

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 21/92
T.A.NO.

DATE OF DECISION 19-12-1997.

Shri R.T.Adhvaryu

Petitioner

Mr. K.K.Shah

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr.N.S.Shevde

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. V.Ramakrishnan

: Vice Chairman

The Hon'ble Mr. T.K.Bhat

: Member (C)

Central Admin.
Divisions

Shri R.P. Adhvaryu,
Sr. ACC MAN
Western Railway,
Maninagar,
Ahmedabad.

: Applicant

(Advocate: Mr. K.K. Shah)

Versus

1. Union of India
Notice to be served
through: The General
Manager, Western Railway,
Churchgate, Bombay.

2. Divisional Railway Manager,
Western Railway,
Baroda Division,
Pratapnagar, Baroda.

3. Divisional Commercial
Supdt. Baroda Division,
Pratapnagar, Baroda.

4. Divisional Commercial Supdt.,
Western Railway, Ahmedabad. : Respondents

(Advocate: Mr. N.B. Shevde)

JUDGMENT

O.A. 21/92

Date: 19-12-1997

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

1. This O.A. is directed against the order
dated 21.11.1990 issued by the Divisional Commercial
Superintendent (hereinafter referred to as D.C.S.),
Western Railway, Ahmedabad, by which the penalty
of removal of service has been imposed upon the
applicant.

2. The applicant, while working as Assistant Coaching Clerk, Maninagar, was served with a charge sheet dated 1.8.1988, containing the imputation that while on duty on the night shift on 29/30-6-1988, he had collected Rs.110/- from some passengers but had not issued any money receipt and had thereby pocketed the said amount.

3. A written complaint was presented before the Area Manager, Western Railway, Ahmedabad on 1.7.1988, by one Surender S. Gupta containing the following allegations:

That the complainant together with some other persons, forming a Group of passengers were travelling in 17 D Train on 29.6.1988, upto Anand. But they secured extension of two tickets from Anand to Maninagar. But the ticket of a lady from that group could not be extended. When they got down from the train at Maninagar Station, the "S.M." demanded money. But, the complainant informed him that the tickets had been obtained but had been deposited at Anand. Accordingly, the passengers went to Anand and brought those tickets and gave them to "S.M." who, however, demanded Rs.440/- and also gave them advice that they could later claim refund of the same by applying at the Headquarter Office at Bombay.

4. It appears that one Shri M.N. Parmar C.M.I-II was asked to hold a preliminary (fact finding) enquiry who went to Maninagar alongwith two others, namely, Shri K.G. Parmar and Shri S.S. Dani. Some sort of enquiry was conducted and a report was submitted. The D.C.S. appointed one Shri Fernadis as the Enquiry Officer after serving the charge-sheet on the applicant. The Enquiry Officer examined the listed witnesses and submitted his report in which he held the charge proved against the applicant. A copy of the Enquiry Officer's report was furnished to the applicant who submitted his objections/representation, whereafter, the D.C.S. issued the following order:-

"I have gone through the proceedings and findings of the case. The employee was the only Booking Clerk on duty at the time of incident. Hence, he is fully responsible. Enquiry Officer has correctly mentioned in the charges about the charges sustained. Hence the employee is removed from the Railway Service."

Interestingly, this order has been described as "speaking order" by the D.C.S.

5. Admittedly, the applicant submitted an appeal to the competent authority within the period prescribed by the Rules. But despite the lapse of more than a year, the appeal was not disposed of. The applicant, therefore,

filed this O.A. assailing the punishment order on various grounds.

6. The first ground agitated by the applicant is that the status of the Enquiry Officer who held the enquiry being lower than that of the official who conducted the fact finding enquiry the disciplinary enquiry was vitiated. Another important ground raised is that the key witnesses were not examined nor even cited in the inquiry. Contravention of the principles of natural justice is yet another ground taken by the applicant. He further assails the enquiry on the ground that D.C.S., Ahmedabad was not the competent disciplinary authority as he was not exercising any administrative control over the applicant. The applicant also takes the plea that additional evidence was recorded by the Enquiry Officer without following the mandatory provisions of the Rul's and that the documents sought by the applicants for preparing his defence were not furnished to him even though his request was earlier allowed by the Enquiry Officer. It is also averred that the Enquiry Officer had not examined the applicant to enable him to explain the circumstances, if any, appearing in the evidence against him.

7. The respondents have filed a detailed reply statement in which they have sought to justify the findings recorded by the Enquiry Officer and the order of punishment issued by the disciplinary authority. The respondents have further averred that DCS, Ahmedabad was the competent disciplinary authority in this case. As regards the appeal, the respondents have taken the plea that the applicant had been given opportunity of personal hearing before the appeal could be disposed of, but that he failed to appear before the appellate authority; and that without waiting for the decision of the appellate authority, the applicant could not directly approach the Tribunal.

8. We have heard the learned counsel for the parties and have perused the material on record available on the file. The records of the disciplinary proceedings could not be made available by the respondents for our perusal. However, we have sufficient material before us to dispose of the U.A.

9. As already indicated, the punishment of removal from service has been imposed upon the applicant and the enquiry against him had been initiated for major penalty. It is now well settled that in such cases every attempt should be made to give the charged officer adequate opportunity to defend himself and the

enquiry authority should be very careful in recording findings. The rules also provide that the disciplinary authority should in such cases pass speaking orders indicating the reasons for imposing a particular penalty.

10. Admittedly, the complainant, Mr. S. S. Gupta, was neither cited nor produced as a witness during the enquiry proceedings. The passengers who accompanied him, more particularly the lady who was found to be without a valid passenger ticket, have also not been produced. Therefore, there is much force in the contention of the applicant that the key witnesses having not been examined the punishment order could not be sustained. An examination of the documents produced by the applicant, the correctness of which is not disputed by the respondents, reveals that a procedure unknown to law has been followed in this case. The main actor in the entire episode appears to be Mr. M. M. Parmar, the fact-finding Officer who went to Maninagar Railway Station on 1.7.88 with a pre-conceived idea that some action had to be taken against the applicant, even though at that time there was no material before him to show that it was the applicant who had allegedly accepted money from the complainant. It is not disputed that Mr. K. G. Parmar was taken by Mr. M. M. Parmar with him only for the purpose of taking over charge from the applicant as he

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had intended to place the applicant under suspension. As soon as the party reached Haninagar Railway station the complainant was called and Mr. M. M. Parmar made inquiries from him. His statement was reduced into writing by Mr. K. G. Parmar and, admittedly, Mr. M. M. Parmar dictated the statement. As admitted by Mr. K. G. Parmar before the Enquiry Officer, the complainant did not identify the applicant in his presence, as this witness remained outside the room before he was called in by Mr. M. M. Parmar. It was then that Mr. M. M. Parmar dictated the statement and Mr. K. G. Parmar reduced it into writing. It is in this statement of the complainant that the name of the applicant finds a mention for the first time.

11. It is also not disputed that Mr. M. M. Parmar made certain interpolations in the statement written by Mr. K. G. Parmar. When Mr. M. M. Parmar was asked during the course of the enquiry as to why did he make those interpolations he stated that this was done by him only with a view to ensure that the contents of the complaint and the statement of the complainant were matching. In these circumstances, the statement allegedly made by the complainant before the fact finding officer Mr. M. M. Mathur loses much of its evidential value. The Enquiry Officer, therefore,

clearly fell into error in blindly relying upon the said statement allegedly given by the complainant on 1.7.88. We may further mention that there is a glaring contradiction in the contents of the complaint and the statement of complainant recorded by the fact finding officer. In the written complaint it was stated that the demand was made for Rs.450/-. There was no mention of the fact that only Rs.110/- was actually paid by the complainant and received by the "S.M." (Station Master). On the other hand in the statement allegedly made by the complainant before Mr. N.M. Mathur and others the same day it is stated that the amount paid was only Rs.110/-. These being the circumstances, it was incumbent for the Enquiry Officer to insist upon production of the complainant and other eye witnesses during the enquiry proceedings. Not only that but also should the disciplinary authority have included the names of those witnesses including the complainant in the list of witnesses.

12. It is admitted by the Enquiry Officer in his report that some important documents the production of which was sought by the applicant were not made available. The plea taken by the department is that these records were not "traceable". It is difficult to believe that the relevant reservation chart was not available or traceable. Mr. N.M. Farmer while being examined

as witness in the enquiry could not give any satisfactory reply to the question as to whether he had tallied the computer tickets with the relevant reservation chart to see whether the complainant and party were bona fide passengers or not. His reply was that since, the complainant "had taken pains" to report the matter to the D.C.S. it was not necessary to tally the computer tickets with the reservation chart. From this it can safely be inferred that the fact finding officer, namely, Mr. M.M. Parmar as also the Enquiry Officer had recorded the findings against the applicant solely on the basis of the complaint filed by the complainant before the D.C.S. and had not thought it fit or necessary to get the complaint corroborated by other evidence.

13. It is true that while conducting the departmental enquiry proceedings, the Enquiry Officer or the disciplinary authority is not required to abide by the Rules of evidence provided for in the Indian Evidence Act. But it is equally true that in all enquiries, whether judicial or quasi judicial, the first attempt should be to examine the primary evidence or direct evidence. Placing reliance upon indirect or hearsay evidence cannot be justified when direct evidence is available but no attempt is made to adduce the same.

14. We are, therefore, convinced that non-examination of the complainant and his co-passengers during the enquiry proceedings is by itself a sufficient ground for quashing the impugned order in this case.

15. There is also much force in the contention of the applicant that he has been denied reasonable and adequate opportunity in the inquiry proceedings. In this regard it needs to be noted that the documents asked for by the applicant were not furnished to him even though the Enquiry Officer had found sufficient justification in his request for production of those documents.

The examination of one Mr. Isham as an additional witness who was not named as witness in the charge sheet was also clearly an attempt on the part of the Enquiry Officer to fill the gaps in the evidence against the applicant and reasonable opportunity does not appear to have been given to the applicant before the said witness was summoned and examined. These circumstances throw a flood of doubt on the inquiry.

16. We further notice that during the course of the disciplinary proceedings the Enquiry Officer himself has played a leading role. Admittedly, there was no presenting officer appointed by the Railwa, Administration. In the absence of the Presenting Officer, the

Enquiry Officer seems to have cross-examined the witnesses and not merely examined them.

17. Coming to the question as to whether D.C.S., Ahmedabad was the competent disciplinary authority in this case, we find that although normally there is only one D.C.S. in a division, in the case of Vadodara Division, of which Ahmedabad area is a part, an additional D.C.S. has been posted at Ahmedabad. The Divisional Railway Manager, Baroda also has issued instructions deviding areas of jurisdiction between the two Divisional Commercial Superintendent's (D.C.S.). Maninagar station has been brought under the jurisdiction of the D.C.S. Ahmedabad. We are not entirely convinced by the contention made by the learned counsel for the respondents that a Divisional Railway Manager is competent to pass such orders without reference to the higher authorities.

18. We further find that while the fact finding officer was of the rank of C.M.I.-II the Enquiry Officer was in the rank of C.M.I.-III. It has been averred by the applicant that the scale of pay in which the Enquiry Officer was working was lower than the scale of pay of the fact finding officer. On going through the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968, we find clear

instructions contained in the Railway Board's letter dated 6.2.1980 to the effect that the departmental enquiry should not be entrusted to an officer lower in status than that of the officer who conducted the fact finding enquiry. This instruction clearly appears to have been issued to eliminate the possibility of the Enquiry Officer being influenced by the findings of the Superior officer. In the instant case, as already observed, the officer who conducted the fact finding enquiry does not appear to have conducted himself in a manner suggesting that he was acting impartially or objectively. Appointment of an officer lower in status to the fact finding officer has certainly caused prejudice to the applicant in this case.

19. Least, but not the least, important fact to be taken note of is the cryptic order passed in a cavalier fashion by the disciplinary authority, whereby the extreme penalty of removal from service has been imposed upon the applicant without giving any cogent reasons whatsoever for the same. The applicant appears to have been punished only on the ground that at the relevant time "he was ~~the~~ only person~~s~~ on duty from the cadre of Booking Clerks". It is not clear as to what does a Booking Clerk have to do far as the work of collecting passenger tickets at the exit gate is concerned. Furthermore, any person could have

stood at the gate even without being an employee of the Railways and could have acted unauthorisedly and illegally in collecting the tickets and demanding money from any passenger who did not have a valid ticket. It was for this reason all the more necessary for the Railway authorities, more particularly the disciplinary authority and the Enquiry Officer, to have insisted upon the identification of the applicant by the complainant and his co-passengers during the course of the enquiry proceedings which they have failed to do. Identification allegedly made before a partisan witness, namely, A.M. Panigrahi could not suffice.

20. Although a number of judgments have been cited by the learned counsel for the applicant during the course of his arguments spread over several days, we feel it unnecessary to refer to those judgments. The illegality in the impugned order in this case is so blatant that no judgments need be cited or referred to. This is also a clear case of no evidence and of perverse findings recorded by the Enquiry Officer. The impugned order, further, suffers from non-application of mind by the Disciplinary Authority.

21. In view of all the facts and circumstances discussed above we allow this C.A. and quash the impugned order imposing the punishment of removal from service upon the applicant. We further direct the respondents to reinstate the applicant giving

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him continuity of service and back wages from the date of removal from service as if no such punishment order had been issued. He would also be entitled to all the consequential benefits including increments which might have become due in the meantime and also promotion, if due.

22. The applicant's counsel has urged that the applicant is entitled to costs. However, keeping in view the circumstances of the case, we leave the parties to bear their own costs, though initially we were inclined to award costs.

Sd/-
(T.N. Bhat)
Member (J)

Sd/-
(V. Ramakrishnan)
Vice Chairman

मान्यता दिलाई
Prepared by:
Rakeshach
Date: 22/12/97
Time: 12.30 P.M.
Place: Central Administrative Tribunal
नगरपाली राजमार्ग,
Ahmedabad (Guj.)

22/12/97

मान्यता दिलाई (संग)
राजीव गोप्ता (संग)
मान्यता दिलाई
Central Administrative Tribunal
नगरपाली राजमार्ग,
Ahmedabad (Guj.)