrary and illegal manner and in violation of principles of natural justice. He therefore, prayed that ^amajor penalty imposed upon him by orders dated 5.2.1986, - 10.9.36 passed by the disciplinary authority and orders dated 22.4.87 in appeal be quashed and set aside.

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9

2. The respondents-railway administration, in their counter, submitted that the action taken by the department was in accordance with the rules, after giving reasonable opportunity and show-cause notice. According to them, articles of charges levelled against the petitioner-delinquent, were fully enquired by the Enquiry Officer, fairly and according to rules and the orders passed by the disciplinary authority based on the findings of the enquiry officer, are confirmed in appeal and they do not suffer from any infirmity.

3. When the matter came up for hearing we have heard Mr. B.S. Shah and Mr. B.R. Kyada, the learned counsel for the petitioner and respondents respectively. We have also perused the materials placed on record. During the course of his arguments Mr. Shah, the learned counsel for the petitioner raised four-fold contentions viz; (1) non-examination of two lady passengers i.e. Amita K. Joshi and Naina C. Lava is fatal to the inquiry (2) Enquiry Officer was not changed even though allegations of bias were made by the petitioner. (3) Appellate order is ineffective and inoperative as A.D.R.M./ Rajkot was not competent to hear the appeal (4) Punishment of removal from service is disproportionate and unreasonable. In support of his submission he relied on the case of Mohanbhai Dinkerbhai Parmar V/s. Y.B. Zala & Ors. (1980 (1) S.L.R. 324, Gujarat High Court) wherein it was held that while inflicting punishment the general character of the officer affected and his past service should be taken into consideration. Mr. Shah also relied on the case of Dhani Sahu V/s. Bishan Prasad Singh (A.I.R. 1942, Patna, 247, wherein Fazal Ali J. speaking in Division Bench expressed the view that the plaintiff ought to be given such relief as he is entitled to get on the facts established upon the evidence in the case even if the plaint does not contain a specific prayer for that relief. Mr. B.R. Kyada for the respondents

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however supported the departmental action taken against the petitioner. It was strenuously urged that the findings of the fact recorded by the Enquiry Officer and confirmed by the disciplinary authority can not be challenged on the ground that the relevant and material evidence adduced before domestic tribunal is insufficient or inadequate to sustain a finding. ✓

4. Before examining the rival contentions raised in this petition, at the outset, it may be stated here that Mr. Shah during the course of his arguments declared that he does not press the contention regarding competency of the appellate authority to hear the appeal. Now, in order to appreciate the merits of the rest of the contentions raised by Mr. Shah, it would be useful to examine ^{the} materials brought on record pertaining to the departmental enquiry. The petitioner was served with the standard form-charge-sheet under Rule 9 of the Railway Servant (Discipline and Appeal) Rules 1963, Annexure I, dated 22.2.1985. Articles of charges relating to the misconduct as alleged, read as under : -

1. He had returned only Rs.40-00 as against the correctly due balance of Rs.96-00, to Amita K. Joshi and party, the allottees of G coupe comptt of FC 6145, thus retaining the amount of Rs.56-00 with an obvious ulterior motive; the subject amount of Rs.56-00 was however returned to the party by him between VG-SAU, that too as a sequel to the vigilance detection.
2. He prepared and issued EFT No.363044 dt.1.1.85 for Amita K Joshi & party/2 by showing false station of issue and false portion for the journey by I Class as RJT and RJT BCT resp. even though he had allotted the said coupe to the party at HXP and had obtained Rs.400/- towards the issue of EFT.
3. The amount as shown by him on EFT No.363044 was differing in figs. and words. He, by his above act, has failed to show devotion to duty, to maintain absolute integrity and has acted in a manner unbecoming of a Rly.servant thereby violating rule no. 3.1 (i) (ii) (iii) of the RSCRs, 1963.

5. Shri R.S. Dixit, E.C. (V) CCG was appointed as Enquiry Officer, to enquire into the charges framed against the petitioner vide order dated 3.10.1985 issued by the disciplinary authority Shri R.S. Chaudhary (DCS, RJT), the Enquiry Officer examined S/Shri M.R. Pandya, TNCR, ADI, Bridge Mohan, First Coach Attendant, RJT & S.G. Ambani, CVI, RJT. Out of this witnesses, Shri Bridge Mohan was not cross-examined and therefore, the version given by him remained unchallenged. The Enquiry Officer, after discussing the evidence recorded by him, held that the charges levelled against the petitioner-delinquent are duly established. While holding him guilty of the charges he has rendered his findings in his report dated 13.1.1986, in the following terms : -

From the material before me it is established that Shri S.C. Modi was working as first class conductor by 6 UP of 1.1.85 ex-Okha to VG. At Hapa, 2 lady passengers approached him with a request that they wanted to travel first class and their II class tickets be converted into I class. They paid Rs.400/- in 4 currency notes of Rs.100/- each to Shri S.C.Modi and also gave their II class tickets to him for conversion into I class. Shri Modi accommodated these 2 ladies in G coupe compartment of first class coach No.6145 which was in his charge at Hapa only. He did not prepare any EFT for conversion of II class tickets to I class immediately or soon after and issued EFT, for the difference ex-RJT to BCT showing the amount recovered as Rs.304/- in figures and Rs.three hundred and fiftytwo in words. This led the ladies to believe that the amount returned to them were short. This coach was subjected to check by the CVI RJT from VG and these lady passengers while producing their tickets and the EFT for check complained that they had been returned short amount. Shri S.C.Modi was called in the compartment and on being confronted with the ladies he immediately returned Rs.56/- the balance left after return of Rs.40/- to the ladies and also gave it in writing that he had returned the balance amount of Rs.56/- to the lady passengers in presence of the CVI and TNCR.

