

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

O.A. No.79/95

Date of Order:13.11.1998

R.C. Lal s/o Shri Genda Lal r/o Flat No.10, University Flats, V.G. Garde Marg, Residency Area, Jodhpur, lastly employed on the post of T.T.E., Ratangarh, Northern Railway, Bikaner Division, Bikaner.

... Applicant

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Commercial Manager, Northern Railway, Baroda House, New Delhi.
3. The Additional Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner (Rajasthan).
4. The Senior Divisional Commercial Superintendent/Manager Northern Railway, Bikaner Division, Bikaner (Rajasthan).

... Respondents

Mr. S.K. Malik, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. Gopal Singh

Applicant, R.C. Lal, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned orders dated 8.5.1987 (Annx. A/1), dated 22.7.1988 (Annx. A/2) and dated 18.2.1994 (Annx.A/3) and for issuing a direction to the respondents to reinstate the applicant in service with all consequential benefits.

Gopal Singh

2. Applicant's case is that while working as TTE at Hanumangarh Junction, he was served with a charge sheet dated 8.5.1987 with the following charges:

"Shri R.C. Lal, the then TTE/ Hanumangarh while working as such in 3 - Tier sleeper coach No. 34290 in train No. 11 UP Jaipur - Sri Ganganagar Express on 13.11.1986 committed the following serious irregularities:-

At first he tried to hush up Rs.40/- by not providing EFT to the Complainant Shri H.C. Singh in favour of his daughter Km. Laxmi F-9, Secondly on insisting of Shri H.C. Singh complainant, he issued EFT No.75566 dated 13.11.86 for Rs.40/- prepared wrongly in order to adjust the amount in question.

By his above acts Shri R.C. Lal failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a railway servant there by con-travening Rules 3 (i) (i), (ii) & (iii) of the Railway Services (Conduct) Rules - 1966."

On conclusion of the enquiry in the case, the Disciplinary Authority imposed upon the applicant the penalty of removal from service vide its order dated 22.7.1988 (Annx.A/2). On a appeal against the order of the Disciplinary Authority filed by the applicant, the Appellate Authority modified the punishment vide its order dated 18.2.1994 (Annx.A/3) from removal from service to compulsory retirement and the applicant stood compulsorily retired from service from that date. Feeling aggrieved by this action of the respondents, the applicant has approached this Tribunal through the present O.A.

3. Earlier the applicant had approached this Tribunal vide O.A. No.74/90, which was decided on 22.9.1993. In its order dated 22.9.1993, this Tribunal had observed as under:

"4. We, therefore, have no option except to quash the appellate order passed by the respondents i.e. Annex.A/3 and direct the respondents that they shall dispose of the appeal again on merits by a speaking

Cupal Singh

19

order within a period of four months from this order. After the decision in the appeal, if the applicant succeeds, then the consequences would follow.

5. Since, we have heard this matter only in view of order passed by the appellate authority as such, we are not disposing the OA on merits on other grounds."

4. In compliance to the above order of this Tribunal, ~~the~~ ~~Appellate Authority~~ ~~dated 23.9.1988~~ ~~of the applicant~~ the Appellate Authority dated 23.9.1988 of the applicant disposed of the appeal vide its order dated 18.2.1994 (Annx.A/3) with the following observations:

"4. As per the enquiry report submitted by the enquiry officer, Sh. R.C. Lal has been held responsible for the charge that while working as TTE/Hanumangarh in 3 tier sleeper coach No.34290 in train No. 11 UP Jaipur - Sri Ganganagar Express on 13.11.1986, first tried to hush up Rs.40/- by not providing EFT to the complainant Sh. H.C. Singh in favour of his daughter Kumari Laxmi, F-9 years. Secondly, on insisting of Shri H.C. Singh, he issued EFT No.75566 dated 13.11.1986 for Rs.40/- which was prepared wrongly in order to adjust the amount in question. The charge had been proved during the course of enquiry and Shri Lal in his appeal has not brought out any point which goes to prove his non-indulgence in this case.

5. The enquiry report along with NIP was sent by the Disciplinary Authority to the employee's last place of posting which was not received by the appellant as he was absconding from duty. A copy of the punishment notice alongwith enquiry Report was sent to the employee on his permanent home address through registered post which was duly acknowledged.

6. However, after carefully considering the appeal against the order of Disciplinary Authority imposing punishment of removal of service and his having completed 15 years of service in Railways, the punishment of removal from service imposed is modified to compulsory retirement."

