

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

14

O.A. No. 112 of 1990.
T.A. No.

DATE OF DECISION 05th October, 1993.

Shri N.D.Bhambhani Petitioner

Party in Person. Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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Shri Nanakram Dolatram Bhambhani,
48/ 977- Rampir Mandir Road,
Opp : Old Wadaj Bus Stand,
Ahmedabad - 13.

...Applicant.

Versus

1. Union of India
(Notice to be served through
The Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi.)
2. General Manager,
Western Railway,
Churchgate,
Bombay.
3. Divisional Railway Manager,
Western Railway,
Pratapnagar,
Baroda.
4. Sr.Divisional Commercial Superintendent,
Western Railway,
Pratapnagar,
Baroda.
5. Divisional Commercial Superintendent,
Western Railway,
Pratapnagar,
Baroda.
6. Enquiry Officer,
Sr.CMI, Dabhoi,
Western Railway,
Dabhoi.

...Respondents.

(Advocate : Mr. N.S. Shevde)

JUDGMENT
O.A.NO. 112 OF 1990.

Dated : 05.10.1993.

W Per : Hon'ble Mr. M.R. Kolhatkar : Member (A)

This is an original application under Section 19
of the Administrative Tribunals Act, 1985. Disciplinary

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Proceedings as for a major penalty were initiated against the applicant on the following charges :

Article I. Shri N.D.Bhambhai, while working as TC-GDA on 24.4.85, pulled emergency Chain from Chair Car Coach No.3004 of 26 UP of 24.4.85, because manager of pantry car did not provide him with Bread on his demand. Since there was no extra stock with the Manager.

Article II. He pulled the chain as many as 4 times, causing extra detention of 8" to 26 UP. This act of his tantamounts to gross and serious misconduct and is highly unbecoming of a Rly. Servant."

Ma A departmental enquiry was held against him and the penalty of removal from service was imposed on him on 29.6.1987, vide Annexure-A/10. The speaking order is reproduced below :

Speaking orders : "Since the defendant has not turned up for inquiry ~~so~~ inspite of the efforts made by the EO. The findings of EO are accepted. Shri Bhambhani, TC has acted in a manner ~~which~~ which is unbecoming of Railway Servant."

The applicant appealed against the order imposing penalty. As the appeal was rejected by Sr.Divisional Supdt. on 1.3.1988, vide Annexure-A/13, the applicant filed a Review Application which was rejected by the Divisional Railway Manager, on 10.4.1989, vide Annexure-A/21.

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2. The applicant has impugned the above three orders viz., the order of the disciplinary authority, the order of the appellate authority, and the order of the revisionary authority, on the ground that the enquiry proceedings were held in disregard of the principles of natural justice, that they suffer from the vice of non-application of mind and that the findings are also perverse and violative of Article 14 and 16 of the Constitution. He has requested for quashing and setting aside the three impugned orders and directing the respondent authorities to reinstate the applicant and grant him all consequential benefits and for granting such other reliefs as may be deemed fit and proper.

3. The applicant was initially represented by the counsel but with effect from 07.01.1993, he had retired his counsel and has appeared in person. The respondents have filed a written statement and the applicant has filed his rejoinder. The applicant filed written submissions in lieu of arguments and we have heard the learned advocates for the respondents. Although the written arguments of the applicant are of not much help because they refer to certain pending matters with which we are not at present concerned, the application of the applicant is detailed enough with relevant case law cited.

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4. It would be seen from the speaking order that the report of the enquiry officer is ex parte because according to the enquiry officer, the applicant though notified failed to attend the enquiry. The report of the enquiry officer may be seen at Annexure-A/24. According to the enquiry officer's report the enquiry was held on following days:

10.12.1986, 17.12.1986, 22.1.1987,
20.2.1987, 13.03.1987, 28.03.1987,
and 15.04.1987.

