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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH  
AT HYDERABAD

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ORIGINAL APPLICATION NO.222/90

DATE OF JUDGEMENT: 11-5-1993

Between

M. Satyanandam .. Applicant  
and

1. Union of India per General Manager, South Central Railway, Rail Nilayam, Secunderabad .. Respondents
2. Sr.Divisional Operating Superintendent, South Central Railway, Vijayawada
3. Divisional Operative Superintendent, South Central Railway, Vijayawada .. Respondents

Counsel for the Applicant :: Mr G. Ramachandra Rao

Counsel for the Respondents:: Mr N.R. Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

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This application is filed under Section 19 of the ~~Adm~~ Central Administrative Tribunals Act, to quash the order of the 3rd respondent imposing the penalty of reduction to lower grade on the applicant and fixing his pay at Rs.1440/- in the scale of Rs.1200-2040 for a period of two years without loss of seniority, that was confirmed by the 2nd respondent as per his order dated 17.2.90 and pass such other order or orders as may deem fit and proper in the circumstances of the case.

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2. The facts giving rise to this OA lie in a narrow compass and be stated as hereunder:

3. The applicant herein, while working as Switchman was promoted as Assistant Station Master in the year 1979, and <sup>was</sup> ~~has been~~ working as Assistant Station Master. In the year 1988, a charge memo was issued on the applicant by the 3rd respondent alleging that the applicant while working as Assistant Station Master(Rest Giver) at Dwarapudi Railway Station, during November,1986, on 9.11.86, ~~the~~ applicant illegally removed the film print of "Satyam-sivam", a telugu Movie that was booked by M/s Vijaya Pictures, Vijayawada, that was negotiable through Andhra Bank, Dwarapudi for delivery to M/s Sri Venkateswara Talkies, Dwarapudi against a payment of Rs.2550/-.

4. During November,1986 three persons were working as Assistant Station Masters at the said Dwarapudi Railway Station, in East Godavari District. Sri On 9.11.86, one T.S.Rama Rao (who was examined as PW 5 in the Departmental enquiry) performed the duties from 14.00 hrs to 22.00 hrs (i.e. 2.00 p.m. to 10.00 p.m.) on 09.11.86. At about 09.30 p.m. the applicant herein had come to the Railway Station on 9.11.86 and had assumed the charge at 22.00 hrs (10.00 p.m.) ~~after~~ by relieving the said Mr Rama Rao. The applicant was on duty till 06.00 hrs (06.00 a.m.) on 10.11.86. The applicant was relieved by one Sri G.Eashwar Rao, ASM on 10.11.86 at 06.00 a.m. and the said Sri Eashwar Rao (who was DW 1 in the Departmental Enquiry) was on duty upto 14.00 hrs (2.00 p.m.) on 10.11.86.

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5. On the night of 09.11.86 at about 09.30 p.m. (21.30 hrs) one Sri Ch. Satyanarayana lessee of Sri Venkateswara Talkies, Dwarapudi had approached the applicant and stealthily took the delivery in connivance with the applicant, the said film Satyam Sivam, without producing the railway receipt under which the said film had been booked by M/s Vijaya Pictures, Vijayawada, to Sri Venkateswara Rm~~x~~ Talkies, Dwarapudi, against payment of Rs.2,750/-, on Andhra Bank Dwarapudi. The said ~~xxxxx~~ picture "Satyam Sivam" was actually screened in the said talkies on 10.11.1986.

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6. M/s Vijaya Pictures, Vijayawada, sent their representative one Mr PDV Prasad to verify whether the said film had been screened as Vijaya Pictures had not received the amount for which the film box containing the film ~~xx~~ "Satyam Sivam" was booked to Dwarapudi under railway receipt. As the amount of Rs.2,750/- was not paid by the lessee of Sri Venkateswara Talkies, Dwarapudi, ~~no complaint was~~ ~~was screened~~ ~~lodged by the Manager of~~ M/s Vijaya Pictures lodged a complaint with the President, East Godavari Film Distributors Association. Subsequently, the said lessee of Venkateswara Talkies, Dwarapudi, Sri Satyanarayana ~~said to have~~ paid the amount of Rs.2750/- to M/s Vijaya Pictures, Vijayawada. The same was reported to the President, East Godavari Film Distributors Association.

