

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 498/92

T.A. NO.

DATE OF DECISION 2.8.1995

R.B. Barot

Petitioner

Mr. P.H. Pathak

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. N.S. Shevde

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

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

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 ?

Whether it needs to be circulated to other Benches of the Tribunal ?

2/10

R.B. Barot
Train Ticket Examiner,
Yogi krupa
Opp. Brahm pole,
Diwali pole, Nadiad.

.. Applicant

(Advocate : Mr. P.H. Pathak)

Vs.

1. Union of India
Notice to be served through
Assistant Divisional Railway Manager (II),
Western Railway,
Pratapnagar, Baroda.
2. Sr. Divisional Commercial Supdt.
Western Railway,
Pratapnagar, Baroda.
3. Divisional Commercial Supdt.
Western Railway,
Railway Station,
Ahmedabad.

.. Respondents

(Advocate : Mr.N.S. Shevde)

Date : 2.8.1995

OA No.498/92

ORAL JUDGMENT

Per : Hon'ble Mr.N.B. Patel, Vice Chairman

The applicant challenges the order of punishment dated 30th September 1991 (Annexure-A4) passed by the Disciplinary Authority whereby he is awarded punishment of reduction to the minimum stage of pay-scale of lower post of Ticket Collector from the post of Train Ticket Examiner for a period of three years with future effect, which punishment order is modified by the Appellate Authority by its order dated 21st July 1992 (Annexure-A8) whereby punishment awarded to the applicant is reduced to reduction to the lowest stage in the pay-scale of lower post Ticket Collector for a period of two years without future effect. It may be noted that the applicant had filed a Mercy Petition against

this appellate order and the said Mercy Petition, as now stated by Mr. Shevde for the Railways, was treated as Revision Application and has been rejected by order dated 12.9.1992 (Annexure-A9).

2. The applicant, who was then working as Train Ticket Examiner at Nadiad, was furnished a charge-sheet dated 18.9.90 wherein the article of charge reads as under :

"Shri R.B. Barot TTE-ADI while working as such on 6-3-90 at Nadiad platform on arrival of 8033 Up at Nadiad, committed serious misconduct inasmuch as that :

- (i) He charged Shri Sanjay kumar Thakkar and recovered Rs.62/- vide EFT No.0030524 on 6-3-90 of 8033 on arrival of 8033 at ND, though Shri Sanjaykumar was holding I-class card pass No.38260 available between Chandkheda and Nadiad. He also misbehaved with Shri Sanjaykumar. He by his above mentioned act exhibited lack of devotion to duty and acted in a manner unbecoming of Railway servant, and thus violated rule 3.1 (ii) and (iii) of Railway service (conduct) Rules 1966".

3. The statement of imputation in support of article of charge runs as follows :

"Shri R.B. Barot, TTE-ADI at Nadias station in checking duties on 6-3-90 on arrival of 8033 Up Howrah Exp. at Nadiad. Shri Sanjay kumar Thakkar arrival at ND by 8033 Up /2T AC coach. Shri Sanjaykumar Thakkar was possessing School card pass No.36260 valid between Chandkheda and Nadias station. Shri R.B. Barot asked Shri Sanjaykumar Thakkar to pay the difference of 2T AC (I class with higher excess charge, Shri Sanjaykumar told that he was having I class school card pass he had not committed any irregularity upon this Shri R.B. Barot told that as he has travelled in 2T AC coach and was having I class Pass he has to pay the difference of fare when Shri Sanjaykumar wanted to meet S.S. and other higher authorities Shri R.B. Barot threatened him to this extent that if Shri Sanjaykumar would complaint for the charging of excess fare his father will be removed from service. He did not allow Shri Chandrakant to contact and see forcibly.

Shri R.b. Barot compelled the said Shri Chandrakant the son of Shri G.M. Papat AME(DL)ADI the pay Rs.62/- Shri R.B. Barot recovered Rs.62/- vide EFT No.0524 of 6/3/90.