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According to Inquiry Report, the applicant attended only on the first four days. (10.12.1986, 17.12.1986, 26.12.1986, and 22.1.1987). He did not attend on the remaining four days. The applicant has denied that he had notice of the enquiry on three out of four days and namely 20.2.1987, 13.3.1987, 28.3.1987. He states that he was informed about the enquiry on 15.4.1987, but he had sent a post card intimating his inability to attend the enquiry as he was unwell. According to the respondents such a post card is not on record.

5. Regarding the absence of the applicant, the enquiry officer has made the following observations :

"This all leads (sic) to prove that Shri N.D.Bhambhani has ignored to attend the inquiry perhaps his guilty conscience did not allow him to attend the inquiry."

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Although the applicant did not emphasize this point, we feel that such observations of the enquiry officer appear to indicate that the enquiry officer did not approach his task with an open mind and hence could be said to be prejudiced.

6. The charge against the applicant is that he pulled the emergency chain of 26 UP train four times, causing extra detention of 8 minutes of the train. According to the respondents it is only bonafide passengers or the employees on duty on the train who can pull the emergency chain. The applicant was a Ticket Checker on duty on platform, and he had no business to go to the pantry car and pull the chain. The say of the applicant is that he noticed one bag containing 50 kg rice which was passing through his gate and ~~the~~ questioned and was told that it had come from the Dining Car. On refusal of the Dining Car Manager to pay the charges, a quarrel arose and he had no alternative but to pull the chain to recover the dues. ASM and the guard were aware of this. According to the respondents, however, the applicant had pulled the chain because he wanted Pantry Car Manager to provide him one bread. Pantry Car Manager did not provide him the bread thus as he had no extra stock with him. It would be seen

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that the fact of pulling the chain was not indisputable. It was, therefore, necessary to be ascertain whether there were valid reasons for pulling the chain and what should be the penalty for the same. According to the applicant there were sufficient and valid reasons and according to the respondents, there were no such reasons. The issues framed by the enquiry officer - - - are given below :

- (1) Who pulled the chain of 26 UP on 24.4.1985, at Godhra ?
- (2) Was emergency chain really pulled at Godhra of 26 UP on 24.4.1985 ?
- (3) Is a fair and sufficient chance given to delinquent ?
- (4) Are charges of 8 minutes detention of 26 UP at Godhra on 24.4.1985, proved against delinquent ?

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It has been contended by the applicant that the issues are not properly framed and we are inclined to agree with this view. Issues No.1, 2, and 4 are non-issues, because it is an admitted fact. The real issues as to what according to the Railway Administration was the reason for the delinquent to pull the chain, what is the

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and whether it is adequate defence of the delinquent, what is the evidence on either side and what is the result of the enquiry, are not framed by the enquiry officer. However, the enquiry officer discussed the reasons given by the Railway Administration in terms of evidence of Shri R. Mani, the Pantry Car Manager, who stated that the delinquent demanded bread from waiter, - - - - - abused the head waiter, shouted loudly and called the police to search Pantry Car and that he was not duty bound to supply the bread to non-passengers. In this statement of the Pantry Car Manager there is a reference to the incident of the delinquent having asked the police to search the Pantry Car. The purpose for which delinquent wanted to search ^{the} Pantry Car, is not mentioned. Generally, no body would think of calling Police because of failure to supply a bread. However, if it was the intention of the delinquent to search the Pantry Car for any excess personal baggage of the Pantry Car Manager, without payment of Railway dues, he could well be justified in calling the police. The statement of the Pantry Car Manager, therefore, indirectly supports the contention of the delinquent. Shri Omprakash TNCR, stated that the delinquent had pulled the emergency chain four times, causing 8 minutes' detention. He is also reported to have stated that the delinquent had demanded bread from the Dining Car Manager. However,

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the statement given by the TNCR immediately after the incident vide Annexure-A/2, has a different version.

He has stated that the delinquent wanted to check the Dining Car without valid reasons. At that time the TNCR did not state anything regarding bread.