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7. For the alleged misconduct of the applicant, in connivance with Ch. Satyanarayana, in delivering the film on 9.11.86 stealthily and without the production of the railway receipt, a regular departmental enquiry was ordered after appointing an enquiry officer. Relying on the oral and documentary evidence, the Enquiry Officer submitted his findings as per his report dated 29.3.88, to the disciplinary authority. The Disciplinary authority accepted the findings of the Enquiry Officer, and imposed the penalty on the applicant, as aforesaid. The appellate authority confirmed the penalty that was imposed by the Disciplinary authority as per his orders dated 17.2.1990. Hence, the present OA is filed by the applicant questioning the penalty that had been imposed on him, as indicated above.

8. Counter is filed by the respondents opposing this OA.

9. In the counter filed by the respondents it is maintained that in view of the oral and documentary evidence that were let in by the respondents, during the departmental inquiry that the enquiry officer had rightly given his findings against the applicant which findings were accepted by the Disciplinary authority and that the penalty imposed was not excessive and this OA was liable to be dismissed.

10. We have heard Mr Ramachandra Rao, counsel for the applicant and Mr NR Devraj, Standing counsel for the respondents in detail.

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11. The learned counsel for the applicant ~~pleaded~~ had maintained in the OA that the third respondent ~~who~~ who has issued the charge memo, ~~had~~ appointed ~~an~~ like ~~enquiry officer~~ ~~who~~ ultimately imposed the said penalty on the applicant, is not the competent authority to do so, and as such, the disciplinary proceedings are vitiated. He also further contended that by reducing the ~~app~~ grade of the applicant to a lower grade of ASM in the scale of Rs.1200-2040 from the grade of Rs.1400-2300 and also reducing the pay of the applicant for a period of two years amounts double punishment. Even though the above grounds had been raised in the OA, when the OA came up for hearing, the learned counsel for the applicant did not press both the contentions. We are ~~satisfied~~ <sup>also</sup> ~~had~~ in this case that the competent authority ~~had~~ issued the charge memo and that the competent authority had also ~~issued~~ imposed the said penalty on the applicant.

12. So far the punishment is concerned, there are no two punishments on the applicant. There is only one punishment that is imposed on the applicant. Imposition of the punishment ~~of~~ to the lower grade in the post of ASM and also reduction of his pay in the lower grade constitutes one punishment only as the reduction of the pay in the lower grade is a consequence of ~~of~~ reduction to the lower post of the applicant in the post of ASM. So, the learned counsel for the applicant ~~also~~ rightly did not press the two contentions raised by him in this OA.

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13. The learned counsel for the applicant ~~xxix~~ had ~~strenuously~~ raised the following points during the course of arguments.

- 1) ~~That the Disciplinary authority at the time of issuing the charge memo itself had come to the conclusion that the applicant is guilty of misconduct and so bias has got to be inferred on the part of the Disciplinary authority. In view of the said bias that the entire proceedings are vitiated.~~
- ii) ~~that the orders of the appellate authority is not a speaking order and the appellate authority has not applied his mind and hence, the penalty imposed on the applicant is liable to be set aside.~~
- iii) ~~that this is a case of no evidence and as such the OA is liable to be allowed and the applicant has to be exonerated of all the charges.~~

14. In the memorandum of charges that was framed on the applicant, the Disciplinary authority had observed as follows:

"Sri Ch. Satyanarayana stated that he could take delivery of the film print in the absence of PWB receipt with the connivance of Sri M. Sathyanandam Rg. ASM/Dwarapudi during his duty hours on 9.11.86 at 21.30 hrs. The print was ~~is~~ brought back on 13.11.1986. In support of the above statement, the statement given by Sri T.S. Rama Rao, ASM/Dwarapudi to whom sri M. Sathyanandam Rg/ASM/Dwarapudi informed that he had delivered the film print of Satyam Sivam in the absence of PWB receipt conclusively indicates that Sri M. Sathyanandam illegally removed the film print from the box and delivered to Sri Ch. Satyanarayana lessee of Sri Venkateswara Talkies/Dwarapudi."

(emphasis supplied)

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15. So, as the disciplinary authority had stated that, "in the absence of PWB receipt conclusively indicates that the applicant herein, illegally removed the film print from the box, it is the contention of the learned counsel for the applicant that bias has got to be inferred by the Disciplinary authority as against the applicant and so, the disciplinary proceedings are vitiated. In support of his contention, the learned counsel for the applicant relied on a decision reported in (1993) 82 FJR 481 Reserve Bank of India Vs C.S.Sathy Kumari wherein it is observed that show cause notice itself containing categorical findings against employee based on evidence taken behind her back, even domestic enquiry cannot be held on basis of such notice.

