

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.474 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

Tushar Kanti Banerjee, Travelling
Ticket Inspector, S.E. Railway,
Howrah under CTI(I/C), S.E. Rly.
Howrah and Sr. Divl. Comml. Manager
S.E. Rly, Kharagpur, S/o late Amulya
Kumar Banerjee, residing at Bose
Nagar, Gate No.3, P.O. Madhyamgram
Dist. 24, Parganas (North), W. B.

... Applicant

VS

1. The Union of India, serice through
The General Manager, South Eastern Rly.
11, Garden Reach Road, Calcutta-43

2. The Additional Divisional Rly.
Manager, South Eastern Railway,
Kharagpur, P.O. Kharagpur, Dist.
Midnapore, West Bengal

3. The Sr. Divisional Commercial Manager
South Eastern Railway, Kharagpur,
P.O. Kharagpur, Dist. Midnapur, W.B.

4. The Asstt. Enquiry Officer, South
Eastern Railway, 11, Garden Reach
Road, Calcutta-700 043

5. Mr. M.R. Satyanarayan, Vigilance
Inspector, S. E. Railway

... Respondents

For the Applicant(s): Mr. B. Sarkar, counsel

For the Respondents : Mr. S. Chowdhury, counsel;

Heard on 30.8.99 and 31.8.99 : : Date of order: 28.9.99


O R D E R

D. Purkayastha, JM

While the applicant was working as Travelling Ticket Inspector (TTI), Howrah he had been served with a chargesheet dated 29.7.94, Annexure/A4 for holding departmental inquiry under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on the alleged ground of misconduct, as stated in the Articles of charges marked Annexures-I, II & III, where it is stated that the applicant while functioning as Conductor by 6003 Howrah Madras Mail left Howrah on 21.1.94 was alleged to have committed an act

of misconduct in as much as he had irregularly carried one passenger holding IInd class ticket Ex. Howrah to Berhampur in first class coach No.5861, without regularising the same till the vigilance check at Kharagpur inspite of having RAC passengers and wait list passengers on hand and by the above act he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant in violation of Rule 3.1(i), (ii) & (iii) of R.S. (Conduct) Rules, 1966. The applicant was asked to submit written statement and to furnish names and addresses of the witnesses, if he wishes to call in support of his defence.

2. Thereafter, the applicant submitted a written statement, Annexure/A13 against the charges brought against him in the chargesheet and he also nominated Shri Bimal Chakraborty, retired CTI, S. E. Railway, Howrah to assist him in the D & A inquiry. On receipt of the written statement, respondent No.3 appointed Inquiring Officer to inquire into the charges brought against the applicant on the basis of the chargesheet and the said inquiring Officer conducted the inquiry and submitted his report on 15.11.94, Annexure/A7 to the disciplinary authority holding that the charge has been proved and thereafter the disciplinary authority, respondent No.3 accepted the inquiry report and decided that the applicant was responsible for carrying one passenger with IInd Class ticket in First Class Coach No.5861 by 6003 Ex. Howrah on 21.1.94 manned by him (applicant) and he imposed penalty to the lowest stage of pay of Rs.1600/- in his existing time scale of pay of Rs.1600-2660/-(RPS) for a period of three years with effect from 10.7.95 and the period of punishment of three years shall not operate to postpone his future increment on restoration, Annexure/A2 to the application. Thereafter the applicant filed an appeal before the appellate authority, the Divisional Railway Manager, S.E. Railway, Kharagpur and the said appeal also had been rejected by the appellate authority by an




order dated 20.2.96, Annexure/A1 to the application stating inter alia that on applying the mind into entire case he found that there was no scope to revise his case further since the charges brought against him were established as per documents and evidences on the record and he agreed with the decision of the disciplinary authority and accordingly he affirmed the punishment.


3. Aggrieved by the punishment order as well as by the order passed by the appellate authority, the applicant has come before this Tribunal seeking relief on the ground that the inquiry report dated 15.11.94, Annexure/A7, punishment order dated 29.6.95, Annexure/A2 and the order of the disciplinary authority dated 20.2.96, Annexure/A1 are vitiated for denial of reasonable opportunity and for the irregularity committed by the respondents during the enquiry in the departmental proceeding and as such all the orders are liable to be quashed. He also prayed for other consequential reliefs in the application.