On the other hand he had confirmed the delinquent indirectly by referring to his intention to check the Dining Car.

7. Now having given the version of Railway Administration it was the duty of the enquiry officer to refer to the defence of the delinquent. The delinquent had denied the charges and he had given a statement on 15.11.1985, vide Annexure-A/3. The statement was on the files with the enquiry officer and he ought to have referred to the statement and then made an assessment as to what he regarded as believable. Even otherwise, it was his duty to specifically require the delinquent to state his defence. In this connection reference may be made to Rule-9 (19) of the Railway Servants (Discipline and Appeal) Rules, 1968, which is reproduced below:

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"9 (19) : - When the case for the disciplinary authority is closed, the Railway servant shall be required to state his defence orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Railway servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any."

There is no doubt that Rule 9 (23) gave the power to the enquiry officer to proceed ex parte but this presupposes compliance with Rule 9 (19). There is nothing in the record to indicate that this Statutory rule was complied with by the enquiry officer.

8. The enquiry officer's findings in this case are given in Annexure-A/24, which are reproduced below for ready reference ,

FINDINGS.

"From the record available and evidence before me it is proved that Shri N.D.Bhamhani the then TC GDA pulled the emergency chain 4 times at GDA by 26 UP on 24.4.85 without valid and sufficient cause which resulted in 8 " ext detention to 21 UP. I agree to the answer no of the statement of Shri Omprakash TNCR BCT 15.4.87. That staff are not authorised to

emergency chain with reasons of non -
supply of bread in an unauthorised manner.

9. It would thus be seen that the enquiry officer started the enquiry with a prejudice against the delinquent, he did not frame the issues properly, and he proceeded ex parte against the delinquent without complying with statutory requirements. The contention of the applicant therefore, that the enquiry is without application of mind and is perverse appears to be borne out by the facts reviewed by us.

10. The disciplinary authority has merely referred to the fact that the delinquent did not turn up for the enquiry as reproduced above. He has not at all given the reasons for accepting the findings of the enquiry officer. He has not referred to the defence taken by the delinquent and his assessment thereof. The say of the applicant, therefore, that the order of the disciplinary authority -- shows lack of application of mind is also borne out by the record. So far as the appellate order is concerned the appellate authority has mainly dealt with the fact of the absence of the delinquent during the enquiry. He has not at all referred to the defence of the delinquent and confirmed the Thus it shows lack of appreciation of role of appellate punishment. So far as the revisionary order is concerned the authority has discussed the case in the

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format of "issue" and "remarks". But again a large part of it is devoted to the issue of absence of the delinquent from the enquiry. Regarding the question as to why the statement of the ASM on duty was not recorded by the EO, Revisionary authority has stated that the delinquent should have brought it to the notice of EO to record the statement of ASM also. Again the defence of the applicant is not discussed in terms but an indirect reference is made there~~as~~^{to} would be seen in the statement below :

"The act of the defendant in pulling alarm chain four times of an important Express train was totally unbecoming of a railway servant whatever be the provocation for doing it."

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Aparently the revisionary authority has conceded~~there~~ could have been a provocation for the delinquent to pull the chain, but he has not discussed the merits of the stand of respective parties and has also not thought it necessary to check the story of the applicant and the possibility that applicant could have been impelled by the very laudable motive ~~of~~ preventing loss of Railway revenue . We are therefore, inclined to agree that the Revisionary order suffers from the vice of non application of mind.

