

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 07.08.20

O.A. No. 189/98

Nanag Ram Meena s/o. Sh. Heera Lal Ji aged about 44 years resident of Kothi No. T-10, Traffic Colony, Northern Railway, Hanumangarh (Rajasthan), presently working on the post of C.T.I. Incharge, Hanumangarh Railway Station.

... Applicant.

v e r s u s

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Commercial Manager (G), Headquarters Office, Baroda House, New Delhi.
3. The A.D.R.M, Northern Railway, Bikaner Division, Bikaner.
4. The Senior Divisional Commercial Manager, Northern Railway, Bikaner (Rajasthan).

... Respondents.



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

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

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed seeking quashing of the impugned order at Annexure A/1 dated 20.1.97, order at Annexure A/2 dated 6.6.97 passed by the respondent No. 4, order at Annexure A/3 dated 20.8.97 passed by the respondent No. 3, and the order at Annexure A/4 dated 18.2.98 passed by

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the respondent No. 2. Annexure A/1 is the charge sheet, Annexure A/2 is the order passed by the disciplinary authority, withholding the increment for a period of 2 years without postponing the future increment. Annexure A/3 is the order passed by the appellate authority in appeal filed by the applicant by which the penalty was reduced to withholding of increment for 1½ years instead of 2 years. Annexure A/4 dated 18.2.98 is the order passed by the reviewing authority, dismissing the review petition by confirming the order of the appellate authority. The applicant has challenged these orders mainly on the ground of lack of evidence to prove the charges.

2. The learned counsel for the applicant contended that there is no evidence on record to prove the charges against the applicant. Therefore, the application deserves to be allowed. He took us through the material on record in order to buttress his arguments. On the other hand, the learned counsel for the respondents supports all these documents contending that this is not a case of no evidence for interference of this Tribunal. Therefore, this application is liable to be dismissed.

3. In order to appreciate the rival contentions, we think it appropriate to note summarily the facts of the case.

4. It is stated that on 29.6.94, the I.I. (Vigilance), Railway Board, intercepted train No. 9712 Dn. Sriganganagar - Jaipur Exp ex RGS and during the course of check, the vigilance team found that one passenger, namely Shri Ashok Kumar, was travelling without ticket in S-1 coach. Accordingly, the I.I. (Vigilance) got excess charged vide EFT No. 272679 for Rs. 236/-. It is stated in the charge that in the presence of the T.T.E. of S-1 coach, Shri Ashok Kumar told that he was allowed to travel without ticket in S-3 coach ~~by the applicant~~ by the applicant (Nanag Ram Meena) from Elanabad to Sikar. It is also stated

that the applicant had shifted the said passenger to S-1 coach and got down at Sikar and the passenger (Sh. Ashok Kumar) told that he paid Rs. 90/- to the applicant. On the basis of these allegations, an article of charge was issued to the applicant alleging that in case had there been no vigilance check, the said passenger could have travelled without ticket causing loss to the Railways and in these circumstances, the applicant failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant, thereby contravened Rule No. 3.1 (i), (ii) and (iii) of the Railway Services Conduct Rules, 1966. The applicant denied these charges by filing a reply. The disciplinary authority refusing to accept his defence, imposed a penalty of withholding his increment for a period of 2 years, and after considering his appeal, this penalty has been reduced to 1½ years instead of 2 years, by the appellate authority.

5. Now we have to see whether it is a case of no evidence. It was the defence of the applicant that no doubt, he travelled in the said train, but he had to get down at Churu, since he had lot of vomiting and after receiving immediate medical treatment there, he was referred to Senior DMO, Hanumangarh, where he received medical treatment with effect from 29.6.94 to 4.7.94. During that period, he did not attend his duties. The authorities have stated that the alleged sickness of the applicant is a 'made up story' and the same cannot be accepted. Accordingly, the applicant was imposed with the penalty, as stated above.

