

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]

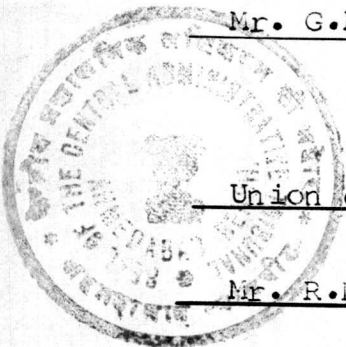
Versus

Union 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)

* NB :- Write dm copy,
revised to accept
by Mr. J.J. Dune

Office Note in
File No. 08/590/98.

* Twelfth Copy Preserved

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

... Applicant

(Advocate: Mr. S.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

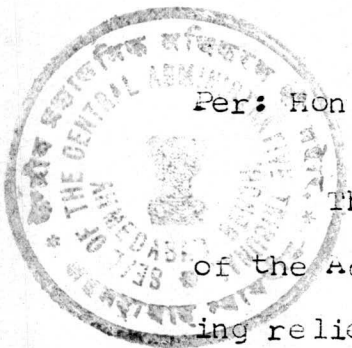
(Advocate: Mr. R.M. Vin)

JUDGMENT

O.A./424/91

Dated: 23/6/98

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



The applicant has filed the above OA 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 intimate 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.

Contd..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 D.R. 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

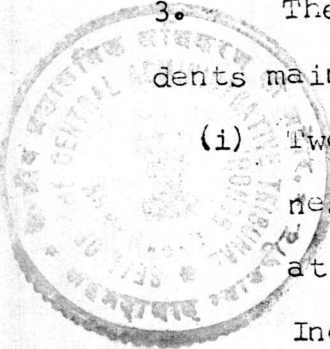
for certain
irregularities.

SS/BIM would come with you for personal hearing. However, you came with Shri Bhagwat, Divl. Secretary, WRU. 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 ^{persons} 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

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, 1968.

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

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.

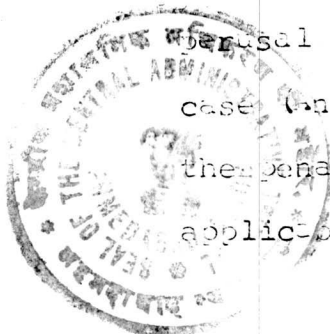
5. We have heard Mr. Malhotra for the applicant and Mr. Vin for the respondents.

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 CAT 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 im-

sed the penalty of reduction of pay to the last stage, which order was challenged in the said C.M. 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 the punishment."

7. 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 refusal 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.



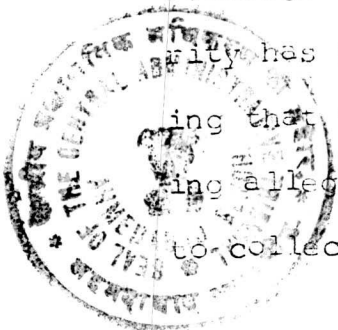
8. Shri Vin, counsel for the respondents submitted that the inquiry was undertaken in terms of the DAR Rules and the disciplinary authority imposed the order of removal from service based on evidence and the Appellate Authority reduced the punishment to "compulsory retirement". He stated that the inquiry 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) SO SLJ 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 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 (DAR) Rules, 1968 reads as follows:-

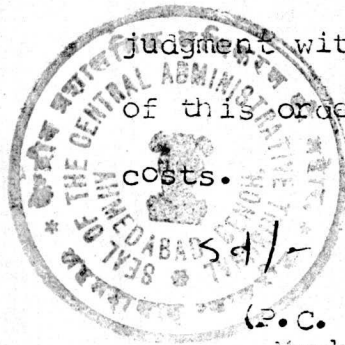
"On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross-examined 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 or 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



that the procedure followed by the Inquiry Officer to dispense with the oral evidence of the prosecution witnesses and to take into the evidence the documents relied upon in the chargesheet without their being taken into his records in accordance with the rules, is absolutely irregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with the rules ought not to have been made use of by the Inquiry Officer.

11. We are therefore of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure under D.K. Rules for proving the charges. We, therefore, set aside the punishment order as also the order of the appellate authority (Annexure A & A-1). As the punishment order is set aside, the applicant will be entitled to reinstatement with consequential benefits. The respondents shall comply with this judgment within 3 months from the date of receipt of a copy of this order. The OA is allowed in the above terms. No costs.



(P.C. Kannan)
Member (J)

(V. Radhakrishnan)
Member (A)

hki

sd/-

अनुभाग अधिकारी (खा.)
Prepared by:
जांच
Compared by:
जांच
True Copy

अनुभाग अधिकारी (खा.)
Section Officer (J),
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अहमदाबाद

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Section Officer (J),
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अहमदाबाद

(1) Total no. of the copy application. 20/99
 (2) Name of the Applicant MR. J. J. Dave
 (3) Date of presentation of application 21-01-99
 (4) No. of pages 10
 (5) Nature of the case (Ordinary or Urgent) Ordinary
 (6) Copying fee charged urgent or ordinary Rs. 5/- R.No. 30 07-01-99
 (7) Date when copy is ready Rs. 10/- R.No. 81 18-02-99
 (8) Date of delivery 18-02-99

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

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether It needs to be circulated to other Benches of the Tribunal ?

[Handwritten signature]

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

... Applicant

(Advocate: Mr. G.R. Malhotra)

VERSUS

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Western Railway,
Bombay Central.
3. The Senior Divisional Commercial
Superintendent,
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... Respondents

(Advocate: Mr. R.M. Vin)

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Dated: 23/6/98

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"Personal hearing had been granted to you on 1.4.91. In your appeal filed on page 84 last but one para, you had mentioned your Defence Counsel Mr. A.V. Desai, retired

*for certain
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.

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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, 1968.

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

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 DAR 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 CAT in the case of Chittaranjan Mazumdar vs. 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 im-

Dr

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 the punishment."

7. Shri Malhotra also referred to the judgment of the Gujarat High Court in the case of Lavjee Punja vs. UOI & Ors. 1992 (1) GLH 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.

FM

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 SLJ 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 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 (DSA) Rules, 1968 reads as follows:-

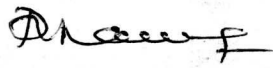
"On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross-examined 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."

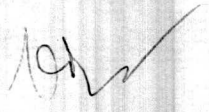
In spite of the mandatory provisions of the rules, the inquiry officer failed to examine any one of the prosecution witnesses cited in the charge sheet. We find that in the charge sheet two officers of the Vigilance Wing of the Respondents were cited as the main witnesses on behalf of prosecution and 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

Dr

that the procedure followed by the Inquiry Officer to dispense with the oral evidence of the prosecution witnesses and to take into the evidence the documents relied upon in the chargesheet without their being taken into his records in accordance with the rules, is absolutely irregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with the rules ought not to have been made use of by the Inquiry Officer.

11. We are therefore of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure under DAR Rules for proving the charges. We, therefore, set aside the punishment order as also the order of the appellate authority (Annexure A & A-1). As the punishment order is set aside, the applicant will be entitled to reinstatement with consequential benefits. The respondents shall comply with this judgment within 3 months from the date of receipt of a copy of this order. The OA is allowed in the above terms. No costs.


(P. C. Kannan)
Member (J)


(V. Radhakrishnan)
Member (A)

hki

CAT/J/13

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T.A.NO.

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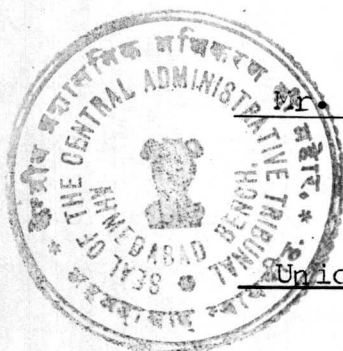
Mr. R.M. Vin

Advocate for the Respondent [s]

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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.
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(Advocate: Mr. R.M. Vin)

JUDGMENT

O.S./424/91

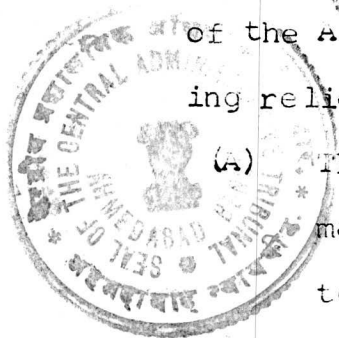
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- (B) Any other relief as deemed fit in the interest of justice.

Contd..3/-

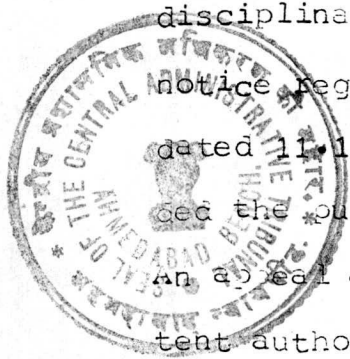


2. The case of the applicant is that he was initially appointed as Loco Cleaner under the Respondents on 4.6.66 and he was subsequently promoted as Second Foreman in the year 1971. In the year 1979, the applicant was declared as surplus staff in Loco and as such was utilised for sometime as Goods Clerk 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 84 last but one para, you had mentioned your Defence Counsel Mr. A.V. Desai, retired

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for certain *Dr*
irregularities.



SS/BIM would come with you for personal hearing. However, you came with Shri Bhagwat, Divl. Secretary, WR3U. 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 ^{persons} 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, 1968.



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

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.

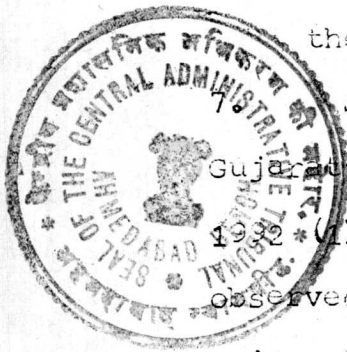
5. We have heard Mr. Malhotra for the applicant and Mr. Vin for the respondents.

6. Shri Malhotra referred in detail the D.I. 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 im-

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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 the punishment."



Shri Malhotra also referred to the judgment of the Gujarat High Court in the case of Lavjee Punja vs. UOI & Ors. 1992*(1) GLH 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.

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) 50 SLJ 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 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



