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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
JAIPUR.

O.A.No.948/92

: Date of order: 15-11-1995

R.C.Garg

: Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate Bombay.
2. The Divisional Railway Manager, Western Railway, Jaipur.

: Respondents

Mr.P.D.Khanna, Counsel for the applicant

Mr.Manish Bhandari, Counsel for the respondents

CORAM:

HON'BLE SHRI G.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL))

THE applicant Shri Ramesh Chand Garg has filed this application under Section 19 of the Administrative Tribunal's Act, 1985 to quash the order of removal from service dated 15.5.1991 and 27.11.1991 issued respectively by the Divisional Railway Manager, Jaipur and the Chief Commercial Superintendent (CCS) Bombay and for reinstatement to his original position with all consequential benefits including back wages, arrears, allowances etc. with 18% interest thereupon.

2. Facts leading to this application are that the applicant was served with a charge-sheet for major penalty dated 19.7.1988 (Annexure A-5) issued by the Divisional Commercial Superintendent, Western Railway, Jaipur on the following Articles of

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Charge:

"Shri Ramesh Chand Garg, while working as Head Booking Clerk at Railway Station, Kishangarh on 23.4.1988 in the shift of 10 to 18 hrs. had committed serious misconduct in that -

He demanded and accepted Rs.71/- (Seventy one) from Shri Sadhu Ram of One II Class sleeper Berth ex.Kishangarh to Delhi by 2 Dn.Mail of 30.4.1988 against the journey cum Reservation charges of Rs.66/- only i.e. Rs.5/- extra as an illegal gratification.

Sh. Ramesh Chand Garg, by his above mentioned act exhibited lack of integrity, devotion of duty and acted in a manner of unbecoming of a Railway servant and thereby violated Rule 3-1(i), (ii) & (iii) of Railway Service (Conduct) Rules, 1966."

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The applicant submitted a reply to the charge-sheet on 21.7.1988 (Annexure A-10) and desired inspection of certain documents ~~including~~ ^{and to} obtain copies of all earlier statements recorded in his cases at all the stages. He was allowed to inspect the documents listed in Annexure A-3 to the charge-sheet and was not allowed to see the other documents desired by him in his reply. Initially, Shri M.L.Sharma was appointed as enquiry officer by the respondents vide Annexure A-13. The applicant after inspection of the documents as at Annexure A-3 gave a detailed representation on 25.8.1988 (Annexure A-12) denying the charges and seeking change of the enquiry officer as the enquiry officer belongs to the Vigilance Organisation. He reiterated his demand for change of the enquiry officer vide his communication dated 23.12.1988 (Annexure A-16) and ultimately the enquiry was entrusted to one Shri S.S.Sharma, EI(V) Jaipur. Even before this enquiry officer, he raised objection

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regarding bias but his objections were over-looked and the enquiry officer completed his enquiry on 23.11.1989. Thereafter the applicant submitted his written statement to the enquiry officer on 27.11.1989 pointing therein the illegalities committed by the enquiry officer and insisted for personal hearing to which no heed was paid by the enquiry officer or by the disciplinary authority. The enquiry officer gave his report on 7.3.1990 (Annexure A-18) a copy of which was sent by Divisional Commercial Superintendent Jaipur vide letter dated 2.5.1990 (Annexure A-21) asking him to make his representation within 10 days of its receipt. The applicant thereafter made his representation to the Divisional Commercial Superintendent, Jaipur on 7.6.1990 (Annexure A-24) pointing out the illegalities and irregularities committed by the enquiry officer. It is the case of the applicant that the Divisional Commercial Superintendent, Western Railway Jaipur applied his mind judiciously and dropped the charges levelled against the applicant in the charge-sheet dated 13.7.1988 vide his order dated 21.8.1990 (Annexure A-6) and no penalty was imposed on the applicant. It is the grievance of the applicant that after exoneration of the applicant of the charges levelled against him by the Divisional Commercial Superintendent, Jaipur, the Vigilance Organisation felt offended and at the instance of the Divisional Railway Manager a show cause notice of intended removal from service on 12.11.1990 (Annexure A-7)

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was issued to him under the alleged Revisional Powers under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 interalia on the following grounds:

- "(1) That it is not necessary that any particular Railway employee must be specifically named.
- (2) That there is no necessity of any Public complaint for a decoy check, nor is there any necessity of obtaining any application from a Public man.
- (3) It is not always necessary for the excess money to get reflected invariably in the total Railway cash, especially in cases of unscrupulous persons, as any shortage in booking and made good later on.
- (4) No one has disputed that neither there was any excess nor any shortage in cash. But as I have mentioned in para (c) above, it is always not necessary.

