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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 451 of 1991

Date of Decision : 11.4.1991

ExAxe.

Mr. R. Chandran

Petitioner.

Mr. M. C. Pillai

Advocate for the
petitioner (s)

Versus

The General Manager, S.C. Railway &

Respondent.

3 others

Mr. N. R. Devaraj, SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. B.N.Jayasimha, Vice Chairman

THE HON'BLE MR. J.Narasimha Murthy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches 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)

hbnj
HBNJ
VC

hjnm
HJNM
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.451 of 1990

DATE OF JUDGMENT: 11.4.1991.

BETWEEN:

Mr. R.Chandran

Applicant

AND

1. The General Manager,
South Central Railway,
Secunderabad.

2. The Divisional Railway Manager,
South Central Railwa, B.G.Division,
Secunderabad.

3. The Senior Divisional Commercial
Superintendent,
South Central Railway,
B.G.Division,
Secunderabad.

4. The Divisional Commercial Superintendent,
South Central Railway, B.G.Division,
Secunderabad.

Respondents

COUNSEL FOR THE APPLICANT: Mr. M.C.Pillai

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, SC for Railways

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CORAM:

Hon'ble Shri B.N.Jayasimha, Vice Chairman

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed by the petitioner for a relief to declare the punishment orders contained in the impugned order No.CON/SC/C/43/87 dated 5.5.1989 issued by the 2nd respondent as illegal, void and unconstitutional and set-aside the same and also quash the Enquiry Report and its findings granting the petitioner all consequential benefits. The facts of the case are briefly as follows:-

The petitioner was promoted as HTTE. While he was working in the Express Train No.121 Express in the first class compartment, a vigilance check was conducted at (BPQ) Station on 20.11.1986/ on the arrival of the 121 Express train, one passenger was noticed alighting on the 'off' side of the train from 1st class Coach No.6758. The station TC/WSR Shri Govardhan Ram Bux who was with the Vigilance team was asked to intercept the passenger who was proceeding towards the Exit, crossing the line through Platform No.1 and checked the ticket of the passenger. The passenger had no ticket and informed the T.C. that the petitioner was preparing the ticket. He was asked to accompany the IIs to the TC's office. The CCA of the coach was



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first summoned. He deposed that the passenger got in the 1st class and he was accommodated in Coach 'A' by the petitioner and informed the petitioner of the fact. First, the petitioner denied that the passenger was in the first class with his knowledge. On being instructed by the I.I.s to hand over the passenger to the GRP to proceed against him as per rules, ✓ the petitioner produced PF ticket No.38698 of WL Station and stated that the passenger was not having enough money to pay for first class and he was going to take necessary action at BPQ. At that moment, the passenger, Shri Soni, a businessman of BPQ flared up and produced a lot of money and agreed to pay all charges. Accordingly, an EFT was prepared for Rs.436/- vide receipt No.128284 by the petitioner after blocking previous EFT No.128283. The above act of the petitioner proves that he entered in a malafide manner with an ulterior motive of securing pecuniary advantage from the passenger. Had not the vigilance check occurred at BPQ proves beyond doubt the guilt of the petitioner in this respect. Thus, the petitioner failed to maintain absolute integrity and devotion to duty and acted as unbecoming of a Railway servant, contravening Railway Service (Conduct) Rules, 3(i) (ii) of 1966. On the above allegations, a charge sheet was issued to the petitioner and it was followed with DAR enquiry on 18.2.1988 and 19.2.1988 conducted by the Assistant Enquiry Officer/HQ, Secunderabad. The petitioner denied all the allegations in the charge sheet. The disciplinary authority ie., DCS/BG/SC in his memo dated 17.3.1988 imposed on the applicant a punishment of reduction from the post of HTTE in the grade Rs.1400-2300 (RSRP) to the lower post of Ticket Collector in grade Rs.950-1600 (RSRP)



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fixing his pay at bottom of the grade of Rs.950/- for a period of five years with cumulative effect and loss of seniority. Against this punishment, the petitioner preferred appeals dated 27.5.1988 and 10.8.1988 to the appellate authority who disposed of the same under his orders dated 7.11.1988 upholding the punishment imposed by the disciplinary authority. Aggrieved by the orders of the appellate authority, the petitioner submitted a review petition dated 8.12.1988 to the Divisional Railway Manager (BG), South Central Railway, Secunderabad, who was the reviewing authority in this case. While disposing of the review petition, the Divisional Railway Manager had gone on record and pointed out some procedural irregularities in the enquiry report and he modified the punishment to that of reduction as TC, fixing pay at Rs.1500/- (RSRP) for one year with loss of seniority and cumulative effect. These orders were implemented even though punishments cannot be given for an alleged guilt. Against these punishment orders, the petitioner filed this petition for the above said relief.

