IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1337 of 1992

Date of Decision: 25th Nov. 1997

Shri Gurbachan Singh Sarin — Applicant.

Mr. L M Nerlekar — Advocate for Applicant.

Versus

U.O.I. & Ors. — Respondent(s)

Mr. S.C. Dhawan — Advocate for Respondent(s)

CORAM:

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

Hon'ble Shri. P.P. Srivastava, 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. 1337/92

DATE OF DECISION : 25th DAY OF NOVEMBER, 1997

Coram : Hon. Shri R.G.Vaidyanatha, Vice Chairman
Hon. Shri P.P. Srivastava, Member (A)

Shri Gurbachan Singh Sarin

S/o. Shri Sardar Pratap Singh

aged 57, Enquiry cum Reservation

Clerk under Divisional Railway

Manager, Central Railway,

Mumbai CST and residing at

Chetna Apartments No.15/D

Sardar Pratap Singh Road

Bhandup

Mumbai 400078

(By Adv. Mr. L.M. Nerlekar) ..Applicant

V/s.

Union of India

through Divisional Railway Manager

Central Railway

Mumbai CST

(By Adv. Mr. S.C. Dhawan) ..Respondents

ORDER

(Per: Hon.Shri R.G.Vaidyanatha, J, V.C.)

1. This is an application under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard both the sides and perused the materials on record.

2. The applicant is challenging the order passed in the disciplinary proceedings. At the relevant time the applicant was working as Reservation Clerk in the Central Railway when he was issuing tickets on 15.11.1982 in the Railway Reservation Counter, the Vigilance Squad raided the place and seized certain papers. Then after priliminary investigations a chargesheet was issued against the applicant communicating certain charges. The applicant filed a reply denying the charges. An inquiry officer was appointed. He conducted the inquiry. Then the inquiry officer gave a detailed report holding that the charges are proved against the applicant regarding illegal gratification and irregularities in issuing the reservation tickets. The disciplinary authority accepted the report of the inquiry officer and held the charges are proved and passed an order dated 22.7.91 and imposed punishment of removal from service with effect from 31.7.91.

2. The Applicant challenged the said order of the disciplinary authority by prefering an appeal before the competent authority. The competent authority by order dated 11.12.91 dismissed the appeal and confirmed the order of punishment.

The applicant filed a revision before the next higher authority. Even the Revisional authority by order dated 6.8.94 confirmed the order passed by the disciplinary authority and appeallate authority and dismissed the revision application.

Being aggrieved by the above three orders the applicant has approached this court by way of this Original Application. He is challenging the correctness and legality of the impugned orders passed by the respective authorities.

3. At the time of arguments, the learned Counsel for the Applicant raised many contentions of which some were new contentions which were not taken in the O.A. and contended that the disciplinary inquiry is vitiated and the findings recorded are erroneous and not sustainable in law. Then it is also submitted, alternatively, that the punishment imposed is very harsh and disproportionate to the alleged misconduct. The learned counsel for the

respondents has supported the findings of the respective authorities and further contended that this Court cannot sit in appeal over the correctness ~~and over~~ of the findings recorded by the authority both regarding merits of the case and regarding the quantum of punishment. We will refer to several contentions urged by the learned counsel for the applicant which are being discussed during the course of this order.

~~It~~ As already stated ~~that~~ the applicant was working as a reservation clerk at the relevant time. The allegations against him as could be seen from the charge sheet issued to him are that on 15.11.82 the Vigilance Squad raided the reservation counter and found certain illegalities and irregularities. It is alleged that the applicant received an unauthorised requisition form from another coofficial one Mr. R.Dixit who works in a different counter and prepared reservation ticket for date of journey on 24.11.1982 and had kept ready tickets for being delivered to Mr. R. Dixit. But the transaction was intercepted by the Vigilance Squad. Then it is further alleged that the applicant was unauthorisedly in possession of

one requisition form in the name of Kishore Mehta along with cash of Rs.120/- for issuing a ticket for journey on 8.12.82. But before the tickets could be prepared and issued the transaction was intercepted and the papers and cash were seized by the Vigilance Squad. Then it is further alleged that the applicant had received illegal gratification from R. Dixit for issuing the ticket unauthorisedly to him in the name of Francis Gomes.