I tend to agree with the finding of E.O. that the charge of demanding and accepting Rs.5/- in excess is established."

The applicant submitted a reply to the show cause notice issued by the D.R.M. Jaipur on 29.11.1990 (Annexure A-25) contesting that the charges levelled ^{-st} again/him are actuated by malice. The applicant thereafter submitted his further defence vide his letter dated 17.12.1990 challenging the show cause notice to which the D.R.M. Jaipur vide his letter dated 27.12.1990 informed that his objection will be dealt with at the time of final disposal of the representation. The applicant also submitted further defence to the D.R.M. Jaipur vide his letter dated 16.1.1991 in continuation of his earlier representations

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dated 28.11.1990 and 17.12.1990. However, the D.R.M. W.R. Jaipur issued the notice of imposition of penalty (hereinafter referred to as 'NIP') dated 15.5.1991 of removal from service of the applicant alongwith the copy of the finding of the Revisionary Authority. The applicant thereafter submitted an Appeal to the Chief Commercial Superintendent, Western Railway, Church-gate, Bombay on 12.6.1991 (Annexure A-3) but his appeal was also rejected by the Chief Commercial Superintendent, Western Railway, Church-gate Bombay vide order dated 27.11.1991 (Annexure A-2) but the decision thereof was communicated to the applicant only on 27.5.1992 i.e. after a lapse of about 7 months. The applicant aggrieved by the order of the Chief Commercial Superintendent, Bombay dated 27.11.1991 submitted a Revision Petition under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 to the General Manager, Western Railway, Church-gate Bombay on 15.7.1992 about which he did not receive any response and hence he has been compelled to file this original application to claim the aforesaid reliefs.

3. The respondents have filed a written reply contesting the application to which the applicant did not file any rejoinder. The stand of the respondents has been that the disciplinary enquiry was conducted properly and the enquiry officer appointed to conduct the enquiry belonged to the Organisation set up to conduct the departmental enquiries. The respondents have denied that the

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applicant has been prejudiced on account of the appointment of the enquiry officer from their enquiry wing and that there has been no illegality or infirmity in the impugned orders passed by the D.R.M. Jaipur and the Divisional Commercial Superintendent which have been challenged in this OA.

4. We heard the learned counsel for the applicant as also for the respondents at great length and have carefully examined the record in great detail.

5. Although lengthy arguments have been addressed on behalf of both the sides, yet the only point for determination in this OA is whether the instant case of the applicant is of the category of a case of no evidence?

6. It has been vehemently argued by the learned counsel for the applicant that inspite of oral and documentary evidence recorded before the enquiry officer, the respondents have failed to establish that the applicant demanded and accepted Rs.71/- from one Shri Sathu Ram for one II Class Sleeper Berth at Kishangarh to Delhi by 2nd Dn.Mail on 30.4.1988 against the journey-cum-reservation charges of Rs.66/- only. It has been emphatically argued by the learned counsel for the applicant that the respondents' own witnesses have admitted

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in their statements that at the time of the raid conducted by the respondents Vigilance Officers, there was neither any excess in the Railway cash nor any loss in it. The argument of the learned counsel for the applicant has been that as per the Panchnama Part-I as at Annexure A-34 and Panchnama Part-II as at Annexure A-35 read with joint note Annexure P-14 prepared by the respondents officers on the spot, it is made out that the total amount in Railway cash was found to be Rs.359/- which included Rs.5/- imprest amount. This amount of Rs.359/- tallied with the Railway cash which should have been available with the applicant at the time of alleged trap. It has also been argued by the learned counsel for the applicant that as per rules and practice an amount of Rs.5/- as imprest amount is left/kept in the Cash Box of the Booking Window and had the applicant demanded or had received or taken Rs.5/- from the said Shri Sadhu Ram (Decoy) as alleged by the respondents, the total cash at the time of counting by the Vigilance Party should have been Rs. 364/- and not Rs.359/- which were actually found at that moment and which amount tallied with the Railway Cash which should have been available at that moment with the applicant. Another argument of the learned counsel for the applicant is that the applicant has been unnecessarily and without any substance implicated in the present case by the Vigilance Organisation when in fact it is not borneout even by the evidence of the respondents Vigilance Organisation as also by the documents particularly the Panchnamas prepared on the spot. Accordingly it has been argued by the learned

