

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 403 of 1999

Tuesday, this the 17th day of July, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. N. Gopalan,
S/o A.A. Narayana Iyer,
Ticket Collector, Southern Railway,
Changanur, residing at: No.4/7,
Mangala Nivas, Ayani Road, Maradu PO,
Pin: 682 304Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO, Madras-3

2. The Senior Divisional Commercial Manager,
Southern Railway,
Trivandrum Division, Trivandrum-14

3. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum-14

4. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14Respondents

[By Advocate Mrs Sumathi Dandapani]

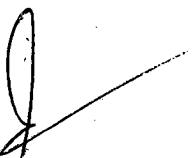
The application having been heard on 17-7-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1 and A2 and to grant him
consequential benefits.

2. The applicant while working as Ticket Collector was
issued with a charge memo. He denied the charge. After
enquiry he was found guilty of the charges by the disciplinary
authority and he was reverted to the post of Server in the

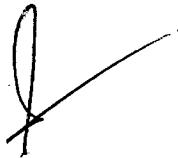


catering department, the post he was holding before he was appointed as Ticket Collector, as per A1. He preferred an appeal and the Appellate Authority as per A2 confirmed the penalty awarded by the Inquiring Authority. He says that A1 and A2 are arbitrary, discriminatory and ultra vires of Rule 9 and 10 of Railway Servants (Discipline & Appeal) Rules. A1 and A2 are not based on evidence. Findings in A1 are based on an enquiry conducted behind the back of the applicant in the office of Area Manager. He was denied a reasonable opportunity to defend the charge against him.

3. Respondents resist the OA contending that though certain independent enquiry was also conducted to check the veracity of the applicant's evidence, apart from that itself the incumbent could not prove his innocence. The applicant was given ample opportunity to go through the documents he wanted and if required to take copies of the same. The Enquiry Officer had to take additional evidence since the applicant's defence contended that it was at the instruction of the Area Manager/Ernakulam that the allotment was done. This was necessitated to be checked up by the Enquiry Officer. Grounds raised are frivolous. They do not require specific rebuttal. It cannot be said that the enquiry was conducted behind back of the applicant.

4. A1 is the order of the Disciplinary Authority, who after having found the applicant guilty of the charge, reverting the applicant to the post of Server in catering department, the post from which he was appointed as Ticket Collector.

5. The learned counsel appearing for the applicant vehemently argued that from a reading of A7, the report of the

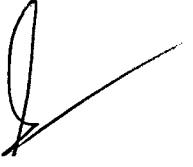


Enquiry Officer, it is clear that the enquiry was done behind back of the applicant. In A7, the enquiry report submitted by the Enquiry Officer, it is stated thus:

"In this connection an indepth enquiry was conducted at AM Office/ERS to find out the genuiness of the message. AM/ERS categorically confirmed that no such message has been given from AM/ERS on 19-1-98 for allotment of one SL berth by name Sri Manish Jain. A statement obtained from AM/ERS dt. 20-8-98 is attached herewith."

6. From the materials made available it is clearly seen that the enquiry was conducted by the Enquiry Officer behind the back of the applicant. When the enquiring authority has relied on an enquiry conducted, such an enquiry cannot be one conducted behind the back of the delinquent employee.
7. While sitting in judicial review, the Tribunal is more concerned with the decision making process than the decision itself. The decision making process in this case by relying on an enquiry conducted behind the back of the applicant cannot be said to be one that can be countenanced in law. It is a case of evidence relied on by the authorities concerned behind the back of the applicant.
8. In this case, the applicant was examined by the Enquiry Officer before any witness was examined on the side of the administration to prove the charge against the applicant. The nature of questions put to the applicant is seen from A7. He was practically cross-examined by the Enquiry Officer. In A7, the Enquiry Officer has also admitted that he has cross-examined the charged employee for it is stated thus:

"While cross examining the CE along with his DH, he fully admitted that he has allotted berth No. 20 by S6 coach of 6320 of 19-1-98 in favour of Shri Manish Jain as per advice from AM/ERS when he was questioned about



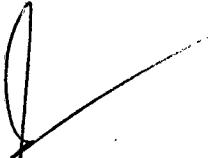
the authority of the advice, he had stated that the message has received direct through Railway Phone No. 5448 asking to allot one berth from AM/EQ in favour of Shri Manish Jain."

9. The procedure adopted by the Enquiry Officer examining the delinquent first and not only examining rather cross-examining as admitted by him, is something strange and not prescribed by the procedure.

10. The learned counsel for the applicant also submitted that no opportunity for adducing defence evidences was given to the applicant. From the materials available it is not seen that an opportunity was afforded to the applicant to adduce defence evidences. It is a valuable right the delinquent has got and that cannot be taken away. Denial of an opportunity to adduce defence evidence is a factor causing serious prejudice to the delinquent employee.