4. The Applicant pleaded not guilty before the inquiry officer. During the inquiry three witnesses were examined viz., PW-1 Dixit, PW2 S K Mehta, Supervisor and PW-3 Vazerani, Inspector of the Vigilance Squad. The applicant did not adduce any evidence in rebuttal. After considering the entire facts on record the inquiry officer gave a very detailed speaking order running into 4 to 5 Pages including his reasons that the charges are duly proved.

The disciplinary authority again by way of a speaking order accepted the findings of the inquiry officer and gave reasons that the charges are proved and imposed the punishment.

5. Learned counsel for the applicant read out the findings recorded in the inquiry and contended that the findings of the inquiry officer and disciplinary authority are erroneous and that their reasoning cannot be accepted and that the ~~findings were~~ evidence was insufficient to reach such a conclusion. In our view this Tribunal while exercising the powers of judicial review cannot constitute itself as an appellate court and then reappreciate the evidence on record and take a different view. Such an ~~unstricted~~ unrestricted power and authority is not given to this Tribunal. The scope of judicial review is always very limited. In view of this limited jurisdiction it has to find out any illegality of procedure in the disciplinary inquiry or violation of principles of natural justice in conducting the inquiry or any illegality in the appointment of inquiry officer of to find out whether the order of the authority is perverse and based on no evidence. We have to make a distinction between a case of no evidence and a case where some evidence there is and it is possible to take more than one view. In our view the question is no longer res-integra as the same ~~has~~ is covered by direct authority of the Supreme Court. In many

cases the Supreme Court has come down heavily on Tribunals and High Courts for interfering with the orders of the disciplinary authority whenever they exercised the power as if they are exercising appellate power. The Supreme Court has in many judgments held that the High Courts under Article 226 or the Central Administrative Tribunal under section 19 of the Administrative Tribunals Act, 1985 cannot exercise the powers of an appellate court and then discuss and reappreciate the evidence and take a different view. Such a course is not open to this Tribunal (Vide AIR 1997 SC 1900 in the case of GOVERNMENT OF TAMILNADU Vs. S. VELRAJ). In another case of GOVERNMENT OF TAMIL NADU Vs. RAJA PANDIYAN the Supreme Court reaffirmed the same view and even observed that sufficiency of evidence cannot be gone into by the Tribunal as if it is an appellate authority (1995(1) ATJ 264). We, therefore, hold that the applicant cannot be permitted to challenge the correctness of the findings recorded by the disciplinary authority. Even otherwise, to satisfy our conscience, we have perused the evidence on record and the findings recorded by the inquiry

officer and the disciplinary authority and we are satisfied that their findings are based on proper appreciation of evidence and there is no question of any infirmity or illegality in recording the findings. Hence we are not persuaded to take a different view on the finding ~~and~~ of facts recorded by the inquiry officer and confirmed by the disciplinary authority.

6. A new point was urged before us that the charge sheet was issued by an authority which is ~~inferious~~ inferior to the appointing authority and further the order of removal from service is not passed by the appointing authority but by a different authority. In our view these two new points cannot be permitted to be canvased at the time of arguments. There is no material on record to suggest that the authority who issued the chargesheet and the authority who issued the order of punishment was not appointing authority. There is neither plea nor evidence available on record before us. When there is no plea at all there is no question of respondents meeting that point by showing that the authority who passed the punishment was the appointing authority.