4. The respondents filed written statement and they denied all allegations made by the applicant in the application. According to the respondents, the applicant was granted fair and full opportunity to defend his case before the Inquiring Authority and the entire inquiry was done according to the rules prescribed in R.S.(D&A) Rules, 1968 and the applicant was furnished all requisite documents. So, there cannot be any question of non-giving of reasonable opportunity to defend his case before the inquiring authority. It is stated by the respondents that the charge brought against the applicant was fully proved and the enquiry conducted by the inquiring officer was appointed by the disciplinary authority in accordance with the rule and the application is devoid of merit and liable to be dismissed.

5. Mr. Sarkar, learned advocate firstly submits that the charges brought against the applicant could not be proved by the




respondents by producing any evidence and rule before the inquiring authority as well as before the disciplinary authority. Under the provisions of the RS(D&A) Rules, no charge could have been proved by the respondents against the applicant and the applicant never acted beyond the jurisdiction in allowing one passenger holding IIInd Class ticket into Ist Class Coach. According to the applicant, he was competent in terms of the Railway rules i.e., Reservation Rules, Time Table and the instructions contained in the Annexure/A10 to the application and no irregularity or illegality has been committed by the applicant under the rules, as alleged by the respondents. So, the inquiring authority as well as the disciplinary authority failed to consider the relevant rules by which the applicant was authorized to allow one passenger having second class ticket to travel in a first class coach under certain contingency. He further submits that the question of misconduct, as alleged by the respondents cannot be said to have been committed by the applicant since there is no evidence against the applicant. The applicant allowed the said passenger not for any collateral purpose nor for gaining any illegal benefit. According to the applicant, he realised the difference in price of the ticket from the passenger by issuing due receipt as per the rules. In the absence of any malafide on the part of the applicant in the matter of allowing the passenger in the first class coach the charge of misconduct cannot be proved and he further submits that the applicant has been seriously prejudiced in this case since the report of the Vigilance Inspector basing upon which the impugned chargesheet had been framed by the respondents against the applicant had not been furnished to him and the Vigilance Inspector who brought the allegation against the applicant by filing report has not been examined in this case. According to Mr.Sarkar, learned advocate, since the chargesheet had been issued on the basis of the report of the Vigilance Inspector,



that ^{report} ought to have been furnished to the applicant. Due to non furnishing of the report of the Vigilance Inspector on the basis of which the chargesheet for major penalty had been issued upon the applicant, the entire disciplinary proceeding is liable to be quashed. Mr. Sarkar also submits that the disciplinary authority and the appellate authority did not consider the representation made by the applicant against the enquiry report and he was not allowed any personal hearing to represent his case before the disciplinary authority as well the appellate authority before imposition of punishment against the applicant. So, orders are liable to be quashed.


6. Mr. Chowdhury, learned advocate on behalf of the respondents contended that the allegation of the applicant against the enquiry report and against the disciplinary authority are baseless as the applicant was granted full opportunity to defend his case before the enquiring authority and the applicant never applied before the inquiring authority for examination of witness in support of his defence case and he also did not seek for cross examination of the witness and the documents mentioned in the chargesheet have been furnished to him and therefore, there was sufficient evidence to hold that the applicant was guilty of misconduct as alleged against him and the disciplinary authority after careful consideration of the records and inquiry report had decided that the applicant was guilty of misconduct and thereby the application is liable to be dismissed. The applicant also filed a rejoinder in this case.

7. We have heard the learned counsel of both the parties at length and perused the materials on record. It is now settled position of law that the departmental authorities are, if the inquiry is otherwise properly held, sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High




Court/Tribunal in a proceeding for a writ under Art.226 of the Constitution. (State of Andhra Pradesh vs. S. Sree Rama Rao, AIR 1963 SC 1723). So, we find that the point of judicial review in the matter of interference on the truth and correctness of the charge, ^{debarmental} ~~even in a proceeding for final order~~ is rather circumscribed. The Court or Tribunal cannot exercise the power of judicial review as appellate authority over a decision unless the Court or Tribunals are satisfied that the applicant was denied any reasonable opportunity to defend his case during the inquiry conducted by the inquiring officer appointed by the disciplinary authority and ~~before the disciplinary authority~~ or the appellate authority.

