

A

CAT/J/13

(8)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A.NO./482/89**  
**T.A.NO.**

DATE OF DECISION 28.1.1998

Manilal Bhalabhai Solanki

Petitioner

Mr.K.K.Shah

Advocate for the Petitioner [s]

Versus

Union of Undta & ors.

Respondent

Mr. S. Shevde

Advocate for the Respondent [s]



**CORAM**

The Hon'ble Mr. V.Radhakrishnan

Member (A)

The Hon'ble Mr. T.N.Bhat

Member (J)

Manilal Bhalabhai Solanki,  
Add : Block No.44, Aavsoadia,  
Ankur Co-Operative Housing,  
Society, Nr. Water Tank,  
Railway Station,  
Kalol.

Applicant

Advocate Mr. K. K. Shah

versus

1. Union of India, Through :  
The General Manager,  
Western Railway,  
Churchgate,  
Bombay-

2. Sr. Divisional Commercial Supdt.,  
Divisional Office, Pratapnagar,  
Western Railway,  
Baroda.

3. Divisional Commercial Supdt.,  
Divisional Office,  
Western Railway.,  
Pratapnagar,  
Baroda.

Respondents

Advocate Mr. N. S. Shevde

J U D G M E E N T

O.A. 482/89

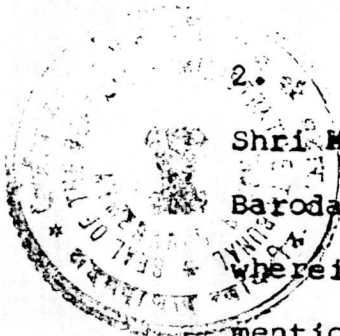
Date: 28.1.98

Per Hon'ble Mr. T. N. Bhat Member (J)

1. The applicant in this O.A. was working  
as Head Booking Clerk at Asarva Railway Station in  
the Baroda Division of Indian Railway, when on

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20.4.1987, the vigilance party of the Indian Railways allegedly laid a trap, during the course of which, it is alleged, the applicant was caught red-handed accepting the amount of Rs.10/- as illegal gratification for himself and Rs.7/- for one Shri Chamanbhai, who was working as a Loader at that place. It is further alleged that <sup>one</sup> Shri Iswarlal, Constable was sent as a decoy to get a scooter booked at Asarva to be carried to Himatnagar station. It is, however, admitted that the applicant himself did not take the amount of illegal gratification but that at the instance of the applicant an amount of Rs.17/- was paid to the said Sh. Chamanbhai Loader, who accepted the same on behalf of the applicant.



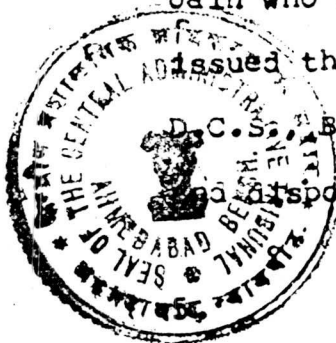
2. The charge-sheet dated 9.12.1987 issued by Shri Mukul Jain, Divisional Commercial Superintendent Baroda, (DCS, for short) was served upon the applicant wherein it was stated that copies of the documents mentioned therein as per the Annexure III <sup>were</sup> ~~was~~ being enclosed with the charge-sheet. It is, however, admitted by both the sides that the documents were not actually furnished to the applicant, but that some of the documents were shown to him in the office which he inspected. According to the respondents, this was sufficient compliance with the relevant rules and the principles of natural justice.

3. One Shri J.N. Hazari was appointed as Enquiry officer by the D.C.S., who conducted the

contd...4

enquiry and submitted his report dated 17.3.1989. On consideration of the report the disciplinary authority by his order dated 12.5.89, as at Annexure A-3, imposed upon the applicant the punishment of removal from service with immediate effect.

4. The applicant filed an appeal before the Senior Divisional Commercial Supdt. ( Sr. D.C.S. ), Baroda, which was also rejected by the latter's order dated 6.10.1989. It needs to be mentioned here that by the time the appeal came to be filed, Shri Mukul Jain who was functioning earlier <sup>as</sup> D.C.S. and who had <sup>as</sup> issued the charge-sheet had assumed the duty of Sr. D.C.S. Baroda and the appeal was, therefore, considered and disposed of by him.



Aggrieved by the punishment order as well as the order passed by the Appellate Authority, the applicant has come to the Tribunal seeking the following reliefs:-

- " (A) The Hon'ble Tribunal may be pleased to quash and set aside the impugned orders of disciplinary authority and appellate authority dated 12.5.89 & 6.10.89 and direct the respondents to reinstate the petitioner with back-wages and all consequential benefits arise under the services



by holding the respondents action as illegal.