6. To prove the charges, the disciplinary authority examined the T.T.E., Shri Mohar Singh Jarodia. He stated that he was the incharge of S-1 coach between the night on 28.6.94 to 29.6.94 in the train in question. He stated that on that date, three passengers were occupying berth Nos. 45, 46 and 47 (Suratgarh quota) without any ticket and at that time, the I.I. of the Railway Board alongwith the T.T.E., Shri Subhash Chand, entered into the S-1 compartment and those three persons

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were charged with a penalty by getting the receipts issued by Shri Subhash Chand, T.T.E. He stated that they might have got into this compartment in the Ringas Station, where the train stops for a considerable time and the passengers take their tea and he has no knowledge of those 3 persons occupying the berths. He also stated that one of these passengers, by name Shri Ashok Kumar, had given a statement in writing that he had travelled in S-3 coach upto Sikar with the permission of Shri Nanag Ram Meena (present applicant). Shri Ashok Kumar also stated that he had paid Rs. 90/- to the applicant, who got down at Sikar and he was given the charge to Shri Mohar Singh Jarodia, which according to him, is not correct. It was not his fault if those passengers travelled in his S-1 coach. It may be due to the fact that it was already a day break and they must have come from general coach to S-1 coach.



7. Except the above statement, there is no evidence on record. The said passenger, by name Shri Ashok Kumar, who is alleged to have paid Rs. 90/- to the applicant has not been examined in this case. From the material on record, it is clear that the applicant was not the T.T.E. of S-3 coach, but he was in general supervision with the entire train. There is no evidence as to who was incharge of S-3 coach. The fact remains that those 3 passengers were apprehended in S-1 coach. They were apprehended in S-1 coach of which the witness, Shri Mohar Singh Jarodia, was incharge. From the evidence of this witness, it is clear that he is not sure wherefrom those passengers came to S-1 coach and according to him, they must have come from the general compartment. From this evidence, it cannot be said that the said Shri Ashok Kumar alongwith 2 others travelled in S-3 coach. The T.T.E. of S-3 coach could have been the best witness to speak the fact whether Shri Ashok Kumar and 2 others were travelling in S-3 coach or not. Moreover, there is no evidence as to who was the incharge of S-3 coach. Therefore, on the basis of this evidence, it cannot be established that Shri Ashok Kumar and 2 others were travelling in S-3 coach with the permission of

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the applicant by paying Rs. 90/-. Whether actually he paid Rs. 90/- or not, would be a matter within the knowledge of Shri Ashok Kumar, who has not been examined in this case. There is possibility that Shri Ashok Kumar, to save his skin, might have just named the applicant as a person received Rs. 90/- for travelling in S-3 coach without ticket. There is also possibility that the witness, Shri Mohar Singh Jarodia, in order to avoid his liability might have implicated the applicant. In fact, those three passengers were found travelling at the relevant point of time in S-1 coach, of which this witness was incharge as T.T.E. In order to absolve his liability in failing to collect the ticket charges and penalty from the passengers found in his own coach, he might have thrown the liability on the applicant. All these conjunctures are possible because there is no positive evidence on record to prove the alleged charges against the applicant. Whether the defence set up by the applicant as to his sickness and the treatment is acceptable or not, the fact also remains on record that the respondents have not proved the charges framed against the applicant. In our opinion, this is a case of no evidence. In this view of the matter, we pass the order as under:-

8. The O.A. is allowed. The impugned orders at Annexure A/2 dated 6.6.97, Annexure A/3 dated 20.8.97 and Annexure A/4 dated 18.2.98, are hereby quashed with all consequential benefits. No costs.

Gopal Singh

(GOPAL SINGH)

Adm. Member

B.S. RAIKOTE

(B.S. RAIKOTE)

Vice Chairman

cvr.

Records
for Sec 107
Shanley
10/9/2003
R. com
DDT
11/8/2003

Part II and III destroyed
in my presence on ... 10/11/03
under the supervision of
Section Officer () as per
order dated 10/11/03

VRM 10/11/03
Section Officer (Records)