CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 956/92/199

Date of Decision: 10 AUGUST, 1998

M B Pandey — Petitioner/s

Mr. C M Jha — Advocate for the Petitioner/s

V/s.

U.O.I. & Anor. — Respondent/s

Mr. V S Masurkar — Advocate for the Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri D S Baweja, Member (A)

(1) To be referred to the Reporter or not ? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal ? No

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI-400001

O.A. No. 956/92

DATED : THIS 10 th DAY OF AUGUST, 1998

Coram : Hon.Shri Justice R.G.Vaidyanatha, V.C.
Hon.Shri D.S. Baweja, Member(A)

M.B. Pandey
Ex.ACC, Virar
R/at. Poisar Gamdevi Road
Vidya Dubey Ki Chawl
Kandivli (E)
Mumbai 400101
(By Adv. Mr. C M Jha) ..Applicant

V/s.

1. Union of India
through General Manager
Western Railway
Churchgate, Mumbai 400020

2. Divisional Railway Manager
Western Railway
Bombay Central
Mumbai 400008
(By Adv. Mr. V.S. Masurkar,
Central Govt. Sr.Standing Counsel) ..Respondents

ORDER

(Per: R.G. Vaidyanatha, Vice Chairman)

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the learned counsel appearing on both the sides.

2. The applicant was working as a Booking Clerk at Malad Railway Station, Western Railway at the relevant time. It appears that on 28.3.1990 a trap was laid by the Vigilance officials of the Railways and the applicant was caught for reselling sold tickets and for other irregularities. A disciplinary enquiry was held against the applicant. After the inquiry the Inquiry Officer submitted his Report dated 20-11-1990 held that the three charges are proved against the applicant. On the basis of

of the said Inquiry Report and after hearing the representation of the applicant regarding the inquiry report, the disciplinary authority passed an order dated 30.4.1991 holding that the charges are proved and imposed a penalty of removal from service against the applicant. Being aggrieved by that order the applicant preferred an appeal before the appellate authority. After giving a personal hearing to the applicant the Appellate Authority by an order dated 26.9.91 held that the charges are proved, but however on humanitarian grounds reduced the punishment from removal from service to one of Compulsory Retirement. The applicant challenged that order by filing a Review Petition before the appropriate authority. The Reviewing Authority by order dated 2.4.92 confirmed the orders of the subordinate authority and dismissed the Review Petition. Being aggrieved by the same the applicant has approached this Tribunal by way of this application.

2. Number of grounds are taken in the O.A. challenging the inquiry proceedings and the orders of Disciplinary Authority, Appellate Authority and the Revisional Aurhority. It is stated that no inquiry was held according to law and there was violation of principles of natural justice. It is also alleged that the inquiry was conducted in English language which is not understood by the applicant. The validity of the appointment of inquiry officer is also questioned. Applicant therefore wants the orders of the respective authorities to be set aside and the applicant should be reinstated in service.

3. The respondents have filed a reply justifying the disciplinary action taken against the applicant. It is stated that the inquiry has been conducted according to the rules and the principles of natural justice have been observed and there are no grounds to interfere with the impugned order.

4. At the time of arguments, the learned counsel for the applicant pressed some of the grounds before us and contended that the inquiry is vitiated and submitted that the application may be allowed.

5. The learned counsel for the respondents refuted all the arguments and justified the stand taken by the Administration in the reply statement. We will consider the submissions made on behalf of the applicant one by one.

6. The first attack of the learned counsel for the applicant is about the appointment of inquiry officer before receipt of written statement. According to rules the disciplinary authority after receiving the written statement may appoint an inquiry officer to conduct the inquiry. Applicant's contention is that he gave his written statement to the charges on 31.7.98 and the inquiry officer has been appointed on the very next date and therefore there is non-application of mind of the disciplinary authority to the allegations made in the written statement. Reliance was placed on a decision of the Principal Bench of the Tribunal's decision in the case of B.K. MISRA Vs. UNION OF INDIA & ANOR. (1988)6 ATC 425. In that case it is seen that even

before the receipt of the written statement inquiry officer has been appointed. The question whether the procedure for appointment of an inquiry officer after receiving the written statement is a mandatory provision or a directory is a moot question. In our view that is not necessary to go into this question in view of the facts of the present case. We must also bear in mind, in the said case, the appointment of the inquiry officer was made prior to written statement. However in the O.A. the very issuance of the charge sheet itself was challenged and this was one of the grounds. The Tribunal also noticed that no progress has been done in the disciplinary enquiry and therefore the matter was remanded with certain directions. In the present case the inquiry has been fully completed and the orders have been passed by the Inquiry Officer, Discipliary Authority, Appellate Authority and the Revisional Authority. We cannot at this distance of time put the clock back on the contention now pressed that the inquiry officer has been appointed without application of mind. On facts we see that the inquiry officer has been appointed by order dated 1.8.90. The written statement of the applicant in reply to the charges is dated 28.7.90. Even according to the applicant the department has received his written statement on 31.7.90. Therefore, when the reply statement to the charges is received on 31.7.90 and the inquiry officer is appointed on 1.8.90 we fail to see how there is violation of natural justice. The argument that there was no sufficient time for application of mind to the disciplinary authority to the written statement has also no merit. The written statement contains only one sentence