The respondents were taken by surprise when these two new grounds were raised at the time of arguments. The arguments are based on no evidence and further no material is placed on record even at this late stage to support that submission. When we pointed out this fact to the learned Counsel for the Applicant, he replied ~~us~~ that now the Court may direct the respondents to produce the appointment order and other papers to show that the authority who issued the order of punishment was an appointing authority. In our view such thing is not permissible when the matter is raised at this late stage. We must bear in mind that this is an application filed in 1992 challenging the order of the disciplinary authority passed in 1991 for an incidence which is of the year 1982. Now this Tribunal cannot make a roving inquiry and allow both the parties to adduce evidence to show as to who was the appointing authority of the applicant in 1982 when charge sheet was issued and again who was the appointing authority in 1991 when the order of punishment was passed etc. If the applicant was serious he should have taken this ground in the O.A. and further he should have produced supporting

material in support of these gounds. Not only these two grounds are not taken in the O.A. but also they are not supported even at this stage by any document to show that the officer who issued the order of punishment was not the ~~compitent~~ competent authority. There is a presumption in law that all official acts have been done according to law. In these circumstances we cannot consider the two belated grounds now urged by the learned counsel for applicant and that too which are not supported by any documents. Hence both these points are rejected as being belatedly raised and further not being supported by ~~the~~ any documentary evidence. It was argued that copies of documents asked for by the applicant were not supplied and hence the applicant is prejudiced. Though a vague plea is taken in the O.A. on this point it is not mentioned as to what particular documents he wanted and how they were relevant for the inquiry in question. In para 4.3 of the O.A. it is simply stated that the applicant requested for supply of copies of documents relied on but they ~~have~~ were not supplied. No particulars of the nature of documents are stated. It is replied by the respondents stating that the applicant was given inspection of

all the documents and he is not entitled to copies. We need not consider this point in detail since the applicant never raised such a point before the inquiry officer. In the O.A. at page 20, the question No.5 put by the inquiry officer to the applicant, the applicant has admitted that he has inspected all the documents mentioned in the charge memorandum. Therefore, the applicant has admitted that he has inspected all the documents relied on in the charge sheet. Then, to a specific question viz., Question 6, the applicant was asked, whether he wanted ~~for any~~ other documents for the purpose of his defence. The reply of the applicant was that he has not asked for any other relevant document and if necessary he would ask for it during the regular hearing. Nothing is shown to us that any fresh ~~report~~ request was made to the inquiry officer for supply of the copies of any particular documents. In view of the admission made by the applicant before the inquiry officer, that he has inspected all the documents relied upon in the charge sheet and he has not asked for any other documents, we do not find any merit in the contention now raised that the inquiry is vitiated for not supplying some copies of documents, the particulars of which are not mentioned in the O.A.

7. Another contention on behalf of the applicant is that two material witnesses were not examined and hence the inquiry is vitiated. It is argued that two passengers who have supposed to have given the requisition forms were not examined as witnesses and therefore the question whether they had paid any illegal gratification for obtaining the reservation cannot be said to have been proved. Reliance was placed on AIR 1986 SC 995, SAWAI SINGH Vs. STATE OF RAJASTHAN, That was a case where the Supreme Court found the ~~veracity~~ version of the complainant was not reliable. The Supreme Court has pointed out number of circumstances to show as to how the charge cannot be sustained. Then there is also an observation that two witness were not produced in that inquiry. There is no observation by the Supreme Court that non-examination of two witnesses is fatal to the inquiry. They have examined the entire material on record and found that the charges are not proved. It is not an authority for the proposition urged by the learned counsel for the Applicant that if the material witnesses are not examined the whole inquiry is vitiated. It is always a question of fact whether the evidence on record is sufficient to prove

a charge or not. If the available material on record is sufficient to sustain the charge, the fact that some more witnesses ought to have been examined does not arise for consideration. If, however, the material on record create a doubt in the mind of the Court or insufficient to prove the charges then the Court may observe that the evidence cannot be accepted since material witnesses are not examined. ~~But~~ If, even without the evidence of those two witnesses, the available materials are sufficient to sustain the charges then non-examination of two passengers as witnesses is wholely irrelevant and immaterial. We have already pointed out how the inquiry officer by a detailed order has considered all the facts and circumstances and referred to evidence of three witnesses and other circumstances and pointed out that the charges are proved, which has been upheld concurrently by the disciplinary authority and appellate authority as also by the revisional authority. As we have already stated we cannot now reappreciate the evidence and then find out what would be effect of non-examination of those two passenger witnesses etc. Even otherwise there is no material to show that these two passengers were

