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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT

HYDERABAD

TRANSFERRED/ORIGINAL APPLICATION NO. 285 of 1989

DATE OF ORDER: 21-2-1990

BETWEEN:

Mr. A. Sreeramulu

APPLICANT(S)

and

The General Manager, S.E.Railway,
Calcutta and two others

RESPONDENT(S)

Mr.
FOR APPLICANT(S): V. Venkata Ramana, Advocate

FOR RESPONDENT(S): Mr. P. Venkatarama Reddy, SC for Railways.

CORAM: Hon'ble Shri D. Surya Rao, Member (Judl.)
Hon'ble Shri D.K. Chakravorty, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the NO fair copy of the Judgment?
4. Whether it ^{es} needs to be circulated to No other Bench of the Tribunal?
5. Remarks of Vice-Chairman on columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench)


HDSR
M(J)


HDKC
M(A)

33

ORIGINAL APPLICATION NO.285 of 1989

JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER (JUDL.).

The applicant, an Upper Class Conductor in the office of the Senior Chief Ticket Inspector (CITC), Waltair, has filed this application questioning the Order No.WCZ/Misc./TC dated 3.11.1988 passed by the 2nd respondent imposing upon him a punishment of reduction in rank by four stages. On 10.7.1987, a charge sheet was issued to the applicant alleging that while working as First Class Conductor by Train No.18 DN on 13.6.1987, he had allowed three passengers holding 2nd class tickets to travel in the 1st class express from Titlagar to Raipur without any authorisation and, thereby, committed misconduct within the meaning of Rule 3(1)(f) of Railway Servants (Discipline & Appeal) Rules, 1968. It is further alleged that the applicant has not issued any certificate for change of tickets. The three passengers were charged with higher penalties of Rs.330/- for 2½ tickets by the Chief Commercial Superintendent Squad. The applicant states that after receipt of the charge sheet he submitted a representation dated 22.7.1987 requesting the 3rd respondent to furnish eight documents. The 3rd respondent replied furnishing only one of the documents viz., true copy of the A.C.O.(TC)'s Note dated 18.6.1987. It was replied that the other documents are not available. The applicant states that on 16.6.1987 even before the receipt of the charge sheet, he had submitted the representation to the 3rd respondent explaining ^{the incidence} which took place on 13.6.1987. In this representation, he had clearly averred that he had prepared a certificate as per the rules in Com.P.44 No.094884 vide Rule No.204 Page No.8 Item E of the Ticket Collectors Manual which was cancelled subsequently since the passengers were charged excess fare ~~ticket~~ by the inspecting

Squad. The applicant thereby contends that he had primarily intimated the incidence. Despite the same, charges were framed and inquiry was ordered. After the inquiry, the 2nd respondent passed the impugned order imposing a punishment of reduction in rank to the post of Ticket Collector in the pay scale of Rs.950-1500 for a period of one year, without cumulative effect. The applicant submitted an appeal against the order of punishment, on 23.11.1988 to the 1st respondent. He alleges that till the date of filing of the application, the appeal was not disposed of. The applicant raised various legal contentions questioning the competency of the 3rd respondent to initiate inquiry or the 2nd respondent to pass the order of punishment. He contends that the act alleged does not constitute misconduct under Rule 3(1)(i) of the Conduct Rules. It is alleged that the applicant cannot ~~refuse~~ refuse the passengers ^{to} entry into the 1st class compartment on the ground of not possessing a particular ticket, that he had prepared the certificate as required under Rule ~~item E of the Ticket Collectors' Manual~~ No, 204 Page No.8 Item E of the Ticket Collectors' Manual and called upon the Travelling Ticket Examiner Mr.A.Dharma Rao to the compartment and directed ~~him~~ him to prepare the excess fare constituting difference in fare between the 2nd class and the 1st class ticket fare. He had to do so as the Upper Class Conductors are not provided with the excess fare ticket books. He alleges that the Enquiry Officer and the disciplinary authority ~~was~~ found him guilty merely on the basis of apprehensions and without affording him a reasonable opportunity. He, therefore, seeks to impugn the punishment order.

