

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH: ALLD.

CIRCUIT BENCH AT LUCKNOW.

T.A.NO. 1087 of 1987 (T)

(W.P.No. 5030 of 1982)

K.P.Srivastava

..... Applicant/petitioner

Versus

Union of India &Others

..... Respondents.

Hon'ble Mr.Justice U.C.Srivastava, V.C.

Hon'ble Mr.A.B.Gorthi, Administrative Member

(By Hon'ble Mr.Justice U.C.Srivastava, V.C.)

This transferred case under section 29 of the Administrative Tribunal's Act has come before this Tribunal from Lucknow Bench of the Allahabad High Court before which it was filed as a writ petition against the punishment order dated: 15.6.1982 imposing penalty of reduction to lower post under Rule 6 (Vi) of part III of D.A.R. 1968 and the appellate order dismissing departmental approval against the same. Before passing of the impugned order, the applicant was promoted as Head Enquiry cum reservation clerk in the scale of 425-640 of chief commercial Superintendant.

The applicant who entered the service of N.E. Railways at the relevant time was Enquiry Cum Reservation clerk in the grade of Rs. 330-560. It appears that on 29.8.80 a vigilance raid was conducted in the evening when the applicant was on duty and Rs. 25.08 was found in excess from him. This cash was checked after reservation tickets were purchased by the passengers and one Ramesh Khalasi attached to Railway

vigilance Department who had been comming to window of and on and the conversation is said to have takes place in presence of another vigilance Khalasi Ram deo. An F.I.R. was lodged by the vigilance Inspector on 30.8.80 and 29.8.80 the applicant was served with a chargesheet levelling three charges which amounted to miscouduct and contravention of Rule 3(1) and (1) (11) of Railway (Service) conduct Rules 1966. The charges were:-

- (1) The petitioner issued the journey cum Reservation Ticket bearing No. 54224 and 54225 Exp. Gorakhpur to Lucknow 17 Up Express train and Reservation & berth in sleeper coach on realisation of Rs. 241/- against actual fare of Rs. 20/-
- (2) Also issued reservation ticket No. 81687 and 81688 in the same train and on the date and reservation of two berths on the same realisation of Rs. 16/- against actual fare of Rs. 10.50/-
- (3) Also realised excess money on the sale of other tickets for reserving berths of Rs. 25.08 was found excess in the Government Cash.

The applicant gave his explanation on 30.10.81 rejecting the charges and stating that he could not have charged any excess amount of Railway vigilance Khalasi whom he know from before and that no excess money was charged by him and for two tickets he charged the actual fare viz. Rs. 41.61. In fact there was no excess money and accounting was not done properly and cash was short by 17 paisa. An enquiry officer was

appointed but in the list of witnesses the two passengers Iqbal Singh and one Mali who were said to have purchased tickets from whom excess was charged and their statement was taken by the vigilance party forming series of charges against him. In the memo accompanying chargesheet name of Ram Deo vigilance Khalasi who heard the conversation did not find place. Name of Iqbal singh who had also asked Ramesh Khalasi to purchase two tickets was also not in the memo. The name of R.P.Shukla Chief Reservation Supervisor was mentioned in the list of witness and he was also examined but in cross examination he stated that he was not at the scene and came later on and endorsed the statement of Iqbal and Mali, although the same were not recorded in his presence. Before the Enquiry Officer the applicant nominated Shri. C.B.Chaubey Law Assistant, as his defence counsel but his prayer was refused on the ground that as per Railway Boards instructions a law assistant could not appeared departmental enquiry. Thereafter the applicant had to nominate another person R.P.Singh as his defence assistance. The applicant's other grievances regarding enquiry in which he was not given full opportunity to defend are that he moved an application for summoning the said Iqbal and Mali, whose statements were taken by the vigilance authorities on platform for cross examination as he had no opportunity for the same but they were not summoned and in the opinion of disciplinary authority it was open for him to summon these as witness. One P.N.Gupta vigilance Inspector was examined on 16.10.81 and as applicant was not present