At one stage Shri S.C.Modi had put forth a plea before the CVI that he could not return the full amount of Rs.96/- because he had no change with him. It is note worthy that Shri S.C.Modi had to get off duty and detrain at VG. Upto VG he had neither returned the balance of Rs.56/- to the lady passengers nor even informed them that he was coming upto ADI. The intentions of Shri S.C.Modi are clear from his conduct. Had he got down at VG that amount of Rs.56/- would remain in his pocket unaccounted for. Unfortunately for him he could not complete the charts upto VG and had to travel beyond VG which made it possible for the CVI to confront him with the lady passengers and resulted into the refund of Rs. 56/- which were incorrectly retained by Shri S.C.Modi.

2

CONCLUSION

All the articles of charge are substantiated.

6. The disciplinary authority on going through the papers including statement recorded during DAR Enquiry and the findings submitted by Enquiry Officer, he accepted the same and held that the charges were proved beyond doubt and passed the order dated 5.2.1986 imposing penalty of removal from service.

7. The petitioner having come to know about the orders being passed against him, he filed an application No. 61/86 on 18.2.1986 (renumbered as O.A. 183/86) before this Tribunal. During pendency of the proceedings of the said application interim orders were passed on 7th March, 1986 directing the respondents not to give effect to the dismissal order and the disciplinary authority was directed to start a fresh after supplying a copy of the Enquiry Officer's report to the petitioner and after giving an opportunity to him to show-cause against that report. In pursuance of the said direction a copy of the findings of the Enquiry Officer was furnished to the petitioner alongwith the show-cause notice. In response thereof, he filed his reply dated 5.5.1986 wherein he contended that several facts which were in his favour were not considered by the E.O's and that the Enquiry Officer was from the Vigilance Department and naturally therefore, he was favourable to the case prepared by his department and therefore, he has not been able to get justice. The disciplinary authority again considered his contentions and passed the order dated 10-9-1986 imposing penalty of removal from service which is reproduced as under :-

.....7/-



Shri S.C.Modi,
Hd TTE RJT.

Through :- DCTI-RJT,

Sub : - DAR N G Staff against you.

Ref : - This Office even No. dtd. 1.4.86
& your letter dtd. 5.5.86
addressed to DCs RJT.

I have carefully gone through the reply dtd.5.5.86 with reference to the show-cause notice given to you vide this office even No. dtd. 1.4.86 even though you were given one month for reply. However, I consider your reply though you have not cared to give timely reply even in such serious matters.

You have failed to bring out any new facts or any other points which can be considered in reducing or amending the proposed orders of punishment. You have not stated the details of facts not considered by the E.O. nor you were given the name of parties not called at the time of DAR enquiry.

After considering the reply given by you and also statements recorded during the enquiry preliminary statements and the findings submitted by the E.O., I have come to the conclusion that the charges levelled against you have been proved beyond doubt. The charges are serious and call for stringent punishment. I, therefore order that you should be "REMOVED FROM SERVICE" with immediate effect. This has ref. to this Office NIP No. E/308/161/35/S/8 dtd. 5.2.1986.

(R. S. Chaudhari)
Div. Comm. Supdt,
RJT.

8. Being aggrieved by the aforesaid order the petitioner preferred an appeal on 17th October 1986. The appellate authority, however, vide its order dated 22.4.1987 confirmed the order of disciplinary authority imposing penalty of removal from service and rejected the appeal. In the meantime O.A.No. 183/86 filed by the petitioner earlier was disposed of vide order dated 13.8.1986.

9. The main grievance of the petitioner is that two lady passengers viz; Anita K. Joshi & Nina C. Lava, whose statements were recorded on the date of the incident i.e., 1.1.1985 were

