

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 799/92
TAXXNO.

199

DATE OF DECISION 7.7.1993

O.P. Tiwari Petitioner

Mr. J. K. Kaushik Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. Manish Bhandari Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B. B. Mahajan, Member (Adm.)

The Hon'ble Mr. Gopal Krishna, Member (Judl.).

- 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- 2. To be referred to the Reporter or not ? *Y*
- 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- 4. Whether it needs to be circulated to other Benches of the Tribunal ? *Y*

G. Krishna
(Gopal Krishna)
Member (Judl.)

B. B. Mahajan
(B. B. Mahajan)
Member (Adm.).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR
BENCH, JAIPUR.

O.A.No. 799/92

Dt. of order: 7.7.93

O.P.Tiwari

: Applicant

Vs.

Union of India

: Respondents

Mr.J.K.Kaushik

: Counsel for applicant

Mr.Manish Bhandari

: Counsel for respondents.

CORAM

Hon'ble Mr.B.B.Mahajan, Member (Adm.).

Hon'ble Mr.Gopal Krishna, Member (Jud.).

PER HON'BLE MR.B.B.MAHAJAN, MEMBER (ADM.).

Shri O.P.Tiwari has filed this application under Sec.19 of the A.Ts Act against the order of dismissal from service and the orders rejecting his appeal against dismissal. He was initially appointed as Ticket Collector and subsequently promoted as Travelling Ticket Examiner (for short 'TTE'). On 17.7.1985 when he was working as TTE/Conductor manning sleeper coaches by 4 UP Frontier Mail he was alleged to have committed serious misconduct. A charge sheet was served on him on 15.10.85 (Annex.A-2). The charges mentioned in the charge sheet are as under:

1. He demanded and accepted illegal gratification from a passenger Smt.Sheela P.Agarwal for preparing a ticket for her journey but he carried her without issuing any ticket.
2. He unauthorisedly carried Shri Rajendra Singh Hora and family in his coach without any reservation for some consideration.
3. He consumed liquor on duty in a public place and became badly intoxicated resulting non-check of coach 7808.

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4. He misbehaved and molested the lady passenger Mrs. Sheela P. Agarwal to outrage her modesty.
5. He misbehaved and manhandled the passenger Shri Abdul Karim Bhati and family and reaved and threw their two small kids on other passengers.
6. He misbehaved with the passenger Shri Mumtaz Ahmed and denied to provide sleeping berth causing loss to railway of sleeper charges.
7. He failed to recover sleeper charges due from passenger Mrs. Santosh Rani and family.
8. He demanded and accepted illegal gratification from passenger Shri M.K. Shah & family on the pretext of sleeper charges for second night though not leviable.
9. He failed to handover charge to his reliever at Kota causing harassment to the passengers of Kota quota.
10. He disobeyed his superiors and in a state of intoxication created nuisance publicly on the platform at Kota Station.
11. He failed to give room message to HTC-KTF and to prepare and handover summary of accommodation and thereby blocking available accommodation."

2. Enquiry was conducted into the charges under the Railways Services (Discipline & Appeal) Rules. The Enquiry Officer has submitted his report on 10.2.86. In the report the Enquiry Officer held that the charge No. 6 and 8 has not proved while he had the other charges proved. On consideration of the Enquiry Report the impugned order of dismissal from service was passed by the Disciplinary Authority on 19.8.87. The applicant submitted an appeal against this order and the same was also rejected by the Appellate Authority ^{vide} ~~while~~ his order conveyed to the applicant on 18.4.88.



(Annx.-A-15). The applicant had challenged the order of the Punishing Authority on the ground that the appointing Authority is General Manager and he could not be dismissed from service by the Sr.Divisional Commercial Superintendent who had passed the impugned order. He had also impugned the findings of the enquiry on the ground that the statement of some of the material witnesses were not recorded in his presence and no opportunity was given to him for cross examining them and prejudice had been caused to him. ~~because after close of the enquiry~~. The matter was referred back by the Disciplinary Authority to the Enquiry Officer for further examination of witnesses who have initially not been examined and the evidence of those prosecution witnesses was thus taken after he closed his defence. He had also alleged certain malafides on behalf of S.C.Mittal, Head Train Clerk who had been impleaded by him as respondent No.4. The respondent in the reply has stated that the applicant was appointed by the Sr.Divisional Commercial Supdt., Western Railway, Kota and he was thus the appointing authority. They have also stated that the enquiry had been conducted in accordance with the rules and have denied the allegations of malafides.

