

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

~~W.A.~~ /O.A.NO. 543/87 .

Date of Order...14-9-1989....

C. Rama Rao

Applicant

And

The Divisional Commercial Superintendent,
South Eastern Railway, Waltair-530004.
and 2 others

Respondents

FOR THE APPLICANT : MR.P.B.Vijaya Kumar, Advocate

FOR THE RESPONDENTS: MR.P.Venkatarama Reddy, SC for Railways

CORAM: THE HONOURABLE MR.D.SURYA RAO : MEMBER (J)
AND
THE HONOURABLE MR.D.K.CHAKRAVORTY : MEMBER (A).

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE MEMBER (J)

MR.D.SURYA RAO:

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contd....

ORIGINAL APPLICATION NO.543/87

(Judgment of the Bench delivered by
Hon'ble Sri D.Surya Rao, Member (J)).

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The applicant herein is ^a Railway Employee who is working as Travelling Ticket Inspector, Head Quarters Naupada in the South Eastern Railway. He seeks to question order No.WCZ/CR 84 dated 7-8-87 passed by the 3rd respondent imposing upon him the punishment of reduction in service. The facts narrated in the application are briefly as follow :-

2. On 9-11-1984 a charge memo was issued to the applicant to the effect that he tried to cheat and dupe the administration by showing a letter said to have been given to him by the vigilance Department to check the sleeper coaches and general coaches and to report irregularities to the vigilance branch. The applicant submitted an explanation on 27-11-1984 denying the charge. The first respondent had appointed an Enquiry Officer by letter dated 29-12-1984. Subsequently the second respondent, the appellate authority appointed another Enquiry Officer by his letter dated 4-11-1986. The applicant objected to the same. This objection was over-ruled by the Enquiry Officer. On behalf of the Disciplinary Authority, from the prosecution side three witnesses were examined and two from the defence side. The applicant states that on 30-4-87 the Enquiry

Officer submitted a bald report that the charges was proved. He omitted the oral and documentary evidence produced by the applicant. The second respondent by an order dated 15-6-1987 imposed upon the applicant the punishment of removal from the services. The applicant filed O.A.No.411 of 1987 in this Tribunal but it was rejected on a preliminary objection that he should pursue the departmental remedy of appeal available to him. The applicant submitted an appeal on 6-7-1987 and the third respondent by his order dated 7-8-1987 modified the order of removal into one of the reversion as Travelling Ticket Inspector in the scale of Rs.1400-2399. This order is sought to be impugned on various grounds.

3. On behalf of the respondents a counter has been filed denying the various contentions raised. It is stated that the appointment of the Enquiry Officer by the second respondent is proper and valid. It is contended that due and proper opportunity was given to the applicant by the Enquiry Officer and there is no infirmity in his report. After the decision of this Tribunal in O.A.No.411 of 1987, third respondent considered the appeal of the applicant and passed an elaborate and reasoned order. This was done after giving him a personal hearing. It is contended that there was no contravention of rules. The allegations proved, constitute ~~to~~ misconduct within the meaning of rule 3(1)(i) of the Railway Servants conduct rules and that it is

not correct to say that the Enquiry Officer did not consider oral and documentary evidence. It is stated that the Disciplinary Authority and the Appellate Authority considered all aspects of the case.

(4)
(5)

We have heard Sri Vijaya Kumar learned counsel for the applicant and Sri P.Venkatarama Reddy, Standing Counsel for the Railways. The first contention raised by Sri Vijaya Kumar is that violation of the conduct rule alleged has no relation whatsoever to the charge framed. The charge memo is to the effect that the applicant had shown an authorisation letter, alleged to have been issued to him by the Chief Vigilance Officer enabling him to conduct checks and intimate irregularities committed by the ticketing staff, to certain members of the staff who were cited as witnesses, and that he had thereby contravened rule 11 of the Railway servants conduct rules. ^{Railway} Railway Servants conduct Rules reads as follows :-

" Unauthorised Communication of Information :- No railway servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him communicate, directly or indirectly, any official document or any part thereof or information to any Government or Railway Servant or any other person to whom he is not authorised to communicate such document or information."