16. In the said decision, without notice and without affording an opportunity to the charged employee, the competent authority, on the basis of the ~~enquiry~~ enquiry held behind the back of the charged employee, had come to the conclusion that the certificate obtained by the employee and produced by her is a fraudulent one. The Karnataka High Court ~~which~~ was dealing with the case where allegedly, an employee had produced false certificate that she belonged to Kadu Kuruba community which is scheduled tribe community and which certificate according to the respondents therein was a bogus one. But, in this case, whatever might be the observations therein, the applicant had a fair enquiry and the respondents side witnesses PW1 to PW5 were examined in the presence of the applicant and the applicant had been given an opportunity to let his evidence and DW 1 Sri Eashwar Rao, ASM who was the reliever of the applicant on 10.11.86 at 06.00hrs was also examined on behalf of the applicant. It is

not the case of the applicant at any time during the inquiry that the Disciplinary authority had bias against him. Nor such a bias can be inferred on the part of the Disciplinary authority, merely because an observation has been made in the charge memo that was issued that "the absence of PWB receipt conclusively indicates that Sri M.Sathyanaandam illegally removed the film print....." So, from the facts and circumstances of the case, we are not prepared to accept the contention while issuing the charge memo itself that the Disciplinary authority had come to the conclusion that the applicant is guilty of the mis-conduct and the disciplinary authority had bias against the applicant. Hence, the decision cited by the learned counsel for the applicant, has no relevance and does not apply to the facts of this case. After going through the records, we are satisfied that the applicant had reasonable opportunity and no principles of natural justice had been violated nor any procedural ~~xxxxxx~~ irregularities had been committed that vitiated the disciplinary proceedings.

17. Enquiry Officer has gone through the entire evidence and ~~xx~~ taken into consideration the oral and documentary evidence and then only has given his findings as against the applicant. The Disciplinary authority had also- re-appraised the entire evidence and then had accepted the findings of the enquiry officer and had imposed the penalty as against the applicant, as indicated above. The appellate authority had agreed with the orders of the Disciplinary authority and had confirmed the punishment imposed by the Disciplinary authority after going through

the entire material and also after taking into consideration the enquiry report. Hence, we see no force in the contention of the learned counsel for the applicant, that the order of the appellate authority is not a speaking order. The appellate authority in its order had stated that it had carefully gone through the appeal of the applicant along with the relevant records. The appellate authority had also been satisfied from the evidence of the Manager of M/s Vijaya Films and the lessee of Sri Venkateswara Talkies that the applicant was responsible for unauthorised removal of the film <sup>from the</sup> box. So, we are satisfied in this case that the appellate authority had applied ~~its~~ mind and had come to the conclusion and confirmed the order of the Disciplinary Authority. Besides this, we were taken through the entire material by both counsel during the hearing of this OA. From the perusal of the records, we are satisfied that the misconduct of the applicant is amply established.

18. So far the contention that there is no evidence as against the applicant, we may refer to the evidence of Mr Satyanarayana who is the lessee of Sri Venkateswara Talkies, Dwarapudi. The statement given by the said Satyanarayana during the course of preliminary departmental enquiry shows the name of the applicant and the applicant as the person who ~~had helped~~ him on the night of 9.11.1986 at about 9.30 p.m. in helping him to give the film Satyam-sivam. The earliest statement/said

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mentioning the name of the Applicant as  
Satyanarayana is Ex.P.6. The said Sri Satyanarayana  
had no motive to mention <sup>in the</sup> wrong name of the ASM  
who had helped him in removing the said film from the  
film box unless the applicant himself had connived  
with the said Sri Satyanarayana and had delivered the  
said film stealthily, on the said night. Ex.P.6  
coupled with the evidence of the Sri Satyanarayana  
during the departmental inquiry, point out only, the  
misconduct of the applicant and that the applicant  
himself is personally responsible for the delivery  
of the film stealthily.

19. There is one more circumstance which clearly  
points out the guilty of the applicant. It is also on  
record that a group of Railway officials have  
approached on behalf of Mr Satyanandam and requested  
Mr MV Ramana Rao, Manager of M/s Vijaya ~~Pictures~~  
and requested to withdraw his complaint stating that  
the applicant is likely to loose the job because of the  
complaint, and that Mr Satyanandam had committed a mistake  
in delivering the film without production of RR and  
(Satyanandam)  
the applicant felt sorry for the same.

20. Unless the applicant had committed such a  
mistake, we see no reason for the group of railway  
officials to approach the Manager, Vijaya Pictures  
to seek his help in protecting the applicant from any  
possible action that may be taken against him. So, from  
the above two circumstances, it is very difficult to  
accept the contention of the learned counsel that this  
is a case of no evidence.