5. Notices were issued to the respondents and they have filed their reply.

6. We have heard the learned counsel for the parties and perused the record of the case carefully.

Carpal Singh

7. The learned counsel for the applicant had challenged the impugned orders and action of the respondents on various grounds, inter alia, the following:

(i) The Disciplinary Authority in his order dated 22.7.1988 has observed that the applicant tried to pocket Rs.40/- as illegal gratification and the charge stand proved after the enquiry, whereas the charge against the applicant was to hush up Rs.40/- by not providing EFT to the complainant and on the insistence of the complainant issuing him EFT wrongly in order to adjust the amount in question.

(ii) Documents demanded by the applicant in connection with the enquiry case were not made available.

(iii) Vigilance Inspector was quoted as the witness because he had conducted the preliminary enquiry in the case.

(iv) Appellate order is again a non-speaking order and indicates non-application of mind by the Appellate Authority.

(v) Punishment imposed is disproportionate to the alleged mis-conduct, and finally

(vi) This is a case of no evidence.

8. The learned counsel for the applicant has cited the judgements in the following cases in support of his contention:

1988 (8) ATC 410 Omkar Prasad Choubey Vs UOI & others

1990 (14) ATC 823 State of Haryana Vs Om Prakash

1993 (23) ATC 403 State Bank of India Vs D.C. Aggrawal

1994 (5) SCC 118 Mohd. Quaramuddin Vs State of A.P.

AIR 1987 SC 2386 Ranjit Thakur Vs UOI & others

1995 (31) ATC 475 SC Ram Kishan Vs UOI & others

1998 SCC (L&S) 771 Colour Chem Ltd. Vs A.L. Alaspurkar and others

Lupal Singh

1994 (2) ATJ 440 K.K. Balakrishanan Vs Divisional Engineer Telecom

1996 (33) ATC 1 P.C. Pandey Vs UOI & others

1994 (2) ATJ 555 Chiranji Lal Surya Vs UOI & others

AIR 1986 SC 113 Ram Chander Vs UOI & others

1996 (1) ATJ 81 Basant Kumar Vs UOI & others

TA No.864/86 decided on 5.1.1987 Pyare Lal Gaur Vs UOI

& others

O.A. No.353/96 decided on 18.2.1998 S.J. Verma Vs

UOI & others

9 Briefly stated the facts of the case as made out by the respondents are that one Shri H.C. Singh was travelling with his wife and two daughters on 13.11.1986 in 3 Tier sleeper coach of 11 UP train Jaipur Sri Ganganagr Express. He had only three berths reserved for him and his family. His youngest daughter, Laxmi, 9 years was travelling without ticket. Shri H.C. Singh requested for a ticket and a berth for his daughter from the applicant who was on duty in that coach of the said train. Shri H.C. Singh initially gave Rs.23/- and on further demand from the applicant gave Rs.17/ more. In all he paid Rs.40/- and demanded EFT from the applicant. The applicant told Shri H.C. Singh that he will be issuing EFT later on. On persistence demand from Shri H.C. Singh, the EFT for Rs.40/- was issued at Sikar charging fare from Ringus to Sri Ganganagar. It is alleged that this EFT was wrongly prepared by the applicant. It is inferred by the respondents from this incident that the applicant never wanted to issue EFT and wanted to pocket Rs.40/-. This charge is based on the complaint allegedly filed by Shri H.C. Singh.

Carpal Singh

10. Applicant's version of the incident is that Shri H.C.Singh wanted to carry his second daughter, namely Laxmi, 9 years free of cost. However, on the insistence of the applicant he had to pay Rs.40/- as fare. The alleged complaint might have been made by Shri H.C. Singh for teaching a lesson to the applicant.

11. The alleged complaint of Shri H.C. Singh dated 17.11.1986 has been reported to have been verified by the Vigilance Inspector and on that basis the charge sheet was issued to the applicant.