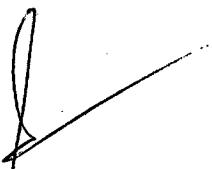
11. The learned counsel appearing for the respondents mentioned the rulings reported in V.Gopalan vs. Union of India & Others [ATR 1989(2) CAT 608], G.Anandam vs. Tamil Nadu Electricity Board & Another [1996(2) LLJ 1198], Bibhuti Bhushan Das Gupta & Another vs. State of West Bengal [AIR 1969 SC 381], B.C.Chaturvedi vs. Union of India & Others [JT 1995(8) SC 65], Badri Naryanan & Others vs. Rajabagyathammal & Others [1996(7) SCC 101] and The High Court of Judicature at Bombay, Appellant vs. Shashikant S.Patil and Another, Respondents [AIR 2000 SC 22], but these citations were not made available for our perusal excepting the ruling in AIR 2000 SC 22.

12. In The High Court of Judicature at Bombay, Appellant vs. Shashikant S. Patil and another, Respondents [AIR 2000 SC 22], it has been held that interference with the decision of departmental authorities can be permitted, while exercising



jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. So, from the said ruling it is quite evident that if the decision of the authority is vitiated by considerations extraneous to the evidence or if the conclusion made by the authority, on the very face of it, is arbitrary or capricious or that the authority had proceeded in violation of the statutory regulations, the findings can be interfered with. Here, the authority concerned has relied on a piece of evidence based on an enquiry conducted behind the back of the applicant. This can never be said to be in consonance with the principles of natural justice. This is wholly arbitrary and capricious. It is against the statutory regulations for statutory regulations do not provide for such an enquiry behind the back of the delinquent. Hence, this particular ruling does not help the respondents in any way.

13. In the report submitted by the Enquiry Officer it is stated that the statement obtained by the TTE from the party is also available along with the charge memo and even though this document is not relied upon it has to be perused under the circumstances referred. So, according to the inquiring authority, the statement obtained by the TTE from the party is available along with the charge memo and that has to be perused. A4 is the charge memo. It does not contain the said

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statement obtained by the TTE. Under such circumstances, how there can be a perusal of the same is known only to the Enquiry Officer.

14. In Kuldeep Singh vs. Commissioner of Police and Others [1999 SCC (L&S) 429] it has been held that:

"From the findings recorded separately by the Deputy Commissioner of Police, it would appear that there is a voucher indicating payment of Rs.1000 to Rajpal Singh, one of the labourers, on 8-2-1990. This document was not mentioned in the charge-sheet in which only two documents were proposed to be relied upon against the appellant, namely, copy of the report of SHO Lajpat Nagar dated 5-3-1990 against the appellant and the copy of the labourers' statement. This document has, therefore, to be excluded from consideration as it could not have been relied upon or even referred to by the Deputy Commissioner of Police."

In the light of the said ruling, the inquiring authority cannot peruse the statement obtained by the TTE from the party.

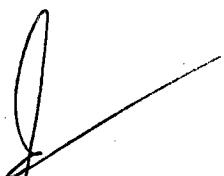
15. The disciplinary authority, while issuing A1, has accepted A7, the report of the Enquiry Officer.

16. This is a typical case where the decision has been arrived at by the disciplinary authority not based on reason but on humor. Any authority while taking a decision should be guided by reason and not by humor.

17. A2, the order of the Appellate Authority, says that:

"proving guilty or otherwise is the onerous responsibility of the delinquent."

On this aspect, we will stop saying that the Appellate Authority is still to get acquainted with the procedure to be followed in enquiries like this.



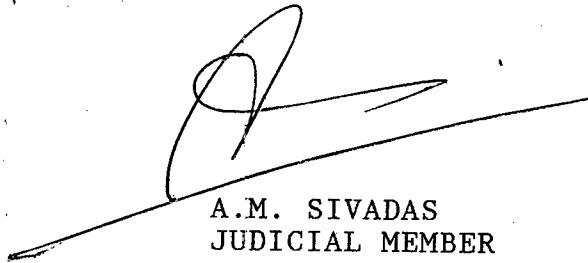
18. Accordingly, A1 and A2 are quashed. The applicant is entitled to the consequential benefits.

19. The Original Application is disposed of as above. No costs.

Tuesday, this the 17th day of July, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:-

1. A1 True copy of the order No. V/C 415/DAR/5/MAJOR /98 dated 13-1-1999 issued by the 2nd respondent.
2. A2 True copy of the order No. V/P.227/A/99/17/ Comml. dated 2-3-99 issued by the 3rd respondent.
3. A4 True copy of the charge Memo No. V/C 415/DAR/5/MAJOR/98 dated 16-2-98 issued by the 2nd respondent.
4. A7 True copy of the letter No. V/C.415/DAR/5/ Major/98 dated 9-10-98 issued by the 3rd respondent with enquiry report and enquiry proceedings.