(B) This Hon'ble Tribunal may be pleased to allow this application with costs.

(C) Any other order or direction may be deemed fit in the interest of justice may be passed."

6. The main grievance of the applicant is that he was not afforded a fair opportunity to defend himself in the inquiry proceedings and, further, that important documents, upon which the Enquiry Officer and the Disciplinary Authority placed reliance were kept back from the applicant. It is further averred that this is a case of no evidence and that the findings recorded by the Enquiry Officer are perverse. According to the applicant, material witnesses were not examined during the course of enquiry and that the Enquiry Officer also conducted himself in a partisan manner. During the course of arguments, the learned counsel for the applicant has also brought out that the disciplinary authority who had issued the charge-sheet has in this case illegality acted as the appellate authority also.



7. The respondents have resisted this O.A. on the ground that there was sufficient evidence to hold that the applicant was guilty of misconduct alleged against him and, further, that inspection of

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all the documents having been allowed to the applicant the enquiry was not vitiated. As regards the furnishing of copy of the vigilance report, it is admitted that the same was not furnished to the applicant but it is averred that since the Enquiry Officer and the Disciplinary Authority had not relied upon the said report nor was it one of the listed documents, the applicant was not entitled to a copy of the same.

8. The applicant has also filed a rejoinder reiterating the contentions raised in the O.A.

9. We have heard the learned counsel for the parties at length and have perused the material on record. We may at the out-set state that during the course of hearing, the respondents were not able to make available the departmental records. It was only later that these records were furnished by the learned counsel for the respondents, when the arguments had already been concluded and judgment had been reserved.

10. On perusal of the records, we notice that as many as seven witnesses were cited, out of which six have been examined. The learned counsel for the applicant has sought to make much capital out of <sup>the</sup> non-examination of the remaining witness, namely, Shri P.G.Roy. However, the learned counsel for the respondents states that examination of all

contd-....7

the cited witnesses is not a mandatory requirement. We find much force in the contention of the respondents' counsel. It is well-settled that if the evidence examined by the Enquiry Officer proves the alleged misconduct of the delinquent official, the non-examination of some of the listed witnesses would not vitiate the enquiry. But we must observe here that one of the star witness<sup>es</sup>, namely, Shri Chamanbhai on whom the department seemed to rely heavily was not cited as a witness although in the list of documents, the statement of this witness recorded on 20.4.1987 during the fact finding enquiry was listed as one of the documents on which the department relied. We are convinced that having relied upon the aforesaid statement, the department ought to have cited and produced the said Shri Chamanbhai as witness which has not been done. We notice that this person has been produced as a defence witness by the applicant during the course of which he has vehemently denied the correctness of the statment dated 20.4.1987 attributed to him. He states in his deposition before the Enquiry Officer that money was forcibly thrust into his pocket and was latter taken out from the pocket by the Vigilance people.

11. That leads us to the question as to whether the Enquiry Officer had followed the correct procedure while conducting the enquiry. On going through the depositions of the various witnesses recorded by the

Enquiry Officer, we find that all the witnesses have been asked <sup>the</sup> ~~the~~ questions as to whether the statement recorded by the fact finding officer, who had held the preliminary enquiry, was correct or not. Most of the witnesses have stated that the deposition attributed to him is correct. However, the Enquiry Officer does not seem to have considered it worthwhile to reproduce the earlier depositions of the witnesses so that the delinquent officer could properly exercise his right to cross-examine the witnesses. Here we may repeat that the copies of the statements recorded by the Chief Vigilance Inspector, namely, Shri M.L.Sharma (described as the "fact finding officer" hereinabove) were admittedly not given to the applicant. All that he was allowed to do was to inspect those statements on a particular date. This in our considered view would not be sufficient compliance with the rules and instructions on the subject nor would it afford the applicant sufficient time to take copies of those statements, so that the witnesses could be confronted with those statements during the course of the regular enquiry. The requirement to give to the delinquent official the copies of statements made during the course of preliminary or fact finding enquiry is not an empty formality. The Hon'ble Supreme Court has in its judgment in the case State of Punjab Vs. Bhagatram ( 1975 (1) SLR 2 ) held that the object of supply of copies of statements recorded during the preliminary