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11. The applicant has relied on the following case law :

1. M.J.Ninama Vs. Post Master General, Ahmedabad,
1984 GLH Page 800.

"There is only one continuous inquiry till the Disciplinary Authority takes final decision in regard to the charges levelled against the delinquent Government servant, though there are doubt stages of inquiry such as framing of charges, reply to the charges, recording of evidence, report of the Inquiry Officer, tantative conclusion by the Disciplinary Authority, final conclusion by the Disciplinary Authority and imposition of punishment. It is only in the last stage of the inquiry viz., imposition of punishment that delinquent government servant is not required to be heard under the amended provisions of Article 311 (2). However, till that last stage is reached the delinquent must be afforded reasonable opportunity of being heard so far as charges levelled against him are concerned and as observed above he could not be said to have been afforded such reasonable opportunity if he is not furnished with the copy of the Inquiry Officer's report and is not given opportunity of making representation against the tantative findings recorded by the Disciplinary Authority whether it agrees or disagrees with the findings of the Inquiry Officer."

2. Institute of Chartered Accountants of India
Vs. L.K.Ratna and others, AIR 1987 SC, P.71 :

"There is nothing in Regulation 14 which excludes the operation of principles of natural justice and entitling the member to be heard by the Council when it proceedings to render its findings. The principle of

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natural justice must be read into uninterstices of the status, unless there is a clear mandate on the contrary."

In the aforesaid case no report of inquiry was furnished to the member and therefore, it was held that the order of penalty was bad.

3. Union of India Vs. E.Bashya JT 1988 (1) SC : Page - 627.

It is observed therein that copy of the inquiry report has to be furnished to the delinquent before imposing any penalty upon him. Thus, furnishing of inquiry report to the delinquent and considering his submissions thereon before passing the final order is a vital principle of natural justice and essential requirement of Article - 311."

12. Thus, the main legal point raised by the applicant is that the enquiry was not conducted in accordance with the principles of natural justice as well as that the copy of the enquiry report was not furnished to him by the disciplinary authority before passing the order.

Although, the applicant has not referred to it, we take **Full Bench** judicial notice of the case of Premnath K. Sharma Vs. Union of India and ors., 1988 (3) SLJ 449, which after a review of a catena of case law including **Ninama's** case held that the enquiry report is material before the disciplinary authority and supply of the copy of the enquiry report prior to taking a decision on the enquiry Officer's report is necessary for compliance with the **principles** of natural justice and for fulfilment of the

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constitutional guarantee to the delinquent of having
a reasonable opportunity^{of} being heard in respect of the
charges against him. We accept the ratio of Premnath Sharma's
case.

13. The main contention of the respondents is that
the story of the applicant that he wanted to check the
pantry car to avoid loss of revenue to the Railway is not
believable and that in any case the duty of the applicant
was at the Gate and checking the compartments is the duty
of the Railway Train Ticket Examiner. The Rules did not
require furnishing of a copy of the enquiry report and the
cases which are quoted by the applicant are not applicable.

The respondents have stated without giving authority that
Hon'ble Supreme Court has also held in several cases
that supplying the enquiry report along with the order of
penalty is legal and proper and there is no violation of
rules of natural justice. The respondents have also stated
that the charges levelled against the delinquent having
been proved, the Tribunal can not sit in judgment over
the orders of the disciplinary authority, re-appreciate
the evidence and substitute its own orders for those the
disciplinary authority. For this the respondents have
relied upon the judgment of the Hon'ble Supreme Court
in the case of Union of India Versus Pramananda, reported in
1989 (2) SCC-Page - 177.

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14. In the light of the back ground discussed above, we have no hesitation in holding that the enquiry against the applicant was vitiated by lack of adequate opportunity to the applicant to defend himself, by prejudice of EO., by non-compliance with statutory rule 9 (19) of Railway Servants (Discipline and Appeal) Rules, 1968, by the enquiry officer, by the perverse manner in which the issues were framed and by the failure of the enquiry officer to discuss directly or indirectly the defence of the applicant.

The order of the disciplinary authority is not a speaking order, but shows lack of application of mind. Appellate order and Revisionary order also suffer from the vice of ^{Prejudice as also caused to the Applicant by non-supply of copy of Inquiry Report.} non-application of mind. Since the enquiry report and the subsequent proceedings are vitiated,

We pass the following order :

ORDER

1. "The application is allowed. The enquiry proceedings against the applicant are hereby quashed. Consequently, the orders of the disciplinary authority dated 29.6.1987, the orders of the appellate authority dated 1.3.1988, and the orders of revisionary authority dated 10.4.1989, are quashed and set aside.