denial of all the charges and therefore there is nothing for the disciplinary authority to apply his mind to contents of the written statement to form an opinion about the appointment of an inquiry officer. At any rate the appointment of the inquiry officer is made after the receipt of the written statement of the applicant and therefore there is no violation of Rule 8(6)(a). Further no such objection was taken before the Inquiry Officer. Further it is not brought to our notice that any prejudice was caused to the applicant. No prejudice is alleged nor demonstrated before us for alleged violation of Rule 8(6)(a). Hence taking any of the view$ of the matter there is no violation of any rules.

7. The next submission is that the inquiry officer is a Vigilance Inspector but the raid has been conducted by the Chief Vigilance Inspector and therefore the inquiry officer should have been an officer above the rank of Chief Vigilance Inspector. No rule is brought to our notice that the inquiry officer should be above the rank of the officer who laid the trap or who conducted the preliminary inquiry. Hence in the absence of any rule to that effect, we do not find any illegality in the appointment of the Vigilance Inspector as Inquiry Officer. We will just give only one example to show that such a theory cannot be accepted. In respect of a police firing a Sitting Judge of a High Court may be appointed as a Commission of Inquiry. The said Judge may on the basis of the Inquiry give certain findings pointing

out certain irregularities and violation of rules by the Police Officer. On the basis of the findings of the Commission of Inquiry report, sometimes prosecution may be leveled against the erring police officer or a departmental inquiry may be held against him. It cannot be said that the Magistrate who tried the case will have no jurisdiction since he is far below the rank of the High Court Judge who conducted the preliminary inquiry. Similarly the disciplinary proceedings may be conducted by an Assistant Commissioner or Assistant Director who will be very much lower in rank than the High Court Judge. It cannot be said that the disciplinary inquiry should be conducted by an officer above the rank of High Court Judge viz., the Chief Justice of the High Court or a Judge of the Supreme Court. In our view such a theory cannot be accepted. The inquiry officer irrespective of his rank will have to consider the evidence placed before him and take a decision on merits.

8. Another grievance of the applicant is that the proceedings were conducted in English and the applicant does not know English, and this has caused prejudice to the applicant. It is submitted that the applicant has made a written request in this behalf and no action is taken as for as the applicant's request is concerned. The applicant has produced a copy of his written request which is at page 41 of the paper book. But the respondents have clearly stated in the written statement in reply that no such letter was received by the respondents. The respondent's counsel has produced the concerned inquiry file before us and we find that no such Hindi letter written by the applicant

is in the inquiry file correspondence similar to the one at page 41 of the paper book.

9. The learned counsel for the applicant placed reliance on a reported decision of a Division Bench of the Tribunal at Ahmedabad in (1991)17 ATC 113 (TEJANONGHAN Vs. UNION OF INDIA & ORS.) wherein it is observed that if the documents are not given in the language of the official it vitiates the inquiry. In that case though respondent had alleged that necessary translations etc., had been given, the stand could not be substantiated before the Tribunal since the inquiry record had been lost. In that case no inquiry was conducted at all. In the present case the applicant himself has given his reply to the charge sheet in English. The applicant has been questioned and he has understood the question, and his answer recorded by the inquiry officer. The, we find that the delinquent had engaged a retired Chief Booking Clerk Mr. R.K. Khan as his Defence Assistant. There is no allegation that the applicant's Defence Assistant did not know English. We see from the inquiry file that the Defence Assistant has cross examined the witnesses in great detail. Therefore even if the applicant did not know English he had a Defence Assistant who is well versed in the disciplinary inquiry and had cross examined in great detail and therefore we do not feel any prejudice is caused to the applicant. No such stand is taken before the Disciplinary Authority or Appellate Authority and having gone through the material on record we find that the applicant had an able assistance of a senior railway official who knew english and hence no prejudice has been caused to the applicant.

10. An argument was submitted that the inquiry officer was prejudiced. No objection was taken before the inquiry officer and no attempt was made to move the disciplinary authority for changing the inquiry officer. From the material on record we do not find that the inquiry officer was prejudiced against the applicant. At any rate no material is placed before us to demonstrate as to how the inquiry officer was prejudiced or biased against the applicant.

11. Another submission made before us was that the order of the Appellate Authroity was a cryptic order and is not a speaking order as required by the rules and therefore the order is liable to be struck down. Reliance was placed on the decision of the Apex Court in the case of RAM CHANDER Vs. UNION OF INDIA, AIR 1986 SC 1173. No doubt in that case the Supreme Court observed that if the order of the Appellate Authority is not a speaking order as required by Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, then the order should be set aside and the matter should be remitted back to the Appellate Authority to pass a speaking order to meet all the contentions of the delinquent official. In this case though the order of the Appellate Authority is not a speaking order as required by law, atleast the order shows the application of mind and what is more he even exercised the discretion in reducing the punishment from one of removal from service to one of compulsory retirement. Then we find that the applicant challenged that order before the Revision Authority and the Revision Authority by a detailed speaking order

dismissed the Review application. Now, therefore, the order of the Appellate Authority has merged in the order passed by the higher authority viz., Additional Divisional Railway Manager acting as Reviewing Authority who has passed a speaking order.