he moved an application on 23.10.81 for cross examination by him but no action was taken on it. According to enquiry Officer and disciplinary authority, as defence assistant was present and he cross examined him thoroughly, in the presence, of applicant who was having first hand knowledge of facts there was no question of recalling him for cross examination.. The applicant prayed for examining one Om Prakash Ailani but his prayer was refused on the ground that he was not cited as a witness in the statement of defence. Regarding law Assistants as defence counsel the permission was refused to applicant on the ground that they are not allowed to act as such, without quoting any authority or rule for the same. The appellate authority agreed on the ground that this letter was issued prior to issuance of circular by the Railway Board in this behalf. The station superintendent without any basis arbitrariness refused permission and the appellate authority did not like to read the Railway Board letter dated 3.9.81. As a matter of fact, vide the said letter, the Railway Board reiterated its earlier letter dated: 4.2.80 containing decision of Ministry of Railways and that of Railway Board. It permitted law assistant to be departmental counsel except when they have not acquired the status of a legal practitioner. Thus disallowing the applicant's defence counsel of choice and instead requiring him, to take assistance of some other employee as against specific instructions, he was denied reasonable opportunity to defend himself.

The enquiry proceedings also suffer from other

blemishes and establish the applicant's claims of denying him opportunity of reasonable defence in series. Reliance on statement of Iqbal and Mail who were not summoned for cross examination, discarding statement of R.P.Shukla in enquiry proceedings and adhering to his earlier endorsement before vigilance authorities, despite his explanation, not recalling the vigilance officer for cross examination and allowing his cross examination to go ahead in the absence of applicant, who alone could have instructed and requiring the defence counsel a departmental man to cross examination him even then the rejection of prayer made by the applicant for examining a defence witness on the ground that his name was not mentioned in that statement. Rule 9 of Railway Servant (Discipline and Appeals) Rule 1968 confers full powers on the enquiry officer to take statement of a particulars person if it is material. The omission to name a witness in defence statement could not have been a ground of disallowing such a person being examined without, considering whether his statement would be material or not was a negation of principle of natural Justice. It would have been a different thing to accept his statement with more caution. Even on merits, the applicant's statement that in fact there was deficit of 17 paise and there was no excess and the accounts if properly seen and scrutinised would have resulted in rejection of first charge even gets support from the findings of appellate authority which made some comments on the said finalings and did not use its conclusion on the said finding before the appellate authority could decide the appeal the General Manager wrote a letter to the D.R.M. N.E.Railway the appellate authority that the case of applicant be reviewed

for awarding higher punishment. According to applicant the appellate authority in respect of main charge viz charge No.1 instead of allowing the appeal it appears found its hand tight and after making observation ^{& loopholes} regarding trophder and deficiencies in the said finding ["] proceeded to consider other charges the appellate authority observed " The points about the sale of an MFT costing Rs. 25.25 which was not taken into account at the time of surprise check of cash has not been thoroughly investigated by the D.O. If it is a fact that this was missed at the time of checking but came to notice at the time of submitting of monthly return it can be calculated that the cash was not excess but actually short by 19 paise. At the time of enquiry detailed questions should have been asked to the S.P.S. as well as C.R.S. to throw light ~~on~~ the actual portion. However since it is only ~~one~~ of the charges against the S.P.S. it does not itself change the evidence or conclusion as the other charges". The facts stated above indicate that the enquiry was neither proper nor complete yet conclusions were arrived at without giving reasonable opportunity to default to the applicant to defend himself. The denial was not only ~~viadative~~ ^{& violative of} rules regarding enquiry but also the principles of natural justice and as such the entire proceedings and conclusions are vitiated. The application (O.A.) in these circumstances is allowed and the punishment order dated 15.6.82 (Annexure-9) and the appellate order dated 5.10.82 (Annexure-11) are quashed. The applicant will be entitled to consequential benefits including the benefits of restructuring scale of 1984 with effect from 1.6.84 and give him further promotion in accordance ^{with} ~~under~~ law

: 7 :

from the date of his juniors were promoted. It is for the respondents to decide whether to hold ~~any~~ ^{any} enquiry in accordance ^{with} ~~under~~ law or not. No order as to cost. ✓

Shanley D

A.M.

W

V.C.

4 July 91.

R.S.M.