

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 745/01

Date of Decision: 31.8.2004

R.N. Shrinivasan. Applicant

Shri R.G. Walia. Advocate for Applicant/s

Versus

Union of India & Ors . Respondents

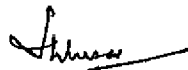
Shri S.C. Dhawan. Advocate for Respondents

CORAM

HON'BLE SHRI A.K. AGARWAL.  
HON'BLE SHRI MUZAFFAR HUSAIN

VICE CHAIRMAN  
MEMBER (J)

1. To be referred to the Report or not ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? x
3. Library. ✓

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 745/2001

THIS THE 31ST DAY OF AUGUST, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN  
HON'BLE SHRI MUZAFFAR HUSAIN .. MEMBER (J)

R.N. Shrinivasan  
Ex. Sr. Booking Clerk,  
R/a No. MHV-IV, 349/4188  
Tagore Nagar, Vikhroli,  
Mumbai-400 083.

... Applicant

By Advocate Shri G.S. Walia.

Versus

1. Union of India, through  
The General Manager,  
Central Railway, Headquarters  
Office, Mumbai CST,  
Mumbai-400 001.
2. Sr. Divisional Commercial Manager,  
Central Railway, Mumbai CST,  
Mumbai-400 001.
3. Divisional commercial Manager,  
(COG), Central Railway,  
Mumbai CST, Mumbai-400 001. .. Respondents

By Advocate Shri S.C. Dhawan.

O R D E R  
Hon'ble Shri Muzaffar Husain. Member (J)

Aggrieved by the order dated 13.6.2001 passed by the Disciplinary Authority imposing the penalty of removal from service, which was upheld by order dated 20.8.2001 passed by the Appellate Authority, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant at the relevant time was working as Senior Booking Clerk at Chembur railway station of Central Railway. A memorandum dated 16.11.2000 was issued levelling the following articles of charge:

...2.



Article-I

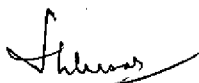
He reissued two IInd Ordinary adult tickets ex.chembur to Mira road bearing number 73639 and 73673 which were already issued and accounted in IInd shift of 07.7.2000 and 09.7.2000 respectively.

Article-II

Rs.64.00 (rupees sixty four) excess in the railway cash.

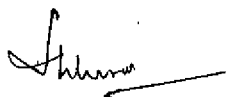
By the above acts omission and commission jointly as well as each one of them by the above named he failed to maintain absolute integrity, devotion to his duty and acted in a manner which is unbecoming of a railway servant and thereby he contravened the provision of Rule No.3.1(i), 3.1(ii) and 3.1(iii) of Railway Services (Conduct) Rules 1966.

The applicant submitted his representation denying the charges and requested to conduct enquiry according to rule. The inquiry was conducted and the Inquiry officer held the applicant guilty of charge. The applicant submitted his representation against the report of the Inquiry Officer. The applicant in his representation stated that Inquiry Officer was biased against him. The applicant submitted that the documents in question i.e. Ex.P-6 had been prepared and signed by booking clerks and ASM Chembur and does not bear the signature of any vigilance personnel and as such the production and the manner in which it was prepared was objected to and also requested that no cognizance of this relied upon documents should be taken to arrive at the findings. However, the Inquiry Officer overruled the objection stating that it was revealed during the inquiry itself through one Shri B.K. Tiwari that it was prepared by Shri Mishra. Moreover, three booking clerks working at



Chembur were neither cited as prosecution witness nor examined by presenting officer during the inquiry to authenticate the documents, which has been taken into account by the Inquiry Officer. It is submitted that relied upon document Ex. P-2 is a letter written by Chief Booking Clerk Chembur addressed to Chief Vigilance Officer, CST. This letter has been taken into consideration, but it has not been proved during the course of inquiry. It was further submitted by the applicant that Shri Tiwari confirmed during the course of the inquiry while replying to question No.8 wherein he stated that he has not verified the facts from the station records though he has stated in the inquiry vide reply to question No.1 that the booking clerk had overcharged the decoy by Rs.2/-. The Disciplinary Authority on the basis of the inquiry report, passed the impugned order imposing the penalty of removal from service and the appeal preferred by the applicant was also rejected.