12. Now, therefore, the question of setting aside the order of the Appellate Authority and remanding the case back to the Appellate Authority as done in the case of RAM CHANDER by the Supreme Court does not arise in this case because the order of the Appellate Authority no longer exists and has merged with the order of the Revision Authority and therefore setting aside the order of the Appellate Authority strictly does not arise in the facts and circumstances of this case. We have to only set aside the order of the Revision Authority, but Review Authority has passed a speaking order. He has considered the contentions of the applicant. Hence even if there is some irregularity or mistake committed by the Appellate Authority it is taken care of by the higher authority and he has passed a speaking order, therefore, the question of remitting the matter back to the Appellate Authority does not arise.

13. Now coming to the merits of the case we find that the three charges framed against the applicant are as follows:

> " i) that he had resold 2 II class return journey tickets ex Malad to Bandra
> ii) that he was having Rs.23.90 excess in his Rly.cash.
> iii) that he had chewed one II class Card journey ticket to evade its detection."

14. The said charges are sought to be proved by number of witnesses who were examined during the inquiry. We have perused the inquiry file. We have seen the depositions of PW-1, R.S. Rohatgi, Chief Vigilance Inspector (A-II); PW-2 J.R.Khanna, Chief Vigilance Inspector (AIL); PW-3 P.R.K. Pillai, Chief Vigilance Inspector (RJT); PW-4 R.S. Yadav, Vigilance Inspector (RTM); PW-5 V.P. Kaushik, Vigilance Inspector (BRC); PW-6 Ballu Ganu, T.C. Malad and PW-7 Hasan Jalaluddin Sheik CBC Malad, who have given clear evidence about the trapping the accused on that date. A perusal of their evidence shows that earlier the delinquent official had sold two tickets and two hours later he took back the same and resold tickets by paying some amount. Then the Vigilance Officials raided the place and seized two of the tickets and it appears that delinquent official put one of the tickets into his mouth and started chewing it and he was made to vomit it and the number of ticket recorded in the 'panchanama'. The applicant examined two defence witnesses of whom one did not say any thing about the incidence and the other witness only stated that delinquent was saying aloud that he took some tablet.

15. After reappreciating the evidence the Inquiry Officer has held that the charges are proved which is confirmed by the disciplinary authority and the appellate authority as also by the revision authority. It is now fairly well settled that this

Tribunal cannot reappreciate the evidence as an Appellate Court and take a different view. That is not the province of judicial review to be exercised by this Tribunal. We are conly concerned if there is any illegality or irregularity in the decision making process and not in the decision itsel vide AIR 1996 SC 1232 (STATE OF TAMIL NADU & ANOTHER Vs. S. SUBRAMANIAM)

16. After going through the materials on record we find that there is no illegality or irregularity in appreciation of the evidence by the authorities and the same is perfectly justified and do not call for interference by this Tribunal. No other arguments were addressed before us.

17. Before parting with this case we have to mention one grievance made by the applicant. It is stated by the learned counsel for the Applicant that the order of compulsory retirement was passed by the Appellate Authority on 26.9.91, still the respondents have not given effect to that order and no retiral benefits are given to the applicant till now.

18. It is really astonishing and surprising how the subordinate officers have not given effect to the order of the Appellate Authority dated 26.9.91. The appellate authority mentions in the order that on humanitarian grounds he is reducing the punishment to one of compulsory retirement. If that is the intention of the appellate authority it is surprising as to why subordinate officers have not extended pension and retirement benefits to the applicant for the last seven years.

19. We cannot give any positive relief to the applicant in the present O.A. since there is no prayer for the same. The applicant could have prayed for interim relief for giving effect to the order of the appellate authority. After waiting for some time the applicant could have either amended this O.A. or filed another O.A. seeking retirement benefits. Even the applicant has kept quite all these years without taking any action. We hereby impress on the Railway administration to immediately wake up and give effect to the order of the appellate authority dated 26.9.91 and give pension and pensionary benefits to the applicant immediately. The applicant can also approach the concerned office of the Railway administration signing necessary papers which are required as per rules. In spite of this observation the respondents do not pay or delay in effecting payment of retirement benefits, it is open to the applicant to approach the highest authority in the Railway Administration or approach this Tribunal by filing a fresh O.A. according to law.

20. In the result the O.A. is dismissed, subject to the observations in para 19 above regarding retirement benefits to the applicant in terms of the appellate authority order dated 26.9.91. No order as to costs.

(D.S.Baweja)
Member (A)

(R.G.Vaidyanatha)
Vice Chairman
10/8/95

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