available. The requisition form of Mehta had been given by Mr. Dixit and as for as Francis Gomes was concerned he was no where near the counter. The Court can take judicial note that in matters like this the people who come to purchase tickets may not be available afterwards. It is no bodies case that those two passengers were available for examination by the Vigilance Squad and subsequently they were available during the inquiry. Even the applicant was at liberty to summon those two passengers during the inquiry. Whether the evidence of those two witnesses is relevant or not when the finding recorded by the relevant authorities is justified on the available material on record, the question about non-examination of those two passengers does not survive. At any rate this also is a point which goes to the arena of appreciation of evidence on record and it is not within the province of this Tribunal as pointed out already.

8. Then there is also a further submission that the inquiry officer was biased against the applicant. There is a vague and bald plea in para 4.5 of the application simply stating that inquiry officer has acted in

a biased manner. No particulars are given as to how the inquiry officer was biased against the applicant. The only point that was highlighted at the time of arguments is that the inquiry officer has made an observation in the inquiry report that the applicant was in the habbit of indulging in malpractices for which there is no evidence on record and this shows that the inquiry officer was biased against the applicant. In our view there is no merit in this submission. Nowhere the inquiry officer has recorded a finding that the applicant is in the habbit of indulging in malpractices. What he has observed in the report is that it is alleged by the investigating agency that the applicant was indulging in malpractices. It is not his finding at all. Therefore, the argument that he is biased against the applicant due to this observation in the inquiry report is misplaced and has no merit.

9. The next contention of the learned counsel for the applicant is that there was no application of mind by the disciplinary authority while passing the order of punishment and therefore the order is bad.

We have perused the order of the disciplinary authority which is at page 15 of the paper book. What

he has stated is that he has considered the report of the inquiry officer and the admission made by the applicant. He has referred to the material on record and passed a two page order and he has accepted the report of the inquiry officer and then imposed the punishment. By no stretch of imagination it can be said that the order of disciplinary authority suffers on the ground of non-application of mind. We find no merit in the argument.

10. It is then submitted that the order of the appellate authority suffers for want of application of mind since no speaking order is passed. Reliance was placed on AIR 1986 SC 1173 RAM CHANDER Vs. UNION OF INDIA & ORs. No doubt in that case the Supreme Court found that the order of the Appellate Authority was not a speaking order and therefore set aside that order and remanded the matter to the Appellate Authority for passing a fresh speaking order according to rules.

Hence, even if we hold in the present case, that the order of the appellate authority suffers from the infirmity of being not a speaking order then it would be a case for remitting the matter to the appellate authority and not to quash the entire proceedings as argued by the learned counsel for the applicant. However, we will point out that latter

decisions have of the Apex Court ~~it had~~ taken a different view.

11. The learned counsel for the applicant also placed reliance on a case reported in 1991 AISLJ 356 where the Division Bench of the Bangalore Bench of the Tribunal has held that non-speaking order passed by an appeallate authority is contrary to rule. But a perusal of the judgment shows that there were number of infirmities in the disciplinary inquiry. It was found that the delinquent had been examined before the examination of witnesses. The witnesses were examined without furnishing list of witnesses to the delinquent official, leading questions were put to the delinquent official. In view of number of infirmities and in view of the long delay they found that it was not a fit case to remit the matter for further inquiry and therefore quashed the proceedings. But here, according to us, the impugned disciplinary proceedings do not suffer from any illegality or infirmity except may be that the order of the appeallate authority is not a speaking order. Even we accept this argument in the light of the judgment of Apex Court decision in Ramchander's case then it would be a fit case for remanding the matter to the appellate authority for passing a speaking order. That will not help the applicant in any way.