Shri Sanjaykumar travelled in 2 TAC coach Ex. ADI to ND with the prior permission of Shri Premsingh TNCR by the train Shri Premsingh also prevented Shri R.B. Barot from wrong charging but Shri R.B. Barot remain unmoved.

As per rules, and Rly. Board's policy I class Pass holders can travel in 2TAC class without paying anything else.

The CCS CCC instructions also circulated vide LRA of 1988 at page 2 para 6 which authorised I class pass holders in 2 TAC without any extra payment but R.B. Barot charges Shri Sanjaykumar Thakkar deliberately against the rules. That resulted into undue harassment to Shri Sanjaykumar.

As mentioned above Shri R.B. Barot exhibited lack of devotion to duty and acted in a manner unbecoming of Railway servant, and thus violated Rule 3.1 (ii) (iii) of Railway Service (conduct) Rules, 1966".

4. At the enquiry, defence of the applicant was that he had correctly charged an amount of Rs.62/- from Sanjaykumar, being the amount of difference between the fare chargeable for 2nd AC and Ist class fare as Shri Sanjaykumar, the son of a railway officer, was holding a student card for travelling by first class. The applicant justified his action in recovering an amount of Rs.62/- from Sanjaykumar by referring to para 102 of Railway Pass Manual, 1977. As regards his alleged behaviour towards Sanjaykumar, it was the defence of the applicant that he had in no way misbehaved with Sanjaykumar. We will later on deal with the contentions raised by Shri Pathak against the charge-sheet itself as also against the

ultimate finding that the charge ~~was~~ ^{against} was proved and also the punishment awarded to the applicant. It may first be noted that an analysis of the charge, ~~was~~ ^{that it is} framed against the applicant revealed ^{that it is} in two parts, the first part being that though Shri Sanjaykumar was holding 1st class card-pass, the applicant charged Shri Sanjaykumar for the difference between 2nd AC fare and 1st class fare, ^{the} ~~L~~ amount of difference being Rs.62/-. The second part was that he also misbehaved with Shri Sanjaykumar. It was stated that by his said acts, the applicant exhibited lack of devotion ^{to} ~~of~~ duty and acted in a manner unbecoming of ^a ~~L~~ railway servant.

5. It is not clear from the charge as to for which act, out of the two acts, the applicant was charged with misconduct. However, reading this charge as a whole, it may be taken that he was alleged to have committed misconduct both in respect of recovering an amount of Rs.62/- from Sanjaykumar and also by misbehaving with him. So far as the second part of the charge is concerned, it does not specifically state as to what was the misbehaviour towards Sanjaykumar with which the applicant was charged. In the statement of imputation, the misbehaviour which is alleged was that though Shri Sanjaykumar wanted to meet the Station Superintendent and other higher authorities, he was not allowed by the applicant to do so and further, that the applicant had threatened ^{Sanjaykumar} ~~L~~ by saying that, if Sanjaykumar complained about having been charged excess fare, his father (a railway officer) would be removed from service.

6. It appears that, at the enquiry, the evidence which was led in respect of the charge of misbehaviour towards Sanjaykumar was that he was taken by the applicant to the Police Station and he had asked the Police officer to take Sanjaykumar in Police lock up. There is nothing to show that any evidence was led about the alleged threat administered by the applicant to Sanjaykumar to the effect that if Sanjaykumar lodged any complaint against the applicant, his father would be removed from service. Even so far as the evidence in respect of the alleged act of the applicant in taking Sanjaykumar to the Police station is concerned, the Inquiry Authority did not find that evidence acceptable and reported that that part of the charge had ~~proved~~ ^{failed}. The Disciplinary Authority has also accepted the finding of the Inquiry Authority relating to the part of the charge whereby the applicant is said to have misbehaved with Sanjaykumar. The only charge which is held proved is that the applicant had wrongly recovered an amount of Rs.62/- from Sanjaykumar, being the difference between the 2nd class AC fare and 1st class fare for which Sanjaykumar was holding a student card-pass as his father was a railway officer. There is no dispute about the fact that Sanjaykumar, in his capacity, as the ward of ^a railway officer, was holding a student's card for 1st class entitling him to travel, without paying any fare for 1st class, from Chandkheda to Nadiad and back.

The only question was whether Sanjaykumar was chargeable with difference in fare between the two classes if he travelled by 2nd AC while holding a 1st class card. As regard this, as already noted, the version of the applicant was that under para 104 of the Pass Manual, Sanjaykumar was liable to be charged the difference between the fares of the two classes.

7. There was no dispute about the fact that, on the relevant occasion, Sanjaykumar was ~~effect~~ found to be travelling by 2nd class AC though he was holding a student card entitling him to free travel by 1st class between Nadiad and Chandkheda. In the charge, there is no mention of what is called LRA 9 of 1988 which, according to the Inquiry Authority ^{and} the higher authorities, exempted Sanjaykumar from payment of difference between the 2nd Class AC fare and 1st class fare, even if he travelled by 2nd class AC while holding a first class card. This LRA No.9 of 1988 is referred to by the Inquiry Authority and the Disciplinary Authority but it was never brought on record. It, however, appears that the applicant was told that it was by virtue of LRA 9 of 1988 that Sanjaykumar was exempted from paying difference between the fares of the two classes. To this, the defence of the applicant was that he was not aware of this LRA 9 of 1988 and it was never brought to his notice.

8. The first contention of Shri Pathak was that the charge was extremely vague so as to deprive the applicant of his right to effectively defend himself. We find ample substance in this contention because, nowhere in the charge, LRA 9 of 1988 has been referred to even though, at the subsequent stage of enquiry, it was that provision by reference to which it was said that a person holding a student card is also exempted from payment of difference in the fares between the two classes. Even so far as the charge of misbehaviour is concerned, it is not stated as to what was the misbehaviour shown by the applicant towards Sanjaykumar. In the particulars of the charge, it is stated that the misbehaviour consisted of a threat given by the applicant to Sanjaykumar that, if he ^{filed} ~~alleged~~ a complaint in the matter, his father would be removed from service. Assuming that this part of the charge was specific and not vague, the evidence thereon has not been accepted by the Inquiry Officer and it has throughout been held that that part of the charge was not brought ^{to} ~~record~~ ^{home} by the applicant.

9. So far as the finding ^{on} ~~of~~ the first part of charge holding the applicant guilty of misconduct in recovering Rs.62/- from Sanjaykumar is concerned, Mr. Pathak contended that, looking to the defence raised by the applicant, it would appear that, at best, the applicant was held guilty of charge of misconduct for his ignorance of ^{the} ~~provision~~ of LRA 9 of 1988 and, that too, on the assumption that

LRA 9 of 1988 provided for exemption to a student card-holder from payment of difference in fares, if he travelled by a class higher than the class for which he held the card. We have no doubt in our mind that the charge of misconduct cannot be held proved for ignorance of some provision. Misconduct will involve an element of mens rea or at least of such gross negligence as would amount to misconduct considering the results flowing from such gross misconduct. As already stated, the defence of the applicant was that he was aware only of para 104 of the Pass Manual and, according to him, that para did not entitle a card-holder to travel by a class higher than the one for which he held the card without paying the difference between the fares of the two classes. The said para 104, as reproduced in the OA, reads as under :

"104.Travel by a Class higher than that for which a Pass is issued :

(1) If any pass holder elects to travel in a class higher than that by which the pass is issued, he may be permitted to do so on payment of the difference between the fares for the class by which the pass is issued and the class by which the pass holder intends to travel. Excess fare tickets should be issued in such cases.

(2) In such cases, the privileges in respect of luggage allowance and availability by trains will be the same as for ticket holders. The right to take attendants will, however, be regulated by the class of pass held by the employee.

(3) The facility of travel by higher class on payment of the difference in fares is admissible also to the holders of free residential and school card passes and season tickets issued at concession rates. In the case of school card passes, the season ticket fares for students will apply for purposes of payment of the difference in fares. The necessary authority for this purpose will be issued on form No.G.9 F against deposit of the card pass".

10. It is obvious, from ~~the~~ plain reading of the aforesaid para 104 of the Pass Manual, that even a card-holder would be entitled to travel by a class higher than the class for which he was holding a card, provided he pays the difference in the fares between the higher class by which he travels and the class for which he actually holds the pass. Thus, if this is the only provision to be considered, there can be no two opinions as to the correctness of the stand of the applicant that Sanjaykumar was liable to pay the amount of Rs.62/-, being the difference between the fares of 2nd class AC and 1st class. However, the Inquiry Authority has referred to LRA 9 of 1988 and it is held that this LRA 9 of 1988 exempts a card-holder from paying difference between fares of two classes even if he travels by a class higher than the class for which he holds a student card. The applicant has claimed ignorance of this LRA 9 of 1988. His plea of ignorance is rejected on the ground that since he knew about ~~the~~ paragraph 104 of Pass Manual, he must be deemed to know also about LRA 9 of 1988. We are unable to appreciate this reasoning, especially in view of the fact that, after the failure of the charge of misbehaviour levelled against the applicant, there was ~~nothing to show~~ ^{nothing to show} ~~anything showing~~ that the

applicant had any ulterior motive in recovering the amount of Rs.62/- from Sanjaykumar. If the applicant had no ulterior motive in recovering the amount, the only inference can be that, at worst, he was labouring under the misapprehension that a card-holder has to pay difference between the fares of two classes if he travels by a class higher than the class for which he was holding ^{the} a card. In fact, once it is said that the applicant had no ulterior motive in recovering the amount of Rs.62/- from Sanjaykumar, we find the reasoning, ^{for} ~~to~~ holding him guilty of misconduct on the ground of such recovery, to be perverse. In this connection, it requires to be noted ^{that} ~~there~~ is no dispute about the fact that the applicant had openly recovered the amount from Sanjaykumar against a receipt issued to Sanjaykumar on the spot and that the applicant had duly credited the amount to the Railway coffers. In the circumstances, we hold that the finding that the applicant was guilty of misconduct for having recovered Rs.62/- from Sanjaykumar is unreasonable i.e. such as no reasonable man could have reached.

11. At this stage, we may dispose of the contention raised by Mr. Shevde that, even if the applicant was not liable to be found guilty of misconduct on the first part of the charge, ^{he could} ~~we~~ ought have been held guilty of a charge of negligence. Mr. Shevde repeated the same reasons for this

contention which are stated by the Inquiry Authority and the Disciplinary Authority in their orders and also branded the defence of ignorance as false and after-thought. It was submitted that the applicant was a Train Ticket Examiner and he must be fixed with knowledge of the relevant provision or, at least, he should be held guilty of negligence if he had not kept himself conversant or aware of the provision of the LRA 9 of 1988. We are not persuaded to accept this contention. The charge against the applicant was a clear charge of misconduct only, on the basis that the applicant had ^{deliberately} wrongly recovered an amount of Rs.62/- from Sanjaykumar. When this was the charge, it would not be possible to hold the applicant guilty of negligence at least in the circumstances of this case. If any charge of negligence were to be brought against the applicant, he ought to have been specifically told that LRA 9 of 1988 provided for exemption to card-holders and that it was the duty of the applicant to keep himself conversant of such provision and he had failed to observe such duty. It was only when at the enquiry stage LRA 9 of 1988 was referred to that the applicant came up with the plea that he was not aware of that provision. He could not have taken up such a plea earlier in the circumstances of the present case. Had LRA 9 of 1988 been referred to in the charge itself, the applicant could have taken up the defence of ignorance which he was obliged to take up at the inquiry. Furthermore, the applicant has stated that he was never made aware of LRA 9 of 1988 by the administration i.e. by the head of the office where he was working.

We do not know whether it is necessary to bring such provisions specifically to the notice of all the concerned employees. There is nothing to show that it was not necessary to do so. Therefore, if a charge of negligence were to be brought against the applicant, it would have been required to state therein specifically that LRA 9 of 1988 was specifically brought to the notice of all concerned employees including the applicant. In short, it is not possible, in the circumstances of this case, to hold the charge of negligence proved against the applicant when such a charge was not levelled against him at all. If such a charge had been levelled against the applicant, it would have changed the entire complexion of the proceedings. We, therefore, reject the contention of the respondent that, at least, a charge of negligence should be held proved against the applicant.

