

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

O.A. No. 612/97

Date of decision: 14.12.2004

Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member.

Hon'ble Mr. M.K. Misra, Administrative Member.

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Swapn Kumar Bakshi, S/o late Shri J.K. Bakshi residing at 105/G, New Traffic, India, Kharagpur, Dist. Midnapore and working for gain as Booking Clerk (since reverted from the post of Head Parcel Clerk) S.E. Rly, Ghoraghat, Dist. Howrah

: Applicant.

rep. by Mr. S.K. Dutta : Counsel for the applicant.

-versus -

1. Union of India, service through the General Manager S.E. Rly, Garden Reach, Calcutta 700 043
2. General Manager, S.E. Railway, Garden Reach, Calcutta 700 043
3. Chief Personnel Officer, S.E. Railway, Garden Reach Calcutta 600 043
4. Chief Commercial Manager, S.E. Rly, 14 Strand Road Calcutta 700 001
5. Sr. Divisional Commercial Manager, S.E. Rly, Kharagpur
6. Divisional Commercial Manager, S.E. Rly, Kharagpur.
7. Shri M.R. Satyanarayana, Chief Inquiry Officer (Inspector) Vigilance Branch-cum-Inquiry Officer, S.E. Rly, Garden Reach, Calcutta 700 043

: Respondents.

rep. by Mr. P. Mukherjee : Counsel for the respondents.



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ORDER (oral)

Per Mr. Mukesh Kumar Gupta

In this application, challenge has been made to the disciplinary proceedings initiated vide memo dated 12.06.95, inquiry submitted thereon and the inflicted penalty of reduction in scale for a period of 5 years with a stipulation that the reduction shall not have the effect of postponing the future increments on restoration. The other consequential benefits like treating the period of suspension as duty etc are also prayed for.

2. The facts which need to be noticed are that the applicant who was initially appointed as Commercial/Junior Booking Clerk in the year 1975, was promoted as Senior Booking Clerk in 1982 and was further promoted as Head Parcel/Booking Clerk in the year 1985. On 03.02.95, when the applicant was on rest day, he was found to be demanding and accepting Rs. 5,000/- from Sh. J.K. Bhowmik and Nirmal Naik by the Vigilance Branch and therefore was suspended vide order dated 16.02.95. Subsequently a charge memo under Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968 (RSDA Rules for short) dated 12.06.95 was issued alleging the misconduct of obtaining a written undertaking from J.K. Bhowmik and Nirmal Naik, both fruit merchants of PKU in connection with breaking up seal of VPU and threatened them of taking legal action if they failed to pay him an amount of Rs. 5000/-. The applicant also demanded and collected Rs.50/- as illegal gratification from J.K. Bhowmik on 03.02.95 and when the merchants demanded written undertaking the applicant torned them into pieces and certain other allegations were also made against him. Since the said charges

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were denied, an oral inquiry was held. The Inquiry Officer vide his report dated 31.01.96, stated that the first and second component of the charges are proved, the third component was partly proved and the 4th component was not proved. The said inquiry report was made available to the applicant. He submitted a detailed representation on 19.03.96 and the Disciplinary Authority vide order dated 28.05.96, imposed the punishment of reduction in pay scale for a period of five years. Being aggrieved by the said order, the applicant submitted a detailed appeal on 23.07.96 and the Appellate Authority after granting personal hearing on 10.02.97 rejected the appeal on 18.02.97, stating that he fully agreed with the punishment imposed by the Disciplinary Authority and the procedures laid down under the rules were correctly followed; he was given reasonable opportunity to defend himself and the punishment imposed was commensurate with the gravity of the offence. The aforesaid charge memo inquiry report, Disciplinary and Appellate Authorities orders are challenged in the present case.

3. Shri S.K. Dutta, learned counsel for the applicant has vehemently contended that the Appellate Authority disagreed with the findings of the inquiry officer on the issue of refusing to sign on the seizure memo. It was further contended that such disagreement was made without giving an opportunity to the applicant and it has been done behind the applicant which is not permissible. For this purpose he strongly relied on the Appellate Authority's order 18.02.97. Much emphasis was laid on the following words i.e. " I disagree with the finding of inquiry officer that since signing the documents would have gone against your own interest, there was nothing wrong in refusing to do so. As a railway servant you should have cooperated with vigilance officials at all times-no one could ever prevent you from recording any remark you wanted to justify your stand."

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A further contention was raised that two witness, who were listed as witnesses in Annex. 4 to the Charge Memo, were not produced and as such there was denial of right to cross examine them. Our attention was also drawn to para 1.2 of the inquiry report, wherein the inquiry officer noticed that Shri A.K. Chatterjee SVI/GRC and Shri S.K. Balibabu a private person have been dropped since they have not turned up on the two occasions and their role was covered by other PWs. We may note para 1.2. and para 1.3. of the said inquiry report which reads as under

" 1.2. The preliminary hearing of the case was taken up on 28.08.95. The regular hearing was held on 09.10.95 and 09.11.95. All the listed documents in Annex.III have been taken on record and marked as Exhibits S/1 to S/23. Out of ten prosecution witnesses as listed in Annexure IV eight PWs were examined and their evidences were recorded Shri A.K. Chatterjee, SVI/GRC and Shri S.K. Balibabu a private person have been dropped since they have not turned up on the two occasions and their role was covered by other PWs.