3. We have heard the counsel for the parties. The name of respondent No.4 was deleted by the interim order dated 4.3.91 on the request of the counsel for the applicant. Amended cause title excluding his name has also been filed by the counsel for the applicant. In the circumstances, the allegation of malafide against him cannot be looked into and the learned counsel for the applicant has not pressed the same. So far as the plea that the appointing authority in this case was the General Manager is concerned, it has been held by the

Hon'ble Supreme Court in 1991 SC (L&S) 355 Scientific Advisors to Ministry of Defence Vs. S. Daniel that where the authority specified as Disciplinary Authority delegated its power to make appointment to a lower authority and the delegated authority actually makes the appointment such authority will be the authority competent to take disciplinary proceedings as well under the Railway Servants (Discipline & Appeal) Rules, 1968 and similar other rules. In view of this, the learned counsel for the applicant has not pressed this plea also. He has ~~meanwhile~~ ^{mainly} sought to impugne the findings of the Enquiry Officer. He has pointed out that ~~in case~~ in respect of charges No. 1, 2, 3 & 4, the material witnesses Viz. Smt. Sheela R. Agrawal, Sh. Rajendra Singh Hora, and Mrs. Bhupendra Hora had not appeared as witnesses before the Enquiry Officer but their statements given in the preliminary enquiry had been relied upon by the Enquiry Officer while holding ~~this~~ charge proved. He had also submitted that after the Enquiry Officer had submitted his report the disciplinary authority remitted to him to examine and cross examine the witnesses who were either dropped or not examined in the case at the initial stage. The Witness S/Shri S.C. Mittal, Abdul Karim and Dola Ram were examined at that stage when the defence witnesses had already been examined. He has also referred to the averment in para 4 of the appeal filed before the Appellate Authority that certain documents mentioned therein had been mentioned in the charge sheet but had not been produced at the time of enquiry. The learned counsel for the respondents has submitted that the Rules contained in the Evidence Act do not apply strictly to the departmental enquiry and there was

therefore nothing illegal in making use of the documents which were part of official record and copies of which had been supplied to the applicant before or at the time of enquiry. He has also submitted that Rule 10(2) of Railway Servants (Discipline & Appeal) Rules, 1968, provides that "The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further enquiry and report and the inquiring authority shall there-upon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be." It has pointed out that in case the Inquiry authority is precluded from recording the fresh evidence of witnesses after the case is remitted back to him by the disciplinary authority this rule becomes redundant. It has also been pointed out that vires of this rule has not been challenged, by the applicant. We have carefully considered the matter. So far as recording of evidence of witnesses of the prosecution by the inquiring authority after the remission of the case to him by the disciplinary authority is concerned, we agree with the submissions of the counsel for the respondent that in view of the provisions of Rule 10(2) no illegality had been committed in recording their evidence. The applicant has not contended that he had not been allowed opportunity to cross examine such witnesses or had not been allowed to produce any additional evidence after recording of their statements for which he may have applied to the inquiring authority. The mere fact that the statement was recorded after the applicant has closed his defence evidence in the enquiry earlier cannot, therefore, be held to have prejudiced the applicant.

4. So far as the plea of the applicant that in respect of certain charges the inquiry officer had relied upon the statements of material witnesses obtained at the time of preliminary enquiry without producing them before the Inquiry Officer and allowing the applicant to have opportunity of cross examining them is concerned, we agree with the intention of the learned counsel for the applicant that this vitiates the findings of the inquiry officer on those charges. The applicant had been denied the opportunity to cross examine the witnesses and their statement taken in the preliminary enquiry could not therefore be relied upon for the purpose of holding those charges to have been proved. If the findings of the inquiry officer on these charges are deleted the following charges would still remain proved against the applicant:

5. He misbehaved and manhandled the passenger Shri Abdul Karim Bhati and family and reaved and threw their two small kids on other passengers.
7. He failed to recover sleeper charges due from passenger Mrs. Santosh Rani and family.
9. He failed to handover charge to his reliever at Kota causing harassment to the passengers of Kota quota.
10. He disobeyed his superiors and in a state of intoxication created nuisance publicly on the platform at Kota Station.
11. He failed to give room message to HIC-KTF and prepare and handover summary of accommodation and thereby blocking available accommodation.

5. It has been held by Hon'ble Supreme Court in State of Orissa Vs. V. Bidya Bhushan AIR 1963 SC 779 that the Court has no jurisdiction if the findings of the E.O prima facie make out a case of misdemeanour to direct the disciplinary authority to reconsider his order because in respect of some of the findings but ^{all} ~~not~~ it appears that there was violation of rules of natural justice. It was further held that

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if the order of dismissal may be supported by any finding as to substantial misdemeanour for which the punishment can lawfully be enforced, it is not for the court to consider whether that ground alone would have weighed with the authority in dismissing the official. This would clearly apply to the facts of the present case. While, as held above, there has been violation of rules of natural justice in arriving at the decision in respect of charges No.1 to 4 by the Inquiry Officer, the remaining charges which still stand proved are of such a nature that the punishment of dismissal could lawfully have been imposed by the disciplinary authority for those charges and it is, therefore, not for this Tribunal to consider whether the findings on those charges alone would have weighed with the disciplinary authority to pass the order of dismissal.

6. In view of the above, there is no ground for interference by the Tribunal. The O.A. is accordingly dismissed. Parties to bear their own costs.

Gopakrishna
(Gopal Krishna)
Member (Judl.)

B.B.Mahajan
(B.B.Mahajan)
Member (Adm.).