

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.
(AT JAIPUR).

Date of Decision: May 8, 1989.

TAs Nos. 2303/86
&
2340/86

SHRI SURESH CHANDRA AGARWAL

... Plaintiff/Petitioner.

Shri M.R.Singhvi

... Counsel for Petitioner.

VERSUS

UNION OF INDIA & OTHERS

... Defendants/Respondents.

Shri G.P.Soral

... Counsel for Respondents.

CORAM:

THE HON'BLE SHRI B.S.SEKHON, VICE CHAIRMAN.

THE HON'BLE SHRI G.C.SINGHVI, ADMN.MEMBER .

G.C. SINGHVI

These two Transferred Applications namely No.2303/86 and 2340/86 were heard together and are being disposed of by this common judgment in as much as the substantial questions for decision raised in them are practically the same. Concisely stated the factual matrix germane to the adjudication of the instant Transferred Applications, as presented by the plaintiff in his plaint, is that the plaintiff, serving as T.T.E. Western Railway, Kota had, on 4.2.1983 to go on checking duty on 4 UP Frontier Mail to Bombay. Accommodation was reserved for the plaintiff in Second Class Sleeper Coach 7409 in which the plaintiff performed his journey. Due to malafide on the part of the officers a charge sheet dated 13.10.1983 was served on the plaintiff on the allegation that on 4.2.1983 when he was undertaking the journey from Kota to Bombay, he took along with him a lady passenger whose name was Ms.Veena Agarwal and who had a Second Class ticket. This lady was found travelling with the plaintiff in the First Class by Shri Inder Raj Nigam T.T.E. on 5.2.1983 in the morning when the train had reached Borivli. Shri Nigam T.T.E.



levied on the lady a charge of a sum of Rs.340.00 constituting the difference in the fares of Second and First Class, payment of which sum was also made by the plaintiff. According to the chargesheet, this was a misconduct on the part of the plaintiff.

2. Shri T.M.Desai was appointed as Enquiry Officer in the D.A.R. proceedings. He had almost completed the proceedings when he was transferred and Shri C.B.Harse, Inspector Vigilance was appointed as E.O. in his place. He completed the enquiry and submitted his report. A copy of this report was not given to the plaintiff. Nor was he afforded an opportunity to have his say against the report. The Senior D.C.S. Kota was however, getting impatient to adjudge the plaintiff guilty of the charge and punish him. He had probably sent some papers in this behalf to the Chief Ticket Inspector, Kota.

3. The entire D.A.R. proceedings, according to the plaintiff, are illegal and unauthorised on the following grounds:

(a) There is no basis for the allegations. No such evidence in support of the allegations has come on record as may lead one to infer that the charges are proved.

(b) The procedure adopted in the D.A.R. proceedings was against the Rules. Witnesses were not subjected to Examination-in-Chief in the D.A.R. proceedings, but whatever they had deposed in the Vigilance enquiry had been accepted as Examination-in-Chief. Actually, such statements could be used only for corroboration or confirmation. In D.A.R. proceedings only statements recorded in the proceedings as brought out by the Examination-in-Chief are to be considered relevant. Procedure adopted was thus, against the principles of natural justice. It was, therefore, faulty and contrary to the Rules. The proceedings, therefore, deserve to be quashed on this



count alone.

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(c) Ms. Veena Agarwal was not at all examined. She was the principal witness. This omission, on the part of the defendants, did not help to show that there was malafide on their part.

(d) Copy of the findings of the Enquiry Officer was not given to the plaintiff. Opportunity of defending himself in the D.A.R. proceedings was thus, denied to the plaintiff.

(e) Shri C.B.Harse E.O. was personally prejudiced with the plaintiff. The plaintiff had complained against Shri B.N.Shukla, C.V.O. for illegally carrying wheat by train and for which he was charged a sum of Rs.323.00. Shri Harse was then serving under Shri Shukla and tried to placate the plaintiff to hush up the matter. As the plaintiff did not agree thereto, Shri Harse got annoyed with him.

(f) Shri Indu Raj Nigam, a personal friend of Shri B.N.Shukla, was on the same train. He also pressed the plaintiff but the plaintiff did not relent. So Shri Nigam also got annoyed with the plaintiff.

(g) Otherwise also the way the entire proceedings were conducted was contrary to the Rules.

4. On 22.12.1984 the defendant No.3 refused to give a copy of E.O.'s report to the plaintiff. The cause of action therefore, arose that day. The suit was valued at Rs.300.00 for declaration and Rs.400.00 for issue of a permanent injunction. On the pleadings briefly set out in the preceding paragraphs a Civil Suit was filed in the court of learned Munsif, Kota (North) on 4.1.1985 and registered as Civil Suit No.4/85. The reliefs sought per the suit comprised declaration of the D.A.R. proceedings No.161/3/1895 as



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illegal and issue of a permanent injunction to the defendants directing them not to punish the plaintiff in any manner in pursuance of the aforesaid D.A.R. proceedings and if such punishment had already been awarded the defendants be restrained from implementing the same.

5. Simultaneously, another application for issue of a temporary injunction was also filed in the Court of learned Munsif, Kota (North) by the plaintiff. The learned Munsif issued an ad-interim order on 10.1.1985 for maintenance of status quo ante despite the defendants' pleading that the prima facie case was in their favour, the balance of convenience was also in their favour and no irreparable injury will be caused to the plaintiff by not issuing the temporary injunction because he could, in the event of the case being decided in his favour, be compensated in terms of money. It may be added that before the transfer of the Suit to the Tribunal the learned Munsif had, on May 2, 1985, ordered the defendants to produce the D.A.R. proceedings before the Court. The Civil Suit and the application for issue of a temporary injunction were transferred to the Tribunal by virtue of operation of Section 29(1) of the Administrative Tribunals Act, 1985 and rechristened as Transferred Applications No.2340/86 and 2303/86 respectively.



