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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

* * *

D.A. No. 265/90

Dt. of Decision : 30.11.93

M. Prakasa Rao

. . Applicant

Vs

1. Union of India per General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. Senior Divisional Commercial
Superintendent, South Central
Railway, Vijayawada.
3. Divisional Commercial Superintendent,
South Central Railway, Vijayawada.

. . Respondents.

Counsel for the Applicant : Mr. G. Ramachandra Rao

Counsel for the Respondents : Mr. N.R. Devaraj
Sr. CGSC

CORAM:

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

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

JUDGEMENT

{As per Hon'ble Shri T. Chandrasekhara Reddy, Member(J)}{

This is an application filed under Section 19 of the Administrative Tribunals Act, to set aside the order of the 3rd respondent dated 19.7.89 imposing the penalty of reducing the applicant from the post of Head Travelling Ticket Examiner (HTTE) in the grade of Rs.1400-2300 to the post of Travelling Ticket Examiner(TTE) in the grade of Rs.1200-2040 and also reducing the pay of the applicant from Rs.1560 to Rs.1530 for a period of two years with cumulative effect and with loss of seniority as confirmed by the 2nd respondent as per his orders dated 20.12.89 ^{to direct the respondents} and to confer with all consequential benefits, and pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, may be stated as follows:

3. The applicant was originally appointed as a Clerk in the Southern Railway in the year 1965. In the year 1977 the applicant was appointed as Ticket Collector and was posted at Dronachalam. In the year 1980, the applicant was promoted and posted at Vijayawada as Senior Ticket Collector and in the year 1984 he was promoted as Head Travelling Ticket Examiner. On 7.5.86 the applicant was on duty as Head Travelling Ticket Examiner in 'D' and 'E' coaches of the Train No.20 (Konark Express) from Vijayawada to Waltair. While the applicant was in Coach 'D', the said coach was checked by one Sri KRKV Prasad, Vigilance Inspector between Samalkot and Waltair. The applicant did not co-operate with the checking official and did not produce relevant records.

T. C. R.

..2

P. 108

108

4. A Disciplinary inquiry was contemplated as against the applicant and the applicant was kept under suspension on 14.5.86 by the orders passed by the competent authority. The third respondent who is the disciplinary authority issued a charge memo dated 19.9.86 alleging that the applicant while manning 'D' coach of 20 Konark Express of 7.5.86 had committed serious misconduct and failed to maintain absolute integrity and devotion to duty in that he had collected amounts from several passengers in excess of the due sleeper charges besides not making out receipts towards the sleeper charges and that the said coach while it was checked by the Vigilance Inspector revealed that 3 passengers bound for Waltair and some passengers beyond Waltair paid amounts to the applicant and a decoy used by the Vigilance team also paid Rs.20/- to the applicant and that the applicant did not give the sleeper ticket and that the applicant did not co-operate in the check till the train reached Waltair. The applicant submitted his explanation on 5.10.86 denying the charges levelled against him. After the applicant submitted his explanation on 5.10.86, the 2nd respondent herein vide his memo dated 3.3.87 cancelled the charge memo issued to the applicant ~~xxxxxx~~ without assigning any reasons but without prejudice to further disciplinary action being initiated afresh by the competent authority.

5. After the said charge memo was cancelled by the 2nd respondent, the third respondent vide his memo dated 14.3.87 revoked the order of suspension as against the applicant.