1.3. C.O. has neither cited any defence witness nor asked for any defence document. C.O has also not availed the opportunity of appearing as his own defence witness. C.O. submitted his defence brief on 12.12.95. "

The next contention raised was that the inquiry officer did not consider the defence documents produced by him, for which he has made a specific contention in paragraph 2(iii) of the representation submitted to the Disciplinary Authority after receipt of copy of inquiry officer's report. He further contended that the procedure adopted in the disciplinary proceedings were unreasonable, illegal as well as from non application of mind. The applicant also contended that the appellate authority did not consider the contention raised that the money recovered from the applicant's possession was not produced during the cross examination.

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4. The respondents contested the applicant's claim and stated that during the service tenure on several occasions the applicant's working was found irregular for various lapses and he was awarded penalties in the years 1976, 1988 and 1995. The applicant demanded and collected Rs.5,000-00 as illegal gratification for which he was departmentally proceeded. The money in question was actually recovered from the applicant's possession which was duly witnessed by responsible railway officials. The question of applicant's lodging protest after the incident on 03.02.95 did not hold much water in as much as his presence on the day of incident amply proves his motives, particularly the said day was rest day for the applicant. The suspension was revoked on 15.06.95 and the applicant was paid subsistence allowance as per the extant rules. The charge memo dated 12.06.95 contained 4 articles of charges and the procedure prescribed was scrupulously followed. The applicant did not press for cross examination of the witnesses as is evident from the inquiry officer's report. To the applicant's contention that two witnesses were dropped and therefore he was denied the right to cross examine them, it was contended that it is not the case of the applicant that the said witnesses were not summoned. On the other hand both of them were summoned twice and since they failed to appear and the role to be played by them was covered by the other PWs examined and hence they were dropped. It was further contended that the non examination of the said witnesses did not cause any prejudice to the applicant. As regards the question of alleged disagreement by the Appellate Authority with the report of the inquiry officer

concerned, it was stated that it was only an observation made and it has no basis for passing the said order. In any case, the Appellate Authority justified the punishment imposed by the Disciplinary Authority and also held that prescribed procedure was followed and the applicant was given reasonable opportunity; the punishment imposed was commensurate with the gravity of offence. The said observation of the Appellate Authority cannot be blown out of context and it has to be read in its entirety. The learned counsel for the respondents contended that 7 documents were placed as noticed herein above. No documents were produced even before this Tribunal and hence we are not in a position to render our findings with regard to their relevance or otherwise. It was emphasised that the principles of natural justice were ~~not~~ observed. The applicant was given reasonable opportunity to defend his case and there was no illegality committed either by the inquiry officer, Disciplinary Authority or the Appellate Authority. More over the applicant was afforded personal hearing on 10.02.97 before passing the Appellate Authority's order. It was further contended that the inquiry officer submitted a detailed report. Similarly is the fact with Disciplinary Authority as well as the Appellate Authority's order.

5. We have heard the learned counsel for the parties at length and perused the pleadings carefully. We bestowed our careful consideration to the inquiry officer's report Disciplinary Authority, as well as the Appellate Authority's order. We find that the applicant was indeed afforded a reasonable opportunity of being heard and the principles of natural justice were scrupulously observed. Mere non examination of certain private witnesses was not fatal ,

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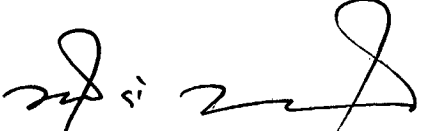
particularly when we find that the other witnesses produced were not examined by the applicant. It is for the prosecution to examine the witness and the applicant cannot compel that all the witnesses should be examined. Particularly in the facts and circumstances of the present case out of 10 witnesses 8 were examined as noticed by the inquiry officer in its report. Regarding the non production of currency notes, we find that the details of the said currency notes were mentioned in the statement of imputation of misconduct or misbehaviour itself. The applicant has not produced some defence documents, which were not considered by the inquiry officer, were not produced before us also and as such we are unable to record any specific finding, whether the alleged documents had any relevance to the issue in question. As repeatedly held by the Hon'ble Apex Court, the scope of judicial review in the disciplinary proceedings is very limited. The Courts/Tribunal cannot re-appreciate the evidences or substitute their own findings for the findings of the Disciplinary Authority/Appellate Authority. If two views are possible than the one taken by the Disciplinary Authority/Appellate Authority, it cannot be disturbed under the guise of judicial review. We may note that the applicant has not denied that on the date of ^{incident} ~~duty~~ he was not on duty but it was his rest day. We may also note that it is a case where the applicant was found to be demanding and accepting Rs.5000/- from the fruit merchants, which is a serious offence. The applicant has not denied the various penalties imposed



on him on earlier occasions in the years 1976, 1988 and 1995.

6. Such being the case and admitted facts, we do not find any illegality or arbitrariness or violation of principles of natural justice requiring our interference by this Tribunal. Accordingly, the O.A fails and is dismissed. No costs.


(M.K. Misra)
Administrative Member


(Mukesh Kumar Gupta)
Judicial Member.

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