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2. The respondents are directed to reinstate, the applicant in service.
3. The respondents ~~may~~ hold a fresh inquiry against the applicant from the stage of framing of charges and conduct it strictly according to the Rules ^{Viz.} ~~of~~ Railway Servants (Discipline and Appeal) Rules-1968. We hope and expect that the applicant will fully co-operate with the fresh enquiry.
4. We pass no orders, re :treatment of the period from the date of the issue of the orders of termination and till the date of reinstatement of the applicant, which should be done by Disciplinary authority after the conclusion of the enquiry as a part of its final orders in the disciplinary proceedings.
5. While this Tribunal is bound by the ratio of Parmanand's case, we wish to observe that the penalty of termination of service imposed by the respondents on the applicant,

even if the defence of the applicant is not wholly accepted, does not appear to conform to the well known principle of proportionality. We refer in this connection to the Supreme Court judgment in **Sardarsingh - A.I.R. - 1992 SC 417**, which gives full exposition of the principle. We hope ~~this~~ that the disciplinary authority would keep in view the observations of the Hon'ble Supreme Court in the above and allied cases before imposing the penalty.

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The application is disposed of accordingly.

No order as to costs."

R.C.Bhatt

(R.C.Bhatt)
Member (J)
05.10.1993.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)
05.10.1993.

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Date	Office Report	Order
10-1-94		<p>On being furnished a copy of the M.A. Mr. M.S. Trivedi waives service. Adjourned to 13.1.94.</p> <p><i>R</i> (K. RAMAMOORTHY) MEMBER (A)</p>
13-1-94		<p><i>R</i> *ATT Parties' advocates present. At the request of applicants/respondents' advocate. adjourned to 18.1.94</p> <p><i>R</i> K. RAMAMOORTHY MEMBER (A)</p>
18-1-1994		<p><u>M.A. 702/93 in O.A. 112/90</u></p> <p>Adjourned to 25-1-1994, at the request of Mr. Shevde as he wants to ascertain whether SLP is already filed or not.</p> <p><i>R</i> (K. Ramamoorthy) Member (A)</p> <p><i>R</i> (N.B. Patel) Vice Chairman.</p>

Date	Office Report	Order
25.1.94	Mr. N.S. Shevde has filed a written application for adjournment of the meeting. He has requested the Vice Chairman to receive the application and to consider it. The Vice Chairman has agreed to receive the application and to consider it.	Adjourned to 03.2.94 at the request of Mr. Shevde, as he has still not received any information whether SLP is filed or not. Mr. Shevde states that he will not ask for any further time on this ground.
03.02.1994.		<p style="text-align: center;">*AS*</p> <p>Adjourned to 08.02.1994, at the request of Mr. N.S. Shevde. He states that no further time will be asked for.</p> <p style="text-align: right;">(K. Ramamoorthy) Member (A)</p> <p style="text-align: right;">(N.B. Patel) Vice Chairman</p> <p style="text-align: center;">ait.</p>

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Date	Office Report	Order
8/2/94		<p style="text-align: center;"><u>M.A./702/93</u></p> <p>M.A. rejected as the order in question does not stipulate the time-limit within which it is to be complied with, which means that it is to be complied with within a reasonable time, if not forthwith. There is also no question of staying the implementation and execution of the judgment to enable the respondents to obtain stay order from the Supreme Court as the time to file SLP has already expired and no SLP is filed.</p> <p style="text-align: right;">(K.Ramamoorthy) Member (A)</p> <p style="text-align: right;">(N.B.Patel) Vice Chairman</p> <p style="text-align: center;">a.a.b.</p>