3. The respondents in their reply stated that the applicant was charged for serious misconduct of reselling two second ordinary adult tickets from Chembur to Mira road bearing number 73639 and 73673. These tickets were already been issued in second shift on 07.7.2000 and 09.7.2000. The inquiry was conducted properly, every opportunity was given to the applicant to defend the case, and the charges were established and



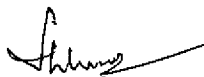
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the penalty was imposed by the Disciplinary Authority, which was upheld by Appellate Authority.

4. The learned counsel for applicant has putforth the following major points:

- i) The documents relied upon by the respondents were not furnished to the applicant during the inquiry.
- ii) The inquiry was not conducted properly in accordance with the rule laid down in this behalf.
- iii) The finding of Inquiry Officer are based on imagination and conjecture and should not have been accepted.
- iv) The procedure adopted in trap is against the vigilance manual, thereby vitiating the whole case. The trap was not witnessed by an independent witness.
- v) The punishment imposed on the applicant is disproportionate to the alleged misconduct.

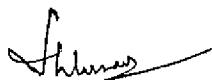
5. The first contention raised by learned counsel for the applicant is that the documents relied upon by



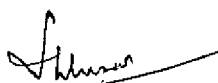
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the respondents were not furnished to the applicant during the inquiry. Learned counsel for the respondents stated that the document listed at Sl. No.1 to 8 in the charge memorandum dated 16.11.2000 were furnished to the applicant along with the charge sheet. Learned counsel has also referred the statement of the applicant dated 20.01.2001 wherein he has accepted that he received copies of documents. More over, this issue has never been raised by the applicant during the course of the inquiry. Thus, it appears that the documents relied upon was supplied to the applicant as such the argument raised by learned counsel for the applicant regarding non-furnishing of the documents has no force.

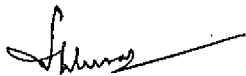
6. The second contention raised by learned counsel for applicant is that the inquiry was not conducted properly in accordance with the rule laid down in this behalf and the documents were not proved by the signatories of the documents. He has specially referred the documents P2, P3 and P6. Learned counsel stated that P2 is a certificate issued by CBS Chembur. This letter has been taken into consideration, but it has not been proved during the course of inquiry by the signatory of the certificate. P6 has been prepared and signed by two booking clerks and one ASM, but it has not been proved by the signatory calling as witness. P3 is cash proceeding memo prepared by the applicant and signed by Shri Upendra Kumar ASM, but has not been duly



proved. Learned counsel for respondents on the other hand contended that the applicant has not raised any objection at the time of inquiry proceedings and expressed his satisfaction with the conduct of the inquiry. If he had any grievance, then he ought to have objected and approached the Disciplinary Authority during the course of the inquiry, which was not done by the applicant. Learned counsel has also stated that P2 was prepared by CBC after checking daily train cash, which is an important official record. P3 was signed by applicant and witnessed by one ASM and Shri V.K. Mishra (V.I.) and P6 was signed by two booking clerks and one ASM due to the fact that the applicant was fallen unconscious at the time of vigilance check and was not in a position to give any written statement, so P6 was prepared with the help of the other booking clerk and ASM on duty at that time. The booking clerks were not called as witness as Inquiry Officer did not feel it necessary to call the witness. He has also contended that adequacy of evidence and truth of finding of the Inquiry Officer cannot be scrutinised by this Tribunal as it will amount to reassessment of evidence and come to a different conclusion. It is seen that Shri V.K. Tiwari in his statement dated 19.3.2001 has confirmed the signature bearing on P8 along with the contents and other relied upon documents and when he was asked that some of these documents do not bear his signature, he replied that he confirmed the contents of the relied



upon other documents as he was present during the inquiry. Thus, it appears that Shri V.K. Tiwari PW-1 has proved the relied upon documents prepared and signed in his presence and some of the documents are signed by him also. It is true that P-2 and 6 do not bear the signature of Shri Tiwari but he has proved the document prepared in his presence. P3 is cash proceeding memo dated 14.7.2000 prepared by the applicant. It is evident from the record that at the time of vigilance check some time later the applicant has fallen unconscious and after signature of the applicant, the signature of Upendra Kumar ASM on duty was also taken and this document is also signed by Shri V.K. Misra, who has proved the contents of the document along with P8. P6 is a joint memo prepared on 14.9.2000 at 0830 hours in booking office at Chembur and it is signed by one Head Booking Clerk, one SBC and one ASM. This is the statement of factual position. Since the applicant was fallen unconscious at the time of check this statement was prepared with the help of commercial staff and ASM on duty. It is not disputed that P2, P3 and P6 were prepared at the time of the check. Shri V.K. Tiwari PW-1 and B.K. Mishra have confirmed the contents of these documents. Therefore, it cannot be said that the documents relied upon by the prosecution has not been duly proved. Hon'ble Apex Court in State Road