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counsel that the instant case is a case of no evidence and as such this Tribunal has jurisdiction and has competence to examine the evidence oral as well as documentary recorded by the enquiry officer which authority is ordinarily not available to the Tribunal. It has, therefore, been urged that not only the Enquiry Officer but also the Appellate as well as the Revisional authority have committed a grave irregularity and illegality in upholding the charges proved against the applicant when on the basis of evidence available before the Enquiry Officer no case of bribery or for that matter of accepting Rs.5/- from the decoy Shri Saihu Ram was made out. It has therefore been stressed by the learned counsel for the applicant that the impugned orders dated 15.5.1991 and 27.11.1991 are liable to be quashed.

7. On the contrary it has been contended by the learned counsel for the respondents that firstly this Tribunal has no jurisdiction to evaluate and re-appreciate the evidence ~~lead~~ disciplinary proceedings. Secondly it has been argued by the respondents that to arrive at a correct finding the whole of the evidence recorded in the disciplinary proceedings has to be read and stray application of facts given by the witnesses and relied upon by the applicant cannot be made basis of coming to the conclusion that the instant case is a case of no evidence. Further argument of the learned counsel for the respondents has been that not only the appellate authority but also the

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Revisional authority were within their competence to evaluate the evidence recorded during the disciplinary proceedings and that there has been no infirmity or illegality in their conclusions to hold the charges levelled against the applicant as proved. It has therefore been urged that the impugned orders dated 15.5.1991 and 27.11.1991 do not suffer from any illegality and infirmity and as such the application deserves rejection.

8. We have given anxious thought to the arguments raised by both the sides and the citations relied upon by the learned counsel for the applicant.

9. Although it is settled law that the Tribunal has no jurisdiction to evaluate and appreciate the evidence led in the disciplinary proceedings and cannot sit as an appellate court against the findings given by the disciplinary authorities yet it is also the settled law that it all depends upon the facts and circumstances of each and individual case. If after perusal of the record made available before the Tribunal it becomes apparent that even though on the basis of evidence recorded no case is made out and still then the disciplinary authority comes to the conclusion that the charges levelled against the delinquent officer are made out; it is a fit case where the Tribunal would be well within its competence to lift the veil and find out the truth. Instant case undoubtedly is one such exceptional case where even though it is a case of no evidence and the disciplinary authority i.e.

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the Divisional Commercial Superintendent, Western Railway Jaipur after evaluation of the report of the enquiry officer has come to the conclusion that the applicant Shri R.C.Garg has not been responsible for the charges and not only the memorandum but also the charges be dropped against him vide his findings communicated by the respondents with their letter dated 12.12.1990 (Annexure A-9); still the appellate and the Revisional authority have taken into consideration extraneous material to hold the applicant guilty of the charges levelled against him in the charge-sheet.

10. Our aforesaid conclusion is born out from the findings given by the disciplinary authority i.e. Divisional Commercial Superintendent, Western Railway, Jaipur at page 59 and 60 of this CA - a copy of which was supplied by the respondents only after the applicant asked for it. The relevant portion of the conclusions arrived at by the disciplinary authority i.e. The Divisional Commercial Superintendent, Western Railway, Jaipur is reproduced as under:-

"Public at KSG is quite responsive to such action and acts immediately in case of any irregularity at the station, but the Vigilance Inspectors have failed to produce any such complaints alongwith the case. The person sent for over hearing and witness the transaction was Shri Kaushik, VI/BRC. The verbatim remarks or talk held between the decoy and the booking clerk have not been mentioned. Immediately after conducting a check the checking party as per the statement of imputation entered in the Booking Office for checking the cash of Shri Garg. During the checking, the private cash of Shri Garg was found Rs.13/- instead of Rs.15/- which was declared by him. The railway cash was found Rs.359/- correct as per the daily trains Cash Book, this included Rs.5/- imprest of the Booking Office.