T. S. R.

108

6.. After a lapse of four months, the third respondent issued a charge memo dated 10.7.87 to the applicant alleging that the applicant while functioning as Head TTE in Train No.20 (KOnark Express) on 7.5.86 committed serious mis-conduct and it was found by the Vigilance Inspector that 'D' coach was carrying 79 adults and 4 children as against the capacity of 75 berths and that the applicant did not issue sleeper tickets to some persons and that the applicant did not offer necessary co-operation to the Vigilance Inspector. The applicant submitted his representation on 10.8.87 to the afore-said charge memo denying the charges levelled against him, as false and baseless. The explanation of the applicant was not accepted by the third respondent who is ^{the} disciplinary authority. So an Enquiry Officer was appointed by the 3rd respondent as per his orders dated 20.1.1988. The enquiry officer completed his enquiry on 27.2.1989. Out of the six ~~witnesses~~ witnesses, two witnesses namely Sri KV Raghava Reddy of Visakhapatnam and V. Banerjee of Tadepalligudem could not be examined as they did not attend any of the ~~proceedings~~ ^{adjudgments} although notices were served on them to attend ~~the enquiry~~ ^{the enquiry}. During the enquiry the Enquiry officer examined the Vigilance Inspector Sri KRV Prasad, RPF Constable Sri Rajagopal, Lr.TTE Sri B.S. Samson, RPF Constable Sri N.Sivaiah. The following documents were marked as Exhibits during the course of enquiry.

1. Joint statement of Sri KV Raghava Reddy and Sri V.Banerjee dt.8.5.86
2. Statement of Sri N.Sivaiah, Constable, RPF dt.8.5.86
- ✓ 3. Statement of Sri M.Rajagopal, Constable, RPF, Sec'bad dt. 8.5.86
4. Xerox copy of EFT No.435365 issued by Sri B.S.Samson TTE, Visakhapatnam dt.8.5.86
5. Money receipt No.758472 dt.8.5.86
6. Xerox copy of EFT No.689735 dt.7.5.86

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P30v

On behalf of the applicant, the applicant examined one Sri T. Balakrishna, TTE, SERly, Visakhapatnam ^{his defence witness}. The enquiry officer submitted his report giving the findings as against the applicant. The Disciplinary authority who is the third respondent after going through the entire enquiry proceedings agreed with the findings of the enquiry officer. Taking into account the entire material and nature of mis-conduct the third respondent inflicted the penalty of reducting the applicant to the next lower grade of TTE in the scale of Rs.1200-2040 fixing his pay at Rs.1530 for a period of two years (recurring) with loss of seniority. The 2nd respondent who is the appellate authority confirmed the orders of the disciplinary authority, as per his orders dated 20.12.89. The present OA is filed questioning the order of penalty imposed by the third respondent ^{in the order} as confirmed by the 2nd respondent as indicated earlier.

7. Counter is filed by the respondents opposing the OA.

8. In the counter filed by the respondents it is maintained that the applicant had a fair trial before the Enquiry officer and in view of the serious misconduct of the applicant that the applicant had been suitably punished and that there are no grounds to interfere with the penalty that had been imposed on the applicant by the disciplinary authority as confirmed by the appellate authority.

9. We have heard Mr G. Ramachandra Rao, counsel for the applicant and Mr NR Devraj, Standing Counsel for the respondents.

10. The entire enquiry file as per our orders dated 12.8.93 had been placed before us and we have gone through the entire enquiry file.

110

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11. Even though a ground has been raised in the OA that the third respondent is not the disciplinary authority and third respondent is not the competent authority either to initiate disciplinary proceedings as against the applicant and impose penalty on the applicant, during the course of hearing this OA it was not disputed, that third respondent was the competent authority to initiate disciplinary proceeding as against the applicant and also the competent authority to impose punishment on the applicant.

12. Another ground raised in the OA is that the principles of natural justice had been violated in not furnishing enquiry report to the applicant before the imposition of penalty on the applicant by third respondent who is the disciplinary authority. In view of the decision of the Supreme Court reported in S.P. VISWANATHAN case reported in 1992 S C C (L&S) 155, this ground was not pressed before us, as the punishment on the applicant had been inflicted prior to the rendering of judgement in Mohd. Ramzan Khan case.