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not examined by the Enquiry Officer and consequently, he has been deprived of the benefit of cross-examining them. It is pertinent to note that those two ladies were not at all cited as witnesses in support of the charge. The department relied on the joint statement of Anita K. Joshi & Naina C. Lava dated 1.1.1985. It is significant to note that before the inquiry started the aforesaid statement and other documents were inspected by the petitioner-delinquent and he having admitted the same they were taken on record. Moreover, the fact that the said two lady passengers who were holding second class ticket No. 4683 & 864 Ex. Jamnagar to BCT had approached the petitioner at Hapa Station for conversion of ticket from second to first class and they had paid Rs. 400/- to the delinquent and he returned them only Rs. 40/- and that they were accommodated at Hapa in 'G' Coupe Compartment of the first class coach is not in dispute. Admittedly, when vigilance officer inspected the compartment between Viramgam & Sanand, they noticed two lady passengers in the compartment holding second class mail tickets and EET No. 363044 of 1.1.1985 for conversion from second to first class ex. Rajkot to Baroda. It was further found that amount shown on this EET in the figure was Rs. 304/- whereas that in words was Rs. 352/-. On enquiries the said lady passengers stated that they had actually paid Rs. 400/- to the TNCR of the coach against which only Rs. 40/- had been returned to them and that they had travelled in that 'G' coupe right from Hapa. A written statement of this two lady passengers was obtained on the spot in presence of Shri M.R. Pandya, TNCR. Shri Modi was called in the said compartment who admitted that he had returned Rs. 40/- to the lady passengers against the due amount of Rs. 96/- and later on, he returned Rs. 56/- to the said lady passenger in the presence of Vigilance Officer and Shri Pandya. Thereafter

8

a fresh written statement from lady passengers was obtained regarding their having received a further sum of Rs. 56/- wherein the petitioner delinquent Shri Modi recorded in his own handwriting "I have returned Rs. 56/- to the passengers in presence of CVI RJT and Shri Pandya." Thus, having admitted the statements of the lady passengers, their non-examination during the enquiry can not be considered as fatal in any manner. As a matter of fact, he had not challenged the version given by the lady passengers at all. In his explanation, he conceded that this lady passengers travelled in first class and he prepared EFT at Rajkot. He, however, stated that his stomach was disturbed, he went to toilet after that he forgot. He recollected at Rajkot and prepared EFT. He has prepared EFT for Rs. 304/-, but he had shown the amount in words as Rs. 352/-. The Enquiry Officer therefore, concluded that Shri S.C. Modi wrote the figure Rs. 304/- with the intention of remitting only Rs. 304/- to the railway and wrote rupees 352 in words with a view to mislead the passengers regarding the amount payable. It is on record that he had remitted only Rs. 304/- to the railway against this EFT. It is therefore, not understood how the non-examination of two lady passengers has any relevance or importance. In case, two lady passengers were going to support his case, he could have certainly examined them as his witnesses. However, he has not preferred to do so.

10. It is not the case of the petitioner that the Enquiry Officer Shri R.S. Dixit had animosity against him or any personal grievance. The only fact that he happened to be an Officer of the Vigilance Branch of the Western Railway, it does not entitle the petitioner to claim for change of the Enquiry Officer.

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11. It is now well settled that the requirement of reasonable opportunity is duly complied with when (i) the employee proceeded against has been informed clearly of the charges levelled against him (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges (iii) the employees is given fair opportunity of cross-examination of witness. (iv) He is given fair opportunity to examine witness including himself and his defence if he so wishes or any relevant matter and (v) the inquiry officer records his findings with a reason; for the same in his report (see Sur Amamel S.W.Ltd. V/s. Workmen, A.I.R.1963 S.C. p. 1914). In Hind ASM Corporation V/s. Raj Kishan, A.I.R.1967 Patna, it is held that the Courts are to observe the rules of natural justice. So if certain documents are produced in evidence in presence of other party, it is the duty of the later, to rebut an inference that might reasonably arise on the perusal thereof. If the other party does not adduce rebutting evidence and the Tribunal passed its findings on the content of such documents, it is not proper to interfere with that findings. In such matters, the Court is concerned to determine whether inquiry is held by the authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. On careful consideration of the findings reached by the Enquiry Officer, which are accepted by the disciplinary authority, we do not find any error of fact or law which is apparent on the face of the record, as contended. Now, turning to the last contention regarding the disciplinary action taken against the petitioner of "removal from the service", by the order dated 10.9.1986, it may be stated at the outset that both the authorities i.e. disciplinary authority and the appellate authority



have adverted to the relevant issues while imposing the penalty. It is true, the petitioner has put in service for more than 20 years with the railway administration, however, he was holding a responsible job as a Head TTE during the relevant period. The fact that he was holding a responsible job and the question of his duties and responsibilities required to be discharged by him, seem to have been examined considerably qua the gravity of the misconduct alleged and proved against the petitioner. There is hardly any dispute regarding the broad principles laid down in the case of Mohanbhai Dunderbhai Parmar (supra) wherein the misconduct alleged was "delay in returning for duty". In the instant case after having regard to all the facts and circumstances of the case, both the authorities viz; the disciplinary and appellate, have taken into account, and held that "the charges which are duly established are serious and called for stringent punishment and there is no rule to reduce or amend the same". Ordinarily, the Tribunal is not required to consider the propriety or adequacy of the punishment or whether the same is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or in such as no reasonable employer would impose such punishment in like circumstances, the Tribunal may treat imposition of such penalty as itself unfair.

12. Bearing in mind the facts and circumstances of this case it can not be said that there are any compelling reason for the Tribunal to interfere with the discretion exercised in respect of disciplinary action taken against the petitioner.

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