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In case Shri Garg had accepted Rs.5/- extra, this should have been reflected in the railway cash which should have been Rs.364/- instead of Rs.359/-. The immediate explanation given by Shri Garg that he received Rs.70/- from Shri Sadharam and asked for 1/- rupee extra so that he could return him a 5/- rupees note. In view of the railway cash found correct as per the account books the explanation of Shri Garg is easily acceptable. The E.O. has relied upon the un-corroborated evidence of the checking party i.e. Shri Kaushik VI/BRC and Shri Sadharam HC(V) about the recovery of GC Notes which were mentioned in the Panchnama Part I.

It is a matter of fact, when the GC Notes, whose numbers has been noted down in Panchanama Part I, were handed over by Shri Sadharam the decoy to the Booking Clerk, they would certainly figure in the recovery Memo. One and all witnesses have stated the numbers of the GC Notes recovered. As such the recovery has no evidence value in this case. On the other hand the witness Shri Sharad Kumar, CBS/KSG in answer to question No.4 of his statement has stated that there was neither excess nor shortage in the railway cash. Shri P.S.Rohatgi CVI/AII in his statement in answer to question No.15 has very clearly stated that there was no shortage or excess in the railway cash. Shri P.P.Ghai, ASM/KSG who was called to witness the checking of cash in the Booking Office, in answer to question No.3 has stated that no excess amount was detected in railway cash.

In case Shri Garg accepted Rs.5/- extra there could have been no better evidence than finding of Rs.5/- extra in the railway cash which was not found.

In view of the above, I do not hold Shri R.C.Garg responsible for the charges and as such the memorandum may be cancelled and charges dropped."

Not only the perusal of the findings given by the disciplinary authority and quoted above, but also a perusal of the Panchnama Part-I(Annx.A-34) and Panchnama Part-II (Annexure A-35) read with the joint note (Annexure A-37) and verification note entered in the DTC Book on the spot dated 23.4.1988 (Annx.A-43) make it abundantly clear that inspite of the verification made by Shri R.S.Rohatgi CVI Ajmer and Shri V.P.Kaushik, Vigilance Inspector to the effect that the cash total

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was Rs.354/-, imprest was Rs.5/- and total was found Rs.359/-, a contrary view has been taken by the appellate & revisional authority. This verification has been made by these two officers of the Vigilance on the spot as is evident from the perusal of Annexure A-43 dated 23.4.1988. It all goes to show that in perfect disregard of the truth as was evident at the time of spot check by the Vigilance wing of the respondents, the appellate authority as also the revisional authority erred in coming to the conclusion that the charge of having accepted Rs.5/- as an extra amount from their decoy Shri Sadhu Ram by the applicant has been proved from the findings given by the Divisional Railway Manager, W.R.Jaipur dated 15.5.1991 (Annexure A-1). More particularly from ^{its} Para 8, it is made out that the basis of coming to the conclusion that the applicant has taken an extra amount from Sadhu Ram has been that in the Panchnama Part I and Panchnama Part II, the currency notes of the same denomination and number were found in the cash at the time of spot check. The same mistake has been committed by the Revisional authority to corroborate the recovery of the currency notes bearing same numbers and found in the total cash amounting to Rs.359/- which were indicated in Panchnama Part I and Panchnama Part II prepared by the respondents Vigilance party. In other words, the basis of finding given by the Appellate and the Revisional Authority of having accepted an extra amount of Rs.5/- by the applicant has simply been the recovery of the general currency notes bearing same numbers and amounting to Rs.71/- which made a part of Rs.90/- handed over by the Vigilance Wing to the decoy Sadhu Ram for asking/ reservation for the

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in question. Not only this, the Revisional Authority although found that the cash was found correct as per Cash Book as adduced in evidence but held that it does not change the material fact of the case that the employee i.e. the applicant had demanded and accepted Rs.71/- from the decoy as against the correct dues of Rs.66/-.