12. A perusal of the records of the departmental enquiry available on the case file reveals strange facts that give rise to various questions. In the recorded statement of Shri H.C.Singh dated 28.9.1987 (Annx.A/10), it is mentioned, "when I decided to carry my daughter with me in addition to three berths already reserved for my family, I approached booking office for issue of half ticket for my daughter and he advised to get the ticket prepared in the train. I could not enquire from the booking Clerk due to shortage of time the reasons for not issuing the ticket and advising me to get the ticket in the train." It looks very strange that ticket Clerk refused to issue the ticket to Shri H.C.Singh without giving any reasons thereof. In normal circumstances counter Clerks invariably issue tickets as per demand unless there are specific reasons for not to do so. This statement itself appears to be an after thought on the part of Shri H.C.Singh. It can also be inferred that Shri H.C.Singh wanted to carry his daughter alongwith his family on the said

Carpal Singh

train free of cost. In this regard another question arises as to why he was initially leaving behind his youngest daughter aged 9 years at Jaipur when he was posted at Sri Ganganagar and what prompted him to change his mind at the last moment in this regard. Shri H.C.Singh has also stated "I thought it proper to send my complaint through my SP and as such I did not lodge my complaint at the station." This incident was something personal to him. It is not understood as to why he wanted to lodge the complaint through his SP. In ordinary course, any passenger can lodge the complaint with the Station Master for any misconduct on the part of the Railway employees. Involvement of superior authority in personal matter is uncalled for. Here it can also be inferred that the lodging of the complaint was an after thought. Interestingly, Shri H.C.Singh has also stated, "nobody approached me for any clarifications in regard to my complaint. If somebody have gone to my place of postings at Sri Ganganagar in my absence, I cannot say about the same." It is the case of the respondents that the complaint was verified by the Vigilance Inspector from a member of the family of Shri H.C.Singh. Had that being the case, Shri H.C.Singh should not have shown ignorance of the fact of the verification of his complaint as this verification must have been a topic for discussion amongst the members of the family of Shri H.C.Singh.

13. In his statement dated 11.8.1987, Shri S.K.Verma, Vigilance Inspector has mentioned, "no statement of the complainant Shri H.C.Singh was recorded by me. I have verified the genuineness of the complaint through his family member as the complainant himself was not available - I do not recollect the name of the family member from whom verified the genuineness

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21

of the complaint of Shri H.C.Singh. Since the person who verified the genuineness of the complaint claimed to be his family member of Shri H.C.Singh, it was believed so." Such a cock and bull story cannot be accepted from a responsible officer like Vigilance Inspector. In case verification of the complaint was assigned to him, he should have done a thorough verification.

14. In the light what has been discussed above, we conclude that this is a case of no evidence and the applicant has been falsely implicated. There is no worthwhile evidence available on records produced before us which can prove the guilt of the applicant. Since the applicant had issued the EFT to Shri H.C.Singh and thereafter deposited the amount with the Railways authorities, the allegation of illegal gratification cannot be proved.

15. In view of the fact that in our view this is a case of no evidence, we do not consider it necessary to discuss other contentions of the applicant.

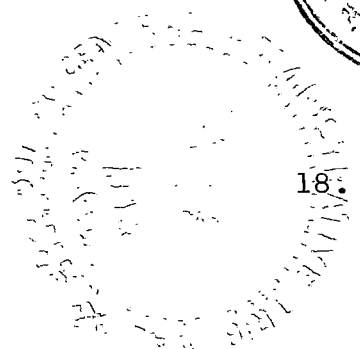
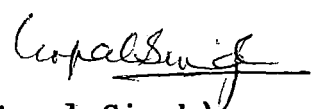
16. In terms of this Tribunal order dated 22.9.1993 in O.A. No. 74/90, the case was remanded back to the respondents with a direction that they shall dispose of the appeal again on merits by a speaking order. It is, however, noticed that the Appellate order dated 18.2.1994 cannot be said to be a speaking order. The appeal has been disposed of by this order in a routine fashion without considering various points raised by the applicant in his appeal. We, therefore, consider that no useful purpose will be served by remanding the case back to the respondents.

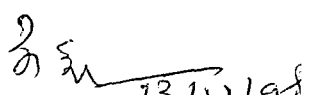
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17. In the result the O.A. succeeds and is allowed with the following observations:

- (i) The impugned orders dated 8.5.1987 (Annx. A/1), dated 22.7.1988 (Annx. A/2) and dated 18.2.1994 (Annx. A/3) are quashed.
- (ii) The respondents are directed to reinstate the applicant in service within a period of three months from the date of issue of this order.
- (iii) The applicant would be entitled to all back wages from the date of his compulsory retirement to the date of his re-instatement subject to the condition that he has not been in any gainful employment during this period.
- (iv) The period from the date of compulsory retirement to the date of re-instatement will also qualify for all service benefits including pension.

18. Parties are left to bear their own costs.



(Gopal Singh)
Administrative Member


13/11/98
(A.K. Misra)
Judicial Member

Aviator/