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enquiry is that the government servant will be able to refer to the previous statements of witness<sup>-es</sup> proposed to be examined against him and unless the statements are given to the government servant, he will not be able to have an effective and useful cross-examination. Similarly, the Calcutta Bench of this Tribunal in its judgment in Sankri Pada Mukherjee Vs. Union of India & ors., reported in 1986 (2) CAT 166, held that where a preliminary enquiry report had been submitted by the CBI which formed the basis of the allegations levelled against the delinquent, it was incumbent on the department to furnish all copies of preliminary enquiry report to the delinquent ~~as~~ so as to enable him to effectively defend himself. In the instant case, as already mentioned, the copy of the preliminary enquiry report submitted by Mr. M.L. Sharma on 27.6.1987 on the basis of the preliminary enquiry/vigilance check conducted by the raiding party headed by him on 20.4.87 was not furnished to the applicant and we are convinced that it was this report which formed the basis of the charge-sheet issued by the Disciplinary Authority to the applicant. The learned counsel for the respondents has made available file No. EC/161/27/601 pertaining to the office of DRM, Baroda, and on going through the same, we find that not only was the detailed preliminary report submitted by Shri M.L. Sharma CVI, Ratlam, but

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he had also annexed thereto the draft of the article of charge as also the summary of evidence recorded during that preliminary enquiry. We are convinced that the applicant has been prejudiced in his defence by non-furnishing of a copy of the preliminary report and the complete copies of statement of the witnesses recorded during that preliminary enquiry.

13. Another important illegality which we find in this case is the active role played by the Enquiry Officer in examining the witnesses as also the applicant during the course of the enquiry. The questions have been put to each and every witnesses by the Enquiry Officer himself. Not only that, he has also put leading questions to the witnesses and on some occasions even cross-examined them. It clearly appears that the Enquiry Officer was interested in acting as the prosecutor in this case and that seems to be the reason why he did not insist upon the appointment of a presiding officer who could conduct the examination-in-chief of the departmental witnesses. The Enquiry Officer has also cross-examined the applicant when all that he was required to do was to put general questions to the applicant to enable him to explain the circumstances appearing against him in the evidence, Chamanbhai, who appeared as a defence witness has also been extensively cross-examined by the Enquiry Officer

contd...11



with a clear intention to discredit him and to impeach his credibility. This was certainly not the function of the Enquiry Officer who was expected and legally required to act impartially and not in a biased manner. He was discharging quasi-judicial functions and was not supposed to act as the departmental representative.

14. During the course of his arguments, the applicants' counsel extensively quoted from the evidence recorded by the Enquiry Officer and argued that there were inherent contradictions in the different versions given by the witnesses. He made particular reference to the fact that admittedly no money was directly accepted by the applicant as illegal gratification although an amount of Rs.26/- representing the correct and genuine charges were paid to him. According to the learned counsel the story given by the witnesses that it was at the instance of and in the presence of the applicant that the said extra amount of Rs.17/- was paid to the loader, namely, Chamanbhai was highly improbable and that there was no reason why the applicant would not have directly accepted the additional amount of Rs.10/- for himself and to have asked the decoy to pay the remaining extra amount of Rs.7/- to the loader. Although we do not find this contention of the learned counsel to be entirely without substance, yet we are refraining from expressing any opinion on this question. That <sup>is</sup> so in view of the nature of the order that we propose to pass in this case.

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15. Last, but not the least, important fact which we notice in this case is the illegal exercise of powers of Appellate Authority by the same person who had acted as the Disciplinary Authority. As already mentioned, Sh. Mukul Jain who was at that time holding the charge of DCS, Baroda, issued the charge-sheet against the applicant. When the appeal was filed by the applicant against the imposition of the penalty, the same person was holding the office of the Sr. DCS, but he did not care to find out whether he was competent to hear and decide the appeal. The said Sh. Mukul Jain proceeded to decide the appeal instead of referring the matter to a higher authority for appointing somebody else as the Appellate Authority in this case. We also find that the Disciplinary Authority has not passed a reasoned and speaking order while imposing the punishment. The points raised by the applicant in his reply to the charge-sheet and the enquiry report do not at all seem to have been considered by the Disciplinary Authority. He has passed a cryptic order imposing punishment, stating that he agrees with the findings of the Enquiry Officer. The performance of the Appellate Authority has been no better. Even after giving a personal hearing to the applicant, the Appellate Authority gave no reasons and passed a brief order which can by no stretch of reasoning be considered to be a speaking order.