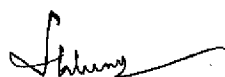




Transport Corporation Vs. Musairam & Others 1999 SCC  
(L&S) 686: 1999(2) SCSLJ 110 in para 9 has held that -

"The question whether the authority can act upon the reports filed by the Assistant Traffic Inspector or not and whether these reports should be accepted or not is a matter which has to be examined by the enquiry officer. The Court does not sit in appeal over the findings of the inquiry officer. If the findings are based on uncontroverted material placed before the enquiry officer, it cannot be said that these findings are perverse"

7. In case of N. Rajarathinam Vs. State of Tamil Nadu 1997 (1) AISLJ 10 the Apex Court held standard of proof in domestic inquiry is only preponderance of probability. Court cannot act as fact finding forum. If there is some evidence on record the decision of disciplinary authority cannot be faulted. In case of Government of Tamil Nadu & Ors Vs. S. Vel Raj 1997 (2) AISLJ 32 the Apex Court held tht standard of proof in DAR action is not a proof beyond doubt. In case of Government of Tamil Nadu Vs. N. Ramamurthy AIR 1997 SC 3571 the Apex court held - The Tribunal has no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. In case of Transport Commissioner, Madras Vs. A. Radha Krishna Moorthy 1995 (1) ATJ 299 the Apex Court held - Administrative Tribunal has no jurisdiction to go into the truth of the allegations. / Charges particularly at a stage prior to the conclusion of the disciplinary enquiry. In case of



High Court of Judicature at Bombay Vs. Sashikant S. Patil & anr 2000 (1) 171 it was held that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition under article 226 of the Constitution. In the case of Government of Tamil Nadu & anr. Vs. A. Rajapandian AIR 1995 SC 561 the Apex Court held that it has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. In case of R.S. Saini Vs. State of Punjab & Ors. 1999 (2) SCSLJ 213 the Apex Court held - "If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

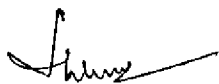


Learned counsel for the applicant has relied upon the following decisions:

- a) Latoor Singh Vs. Union of India & Ors. 2003(1) ATJ 105.
- b) Ravi Parkash Shivhare Vs. Union of India & Ors. 2004 (2) ATJ 315.
- c) V.D. Joseph Vs. Union of India & Ors. (1990) 14 ATC 99
- d) S.C. Girota Vs. UCO Bank & Ors. 1995 SCC (L&S) 1140
- e) Hardwarilal Vs. State of U.P. & Ors. (1999) 8 SCC 582.
- f) M/s. Bareilly Electricity Supply Co. Ltd Vs. Workmen & Ors. 1971 (2) SCC 617.
- g) Union of India & Ors. Vs. V.T. Karandikar decided by High court of Judicature at Bombay in W.P. No.3850/2004.

The decisions cited by learned counsel for applicant are distinguishable on the facts and the ratio laid down in these cases is not helpful to the applicant. Therefore, the argument raised by learned counsel for applicant has no force.

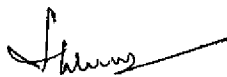
8. The third contention raised by learned counsel for the finding of Inquiry Officer are based on imagination and conjecture and should not have been accepted. We have gone through the inquiry proceedings in judicial review, we are conscious of the limitation of the Tribunal that we cannot go into the sufficiency or insufficiency of the evidence and we cannot reappreciate the evidence adduced in the inquiry. The



Apex Court in Union of India Vs. B.K. Srivastava 1998 SCSLJ 74 held that Tribunal cannot sit in appeal against the order of Disciplinary Authority and Appellate Authority in exercise of powers of judicial review. In case of Union of India Vs. Nagamaleswar Rao 1998 (1) SCSLJ 78 Hon'ble Supreme Court held that "It is really surprising that inspite of clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the enquiry officer as if it was a court of appeal." In the case of Apparel Export Promotion Council Vs. A.K. Chopra AIR 1999 SC 625 Hon'ble Apex court held -

In departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and / or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities.

