CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 805 of 1992.

Dated this Friday, the 21st.day of December, 1999.

Shri Shivnarayan F. Ram - Applicant.

Shri S. V. Mahadeshwar, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

CORAM : Hon,ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ? } NO

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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

Hon'ble Shri B.N. Bahadur, Member (A).

Shivnarayan F. Ram,
Employed as
Ticket Collector,
Western Railway,
Bombay Central,
Mumbai. ... Applicant.

(By Advocate Shri S. V. Mahadeshwar)

VERSUS

1. Divisional Commercial
Superintendent (I),
Western Railway,
Western Railway Divisional
Offices, Bombay Central,
Bombay - 400 008.

2. Senior Divisional Commercial
Superintendent,
Western Railway,
Bombay Central,
Bombay - 400 008.

3. General Manager,
Western Railway,
G.M.'s & H.Q. Offices, ... Respondents.
Churchgate, Bombay-400 020.

(By Advocate Shri V. S. Masurkar).

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OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application challenging the disciplinary action taken by the respondents against the applicant. The respondents have filed reply. We have heard Mr. S. V. Mahadeshwar, the Learned Counsel for the applicant and Shri V. S. Masurkar, the Learned Counsel for the respondents.

2. The applicant is a Railway employee working in the Western Railway. At the relevant time, he was working as a Ticket Collector. It appears, the applicant was on duty as Ticket Collector on 02.02.1988 in the night shift. When the train arrived at Bombay Central, the passengers were checked by the Vigilance Staff. It was noticed that two passengers Champalal and Poonaram Gahloth were stopped at Exit Gate No. 5 and they were holding two second class tickets and their explanation was that it was due to break-up journey due to the arrival of the train in question. It is alleged that the applicant was on duty as Ticket Collector to collect tickets at Exit Gate No. 5 from the passengers. The applicant had demanded the two passengers to pay Rs. 25/- which was negotiated and fixed at Rs. 20/- through the intervention of a taxi driver. Then on collecting Rs. 20/- the applicant allowed them to go through the gate without issuing or granting any receipt. This was noticed by the Vigilance officials and accordingly, the two passengers were apprehended and brought to the Head T.C.'s office where the

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applicant admitted the facts and the amount was recovered from the applicant, which he had received from the two passengers. It is, therefore, alleged that the applicant had committed misconduct by demanding illegal gratification from the two passengers without passing any receipt or allowing the passengers to go through the exit door.

2. The applicant's defence was one of denial. During enquiry, the two passengers were not examined. Four witnesses were examined. On the basis of the evidence, the Inquiry Officer held that the case against the applicant is proved. The Disciplinary Authority accepted the inquiry report and passed the impugned order dated 25.05.1989 imposing the penalty of reduction to the lower grade in the scale of Rs. 950 - 1500 for the period of five years with effect of postponing future increments. The applicant preferred an appeal and then a ~~representation~~ Revision but was unsuccessful. Hence, the applicant has approached this Tribunal challenging the impugned order on various grounds. The main ground of the applicant is that there is no evidence to prove the misconduct against him and he has been falsely implicated.

3. Respondents have filed reply justifying the action taken against the applicant. They have pleaded the facts and circumstances under which the applicant was found indulging in malpractices by allowing the two passengers to go away by collecting Rs. 20/- each. During the arguments, the main

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agrument of the Learned Counsel for the applicant is that the case against the applicant is not proved, particularly since the two passengers are not examined. He, therefore, submitted that the order of penalty may be quashed. The Learned Counsel for the respondents has supported the impugned order.

The Learned Counsel for the applicant placed reliance on 1994 (1) LLJ 795 (Ganesh Raut V/s. Union of India & Others) where a Division Bench of Orrisa High Court has observed that since the concerned witnesses are not examined, the case is not proved. Infact, the Division Bench has observed that strict rules of evidence are not applicable to disciplinary enquiries and in some cases, even hearsay evidences may be admitted. In this connection, we may point out the recent decision of the Apex Court reported in 1998 SCC (L&S) 1722 (Superintendent, Government T. B. Sanatorium & Another V/s. J. Srinivasan where it is observed that even though the victim was not examined to prove the misbehaviour, the finding of misbehaviour is supported by other evidences on record. Therefore, the question is, whether there was some evidence before the Inquiry Officer to sustain the finding of misconduct.

4. After hearing both sides, we have gone through the pleadings and in particular, the enquiry report and the order of the Disciplinary Authority and the Appellate Authority. The enquiry report is a very lengthy report where the Inquiry Officer has

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considered the entire evidence and after disposing the evidence has reached the conclusion that the charge is proved against the applicant. It may be that the two passengers did not turn up inspite of number of opportunities given for getting them. But it is on record that the statement of the two passengers were recorded by the Vigilance Officials in the presence of the applicant and he has even attested those two statements. The applicant has also admitted his guilt before the Vigilance officials. It is well settled that strict rules of evidence is not applicable in a domestic ~~court~~ Tribunal. The appellate authority has pointed out that the applicant has allowed the two passengers to go away without issuing any receipt or without taking any action against ~~him~~ them. This itself is sufficient to show the guilty conduct of the applicant, as allowing the two passengers to go away without any action clearly shows that he must have received ~~any~~ illegal gratification from them. This is not a case of no evidence. There is some evidence, if believed, is sufficient to show the misconduct against the applicant. It is well settled by number of judgements of the Supreme Court, the latest decision is reported in AIR 1999 SCC 625 (Apparel Export Promotion Committee V/s. A. K. Chopra) that Court or Tribunal cannot enter the realm of discussions as evidence or re-appreciation of evidence and then take a different view, even if another view is possible. The role of judicial review is very limited, only to find out the legality and validity of the decision making process and not about the actual decision.

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5. In the present case, the enquiry has been held as per rules, principles of natural justice has been observed, the applicant was given full opportunity to defend himself. The sufficiency or otherwise of the evidence is not a matter for judicial review. If there is some evidence, which if believed, is sufficient to prove the case, then this Tribunal cannot go into the question of whether the evidence is sufficient or not. The adequacy of the evidence is not a matter for judicial review. It is only in the case of no evidence the Tribunal can interefere with the order of the domestic Tribunal. This is not a case where there is no evidence. After perusing the material on record we are satisfied that there ~~are~~ is sufficient material on record to connect the applicant with the misconduct in question. Therefore, this is not a fit case for interferring with the case by this Tribunal.

As far as the punishment is concerned, we do not find any illegality or irregularity with the impugned order. Having regard to the gravity of the charge against the applicant, if at all, the penalty of reduction to lower grade is on the lower side and certainly not on the higher side. At any rate, it is not a case where the penalty is disproportionate, much less grossly disproportionate to the misconduct. Hence, no case is made out even for intereferring with the quantum of penalty.

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6. In the result, the O.A. is dismissed with the above observations. No order as to costs.

(B. N. BAHADUR)
MEMBER (A).

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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