16. In view of the observations recorded herein-

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-above and after considering the rival contentions made by the learned counsel for the parties, we are convinced that the enquiry in this case is vitiated and the impugned orders of punishment and rejection of appeal are not sustainable. We accordingly allow this O.A. and quash the impugned orders. We further direct that a fresh inquiry shall be conducted from the stage of service of charge-sheet but only after the copies of relevant documents including the preliminary enquiry report ( vigilance report ) and the statements of all the witness<sup>es</sup> recorded during the preliminary enquiry are furnished<sup>ed</sup> to the applicant. In the meantime, it shall be open to the respondents to keep the applicant under deemed suspension as was done during the course of enquiry proceedings earlier. Needless to say that during the period he remains under deemed suspension, he would be entitled to subsistence allowance under the rules. As regards the back-wages, we leave it to the competent authority to pass a speaking order on this aspect after the conclusion of the fresh enquiry proceedings as ordered above. We may in this regard refer to the judgment of the Apex Court in the case State of Punjab & ors. Vs. Dr. Harbajan Singh reported as 1996 (2) SC Services Law Judgments 138, wherein it was held that while remitting the matter to the Disciplinary Authority to follow the procedure from the stage at which fault was pointed out and to take action according to law, the Court would not be

(2)

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justified to direct immediate reinstatement with consequent benefits which question would have to wait till the conclusion of the enquiry and the final orders passed therein. It was further held that pending enquiry in such cases, the delinquent must remain under deemed suspension.

17.

However, we consider this to be <sup>a</sup> fit case where costs should be awarded. We assess the same at Rs.1000/- which the respondents shall pay to the applicant within 2 months from the date of receipt of a copy of this order.

18.

With the above directions, this O.A. is finally disposed of. The departmental records to be returned to the respondents' counsel.

Sd/-

( T.N.Bhat )  
Member (J)

Sd/-

( V.Radhakrishnan )  
Member (A)

SSN...

Prepared by: 286  
3/8/98  
Reviewed by: *[Signature]*  
Date Copy: *[Signature]*

अध्यक्ष (अ.)  
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In the Central Administrative Tribunal at Ahmedabad.

O.A.482/89

M.B.Solanki ....Applicant

V/s

Union of India & Others....Respondents

List of Citations by applicant

1.Appointing authority-competancy to issue removal order  
Art.311(1) of Constitution of India

Rly servant Dis.Appeal rules 1968 4th edition

page 9 para (7) Authority competent to impose major penalty

page 10 para (8) "Appointing authority" of staff in relation to  
imposition of penalties of dismissal/removal/Compulsary  
retierment-clarification

Page 11 Appointing authority where records are not available

Schedule of powers and appointing authority.

✓ 1. 1990(12)ATC page 388 para 18 to 21 & 69,72  
A.S.Murthy

2.The authority and the person issuing chargesheet or  
initiating proceeding cannot act as Appellate authority

Shri Jain while working as DCS-issued the chargesheet and  
Appeal was also decided by him-not permissible

Please refer the page 269 and 270 under the head Determination  
of Appeal.-the word institution of proceedings...

✓ 1. 1990 (12 )388 ATCpara 55to59 and 61 to 63.  
A.S.Murthy

3.The DCS-ADI was not having the competency authority and power  
to punish the applicant nor can have the dual charge.

Rly Servants (D&A)rules 1968

Page 4 Disciplinary action against the employee not under the  
the administrative control of the authority ,procedurally  
wrong.

Rly.Board's order E(D&A)72RG 6-13 of 16/10/73 and  
E(D&A)78 RG 6-15 of 10 .1.79,E (D&A)RG-1546-7-79.

✓ 1990(12)ATC388 para 61,68,69to 72

4.Preliminary inquiry-report -non supply -

The preliminary inquiry report and the files pertains to the  
same not made available to the applicant-relied by the inquiry  
officer and returned to the concerned authority page 17,19,21 of  
the original file produce before the court .



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Even the documents No.1to 17c and 21c to 25c were not in the file but were made available to E.O.

Even the Tribunal was also not able to examine the same in absence of producing. Denial of natural justice. the statement made and material relied behind the back of the applicant is improper and violative of natural justice.

① ✓ 1. AIR 1982 SC 937 para 2,3,  
State of U.P. v/s Mohd. Sharif

② ✓ 2. AIR 1961 SC 1623 para 9,10  
State of M.P. v/s Chintaman

③ ✓ 3. 1988(1) ATR371 para 5,6.  
Gunandhi Sahu v/s Union Of India

④ ✓ 4. 1992 (19) ATC659 para 11 to 16  
Harigiri v/s Union of India

✓ 5. 1990(14) ATC 99 para 13 to 17  
V.D. Joseph v/s Union of India

5. Non supply of documents.

① ✓ 1. 1987 (2) ATC 205 para 4 to 6  
Pattipaban Ray v/s Union of India & Others.

✓ 2. 1989(9) ATC21 para 4  
Jagannath Behra v/s U. Of India

✓ 3. 1989(10) ATC565 para above 6, 7, 11 (Exemplary given)  
Sachidanand Singh v/s Union of India

✓ 4. 1990(14) ATC99 para 8, 9, 13, 1017  
V.D. Joseph v/s Union of India

6. No effective defence could be prepared due to non supply of documents before appointment of inquiry officer since there is an important stage either to drop the charges after considering the defence or to convert into minor penalty chargesheet or to proceed with the inquiry.

Rly Servant(D&A) rules 1968.

✓ page 144 Dropping charges after receiving written statement of defence

7. Inquiry  
effect of non examining the prosecution witness

① ✓ 1. 1990(12) ATC353, para 5,6.  
K. Chalamaiah

8. effect of non examining the key witness  
Chamanlal Loader not examined

① ✓ 1. 1989 ATR page 29 para 10 to 20  
Dr. O.P.S. Luthra v/s Union of India & Others.

1986(2) SLJ 167  
Sankari Pandey Mukherjee  
Page 166 para 5 to 8

ATC 10116



2. 1990(12)ATC350 para 5  
Trindha panda

3. 1990(14)ATC99 para 7  
V.D. Joseph

9. Burden of proof

Onus lies on prosecution and not on applicant

Q 1989(10)ATC565 relevant page 567, para 7.

10. Inquiry officer cannot be examined and cross-examined the applicant extensively and no P.O. was appointed so performing the dual role - not permissible inquiry to be vitiated.

Q 1. AIR 1958 SC 6 para 9, 11, 13, 20, 21, 24.

2. V.D. Joseph v/s Union of India  
1990(14)ATC 99, para 7

3. 1991 (18)ATC560, para 6, 7,  
K. Kannan v/s U.O. India

Vol. 19 ATC 1992 659

Sel. Vol. (2) 1986 165.

4. 1991(18)ATC 33 para 11, 12.  
G. Selavathy v/s Director Social welfare

Q 5. 1987(4)ATC727 para 6, 7, 8.  
Prem Baboo v/s Union of India

11. Inquiry officer report is biased and one-sided without appreciating the defence and the evidence of defence witness..

12. No eyewitness or direct evidence substantiating the charge inquiry to be vitiated.

13. Penalty orders are perverse and non-speaking both by D.A. and by Appellate Authority.

Q 1. 1988(7)ATC552 para 6.  
R. Ramasesiah v/s G.M. Southern Railway.

Q 2. 1986(2)ATR 405, para 8, 10.  
Tarlochan Singh v/s Union of India

3. 1990(12)ATC388 para 52, 53.  
A.S. Murthy

14. Effect of illegal orders - to be set aside and all consequential benefits of backwages continuity of service and promotion if given to the juniors required to be given - due to overage and with the stigma could not get the employment.

1. A.S. Murthy v/s Station Director.  
1990(12)ATC 388 para 108

2. 1991 (18)ATC560 para 7  
K. Kannan

15. Cost of the litigation.

cost of Rs.5000 to be atleast awarded since the applicant was not at fault and all illegality and lapses are at thier instance for the same the applicant and his entier family life ruined.

16. Case to be decided on all points

1. 1990(12)ATC388 para 73.  
A.S.Murthy v/s Station Director

17. Review not exhausted.

The amendment in the rules came on 20 /10/89 while the appeal rejected on 6/10 89 -even otherwise once the petiton admitted the case is not to be remitted on that ground even it may be statutory

- ① ✓ 1. 1971 SC 33. it should have been a preliminary objection and not at the time of final hearing.

18. Judgment of - Ghoshyan and Nenu Thakur,  
unreported CA 7-A'Beu,  
Shubla  
K. G. Singh  
P. S.

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(26)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A.No..482/89

M.B.Solanki .....Applicant

v/s

Union of India & Others ...Respondents.

AFFIDAVIT

I, M.B.Solanki the applicant abovenamed do hereby states and stating on oath as under:-

1. I hereby states that the respondents have not produce any file pertaining the vigilance inquiry and the statements and report of the vigilance officer at the time of final hearing. The DAR file produce by them clearly shows that from page 17 and 19 that the other file was also made available to the Enquiry officer and the same was returned. The page No. 1 to 17 C and 21C to 25C and the vigilance report was not before the Honorable Tribunal.

2. The respondents have stated about non supply in their written statement in para 6 internal page 12 actual page 91 and claim confidentiality and not relied by the respondents and hence not to be supplied.

3. I have dealt the same in rejoinder para 6 internal page 5 about non supplying the same.

4. The respondents now on 10/10/97 producing the said file behind my back and not made available to me. However my advocate have perused at a glance without copy of the same furnished to my client and is objected to produce at the stage after final hearing is over and without supplying the copies is against the practice and procedure.

5. As per my advocate's information, the vigilance officer has prepared the report and also drafted the charges and on the basis

of the same the DCS has issued chargesheet and non of the documents or the file was made available in the inquiry and Enquiry officer has consider the same and returned to the authority it means that extrenious material is used which was behind my back and intentionally not listed in the chargesheet. this is against the law of SupremeCourt in Chintamn sadashiv Vaishampayanv/s State of M.P.as cited in the list of citation.

6.The respondents presant stand is contradictory to their written statement .In written statement they have stated in para 6 on page 12 as under:-

"It is submitted that the Vigilance Report was not listed as document.....relied upon by the department."

now after the final hearing is over the respondent made an attempt to correct the error but fact remains and I hereby states that what is in the file produce on 10/10/97 is nor made available to me in the inquiry nor before or after the same and therefore it amounts denial of principles of natural justice and fair play.

< M.B. Solanki

#### AFFIRMATION

I, M.B. Solanki do hereby states that what is stated in the aforesaid affidavit para 1 to 6 is correct and on adivse of my advocate and I accept the same and I have not supressed any material fact.

Solely affirm before me on 13/10/97

< M.B. Solanki  
M.B. Solanki

I identify Shri M.B. Solanki the applicant and he has affirm and sign the above affidavit in my presance before me on 13/10/97.

Kiran K. Shah  
Kiran K. Shah

Advocate for applicant.

< M.B. Solanki  
M.B. Solanki

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CAT/J/13

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A.NO.** 424/91  
**T.A.NO.**

DATE OF DECISION 23/6/98.

Mr. S.N. Desai

Petitioner

Mr. G.R. Malhotra

Advocate for the Petitioner [s]

Versus

Min of India and Others

Respondent

Mr. R.M. Vin

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Radhakrishnan, Member (A)

The Hon'ble Mr. P.C. Kannan, Member (J)



S.N. Desai,  
At & P.O. Madhar,  
Vis: Saiyan, Dist.: Surat

... Applicant

(Advocate: Mr. G.R. Malhotra)

VERSUS

1. Union of India, through  
The General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.
2. The Divisional Railway Manager,  
Bombay Central,  
Western Railway,  
Bombay Central.
3. The Senior Divisional Commercial  
Superintendent,  
Western Railway,  
Bombay Central.

... Respondents

(Advocate: Mr. R.M. Vin)

JUDGMENT

O.A./424/91

Dated: 23/6/98

Per: Hon'ble Mr. P.C. Kannan, Member (J)

The applicant has filed the above O.A. under Section 19 of the Administrative Tribunals' Act and claimed the following reliefs:-

(A) The Railway Authority i.e. Senior D.C.S. Bombay Central may kindly be directed to set aside the order intimated to the applicant at Annexure 'A' of this petition and to put back the applicant on the post of Senior Reservation Clerk with effect from 11-1-91 and with full back wages.

(B) Any other relief as deemed fit in the interest of justice.

Conced..3/-

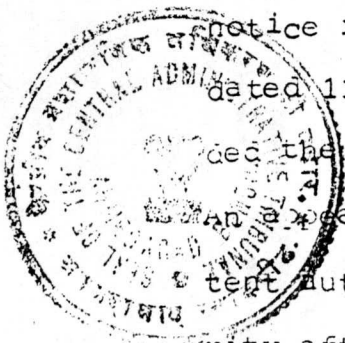


2. The case of the applicant is that he was initially appointed as Loco Cleaner under the Respondents on 4.6.66 and he was subsequently promoted as Second Foreman in the year 1971. In the year 1979, the applicant was declared as surplus staff in Loco and as such was utilised for sometime as Goods Clerk from 1979 to 1987 and thereafter was posted as Passenger Booking Clerk (Reservation). The applicant was further promoted as Senior Booking Clerk in 1988 and posted at Navsari. While he was working as Senior Booking Clerk, he was chargesheeted vide memo dated 23.1.89 (Annexure A-2). An inquiry was held in accordance with DAR Rules and the Inquiry Officer vide his report dated 1.10.90 (Annexure A-6) held that the applicant was not guilty of committing any acts of commission or omission as alleged in the charge sheet. A copy of the Inquiry Report was furnished to the applicant and he also submitted a representation on 21.10.90. The disciplinary authority (DCS) without affording a show-cause notice regarding the enhancement of punishment, by the order dated 11.1.91 held the applicant guilty of charges and awarded the punishment of "removal from service" (Annexure A-1). An appeal against the punishment order was made to the competent authority on 4.3.91 (Annexure A-3). The Appellate Authority after hearing the applicant vide order dated 13.5.91 (Annexure A) reduced the punishment to "compulsory retirement from service". The Appellate Authority passed the following order:-

"Personal hearing had been granted to you on 1.4.91. In your appeal filed on page 34 last but one para, you had mentioned your Defence Counsel Mr. A.V. Desai, retired

Contd...4/-

for certain *Dr*  
irregularities.