9. The fourth contention raised by learned counsel



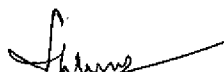
for the applicant is that the procedure adopted in trap is against the vigilance manual, thereby vitiating the whole case. The trap was not witnessed by an independent witness. In this connection we would like to refer Indian Railway Vigilance We would like to refer Indian Railway Vigilance Manual. Paragraph 704 reads as under:

Paragraph 704:

When laying a trap the following important points have to be kept in view:

- (a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.
- (b) The transaction should be within the sight and hearing of two independent witnesses.
- (c) There should be an opportunity to catch the culprit red handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it.
- (d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the department or the police and are men of status considering the status of the accused. It is safer to take witnesses who are Government employees and of other Departments.
- (e) After satisfying the above conditions, the Investigating Officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the S.P., S.P.E. is not near by and immediate action is required for laying the trap, the help of the local police may be obtained. it may be noted here that the trap can be laid only by an officer not below the rank of Deputy Superintendent of local police. After the S.P.E. or local police official have been entrusted with the work, all arrangements for

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laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

Relevant extract of paragraph 705 reads as under:

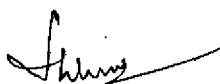
For Departmental traps, the following instructions in addition those contained under paragraph 704, are to be followed:

(a) The Investigating Officer / Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non gazetted staff can be utilized.

Now we have to examine the present case. In the present case the applicant was charged for serious misconduct of reselling of two railway tickets, which were already issued and accounted for on 07.7.2000 and 09.7.2000. It is not the case where the applicant is charged for illegal gratification, but it is the case where the applicant is charged for reselling of the tickets already used. There is sufficient evidence on record to prove the charge. The applicant cannot get the benefit of the decision of M. Anjaneyulu Supra). In the case of State of U.P. Vs. Herendra Arora 2001 SCC (L&S) 959 the Apex Court held as follows:

"Moreover every infraction of statutory provisions would not make the consequent action void and/or invalid. The statute may contain certain substantive provisions e.g. who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in such a case the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural

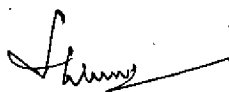
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provisions, there may be some provisions of a fundamental nature which have to be complied with and not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be whether the delinquent officer had or did not have a fair hearing."

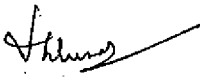
In the present case, the instructions of paragraph 704 are not relevant as this is not the check conducted by vigilance department with the help of local police in respect of corruption of the applicant. So far as paragraphs 705 is concerned, according to para 705 the Investigating Officer / Inspector should arrange two gazetted officers from the railway to act as independent witnesses as far as possible. However, in certain cases, where gazetted officers are not available, the services of non-gazetted officers can be utilised. A plain reading of para 705 reveals that the provisions for arranging two gazetted officers is not mandatory, but it is only an enabling provision in the form of direction. Therefore, the contention raised by learned counsel for applicant has no force.


10. The last contention raised by learned counsel for applicant is that the punishment imposed on the applicant is disproportionate to the alleged misconduct. So far as the quantum of punishment is concerned the Hon'ble Apex Court in B.C. Chadurvedi Vs. Union of India and others - 1996 SCC (L&S) 80 has held that "if the punishment imposed by the Disciplinary Authority



shocks the conscience of the court/Tribunal, it would properly mould the relief." In the present case, the Disciplinary Authority has imposed the punishment of removal from service which was upheld by the Appellate Authority and Revisional Authority. The Disciplinary Authority while imposing the punishment has considered the report of the Inquiry Officer and representation submitted by the applicant. The Appellate and Revisional Authorities have also considered the points raised by the applicant. We have gone through the inquiry proceedings and we are of the view that there is no infirmity in the orders passed by the authorities. In view of the decision of Apex Court, there appears no ground to interfere with the quantum of punishment.

11. In the result, the application being devoid of merit, fails and dismissed accordingly without any order as to costs.

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

  
(A.K. AGARWAL)  
VICE CHAIRMAN

Gajan



05/Sept/5

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~~Order~~/Judgement despatched  
to Applicant/Respondent (s)  
on 8/9/04

K.S.