13. Another ground urged in this OA is imposing the penalty of reducing the applicant from the post of Head TTE to that of TTE and also reducing his pay is a double punishment which ^{is} not permissible under law. In view of the Supreme Court decision in AIR 1992 SC 1898 Union of India Vs K. Krishnan ~~xxx~~ wherein it was held that a Government servant suffering a penalty in a disciplinary proceeding can not at the same time be promoted to a higher cadre and this ^{would not} amount to double jeopardy, ~~this~~ ^{could} ground ~~also~~ was not pressed before us. As a matter of fact it cannot be disputed that, as a measure of punishment a person working in a higher post can be reduced to a lower post in which he has formerly worked. So, when a Govt. servant is reduced from higher post to lower post as mentioned above naturally in view of the reduction of rank the pay also gets reduced as competent authority has got every power to fix the pay of the Govt. servant at the appropriate stage in the lower scale. This does not amount to double punishment as reduction in salary is a consequence of the reduction of the grade of the applicant as a measure of punishment.

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14. As already pointed out, during the course of the enquiry, the enquiry officer has examined the Vigilance Inspector Mr. KRKV. Prasad who is the main witness in this case. We have already mentioned that two RPF Constables, one decoy witness Sri N. Sivaiah who is also RPF constable at Guntakal had been examined by the enquiry officer. The enquiry officer has also considered the joint statement of one Sri Raghava Reddy and Sri V. Benerjee who were passengers in the said train. In spite of taking necessary steps by the enquiry officer, the enquiry officer could not secure the presence of the two witnesses namely Raghava Reddy and Benerjee. So, their evidence has not been recorded during the course of enquiry. Admittedly, the said two witnesses had not been examined by the Vigilance Inspector in the presence of the applicant. According to the respondents in view of the adamant attitude of the applicant towards the said Vigilance Inspector Sri KRKV. Prasad and in view of the scene created by the applicant with the help of other TTEs at Waltair station that it was not possible for the said Vigilance Inspector to examine them at Waltair soon after those two passengers got down from Konark Express and so the Vigilance Inspector could examine them only outside Waltair station and record their joint statement.

15. It is contended by the learned counsel for the applicant that what the said witnesses Raghava Reddy and Benerjee have stated to the Vigilance Inspector on 8.5.86 as per Exhibits P1 joint statement is only hear say and that the said joint statement should not have been taken into consideration by the Enquiry officer and

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and by taking ^{and taking} ~~those~~ statements into consideration, the entire inquiry is vitiated and so, the penalty imposed on the applicant is liable to be set aside.

16. This Tribunal is fully aware of the fact that the principle that a fact sought to be proved must be supported by statements made in the presence of persons against whom the inquiry is held, and the statement made behind the persons charged ^{are} ~~are~~ not to be treated as substantive evidence. This is one of the basic principles which cannot be ignored on the mere ground that domestic Tribunals are not bound by the technical rules and procedures contained in the Evidence Act. But, by the by, we cannot lose sight ^{of} ~~on~~ what the Supreme Court has stated with regard to Rules of Evidence under Evidence Act in a domestic inquiry.

17. In AIR 1977 SC 1512 State of Haryana and another Vs Rattan Singh, the facts are as under:

"The Himachal Pradesh Roadways is a State Transport undertaking. The respondent before the Supreme Court was a member of running staff, a conductor whose job is to collect fares from the passengers and issue tickets to them. Probably because conductors were collecting fares but not issuing tickets a system of flying squads was in operation in the Haryana State for the purpose of checking the proper collection of fares by conductors. The respondent before the Supreme Court while on duty on bus on its trip from Pailwal to Khodulpur was the conductor whose vehicle was overtaken by the flying squad. The squad stopped its bus and its inspector discovered that four passengers had alighted at Kamini Khade without tickets and that 11 passengers travelling in the bus also ^{had} ~~did~~ not ~~have~~ paid the fares. A report followed, a charge-sheet ensued, ~~and~~

a ~~domestic~~ domestic inquiry was held, guilt established and simple termination of services effected. The respondent hastened to the civil court for a declaration that the order of termination in the disciplinary inquiry was a nullity and he must therefore be given a declaration of continuance in service. The trial court on the evidence was taken in by this plea and the appellate court also affirmed it. The Highcourt dismissed the second appeal in limine. The State ~~had~~ ~~approached~~ approached the Supreme Court by way of Special Leave petition. "

16. In the said case, the Supreme Court had held as under:

" In a domestic enquiry the strict and sophisticated rules of evidence under the evidence act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the evidence act.