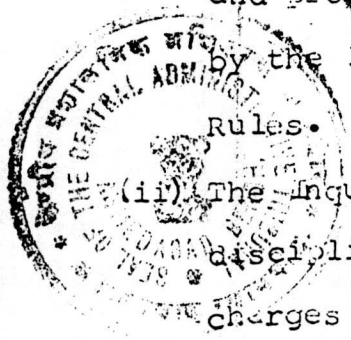
SS/BIM would come with you for personal hearing. However, you came with Shri Bhagwat, Divl. Secretary, WRSU. Shri A.V. Desai, Retired SS/BIM did not come with you.

2. You have given assumption in appeal that ticket No. 4364 might have been issued out of series prior to 1.4.88 whereas the ticket has been issued on 1.4.88 which is as per accountal and issue of ticket & DFC Book. It has also been found true that you reserved berths for passenger in 941 Dn. of 2.4.1988 without collecting reservation and sleeper charges on 30.3.1988. For charge No.3, a benefit of doubt is given to you. Due procedure has been followed in handling the case. Looking to all above, punishment is reduced as under:-

"COMPULSORY RETIREMENT FROM SERVICE".

3. The applicant has challenged the orders of the Respondents mainly on the following grounds:-

(i) Two prosecution witnesses were cited as the main witnesses in the charge sheet. However, these two <sup>persons</sup> did not attend the enquiry inspite of several requests. The Inquiry Officer thereafter dropped these two witnesses and proceeded with the inquiry. The procedure adopted by the Inquiry Officer was against Rule 9(17) of the Rules.



(ii) The Inquiry Officer vide his report submitted to the disciplinary authority, clearly held that none of the charges were established. The disciplinary authority disagreeing with the Inquiry Officer imposed the punishment of removal without issuing notice to the applicant to the effect that he was to disagree with the

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Inquiry Officer's finding and to show-cause why the applicant should not be imposed punishment under the DAR Rules. The order of the disciplinary authority is therefore liable to be quashed.

(iii) The Appellate Authority while reducing the penalty from termination to that of compulsory retirement from service did not consider the various grounds taken in the appeal. The Appellate Authority ought to have considered the fact that prosecution did not examine any witnesses and the documents on which prosecution relied upon were not introduced in the DAR inquiry in terms of Rule 9(17) of the Rules. The order of the Appellate Authority is therefore liable to be quashed.

(iv) The disciplinary authority as well as the Appellate Authority has shifted the burden of proving the charge on the applicant as the prosecution utterly failed to examine any prosecution witnesses or properly introduced the documents. The whole inquiry is therefore vitiated on account of breach of the mandatory provisions of Rule 9 of the Railway Servants (D&A) Rules.



4. The respondents in their reply denied the allegations and stated that the disciplinary authority had held the applicant guilty of charges levelled against him and also recorded the reasons while passing the order of "removal". The Appellate Authority had reviewed the punishment imposed and reduced the same to that of "compulsory retirement". The respondents also denied that punishment of compulsory retirement was too harsh or that the inquiry was vitiated. With regard

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to failure to examine the witnesses referred to in the charge sheet, it was stated that the Inquiry Officer had recorded the reasons for not examining the statement of the said prosecution.

5. We have heard Mr. Malhotra for the applicant and Mr. Vin for the respondents.

6. Shri Malhotra referred in detail the D.A. Rules and stated that in terms of Rule 9(17), the witnesses on behalf of the prosecution shall be examined, cross-examined or re-examined and if necessary, recalled. However, in this case the prosecution never examined any prosecution witnesses or introduced the documents in accordance with the Rules. The whole inquiry report is therefore liable to be struck down on this ground alone. He also submitted that in this case the Inquiry Officer absolved the applicant in respect of all the three charges. The disciplinary authority did not agree with the Inquiry Officer. The disciplinary authority without issuing any notice to the applicant that he was disagreeing with the Inquiry Officer and to show-cause why action should not be taken to impose the punishment of removal on the applicant, proceeded with the matter and imposed the punishment. This action of the disciplinary authority is contrary to the principles of natural justice and is therefore liable to be quashed. In this connection, he referred to the judgment of the Calcutta Bench of C.A.T. in the case of Chittaranjan Mazumdar v. Union of India & Ors. AIR (1993) 1 C.A.T. 323. In that case, the disciplinary authority did not agree with the findings of the Inquiry Officer and came to the conclusion that the applicant was guilty of the charges. He accordingly impo-