12. Apart from the above, Shri Pathak, the learned advocate for the applicant, has tendered to us the said LRA for our perusal. Paragraph 6 of the said LRA is the relevant provision which first states that, as per the present Rules, Ist class ordinary and Ist class 'A' free pass-holders are permitted to travel by AC sleeper (then AC 2-tier) without payment of any extra fare. Paragraph 6 then states that if a Ist class Pass holder travels by AC Ist class, he will have to pay full difference of fare between AC Ist class and AC sleeper. It

further provides that Ist class 'A' Pass-holders may be permitted to travel by AC Ist class on payment of $\frac{1}{3}$ difference of fares between the AC Ist class and AC sleeper. There is nowhere any reference to the holders of Ist class cards being permitted to travel by 2nd AC class either on payment of full difference or part of such difference or without payment of difference altogether. Therefore, even as reading this LRA 9 of 1988, it is debatable whether any benefit is conferred thereby on the card-holders or student card-holders in derogation of para 104 of the Railway Pass Manual 1977. We are not required to pronounce any firm opinion as regards the applicability of the provision of LRA 9 of 1988 to student card-holders. But, even assuming that one had read this provision, if it is said by him that, even after the reading of LRA 9 of 1988, his belief was that a card-holder has to pay difference between the fares of 2nd AC and Ist class (if he travelled by the former class while holding the card for the latter class), it is difficult to say that he would be guilty even of the charge of negligence.

13. Finally, it may be noted that by bringing about the amendment in the written statement, the respondents have contended that the OA was premature as the applicant had not exhausted the remedy of filing a Revision Application before the OA, but this contention was given up by Shri Shevde at the stage of arguments and he conceded that the Mercy petition, which was filed by the applicant, was treated as a Revision Application.

14. On the whole, we find that the finding of guilt recorded by the respondents and consequent order of punishment are vitiated in this case because, even if the allegation made against the applicant of having recovered Rs.62/- from Sanjaykumar is taken at its face value, it does not amount to misconduct in the circumstances of the present case. It is also not possible to say that, in the circumstances of this case, the applicant could have been convicted of a charge of negligence even though the actual charge against him was one of misconduct. Even assuming this to be so, we find that the charge of negligence could not also have been held proved for the reasons stated by us above.

15. In the result, therefore, we allow the OA and set aside the impugned punishment order Annexure-A4 as modified by the appellate order Annexure-A8 and which appellate order is confirmed by Annexure-9 dt. 12.9.1992 passed by the Revisional Authority. As a consequence, the applicant will be given all benefits as if the punishment order is non est.

No order as to costs.

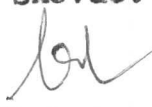




(V. Radhakrishnan)
Member (A)



(N.B. Patel)
Vice Chairman

raj

Date	Office Report	ORDER
20.2.96		<p>Copy of M.A. and copy of judgment should be supplied to Mr. pathak by Mr. Shevde. Adjourned to 28.2.96 at the request of Mr. Shevde.</p> <p style="text-align: right;"> (V. Radhakrishnan) Member(A)</p> <p>vtc.</p>
28.2.96		<p>Heard Mr. Shevde and Mr. pathak.</p> <p>M.A. allowed and extension of time, to comply with the judgment, granted till 15th April, 1996.</p> <p>We make it clear that no further extension will be granted and we might even consider taking suo moto contempt proceedings for non-compliance, if the judgment is not complied with within the aforesaid period. M.A. stands disposed of accordingly.</p> <div style="display: flex; justify-content: space-between;"> <div data-bbox="619 1396 941 1569"> <p style="text-align: center;"> (V. Radhakrishnan) Member(A)</p> </div> <div data-bbox="1220 1449 1484 1569"> <p style="text-align: center;"> (N.B. Patel) Vice Chairman</p> </div> </div> <p>vtc.</p>