The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record.

Where a bus conductor of a State Transport undertaking was charged for not collecting fares from certain passengers and on his guilt being established there was simple termination of his services because of his long services and young age, it could not be said that merely because statements of passengers were not recorded by the Inspector of the flying squad, the order that followed was invalid. The evidence of the Inspector was some evidence which had relevance to the charge against the bus conductor. order of simple termination of services was valid. "

(emphasis is ours)

T. S. R.

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The above decision is a complete answer to the contentions raised by the learned counsel for the applicant.

18. We have gone carefully through the evidence of Shri KRKV Prasad, Vigilance Inspector. He is a dis-interested witness. He does not have any motive to speak false^h against the applicant. He is a public servant. It is only in the discharge of his official duties that he could detect the mis-conduct of the applicant. The evidence of the Vigilance Inspector rings with truth. Even the joint statement of the said Raghava Reddy and Banerjee is ~~is~~ excluded from consideration, and ~~even~~ the evidence of other witnesses i.e S/Sri N.Sivaiah and Rajagopal ^{Sampson is} and ~~not~~ taken into consideration, there cannot be any legal impediment in accepting the testimony of the said Vigilance Inspector Sri KRKV Prasad. No particular number of witnessess shall in any case be required for proof of any fact. ^{the} ~~A~~ Tribunal attaches more importance to the quality than the quantity of evidence. Proof of fact would depend upon the character of a witness and ~~is~~ his competency to speak to the fact. It is not enough to ~~prove~~ ~~prove~~ prove a fact that a number of witness should assert it. ~~So,~~ ~~as already pointed out,~~ ^{to} accept the mis-conduct of the applicant one cannot find a better piece of evidence than that of the Vigilance Inspector who is ^a ~~the~~ responsible officer, and who detected the mis-conduct of the applicant in this case. The enquiry officer had not only taken into consideration, the evidence of the said ~~Vigilance~~ Vigilance Inspector, but also taken into consideration other material and had given a finding as against the applicant which finding has been accepted by the Disciplinary authority and also confirmed by the appellate authority. Nodoubt, ~~for argument~~ an arugment is sought to be advanced

that the R.P.F. witnesses are planted for the purpose of inquiry and that no weight can be given to their evidence, and as the said witnesses are planted as against the applicant that the inquiry is vitiated. We have already said even ignoring the evidence of other witnesses in this case before the Inquiry officer, that the sole testimony of the Vigilance Inspector Sri KRKV.Prasad would alone be sufficient to uphold the misconduct of the applicant and furnishes ample material as against the applicant.

19. As already pointed out while narrating the facts of the case, the applicant was initially charge-sheeted on 19.9.86 and the same was cancelled as per the memo dated 3.3.1987 by the second respondent. After cancelling the said charge memo, the third respondent again issued the present charge memo dated 10.7.87. It is the contention of the learned counsel for the applicant that in view of the cancellation of the charge memo dated 19.9.86 as per memo dated 3.3.87 without assigning any reason that it was not open for the third respondent to issue a fresh charge memo dated 10.7.87 as against the applicant and as the issue of memo dated 10.7.1987 is not valid in law, that the entire proceedings as against the applicant are vitiated and hence, the applicant is liable to be exonerated of the charges framed against him.

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20. In support of his contention, the learned counsel relied on a decision reported in 1987(2) SLJ (CAT) 46 RB Parmar Vs Union of India and others wherein it is held that cancellation of the first charge sheet without giving any reasons or without prejudice to issue a fresh one and ^anew charge sheet issued on the same grounds cannot be sustained. There is a reference to the said decision in 1990(7) SLR 198 also. In view of the contentions raised by the learned counsel for the applicant, it will be appropriate to extract the memo dated 3.3.87 issued by the 2nd respondent.