6. The defence put up by the defendants, as disclosed in their written statement, was that on 27.12.1984 an NIP was issued whereby the plaintiff had been reverted to the post of Ticket Collector. The D.A.R. proceedings were held as per rules and there was no ill will towards the plaintiff harboured by any officer. The charge-sheet was issued on 13.10.1983. Shri T.M.Desai was appointed as E.O. When Shri Desai was transferred, Shri C.B.Harse was appointed as E.O. in his place and the plaintiff was informed accordingly.

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The plaintiff was given all opportunities to defend himself. The E.O. had put up his findings to the disciplinary authority who, after considering the matter, reduced the plaintiff from the post of T.T.E. to that of a Ticket Collector in the pay scale of Rs.260-400 on pay of Rs.400.00 p.m. for a period of two years with a direction that this reduction will have effect on his further increments in the higher grade on restoration. On 27.12.1984 the NIP was issued. The plaintiff somehow gathered knowledge about it and proceeded on sick leave with a view to evading the receipt of the NIP. Copy of the E.O.'s findings was enclosed to the NIP. The plaintiff, in the meantime approached the court and got the order of status quo ante issued.

7. The defendants countered the grounds adduced by the plaintiff in support ^{of} his contention that the D.A.R. proceedings were illegal and unauthorised:

- (a) The D.A.R. proceedings were held as per procedure
- (b) All the witnesses were examined properly and the plaintiff was allowed to cross examine them.
- (c) Ms.Veena Agarwal was not named as a witness in the list of witnesses.
- (d) A copy of EO's report was enclosed to the NIP
- (e) Allegations against Shri C.B.Harse were baseless and this issue, which is now being raised was not raised by the plaintiff at the time of Shri Harse's appointment as A.O.
- (f) Imputation of malafide against Shri I.R.Nigam has also been denied by the defendants.
- (g) The entire D.A.R. proceedings were held according to the procedure. D.A.R. proceedings moreover cannot be challenged in a court of law.

In these pleadings, the defendants prayed that the Suits be dismissed with costs.



8. On September 23, 1985 the plaintiff submitted an application for amending the plaint because on 22.7.1985 promotion orders in respect of TTEs were issued and the plaintiff's promotion was withheld on the plea that D.A.R. proceedings were pending against him. The plaintiff contended that he was entitled to promotion as Head T.C. in the pay scale of Rs.425-640(R). The promotion order dated 22.7.1985 was illegal and violative of Articles 14 and 16 of the Constitution of India. It amounted to withholding of promotion which is a punishment and cannot be awarded without holding D.A.R. proceedings. The plaintiff wanted to amend the reliefs sought by adding thereto that he was entitled to promotion as Head T.C. in the pay scale of Rs.425-640(R) with all consequential benefits. The defendants opposed the application for amendment on the plea that the amendment related to a different cause of action altogether.

9. We have heard the arguments addressed at the bar and have gone through the pleadings and documents on record.

10. What we have found is that in the D.A.R. proceedings witnesses were not examined properly. The Examination-in-Chief of the witnesses was dispensed with and they were asked a question after showing to them their statements recorded in the Vigilance enquiry by the C.V.I., Kota, if those statements were written by them in their own hand writing and whether signatures subscribed thereto were their signatures. Invariably the witnesses replied that the statements were written by them in their own hand writing and the signatures subscribed were also theirs. Then almost every witness was asked to state after going through his statement recorded earlier whether he confirmed the contents



of that statement in the D.A.R. proceedings. Invariably the reply of the witness was that he did confirm the contents of the above referred statement in the D.A.R. proceedings. After these two questions other questions were asked to the witnesses. Thus, the Examination-in-Chief of the witnesses was dispensed with and the statements of witnesses recorded in the Vigilance enquiry behind the back of the plaintiff were accepted as statements recorded in the D.A.R. proceedings which was queer indeed. Even the delinquent plaintiff was asked: "Do you admit your statement given before the C.V.I., KTT on 17.5.1983?" His answer was: "Yes, I admit my above referred to statement". This dispensing with the Examination-in-Chief of the witnesses is a major lacuna which tends to vitiate the entire D.A.R. proceedings. The witnesses should have been allowed to make their statements before the E.O. in the D.A.R. proceedings uninhibited by the statements made by them in course of the Vigilance enquiry. Such statements should have been recorded and then the witnesses should have been allowed to be cross examined by the delinquent official. Since this was not done and a questionable procedure adopted, the principles of natural justice were blatantly flouted.

11. In the premises, the D.A.R. proceedings No.E 161/3/1895 conducted subsequent to the issue of memorandum, statement of charges and statement of allegations is hereby declared illegal and the impugned order dated 27.12.1984, whereby the plaintiff/petitioner was reduced in rank from T.P.B. to Ticket Collector in the pay scale of Rs.260-400(R) on pay of Rs.400.00 p.m. for a period of two years with a directive that this reduction will have effect on his further increments in the higher grade on restoration, is hereby set aside. The ad-interim maintenance of status quo ante



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order dated 10.1.1985 issued by the learned Munsif is hereby vacated. The Transferred Applications are disposed of accordingly and the parties are left to bear their own costs.

Sd/-
(G.C. SINGHVI)
A.M.

Sd/-
(B.S. SEKHON)
V.C.

Copy of order sent to

Ref. I vide no. 2095/18 589
by post.

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22/5/89