From a reading of the rule it is clear that its intention is

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to prevent officials from communicating the contents of any document or information which they have to deal with in the course of their official business. The offence alleged in this case is that applicant unauthorisidly and illegallly used a document alleged to have been issued by the Chief Vigilance Officer, South Eastern Railway for the purpose of checking the work of certain Travelling Ticket Inspectors. Quoting of ~~setting~~ rule 11 was therefore ^{wholly} ~~Rule~~ irrelevant in the context of the charge. This fact was noticed by the appellate authority and he accordingly held that the violation is not a rule 11 but Rule 3(1)(i) of conduct rules. There is ^{no} doubt that the charge framed against the applicant were both vague and irrelevant. It is further contended by Sri Vijaya Kumar that the charge is vague as it doesnot mentioned ~~that~~ the dates, time, or in the course of what transactions ~~with~~ the applicant had sought to show ^{and} the unauthorised authorisation to the witnesses. In AIR 1986, Supreme Court 995 (Sivasingh Vs. State of Rajasthan) it has been held that the date and time of the alleged incident should be mentioned in the charge. It was further held that if time and date are not mentioned the charge would be vague and the employee is entitled to ^{examination. In this instant case} ~~the examination in the instant case~~. Besides not mentioning the dates and times when the acts of misconduct are committed ^{with} ~~with~~ the charge nor the allegations in the support thereof mention in what context the applicant is

alleged to have shown the unauthorised authorisation issued by the Central Vigilance Organisation. This would be most relevant as the applicant had totally denied the existence of such a document. Hence on the grounds that the charge is vague, the Disciplinary Proceedings and the action taken against the applicant ^{are} quashed.

5. (b) The next objection raised by Sri Vijaya Kumar is ^{that} the Enquiry Report is vitiated on two grounds (a) non-application of mind and (b) it is based on surmises and no valid evidence. In ~~the~~ support of the first objection Sri Vijaya Kumar states that the Enquiry Officer didnot even look into the question whether the charge is properly framed viz., whether, there was any relevance at all in quoting rule 11 of the Conduct Rule. He also did not apply the mind to the fact that no times or dates are mentioned in the charge sheet or deal with ~~these~~ contentions ^{despite the same having been} raised by the applicant in his written brief after conclusion of the oral enquiry. ^{we find that the report of the Enquiry Officer is completely silent on these aspects} It was the duty of the Enquiry Officer to deal with these contentions in his report. There is therefore no doubt that the Enquiry Officer has not properly applied his mind to the infirmities in regard to the charges.

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7. In regard to the contention that the Enquiry Officers report is based on surmises and no evidence Sri Vijaya Kumar contends that a perusal of the report shows that the Enquiry Officer has blindly accepted the statement of the witnesses that the applicant had shown them the alleged authorisation letter of the Chief Vigilance Officer. He has not discussed the evidence in favour of the applicant. None of the witnesses have specifically stated when and in what context the applicant had shown them the authorisation letter. The applicants case was, then he had the power to check the sleeper coaches without any such authorisation letter and that there was no need to obtain or fabricate a letter of the Chief Vigilance Officer in this regard. It was always his case that he had been orally asked by the vigilance to report irregularities when-ever they come to his knowledge. *The applicant had adduced oral and documentary evidence in support of this claim.* Sri Vijaya Kumar in this regard specifically draws attention to the last para in the Enquiry Officer's report which reads as follows :-

" I have considered all the relevant evidence and documents on record. Admittedly the Defendant has made certain checks and detected irregularities but according to him such check does not require any authority and falls within the scope of his duties. But since the PWs examined in this case have given clear evidence that the Defendant had shown them some letter of the authority purported to have been given to the Defendant by the Vigilance Branch and he has not been

~~the Defendant has not been~~ *Vigilance*

able to prove that he was ever given any such written authority or letter by the Vigilance Branch. He cannot escape the liability for the charges levelled against him."