South Central Railway

DRM's office
Commercial Br.
Vijayawada

No.B/DCS/Con/74/86/Vol.I

M E M O R A N D U M

The DAR Proceedings initiated vide memorandum of Standard form No.5 issued with docket of even no. dated 19.9.86 by DCS/BZA against Sri M.Prakasa Rao (TTE/BZA) are hereby cancelled without prejudice to further disciplinary action being initiated afresh by the competent authority.

(emphasis supplied)

Sd/-
(C.Seshagiri Rao)
Sr.Dvl.Commercial Superintendent
SC Rly, Vijayawada

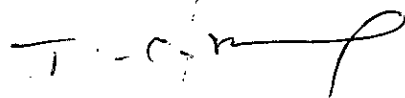
As could be seen while cancelling the said charge sheet dated 19.9.86, the respondents have reserved their right for further disciplinary action against the applicant after issuing a fresh charge sheet. In the decision cited in 1987(2) SLJ CAT 46 the disciplinary authority had to issue a fresh charge sheet and not reserved its right/so the decision reported in 1987(2)(CAT) in which decision 1987(2)CAT is referred SLJ 46 and 1990(7) SLR 198 have no application to the facts of this case.

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21. This is not a case where the applicant had been tried on the first charge memo dated 19.9.86 and had been exonerated of the said charges or a penalty is imposed after holding the said charges were proved. Even before the Enquiry officer was appointed the charge memo dated 19.9.86, had been cancelled as per memorandum dated 3.3.87, and again a fresh charge memo had been issued. So, as the regular inquiry has not at all been conducted as against the applicant and as this is also not a case where the disciplinary proceedings were dropped as against the applicant after the competent authority had applied its mind, in our opinion the issue of second charge memo dated 10.7.87 is perfectly legal and valid. As the applicant was not tried as per the charge memo dated 19.9.86 issued against him in the first instance the respondents certainly had a right to withdraw the charge memo for what ever reason it might be after reserving their right to issue a fresh charge memo and so accordingly had issued a second charge memo in this case. So, in view of this position the respondents action in cancelling the first charge memo and issuing a second charge memo has got to be upheld.

22. The learned counsel for the applicant took us through the charge memo dated 19.9.86 issued as against the applicant and which was cancelled subsequently by a memo dated 3.3.87, and also through the 2nd charge memo dated 10.7.87 issued as against the applicant.



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118

23. In the first charge ^{MEMO} sheet following persons are cited as witnesses.

1. Sri KV Raghava Reddy, Marripalem, Visakhapatnam
2. Sri V.Benerji, Kommugudem, S/o Sri Vattikuti Venkata Rama Rao, Kommugudem, TP Gudem Taluk, WG District
3. Sri Samson, TC/WAT
4. Sri KRKV Prasad, Vigilance Inspector, Secunderabad "

List of documents

- (1) Joint statement dated 8.5.86 of S/Shri KV Raghava Reddy Marripalem, Visakhapatnam and V.Benerjee, Kommugudem Post, Tadepalligudem, WG Distt. "

In the second charge sheet following persons are cited as witnesses.

1. Sri KV Raghava Reddy, 38-22-407, FCI Colony, Narsipatnam Visakhapatnam 530018
2. Sri V. Benerje, Kommugudem Post, Tadapalligudem WG Distt.
3. Sri B.S. Samson, TC/Waltair
4. Sri N. Sivaiah, Constable, RPF/HQrs/SC
5. Sri M. Rajagopal, Constable RPF HQrs SC
6. Sri KRKV Prasad, Vigilance Inspector, SC "

List of documents cited:

1. Joint statement of Sri KV Raghava Reddy and Sri V.Benerjee dated 8.5.86
2. Statement of Sri N.Sivaiah, Constable, RPF/HQrs/SC dt.8.5.86
3. Statement of Sri M.Rajagopal, Constable, RPF/Hqrs/SC dt 8.5.86 "

It is the contention of the learned counsel for the applicant that certain documents to which there was no reference in the first charge ^{MEMO} sheet, had been referred to in the list of documents in the second charge ^{MEMO} sheet and that the contents of the first and second charge memos were different and ~~so~~ in view of this ~~position~~ that the entire material ~~that is~~ as against the applicant had been fabricated and that the witnesses belonging to RPF ^{were} ~~as having been~~ planted