8. In view of the aforesaid settled position of law, let us consider whether the inquiring authority/Disciplinary Authority had followed the correct procedure while conducting the inquiry and whether the applicant was given full opportunity to defend his case in accordance with the rules of natural justice or in accordance with the provision prescribed under RS(D&A) Rules, 1968. In the instant case we find that the disciplinary authority did not cite any witness to examine during the departmental proceeding and they relied on the documents by which articles of charge had sought to be proved and those documents are mentioned in Annexure/III to the chargesheet at Annexure/A4. In Annexure/A4 regarding list of witnesses to be produced by the disciplinary authority was shown as nil. The applicant also did not produce any defence witnesses before the inquiring authority and he also did not cite any name of the defence witnesses in the written statement submitted against the chargesheet. In the instant case the respondents brought some allegation against the applicant alleging misconduct for commission of some irregularities as alleged in the imputation of misconduct, Annexure/II to the chargesheet, but on a perusal of the reply to the OA it is found that the stem of the departmental proceeding




^{was}
~~was~~ based on the report of the Vigilance Branch. The applicant added one Vigilance Inspector, Shri M.R. Satyanarayan as respondent No.5 in this case alleging that the instant departmental inquiry had been initiated on the basis of the false report of the Vigilance Inspector, respondent No.5. The respondents in the written reply had also partly admitted the said fact at page 3 of the reply, where it is stated that on the basis of the report of the Vigilance Branch, Shri Banerjee, applicant was issued with a major penalty chargesheet alleging that he had committed misconduct and irregularity in carrying one passenger holding second class ticket in first class coach without regularising the same till vigilance check at Kharagpur ignoring RAC and wait listed passengers at hand. But admittedly the respondents did not furnish the copy of the Vigilance report of the Vigilance Branch, as stated in the reply to the applicant. Mr. Chowdhury, learned advocate submits that the vigilance report had not been relied upon by the respondents. So, the question of prejudice did not arise for non-supplying the vigilance report to the delinquent official or charged official.

9. We find that the applicant who is the charged official raised a specific defence before the disciplinary authority as well as before the inquiring authority that he was authorised under the relevant rules to allow passenger having second class ticket to travel in a first class coach from Howrah to Kharagpur and before departure of the Train from Kharagpur the question of regularisation of the ticket of the passenger did not arise. In view of the instructions contained in the circular marked Annexure/A10 to the application and mere irregularity alleged to have been committed by the applicant in discharging his duty would not amount to misconduct. Learned advocate of the applicant further submitted that the Vigilance Officer was made a party as respondent No.5. He did not turn up. However, we are also convinced that it was the report of the Vigilance Officer,




according to the respondents, as stated in para 3 of their written reply, which formed the basis of the chargesheet issued by the disciplinary authority to the applicant and thereby the said report is a material document for the purpose of the inquiry in this case. No explanation whatsoever has been put forward by the respondents as to why the said vigilance report could not be furnished to the applicant. So, in view of the said circumstances, we are of the view that the principles of natural justice do require that the copy of the vigilance report, on the basis of which the departmental proceeding had been initiated by the Disciplinary Authority should not be withheld and that ought to have been furnished to the applicant to defend his case. So, it has become unfair on the part of the Disciplinary Authority for withholding such documents in the interest of justice. Hence, ^{it can not be ruled out} the applicant has been seriously prejudiced in his defence before the Inquiring Authority as well as before the appellate authority. ^{how can supply the vigilance report}

10. Another important illegality which we find in this case is that the disciplinary authority passed the impugned order without considering the representation filed by the delinquent official against the inquiry report. It is found from the order of the punishment issued by the disciplinary authority, respondent No.3 that he did not consider at all the representation made by the charged official against the inquiry report. We have perused the order dated 26/29.6.95, Annexure/A2 to the application where simply it is stated that after considering the inquiry report in connection with the charge memorandum and all other relevant records and documents in connection with the case the disciplinary authority had decided that he was responsible for carrying one passenger with IInd Class ticket in First Class Coach. No finding has been made by the Disciplinary Authority to the effect that as to why the grounds taken in the applicant's representation against the