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21. The learned counsel for the applicant relied on a decision reported in AIR 1964 SC 364 Union of India appellant Vs HCGoel Respondents wherein the Supreme Court had said that punishment or removal imposed on the applicant based on no evidence is liable to be set aside. But, as already pointed out, in this case, there is evidence as against the applicant. We may point out that in cases where there is absolutely no evidence ~~that~~ this Tribunal can interfere ~~in the~~ departmental proceedings. Where the departmental proceedings culminated with the punishment even if there is some evidence, it is not open for this Tribunal to interfere with the penalty that had been imposed on the Government servant. So, that being the position as there is evidence as against this applicant, it is not open for this Tribunal to interfere with the penalty that has been imposed on the applicant. ~~The above cited decision has no application to the facts of the case.~~ 22. The learned counsel for the applicant relied on an another decision reported in 1978(2) SLR 46 Nanda Kishore Prasad Vs State of Bihar wherein it is held that suspicion cannot be allowed to take the place of proof even in domestic enquiry. No doubt the said observations may apply to cases where there is no evidence or material on record that might give strong suspicion about the misconduct of the employee. But, as already pointed out, this is a case where there is ample evidence <sup>with regard</sup> ~~on the~~ ~~to~~ the charges as against the applicant. So, the said decision is also not applicable to the facts of this case.

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23. For the misconduct only one of the two persons should be responsible i.e. PW 5 Mr TS Rama Rao who was on duty on the night of 9.11.86 from 14.00 hrs to 22.00 hrs, or, the applicant herein who was the rest given from 22.00 hrs to 06.00 hrs the next day (10.11.86). The material on record discloses that Sri Rama Rao (PW 5) had nothing to do with the removal of the film on the night in dispute. At the earliest possible opportunity, the applicant herein had never thrown any blame on anybody else, in the department as being responsible for removal of the film. So, once Rama Rao is eliminated, automatically, it becomes evident that the applicant herein is the responsible person for conniving in removing the said film stealthily.

24. The learned counsel for the applicant drew our attention, to the correction as of timings from 09.30 to 10.30 in Ex.P.6 and contended that the applicant is liable to be exonerated, as the said correction threw a serious doubt on the veracity of the respondents' case. He also further maintained that the evidence disclosed that the seals of the box in which the film was consigned were intact on 12th and 13th and in view of this position also that the applicant being responsible for delivering the film stealthily cannot be accepted. ~~The fact that the film was stealthily packed box accepted.~~ The fact that the film "Satyam Sivam" was screened on 10.11.1986 is not in dispute. From this, it is quite evident that the film had been removed prior to 10.11.1986. As could be seen from the evidence of PW1 and PW3 and EXP 6 only with the convenience of the applicant herein, the film had been removed at about 10.00 p.m. from the ~~hand~~ <sup>box</sup> on 9.11.86. The said

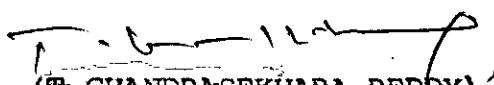
T - C.M

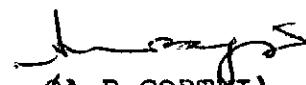
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correction  
of the "Time" in Ex/P 6 does not ~~assert~~ <sup>afford</sup> at all the merits of this case. So, the seals being intact absolutely has no significance and the seals of the box containing the film being intact, does not help the applicant to advance his case in any way.

25. Absolutely, we see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

  
(P.CHANDRASEKHARA REDDY)  
Member (Judl.)

  
(A.B.GORTHI)  
Member (Admn.)

Dated: 11-1-1993

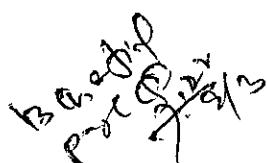
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Deputy Registrar (J) 824783

To

1. The General Manager, Union of India, S.C.Railway, Railnilayam, Secunderabad.
2. The ~~SP~~ Divisional Operating Superintendent, S.C.Rly. vijayawada.
3. The Divisional Operative Superintendent, S.C.Rly. vijayawada.
4. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Sr.OGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One copy to Deputy Registrar(J)CAT.Hyd.
8. ~~x2~~ Copy to All Reporters as per standard list of CAT.Hyd.
9. One spare copy.

pvm

  
B. Venkateswaran

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COMPARED BY

CHECKED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER(A)  
AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY  
MEMBER(JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM: M(A)

Dated: 16 - 9 - 1993

ORDER/JUDGMENT:

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

in

TYING

O.A. No.

222/90

T.A. No.

(W.P. )

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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