119

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has got to be accepted. So for the sum and substance of the charges, in first and second charge memos is one and the same. No doubt certain witnesses cited in the first charge memo are not cited as witnesses in the second charge memo. But even though the same witnesses are not cited in both the charge memos that does not vitiate the inquiry as the name of the main witness namely Sri.KRKV. Prasad, Vigilence Inspector is found in both the charge memos. Certain incident as having taken place on 7.5.86 in the 'D' coach between Vijayawada and Waltair is not at all in dispute in this OA. We have already held that even excluding the evidence of other witnesses, that the evidence of Sri KRKV Prasad, Vigilence Inspector is sufficient to uphold the guilt of the applicant herein. So, even though we find that certain names of witnesses in the second charge memo find place, which names were not mentioned in the first charge memo that does not in any way impair the credibility of the case of the respondents. Nothing turns out from the said discrepancy pointed out by the learned counsel for the applicant as long as there is some acceptable evidence on record to bring home the guilt of the applicant.

24. It is contended that the order of the disciplinary authority is not a speaking order. It is also contended that the order of the appellate authority is not a speaking order and in view of this position, that the penalty imposed on the applicant is liable to be set aside. We have gone through the order of the disciplinary authority and also the order of the appellate authority. Both the disci-

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121

25. The learned counsel for the applicant relied on a decision reported in Indian Factories Journal and Factories Journal report, 1993 82 F.J.R Page 55 State Bank of India and others Vs DC Aggarwal and others. We have gone through the said decision. From the said decision it is evident that the Chief Vigilance Commission examining the Enquiry report recorded its findings on each of the charges and sent its recommendations to the Bank. The Chief Vigilance Commission disagreed with the Enquiry Officer and found charges I, II, III, IV, VIII, XI to XIII to have been proved against the delinquents therein and it advised imposition of a ~~major~~ major penalty not less than removal from service. Non-supply of the report of Chief Vigilance Commission recommendations to the delinquents therein was considered by the Supreme Court, and ultimately it was held by the Supreme Court that the orders passed by the Disciplinary authority was invalid and void. The said decision ~~are~~ ^{is} not applicable to the facts of this case as the material on which the disciplinary authority had acted had been furnished to the applicant with regard to the case on hand.
26. 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.

CERTIFIED TO BE TRUE COPY
Date.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

30/11/23

17

Copy to:-

1. General Manager, South Central Railway, Rail Nilayam, Union of India, Secunderabad.
2. Senior Divisional Commercial Superintendent, South Central Railway, Vijayawada.
3. Divisional Commercial Superintendent, South Central Railway, Vijayawada.
4. One copy to Sri. G.Ramachandra Rao, advocate, CAT, Hyd.
5. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

129

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plinary authority and the appellate authority have applied their mind and have gone through the entire material. It is only after going through the entire material that the Disciplinary authority has imposed the penalty in question, which is confirmed by the appellate authority. As the Enquiry Officer had given a detailed report, with his findings as against the applicant and as the disciplinary authority had also given a detailed order there was no need for the appellate authority to repeat what the enquiry officer had stated in its report and disciplinary authority in its orders. From the material on record, it is quite evident that the applicant herein had collected money from passengers on 7.5.86 travelling on 20 Konark Express while he was on duty as Head TTE and the persons from whom he collected money were N.Sivaiah, Sri Raghava Reddy Sri Banerjee is quite evident that the said Raghava Reddy and Banerjee were given back their money by the applicant at Waltair station after he was held up by the Vigilance Inspector and the said persons have paid reservation charges to the Vigilance Inspector who had remitted the amount at Rajahmundry station. We do not find any flaw or error having been committed in the matter of disciplinary enquiry of the applicant. As already pointed out, the applicant had a fair enquiry and had a reasonable opportunity. The disciplinary authority had passed appropriate orders with regard to the penalty on the applicant. The appellate authority had rightly confirmed the orders of the disciplinary authority. We see no grounds to interfere.

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P. S. J.