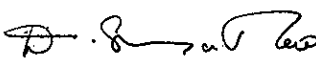
Without discussion^{of} the defence version the Enquiry Officer merely held the applicant guilty since the PWs have deposed that he has shown them such^a letter of authorisation. It is also clear that the Enquiry Officer has not discussed the genuiness or the varacity of the defence version and evidence produced. In 1986 (one) Labour Law Journal page 101 it was held by the Supreme Court that reasons must be quoted by the Enquiry Officer why he accepts the management evidence as against the employees evidence. It is therefore clear that the report of the Enquiry Officer is vitiated since no such reasons have been given. Added to this, the fact that none of the witnesses have mentioned the time, place or date and in what context the applicant had shown the letter and there is no discussion whatever by the Enquiry Officer the complaint that the report is based upon surmises and not on any legal evidence shows established. We would accordingly hold that for these reasons that the Enquiry Officer report is perverse and liable to quashed.

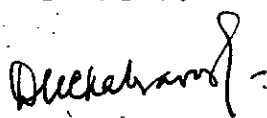
8. It is argued by the Railway Counsel that the appellate authority has dealt with the various

contentions raised and hence the punishment could be up-held on the basis of the appellate orders. A perusal of the appellate order dated 7-8-87, shows that the appellate authority had tried to deal with various contentions raised and has written a speaking order. He has accepted that the version that the rule 11 is irrelevant, but he held that if rule 11 is not applicable rule 3(1)(i) of the conduct rules is applicable. If the appellate authority wished to modify the charge then he ought to have given a notice to the applicant. Without doing so, he cannot hold the applicant guilty or liable ^{for violation} of rule 3(1)(i) of the C.C.S. (C.C.A.) Rules. No doubt normally we would have ^{remanded} ~~remembered~~ ^{matter to the} the appellate authority for issue of such a notice and ~~be~~ consideration. However we find for other reasons that the orders of the appellate authority are vitiated. It has accepted the illegal report of the Enquiry Officer. The appellate authority states that Enquiry Officer has analysed the evidence and found the applicant is guilty and, therefore, concludes that the applicant is guilty of the charge. As already stated supra, the Enquiry Officer's report is based on surmises and no legal evidence. He had blindly accepted the prosecution evidence and did not deal with the ~~applicant's~~ defence put forth by the accused officer that there was no need for him to have procured an authorisation from the Vigilance Branch to carry out various checks

on the Sleeper Coaches. This was also not dealt with by the appellate authority and the reason given is that the defence witness cannot be relied upon since they could not have been present always with the applicant. Even if the defence evidence is rejected on this ground the appellate authority ought to have gone into the question as to in what context, and at what time and on which date the applicant had ^{shown the alleged letter of the} ~~indulged in the instant~~ ^{vigilance branch.} ~~behaviour~~. Failure to do so would mean the appellate authority's order is also passed upon surmises and no legal evidence. We therefore hold that the order of the appellate authority is also vitiated and has to be set aside for the reasons given in the foregoing paragraphs. We allow the application and set aside the impugned order dated 15-6-1987 issued by the 3rd respondent as modified by the 2nd respondent by his appellate order dated 7-8-87. The applicant would be entitled to all consequential benefits i.e. payment of back wages and continuity of service as though the order of reversion was not passed.

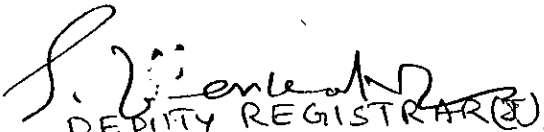
8. 9. There will be no order as to costs.


(D. SURYA RAO)
Member (J)


(D.K. CHAKRAVORTY)
Member (A)

Dated: 14th September, 1989.

AVL.


DEPUTY REGISTRAR (U)

91/15 P.T.O.