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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.1 of 1989.

Date of decision : August 1, 1989.

Trinadha Panda, son of lateRaghunath
Panda, aged about 40 years, working as
T.T.E.Gr. 'A', S.E.Railway, Puri.

...

Applicant.

Versus

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, Khurda Road.
3. Divisional Commercial Superintendent, Khurda Road.

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Respondent.

For the applicant ... M/s.GaneswarRath,
P.K.Mohapatra, Advocate-s.

For the respondent ... Mr.Ashok Mohanty,
StandingCounsel (Railways)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J) This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The facts, shorn of unnecessary details, are as under. The applicant was charged for having received Rs.50/- as gratification for allowing two persons to travel by the 10 Down Jagannath Express in berth nos. 19 and 20 in a coach attached to that train. The charge against the applicant is to be found in Annexure-I to the petition. Relevant portions of the charge are to be found in Annexure-I & II to Annexure-I. These two berths were originally allotted to one T.T.Saha and one R.Saha-M-65 and F 55 respectively. But those were cancelled on 30.1.1986. Subsequently, these two berths were allotted to one Shri C.Saha and Shri M.Saha against JCR Ticket Nos. 72903 and 72904 (Sex and age were given as F/45 and F/55 respectively by the counter clerk). T.Panda, the applicant checked those JCR tickets and collected Rs.50/- for those two defective tickets and did not grant any receipt and allowed the passengers to travel with defective tickets. A complaint was made by one Arabinda Mandal on 9.4.1986. Consequent upon the complaint, a departmental proceeding was started. The Department gave notice to examine ~~Shri~~ Arabinda Mandal, Shri Manick Lall Saha and Nayan Rajan Saha in support of the allegations made in the charge. After that, an enquiring Officer was appointed and notices were served on the witnesses proposed to be examined by the Department in support of the allegations made in the charge. But on two occasions when the witnesses came, the applicant

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not having appeared, the enquiry could not proceed and the witnesses could not be examined. Subsequently, the enquiring officer recorded the statement of the applicant and perusing the letters of the witnesses and the person who made the complaint i.e. Arabinda Mandal closed the enquiry and found the applicant guilty of the charges. On a perusal of the report of the Enquiring Officer, the Disciplinary authority passed an order reverting the applicant who was holding the post of T.T.E. in the time scale of Rs.1400-2300/- to the post of T.T.E. in the grade of Rs.1200-2040/- on a pay of Rs.1200/- for a period of three years with cumulative effect. The relief that the applicant has sought for is to quash this order of reversion.

3. In the counter, the respondents have contended that the enquiry was made properly and after the Enquiring Officer recorded his findings, the findings were examined by the Disciplinary authority who imposed the penalty taking all the circumstances into account. The applicant also preferred an appeal and the appellate authority also examined the records and heard the applicant (appellant before him) and confirmed the order of the Disciplinary authority. In a nutshell, the respondents' ~~conclusion~~ ^{contention} ~~that~~ is, there was neither any illegality nor any irregularity in passing the order of reversion and the applicant deserved the penalty.

4. We have heard Mr. Ganeswar Rath, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing

Mr. Ganeswar Rath

Counsel for the Railway Administration. Mr. Ganeswar Rath, learned counsel for the applicant has confined his arguments to only one point namely whether could the Enquiring Officer reach a finding without actually examining the witnesses. On a perusal of the records and also counter filed by the respondents, it is manifest that infact no witnesses were examined. Mr. Rath has produced a xerox copy of some questions put to the applicant and the answers given by him during the course of enquiry. The report of the enquiring Officer is not on record. But, however, from the copy of the order of the Disciplinary authority i.e. Divisional Commercial Superintendent, S.E. Railway, Khurda Road, it would be found that the disciplinary authority based his order on the answers said to have been given by the applicant to questions 3 and 6. The Disciplinary authority does not appear to have properly understood the answers given by the applicant before us. In the answer to question No. 3, which related to the sex and age as given in the ticket, the applicant said that it sometimes so happens that in order to avoid harassment to bona fide benefit, the passengers the mistakes committed by the counter clerk issuing the tickets are not taken serious notice of and that it might have so happened, for which an enquiry was made. This answer cannot be understood to be an admission that infact the applicant knowingly allowed the passengers to travel with the defective tickets. The question No. 6 related to whether the applicant verified the tickets to which his answer was in the affirmative. The answer was really inconclusive and in conclusion innocuous.

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5. True it is that the strict standard of proof as required in a criminal proceeding cannot be expected in a disciplinary proceeding, but all the same, it is settled that a departmental proceeding is a quasi-criminal one and to reach the finding there must be materials and proof in support of the allegations made against the charged officer. When the witnesses are not examined and the charged officer is denied the opportunity to cross-examine the witnesses, there would be failure of justice if reliance is placed on mere statements in a letter of such a person proposed to be examined as witness. In this connection, the decision of the Principal Bench of the Central Administrative Tribunal in the case of Dr. O.P.S. Luthra v. Union of India reported in A.T.R. 1989 (1) C.A.T. 29 may be referred to. What was really decided in that case is that non-examination of a key witness would vitiate the enquiry. In the instant case, none of the witnesses proposed to be examined in support of the charges was really examined. So, the instant case stands on a much stronger footing than the one to which reference has just been made above.

6. In the facts and circumstances of this case, it is not possible to sustain the impugned order i.e. the order of reversion of the applicant from the higher grade to the lower grade. The impugned order is set aside and the respondents are at liberty to conduct an enquiry

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in a proper manner after affording opportunity to the applicant to have his defence and after examining the witnesses in support of the charges.

7. The application is accordingly disposed of leaving the parties to bear their own costs.

Member (Judicial)
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

B.R.PATEL
1.8.89
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 1, 1989/Sarangi.