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sed the penalty of reduction of pay to the last stage, which order was challenged in the said O.A. After hearing appeals, the Tribunal struck down the punishment order of the disciplinary authority. The following observations of the Tribunal at Para 5 are relevant:-

"The main thrust of the arguments advanced by Mr. Balai Chatterjee, the learned counsel for the applicant is that the disciplinary authority gave no notice whatsoever to the applicant that he was to disagree with the Inquiry Officer's findings. Mere furnishing a copy of the Inquiry Officer's report to the applicant would not be sufficient where the disciplinary authority intended to disagree with the Inquiry Officer's findings exonerating the applicant. Since the Inquiry Officer exonerated the applicant from the charges levelled against him, there was hardly anything for the applicant to represent against the same. He was, therefore, suddenly confronted with the disciplinary authority's order imposing punishment."



Shri Malhotra also referred to the judgment of the Gujarat High Court in the case of Lavjee Punja vs. UOI & Ors. 1992 (1) GLR 498. In that case, the Hon'ble High Court observed that the disciplinary authority is required to pass a 'Speaking Order'. As the order of removal passed in that case was a cryptic order, the court struck down the same. A perusal of the order of the disciplinary authority in this case (Annexure A-1) indicated detailed reasons for imposing the penalty of removal. This judgment therefore is not applicable to the facts of the case.

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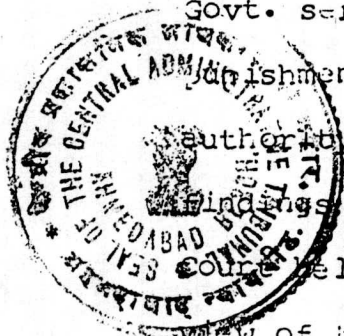
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8. Shri Vin, counsel for the respondents submitted that the inquiry was undertaken in terms of the DAR Rules and the disciplinary authority imposed the order of removal from service based on evidence and the Appellate Authority reduced the punishment to "compulsory retirement". He stated that the inquiry was in accordance with the Rules and cannot be challenged.

9. We have carefully considered the submissions made by the counsel and also perused the records of the case. Shri Malhotra, the learned counsel for the applicant submits that the disciplinary authority gave no notice to the applicant that he would disagree with the Inquiry Officer's findings. In support of his submission, he referred to the judgment of the Calcutta Bench of the C.A.T. in the case of Chittaranjan Mazumdar vs. UOI (1993 (1) ATR (CAT) 323). We find that the Supreme Court in the case of State of Rajasthan vs. M.C. Saxena 1998 (1) SC SJ 379 has held that the disciplinary authority can disagree with the findings arrived at by the Inquiry Officer and without issuing any show-cause notice to the delinquent Govt. servant, act upon his own conclusions and impose any punishment. The only requirement is that the disciplinary authority must record reasons for his disagreement with the findings of the Inquiry Officer. In such cases, the Supreme Court has held that there is no violation of natural justice. In view of the above, we reject the contention of the applicant that the order of the disciplinary authority is liable to be quashed on this ground.

10. Rule 9(17) of the Railway Servants (D&A) Rules, 1968 reads as follows:-

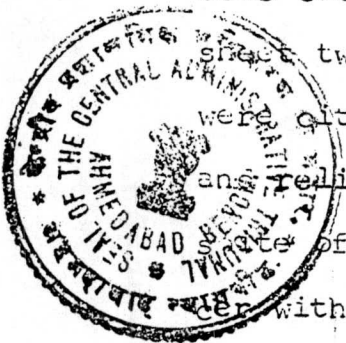
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"On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross-examined by or on behalf of the Railway Servant. The Presenting Officer, if any, shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

In spite of the mandatory provisions of the rules, the inquiry officer failed to examine any one of the prosecution witnesses cited in the charge sheet. We find that in the charge sheet two officers of the Vigilance Wing of the Respondents were cited as the main witnesses on behalf of prosecution and relied upon four documents in support of the charge. In spite of mandatory provisions of the rules, the Enquiry Officer without examining the witnesses received in evidence all the documents. How these documents were received in evidence has not been explained by the Enquiry Officer. The disciplinary authority had drawn certain inferences on the basis of certain entries in DFC book which were never introduced in evidence. The disciplinary authority and the appellate authority has placed reliance on such documents to come to a finding that the applicant was guilty of certain charges regarding alleged issue of a ticket and that the applicant failed to collect certain reservation charges. We are of the view



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