2. On behalf of the respondents, a counter has been filed denying various contentions raised by the applicant. It is stated that the version of the applicant was not accepted by the Enquiry

Officer and also by the disciplinary authority. It is contended that after the surprise check wherein the applicant ^{was} apprehended allowing the 2nd class passengers to travel in the 1st class compartment without tickets, the applicant had tried to manipulate the required certificate. It is denied that the findings are not based on the relevant material or the charge has been held to be proved on mere surmises. It is contended that the reasons given by ~~both~~ the Enquiry Officer and the disciplinary authority passed a speaking order of punishment. It is further contended that there is no legal infirmity in the procedure followed for the competency of the authorities.

3. We have heard the learned counsel for the applicant, Shri Venkataramana and the learned Standing counsel for the respondents Shri P. Venkatarama Reddy. Apart from the various contentions raised, one of the contentions argued by the learned counsel for the applicant is that no reasonable opportunity was afforded to the applicant by the Enquiry Officer. He states that after receipt of the charge sheet, the applicant submitted a representation dated 22.7.1987 to furnish eight documents. This evidence is required to establish whether he prepared the certificate on the date of ^{or the} ~~incidence~~ by the Special Squad who had alleged to have apprehended the applicant when allowing the passengers holding 2nd class tickets travelling in the 1st class compartment. He states that if the documents asked by the applicant has been produced, they would disclose that he had told the Special Squad that he had prepared the certificate as per rules viz., Com.P.44 No.094884. Consequently, non furnishing of these documents caused prejudice to him and thereby the entire proceedings of the Enquiry Officer and the disciplinary authority stand vitiated. The short question is, whether the applicant had asked for those documents and whether non furnishing of the same would cause prejudice to the applicant and amounts to

denial of reasonable opportunity. It is contended by Shri Venkatarama Reddy for the Railways that the applicant had by his letter dated 22.7.1987 asked for copies of eight documents. He was replied by letter dated 23.7.1987 that one document viz., item number (1), was available viz., an ACO (TC) Note dated 18.6.1987 and that the other documents are not available. He, therefore, contends that non-supply of the documents does not vitiate the enquiry. The other documents (except item 4) are mainly statements alleged to have been recorded at the time of the check by the Special Squad. If such statements were recorded they would certainly be relevant and necessary to enable the applicant to defend his case. However, if there are no such statements, then the question of furnishing them will not arise. It is to be noted that the respondents have not stated anywhere that the statements were never recorded. There is a difference between saying that the statements were never recorded at the time of the check and in saying that they are not available.

The applicant has continuously been making a grievance viz., in his defence statement before the enquiry officer, before the appellate authority in his appeal and in the present Original Application that these statements were not made available. In his defence statement before the enquiry officer, he had also alleged that the enquiry was postponed thrice on 8.3.1988, 7.4.1988 and 13.4.1988 due to non-attendance of prosecution and defence witnesses as well as non-supply of records and documents and that the pertinent documents were suppressed. The enquiry officer does not refer to this allegation or answer the question whether statements were recorded or not ^{these particulars} could have been verified from the authorities and a reply given that

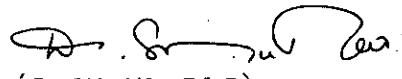
they were not recorded. The fact that no such reply was given, the fact that the enquiry officer does not deny the applicant's allegation that the enquiry was adjourned for production of documents, The file produced also discloses that the Senior Divisional Commercial Superintendent, Waltair requested the Chief Commercial Superintendent, Waltair (under whose supervision the special check was conducted) to furnish "written documents taken from the passengers" to establish that they had boarded the Train at Station TIG (starting station) into a first class compartment with second class tickets. In the reply dated 2.7.1987 by the C.C.S., there is no denial of the fact that statements of passengers were recorded. This letter of the C.C.S., supports the allegation of the applicant that some, if not all the statements asked for by the applicant were available but not furnished. The fact that the enquiry officer, disciplinary authority and the appellate authority do not deal with the allegation of the applicant that these documents were asked for by him and deliberately not furnished together with the fact that the Chief Commercial Superintendent does not deny the existence of statements having been recorded, would establish that the documents asked for are in existence but not made available to the applicant.