Regarding the stand taken by the employee i.e. the applicant in his defence, the Revisional authority has observed in para 3 sub-para (5) of its order dated 27.11.1991 (Annexure-A-2) to the following effect:-

"The stand taken by the employee in his evidence that the Rly. cash of Rs.359/- including the imprest cash of Rs.5/- was found correct which means that he did not have the excess money of Rs.5/- as alleged to have taken excess from the decoy for granting the reservation and that he had correctly returned Rs.5/- to the decoy from Rs.71/- taken from him, is not acceptable and is an after thought to cover up the story and clear his position. The evidence led by the decoy, the shadow witness and others as corroborated with the documentary evidence of Panchnama Part I & Part-II weighs in concluding that the employee had demanded and accepted Rs.5/- extra from the decoy for granting the reservation and did not return Rs.5/- back to the decoy as contended by the employee. With the amount of Rs.71/- paid by the decoy having been found in the cash produced by the employee, the probability of having Rs.5/- short, equivalent to the imprest amount Rs.5/- in the cash already existing prior to the check of cash by CVI, could not be ruled out which resulted in cash being found correct at the time of check because the extra amount of Rs.5/- taken from the decoy had wiped out the shortage."

The above observations of the Revisional authority exhibits that even though the Railway cash has been found correct by the Revisional Authority also, yet the Revisional Authority on its own for some undisclosed reasons, without there being any corroborative evidence

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observed" the probability of having Rs.5/- short, equivalent to the imprest amount Rs.5/- in the cash already existing prior to the check of cash by CVI, could not be ruled out which resulted in cash being found correct at the time of check because the extra amount of Rs.5/- taken from the Decoy had wiped out the shortage." It shows that the Revisional Authority inspite of no evidence to this effect, on an extraneous consideration ^{has} taken the aforesaid view as to how the shortage of Rs.5/- has been wiped out which finding has no basis whatsoever. This conclusion and findings of the Revisional Authority go ² ~~goes~~ contrary to the documents prepared by the Vigilance Wing on the spot and the entries verified in the cash book on the spot where only Rs.359/- have been found in cash when tallied with the Railway cash which should have been the Railway cash available at the time of spot check. Mere ² ~~is~~ recovery of the currency notes of same denomination and description in the Railway cash at the time of spot check which admittedly were handed over by the Vigilance Wing before the spot check to the decoy, would not mean that the applicant did accept any extra amount of Rs.5/- from the decoy Shri Gadhu Ram more particularly and ^{where} unquestionably/there was found neither any loss or excess in the railway cash.

11. In view of the above, we are of the considered view that not only the Appellate Authority i.e. D.R.M. Western Railway, Jaipur but also the Revisional Authority i.e. Chief Commercial Superintendent, Western Railway, Churchgate, Bombay have committed a gross error in

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giving a finding contrary to the evidence recorded at the time of spot check of the applicant which too ^{is} our mind/a perverse finding. It is on account of this perverse finding given by the Appellate as well as the Revisional authority of the respondents, which constrained us to look into the evidence recorded in the disciplinary proceedings by the respondents. Keeping in view this category of cases, Hon'ble the Supreme Court has recently laid down in the case of Transport Commissioner Madras vs. A. Radha Krishna Murty, 1995 (29) ATC page 113 (115) as under:-

"As pointed out by this Court repeatedly even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into the truth of the allegations/charges except in a case where they are based on no evidence, i.e. where they are perverse."

The aforesaid judgment of Hon'ble the Supreme Court applies with full force to the facts and circumstances of the instant case.

12. Consequently for all the aforesaid reasons while answering the issue framed in this OA in the affirmative, we are of the considered view that the impugned orders as at Annexure A-1 dated 15.5.1991 and 27.11.1991 (Annexure A-2) removing the applicant from service are not sustainable in the eye of law and they are hereby quashed and the findings given by the disciplinary authority of having cancelled the Memorandum of Charge and dropping of charge communicated to the applicant by the respondents

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vide their letter dated 12.12.1990 (Annexure A-9) the result of which was communicated to the applicant vide their letter dated 21.8.1990 (Annexure A-6) are upheld. The respondents are directed to reinstate the applicant to his original position and to assign him his seniority vis-a-vis his juniors and to pay to the applicant all the back wages, arrears, allowances and to pay to him the salary and allowances in future as per his entitlements and rules in force.

13. The original application is disposed of as aforesaid with no order as to the costs.


(RATTAN PRAKASH)
MEMBER (J)


(O.P. SHARMA)
MEMBER (A)