inquiry report placed before him could not be considered or accepted by him. We find that the disciplinary authority acted mechanically in this case. It can be said that while recording the findings on the basis of the RS(D&A) Rules, it is necessary that he should indicate that the disciplinary authority has become aware of the points raised in the representation of the charged official. In case of Ram Chander (AIR 1986 SC 1173, the Apex Court held that "it is utmost important that after the 42nd Amendments as interpreted by the majority in Tulsiram Patel's case (1985)3 SCC 398, that the appellate authority must not give only a hearing to the Govt. servant but pass a reasoned order dealing with the contentions raised in the appeal." Moreover, we find that no finding regarding alleged "misconduct" has been made in the order. In order to bring the case within the purview of the word "misconduct", as alleged in the chargesheet it is the duty of the disciplinary authority to be satisfied from the record that the applicant acted wrongly and unauthorisedly and such acts or omission amount to misconduct. It be mentioned that mere irregularity committed by the Govt. servant in the discharge of his official duty cannot be said to be a "misconduct" unless such irregularity is found to have been committed by the charged official intentionally or with wrong motive. So, we find that inquiry report submitted by the Inquiring Authority as well as the order of imposition of penalty at Annexure/A2 to the application do not disclose the fact that such alleged irregularity was committed by him with wrong motive or intentionally for ^{wrongful} ~~alleged~~ gain. So, orders are devoid of consideration of the above material facts and rules. In absence of such finding on evidences on records, it cannot be said that the case of "misconduct" has been proved.

11. We also find that the applicant made an appeal before the appellate authority, who also did not apply his mind independently and he rejected the appeal without giving any



personal hearing to the applicant before disposal of the appeal by order of rejection dated 20.9.96. The Hon'ble Supreme Court has held in the case of Ram Chander vs. Union of India & ors., reported in 1986(2) SLR 608 decided on 2.5.86, that the appellate authority must give a hearing to the appellant before disposing of the appeal. The Hon'ble Supreme Court has clarified that it was necessary to provide an opportunity of personal hearing to the appellant because now, before a penalty is imposed no, opportunity is given to the Government servant concerned to represent against the penalty proposed to be imposed. The Hon'ble Supreme Court has further held in the case of Union of India vs. Mohd. Ramzan Khan, reported in 1991 SCC (L&S) 63 and in the case of Managing Director, ECIL vs. B. Karunakar, reported in 1993 SCC (L&S) 1184 that after inquiry has been held a copy of the Inquiry Officer's report must be given to the charged Government servant who would be entitled to make a representation against it if he so desires. This opportunity is however, only to enable the Government servant concerned to make a representation in regard to the findings of the Inquiry officer and is not an opportunity to represent against any penalty proposed to be imposed. Therefore, apparently in terms of the Hon'ble Supreme Court's judgment in Ram Chander's case, opportunity of being personally heard ought to have been given by the appellate authority to the appellant Government servant, before disposing of the appeal. In view of the aforesaid settled position of law laid down by the Hon'ble Apex Court we are of the view that the applicant was denied reasonable opportunity to defend his case before the inquiring authority as well as to the appellate authority and inquiry was conducted in violation of the rules of natural justice. We find that the inquiry report is not sustainable and consequently, all orders of punishment including the order of the appellate authority are liable to be quashed.

12. It is stated by the learned advocate of the applicant



that the applicant has been denied the promotion even after expiry of the period of alleged punishment imposed upon him (Annexure/A2 to the application) though the applicant was selected by the Departmental Promotion Committee for further promotion to the higher grade, this promotion had been arbitrarily withheld by the respondents due to the imposition of the penalty upon him. We are of the view that the applicant is entitled to get all consequential reliefs in this case, if he was found selected by the DPC for the purpose of getting promotion to the higher grade and if his promotion was withheld on the basis of the said inquiry report. Accordingly, we direct the respondents to consider the case of the applicant for promotion, if he was found selected by the DPC, as stated by the learned advocate of the applicant, within three months from the date of communication of this order.

13. In view of the aforesaid reasons, we set aside all the orders including inquiry report, chargesheet, order of punishment, order of appellate authority and the applicant should be granted all consequential reliefs as per rules. Accordingly the application is allowed awarding no cost.

G. S. Maingi 28.9.99
(G. S. Maingi)

MEMBER (A)

D. Purkayastha 28.9.99
(D. Purkayastha)
MEMBER (J)