12. In the facts and circumstances of this case and in view of the latter decision of the Apex Court reported in 1994 S.C.(L&S)1019 (State Bank of India Vs. S.S.KOSHAL) we do not find that remanding the matter to the appellate authority is necessary. In that case almost an identical short order was passed by the appeallate authority stating that taking into consideration the facts of the case and after considering the appeal and other relevant papers the appellate authority found that it is a fit case to uphold the order of the disciplinary authority. The order passed by the appellate authority has been extracted in para 2 of the judgment of the Apex Court. In that case also the High Court had quashed the order of the appellate authority on the ground that it was not a speaking order. The Supreme Court pointed out that the said appellate order cannot be said to be not a speaking order. Then it is observed that till the order was one of affirmation it is not obligatory on the part of the appellate authority to say more than that order which shows application of mind.

13. In the present case also the order of the appellate authority shows that he has carefully gone

through the inquiry report, the findings of the inquiry officer, the order of punishment and the appeal grounds and then he records that he has no reason to alter the punishment imposed by the disciplinary authority. In the light of the latter decision of the Apex Court we find that this order shows application of mind, though there is no lengthy speaking order. Since this is a case of affirmation of the order it is sufficient in the facts and circumstances of this case. Even otherwise we find that the inquiry report has considered all the aspects and the entire evidence and then says that the three charges are proved against the applicant. Hence remanding the matter to the appelate will be an empty formality when we find that the inquiry report clearly refers to all the circumstances and evidence and holds that the charges against the applicant are proved. Hence we are not inclined to interfere with the order of the appellate authority on this ground.

14. The next and the last contention urged on behalf of the applicant is that the punishment imposed is grossly disproportionate to the misconduct. It was, therefore argued that the punishment may be modified or reduced.

15. On the other hand the learned counsel for the respondents contended that this Tribunal has no jurisdiction to interfere in the order of punishment and places strong reliance in the Apex Court's decision 1997(27) ATC 149 (Stste Bank of India Vs. Samarendra Kishore) where the Supreme Court has observed that the High Court or this Tribunal cannot interfere with punishment imposed in a disciplinary inquiry.

16. It may be that in some subsequent pronouncements of theApex Court it is explained that though normally the Courts and Tribunals have no right to interfere with the punishment imposed in the departmental inquiry an exception is carved out by saying that if the punishment is grossly disproportionate to the misconduct and shocks the conscience of the Court then the Court or Tribunal can set aside the punishment and remit the matter to the competent authority. But this exercise should be done in rare cases. 1997(2) SCSLJ 347 (UNION OF INDIA & ORS. Vs. G. GANAYUTHAN). In the present case the applicant who was in the reservation counter was found to have

prepared tickets in one place to be given to another clerk and not to the passenger and in another case the passenger was not at all there and he was about to prepare the tickets when he was intercepted. Though there was no evidence regarding corruption or extraneous consideration, the inquiry officer has spelt out the same by drawing inference from the circumstances of the case. As regards the gravity of the charge it cannot be said that the punishment imposed in this case is so grave/~~gross~~ so as to shock the conscience of the Court; and it may be stated that a lesser punishment would have met the ends of justice. As a Original Authority, we might have taken a different view, if we were sitting in appeal then we could go into the question of adequacy of the punishment and impose proper punishment. As already stated we are not exercising appellate powers over the departmental inquiry. Merely because another view is possible it is no ground to interfere with the findings of the punishment recorded by the disciplinary authority and having regard to the facts and circumstances of this case it is not possible to come to a conclusion that the punishment ~~xx~~ imposed in this case is so gross so as to shock the conscience of the Court. Hence we

are not inclined to interfere with the order of punishment passed in this case.

17. In our view none of the arguments addressed by the learned counsel for the applicant merits acceptance. He has also given a compilation of a number of authorities at the time of reply. We have perused them but none of them are applicable to the facts of this case. Each case depends on its own facts and circumstances. There cannot be any authority on the question of fact. Hence we are not burdening this judgment by refering to all the authorities which were submitted at the time of reply.

18. In the result this application fails and accordingly dismissed. In the circumstances of the case there would be no order as to costs.

(P.P.Srivastava)
Member(A)

(R.G.Vaidyanatha)
Vice Chairman

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