4. The next contention of the applicant is that the charge is not maintainable since ~~he~~ had followed the prescribed rules, in that, when certain passengers who were holding second class tickets had boarded the Train at a mid-station viz., BGRR, ~~that~~ he prepared a certificate in form Com.P.44 No.094884 to this effect and that he was awaiting action by the T.T.E., one Mr. Dharma Rao to furnish particulars as to the excess fare charge to complete the form. The case of the respondents,

however, on the other hand as stated in the order of the disciplinary authority - second respondent, is that at the time of the check the applicant had not been able to produce the certificate and that it was probably lying in his line box somewhere else. It was also stated that the claim that the certificate was at variance with the statement of Mr. Dharma Rao, TTE who stated that the applicant had told him that "he would issue a certificate". The applicant's case is that if the material documents asked for by him were produced, he would have been able to establish that he had in fact prepared the certificate. In any event, it is contended by the learned advocate for the applicant that soon after the incident, the applicant had on 16.7.1987 informed the Senior D.C.S., Waltair giving his version of what took place, that he had specifically stated that he had prepared the Com.P.44 certificate and that the Senior D.C.S., replied on 22.6.1987 accepting that the applicant had prepared the travel memo (certificate) but that it had not been handed-over to the passengers. The applicant has raised this plea in his defence statement before the enquiry officer. Ignoring the same, however, the disciplinary authority has held that the requisite certificate had not been prepared at all. Thus, while the case of Senior D.C.S., is that the certificate was prepared but not handed over to the passenger, the case of the disciplinary authority is that the certificate need not be handed over to the passengers but was not in fact prepared at all. There is ~~was~~ clearly an inconsistency in the stand of the department. We would, therefore, hold that the disciplinary authority has ignored, material in favour of the applicant viz., conclusions of the Sr. D.C.S., and that he had held without sufficient evidence or material that the certificate had not been prepared at all. In the circumstances,

the decision of the disciplinary authority holding the applicant guilty of the charge is liable to be set-aside.

5. For the reasons given above viz., that the applicant was not given a reasonable opportunity in that relevant documents asked for were not furnished and also that the disciplinary authority did not consider or refer to the evidence in favour of the applicant, the application is allowed and the impugned order dated 3.11.1988 reducing him to the rank of T.T.E., is set-aside. The applicant will be restored to the post of Upper Class Conductor with all consequential benefits. Parties to bear their own costs.



(D.SURYA RAO)
MEMBER (JUDL.)


(D.K.CHAKRAVORTY)
MEMBER (ADMN.)

Dated: 21st February, 1990.

Hyderabad,

TO:

1. The General Manager, south ~~and~~ Eastern Railway, Garden Reach, Calcutta-43.
2. The ~~0~~ Additional Divisional Railway Manager, South Eastern Railway, Waltair.
3. The Senior Divisional Commercial superintendent, south eastern railway, Waltair.
4. One copy to Mr.V.Venkatarama, Advocate, 62/2 RT, Saidabad colony, Hyderabad-500 659.
5. One copy to Mr.P.Venkatarama Reddy, SC for Rlys., CAT, Hyderabad.

One spare copy.

• • •

k.j.

8/2/90

✓
Draft by: Checked by: Approved by
D.R.(J)

Typed by: Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

HON'BLE MR. B. R. JAYASIMHA: (V.C.)

A N D

HON'BLE MR. D. SURYA RAO: MEMBER (SUDL.)

A N D

HON'BLE MR. J. NARASIMHA MURTHY: (M) (J)

HON'BLE MR. R. BALASUBRAMANIAN: (M) (A)

DATED: 21-2-90

ORDER/JUDGMENT:

M.A./R.A./C.A./No. in

T.A. No.

(W.P. No.)

O.A. No. 285/89

Admitted and Interim directions
issued.

Allowed.

Dismissed.

Disposed of with direction.

M.A. Ordered.

No order as to costs.

Sent to Xerox on:

