IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 168 OF 1993.

Date of Decision: 13th July, 1999.

Sharadchandra Dattatre Shukla, — Applicant.

Shri L. M. Nerlekar, — Advocate for Applicant.

Versus

Union Of India, — Respondent(s)

Shri S. C. Dhavan, — Advocate for 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? No

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

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 168 OF 1993.

Dated this Tuesday the 13th day of July, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Sharadchandra Dattatre Shukla,
Junior Clerk at Nerul.
Residing at -
15/7, Vinayak Colony,
Near Bus Depot,
Vithalwadi, Kalyan, ... Applicant
Dist. Thane.

(By Advocate Shri L. M. Nerlekar)

VERSUS

Union Of India through
The Divisional Railway Manager,
Central Railway,
Bombay V.T. ... Respondents.

(By Advocate Shri S. C. Dhavan).

O R D E R

PER.: SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the Learned Counsel appearing on both sides.

2. The applicant was working as Head Ticket Collector in the Central Railway at the relevant time. He was on duty

...2

in checking tickets in the train on 15.10.1990 and 16.10.1990. He was also not well during that time. On that day he was in-charge of 3 tier sleeper coach of 1326 Bombay-Pune. It appears the vigilance squad made a surprise check on that day and found certain irregularities and shortcomings in the work of the applicant. On that basis a charge-sheet was issued against the applicant. Then a regular enquiry was held. Some witnesses were examined during the enquiry. The applicant did not adduce any defence evidence. Then the Inquiry Officer gave a report that the charges are proved against the applicant. A copy of the enquiry report was sent to the applicant for his remarks. He gave his reply. Then the Disciplinary Authority passed an order dated 02.11.1992 holding that the charges are proved by agreeing with the enquiry report and then imposed the penalty of removal from service. Being aggrieved by that order, the applicant preferred an appeal. The Appellate Authority while confirming the finding of misconduct against the applicant, taking a lenient view on humanitarian consideration due to sickness of the son of the applicant, he modified the penalty and reduced it to reversion as a Ticket Collector in the grade of Rs. 950-1500 i.e. the initial grade at initial stage for a period of three years with cumulative effect. Being aggrieved by the orders of the Disciplinary Authority and the Appellate Authority, the applicant has preferred this original application. Number of grounds are taken in the application challenging the orders of the respective authorities. But the main

...3

ground is that the applicant was innocent and the charges are not proved against him.

3. The respondents have filed the reply pleading the facts and circumstances of the case and asserting that the enquiry has been held properly and on the basis of the evidences on record and admitted conduct of the applicant, the Disciplinary Authority has rightly held that the charges are proved though the Appellate Authority has taken a lenient view on humanitarian grounds so far the quantum of penalty is concerned. It is, therefore, stated that there are no merits in the Original Application.

4. At the time of argument, Shri L. M. Nerlekar, the Learned Counsel for the applicant did not point out any defect in the conduct of the disciplinary enquiry or orders of the respective authorities. His main argument is that the charges are not proved and that the applicant's explanation has not been accepted and, therefore, the order should be set aside. Only one legal argument was pressed into service, namely - that the impugned punishment imposed by the Appellate Authority amounts to double jeopardy. The basis of the argument is that it is a case of no evidence or insufficient evidence and the orders of the respective authorities are perverse. The Learned Counsel for the respondents while justifying the impugned order on merits, contended that the scope of judicial review is very limited and this Tribunal cannot go into the merits of the case by

...4

re-appreciating the evidence to find out whether the evidence is sufficient or not and whether the evidence should be accepted or not.

5. Eight charges were framed against the applicant which are as follows :

"Article 1 :

He was detected with unacounted hard cash of Rs. 250.75ps. in his possession.

Article 2 :

He was detected with an excess amount of Rs. 325/- which was a reflection out of malpractices by him.

Article 3 :

He deliberately did not prepare and grant receipt even after collecting Rs. 80/- from the passengers towards Resvn/Sleeper charges of berth Nos. 7, 8, 13 and 14 before LNL Stn. with mal-intention to pocket them.

Article 4 :

He failed to initiate suitable action against the pass holding PNR No. 410868 (JCR) ex SC-BRC valid by 2102 of 14.10.1990 but invalid 1326 UP as per extant rules, who was travelling on Berth No. 11.

Article 5 :

He failed to collect exact prescribed reservation/ sleeping charges vide EFT No. E 845874, 875 and 876 in allotting Bo. Nos. 72, 68, 69 & 71 resp. and collected Rs. 20/- short.

Article 6 :

He failed to prepare amended chart of the said coach No. 9774(S-1) of PA-BB VT. Sec. of 1326 Up Passr.

Article 7 :

He unauthorisedly permitted one Shri A. V. Joshi holding 1st MST No. 17526 between PA-BB VT to sleep on B. No. 28 after accepting illegal gratification for undue favour.

Article 8 :

He unauthorisedly allowed one Shri Ratnam Mishore holding IInd MST No. 42616 bet. PA-BB VT to sleep on N. Bo. 31 after accepting illegal gratification of Rs. 10/- for this undue favour. "

Detailed statement of imputations are given to explain the facts and circumstances of each article of charge.

6. After enquiry the Investigating Officer has held that Charge No. 3 is not proved. This has been accepted by the Disciplinary Authority also. Hence, we will have to consider only charges 1 and 2 and 4 to 8.

The department examined P.W.-1, Shri M.A. Kazi, Senior Vigilance Inspector who conducted the raid, P.W.-2 Shri S. D. Shukla, Head Train Ticket Examiner, who assisted P.W.-1 in conducting the raid and checking the tickets, etc. and P.W.-3, Shri K. D. Moolya, F.C.C.A. is another official who also accompained P.W.-1 at the time of raid. The witnesses have given detailed evidences about the nature of checking on that day. They have been cross-examined at length.

The checking as such is admitted. But the applicant gives his own explanation as to why he did not declare the cash, why he had excess cash and why he had unaccounted cash, etc.

The Inquiry Officer has written a lengthy speaking order considering the evidence of the witnesses and also the defence of the applicant and has come to the conclusion that the charges are proved except Charge No. 3.

The Disciplinary Authority has written a short order agreeing with the report of the Inquiry Officer and imposing the penalty of removal from service. The order of the Appellate Authority is in two parts. The first part is the letter dated 30.12.1992 addressed to the applicant intimating that there is no merit in the appeal but however, taking into consideration that his son is suffering from Kidney trouble, he has taken a lenient view and changed the penalty of removal from service to one of reversion to a lower grade in a particular scale. In support of this letter conveying his decision to the applicant on the appeal he has recorded reasons. The Learned Counsel for the respondents has placed before us the entire enquiry file which contains the order of the Appellate Authority. In this order the Appellate Authority has observed that it has carefully gone through the enquiry report and the order of the Disciplinary Authority and has taken into consideration the grounds in the applicant's appeal and he agrees with the findings of the Inquiry Officer. Then it is also mentioned about the applicant's defence that he was sick on that day. He has pointed out that if he was really sick, he should have reported sick either at Pune or Lonavala and he should not have continued on duty in the train. He has also given the applicant

personal hearing on 24.12.1992. Then he has also given reasons for taking a lenient view regarding the punishment.

7. The Learned Counsel for the applicant read over the evidence of witnesses and pointed out some discrepancies and also commented on the non-examination of the passengers and argued that it is a case of no evidence or no sufficent evidence and hence the finding of guilt is not sustainable.

8. After hearing the Learned Counsel for the applicant and perusing the articles of charges, the defence of the applicant and the evidence adduced in the enquiry, we ~~do not~~ find that the impugned order of penalty does not fall in the category of "perverse order or case of no evidence". It is a question of either accepting the applicant's defence or rejecting it. It is the question of accepting the evidence of P.W.s 1 & 3 or rejecting the same. While exercising judicial review we cannot re-appreciate the evidence and come to another conclusion, even if another view is possible. It is not the province of the Tribunal to re-appreciate the evidence like an Appellate Court. We are only concerned with any defect in the enquiry or about violation of principles of natural justice, etc. We cannot go into the realm of appreciating of evidences. The Appellate Authority is the final fact finding authority. This Tribunal cannot substitute its own finding of fact in the place of finding of fact recorded by a domestic Tribunal. There are number of recent decisions of the Supreme Court taking the view that the scope of judicial review is very limited and the

...8

Tribunal cannot go into the realm of appreciation of evidences or discussion of evidences, etc. Suffice it to refer to the latest authority on the point, namely- a case reported in AIR 1999 SC 625 ( Apparel Export Promotion Council V/s. A. K. Chopra ). Therefore, we cannot go into the question of appreciation of evidence and then come to the conclusion whether the charges are proved or not.

9. The Learned Counsel for the applicant did not point out any irregularity or illegality in conducting the enquiry. He has not argued about any violation of principles of natural justice. The applicant had sufficient opportunity to defend himself. He has cross-examined the witnesses. He has given a detailed defence brief after the evidence of the record. Hence, the applicant had fair and sufficient opportunity to defend himself in the case. The Learned Counsel for the applicant has invited our attention to some authorities, which in our view, do not have any bearing on the point under consideration.

In A.I.R. 1986 SC 995 ( Sawai Singh V/s. State of Rajasthan ) the Supreme Court has observed that the charges are vague and hence enquiry vitiated. In our view, this decision has no application to the facts of the present case where the charges are specific and supported by detailed statement of imputations where all necessary particulars are given. What is more, some

...9

of the charges are not disputed at all. The fact that the applicant did not disclose the cash in hand at the time of starting of his duty on that day, as required by the rules, is not disputed at all. The fact that the applicant was in excess of cash is an admitted fact. The fact that the applicant had certain unaccounted money is not disputed at all. The applicant gives some explanation for these irregularities but he has not produced any evidence to support that explanation. A mere explanation is no evidence. The applicant should have produced some evidence by examining the witnesses to prove his explanation. As rightly argued by the Learned Counsel for the respondents, by placing reliance on 1997(1) SLJ 133 ( Orissa Mining Corporation and Another V/s. Ananda Chandra Prusty ) the burden of proof is not a static thing and if certain facts mentioned in the charges are admitted, then the burden shifts on the delinquent official to prove his version. ~~the charges~~. The Supreme Court has clearly stated that there is nothing like that that the burden is always on the department in a disciplinary enquiry, but in a given case the burden may shift on to the delinquent official depending upon his explanation, etc. In this case, the applicant did not produce any evidence to support his defence. The decision of the Gujarat High Court reported in 1992 LAB I.C. 420 (State of Gujarat V/s. Vinubhai Maganlal Thakker ) has absolutely no relevance since in that case it is observed that there was no evidence and the conclusions were drawn on the basis of surmises and conjectures. We have already pointed out that in the present case there is evidence of

..10

P.W. 1 to 3, apart ~~of which~~ from which the admission of the applicant like unaccounted cash, excess of cash, non-disclosure of cash at the time of boarding the train on duty, etc. In our view, this is not a case of no evidence at all. In the decision relied upon by the Learned Counsel for the applicant in the case of Anil Kumar V/s. Presiding Officer and Others reported in 1986 (1) L.L.J. 101 it is pointed out that the Inquiry Officer should give reasons for the conclusions and he must consider the evidence of the management and the evidence of the delinquent official. In our view, even this decision has no application to the facts of the present case since the Inquiry Officer has written a detailed order mentioning the evidences adduced by the administration and he has taken into consideration the defence of the applicant and then has held that all charges except charge no. 3 are proved. Similarly, in our view, even the decision of the Bangalore Bench of the Tribunal in the case of D. V. Pathan V/s. Union Of India & Others reported in 1991 (1) SLJ 356 has no application to the facts and circumstances of the present case.

10. In the light of the above discussions we hold that the impugned orders do not suffer from any illegality or infirmity and hence on merits no ground is made out to interfere with the finding of fact recorded by the domestic Tribunal.

11. The next point urged by the Learned Counsel for the applicant is that the impugned penalty causes

double jeopardy to the applicant since there is not only a reduction in rank but also reduction to the initial pay of the lower grade and this amounts to double jeopardy. In our view, the argument has absolutely no merit. Penalties are provided in Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968. We are concerned with major penalty (vi) which reads as follows :

> " Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service."

The above rule empowers the Disciplinary Authority to reduce an official to a lower time scale of pay or a lower post and he can also give directions regarding fixation of pay in the lower grade, etc.

Therefore, reducing the applicant to a lower grade of a particular pay at a particular stage cannot and does not amount to double jeopardy as argued by the Learned Counsel for the applicant. No other contentions are urged before us. To satisfy ourselves, we have gone through the inquiry report and the materials on record and we are satisfied that the impugned order does not suffer from any legal defects or infirmities. Hence, we do not find any merit in the present application.

...12

The applicant must thank himself that though he had been removed from service by the Disciplinary Authority, he has been reinstated by just reduction in rank for a limited period by the Appellate Authority. Hence, we find no merit in the present application

12. In the result, the application is dismissed. No order as to costs.

(D. S. BAWEJA)
MEMBER (A).

13/7/95
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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