2. The respondents filed a counter. The contents of the counter are briefly as follows:-

The petitioner while working as COR by 121 Express between BZA and BPQ on 20.11.1986 carried one first class passenger without ticket from Warangal to Balharshaw with the malafide intention of securing pecuniary advantage to himself and causing loss to the Railway. He failed to maintain absolute integrity, devotion to duty and exhibited his conduct as unbecoming of a Railway servant. Thus, he contravened Rule 3(1) (i) (ii) and (iii) of the Railway Services (Conduct) Rules, 1966.



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The Enquiry Officer conducted the enquiry and submitted his report on 17.3.1988. The disciplinary authority after considering the enquiry report imposed a penalty of reduction from the post of HTTE in grade Rs.1400-2300 (RSRP) to a lower post of Ticket Collector in grade Rs.950-1500 (RSRP) fixing his pay at the bottom of the grade i.e., Rs.950/- for a period of five years with cumulative effect and loss of seniority, ~~er~~ against the petition/vide order dated 13.5.1988. The appeal dated 27.5.1988 submitted by the petitioner was rejected by the appellate authority vide his orders dated 7.11.1988. The revision petition ~~dated~~ submitted by the petitioner was considered by the Divisional Railway Manager, Secunderabad in terms of Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 and the punishment was reduced to that of reduction as Ticket Collector in grade Rs.950-1500 (RSRP) fixing his pay at Rs.1500/- with loss of seniority and with cumulative effect for a period of one year vide his orders dated 5.5.1989.

3. According to Railway Rules, all passenger fares must be prepared and nobody can travel in a Railway carriage without a valid ticket. The rule further says that Guard's certificate of permission to travel can be issued to the passengers who apply for such permission before incurring the charge on the condition that the passenger will subsequently pay the fare ~~if~~ and any excess charges due, when a passenger owing to want of time is unable to purchase a ticket. Guard's certificates will be issued in such cases at stations where platform tickets are and issued/only on production of valid platform tickets. The petitioner allowed the ticketless passenger to perform his journey from Warangal to Balharshah without valid ticket or without a certi-

ficate obtained from the Guard of the train. According to Indian Railway Act IX of 1890 under Section 113, all the charges due from the ticketless passengers should be ✓ collected immediately at the place where he is detected travelling without ticket, before allowing him to continue his journey in the carriage. It is evident that the petitioner did not make any effort to realise the charges from the passenger who travelled with a platform ticket in 1st class compartment by Tamil Nadu Express (121 Express) on 20.11.1986 from Warangal to Balharshah. The intention of the passenger was to travel without incurring any Railway charges and this is evident from the statement given by Shri Yadagiriswamy, Coach Attendant whom Shri Sony (passenger) had approached for permission to enter into the first class bogie. The petitioner deposed in the enquiry that he demanded the charges due from ✓ the passenger amounting to Rs.436/- but the passenger had his own doubts about the payment of charges since it was a distance restricted train and agreed to pay at Balharshah and the petitioner went for usual check. The petitioner failed to explain the passenger the correctness of the charges and the urgency of making payment on the spot before allowing the said passenger to continue his journey. The petitioner should have told the passenger that he was not authorised to travel in 1st class with platform ticket and if he had doubted the veracity of the penalty amount, he should have been told that he was a ticketless passenger travelling in 1st class and he was liable to pay the fare with penalty as per Railway Rules, duly giving details of the amount. The petitioner should have sought the assistance of his colleagues on train if necessary, to convince the passenger. The charges should be collected from the ticketless passenger on the spot before allowing him to carry his journey upto the destina-

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station. The petitioner deposed in the enquiry that the passenger appeared to have doubted that he was demanding more money towards fare and penalty, where he stated in his application that he did not demand for spot payment thinking that he would be short of money. These statements clearly indicate that the petitioner did not make any effort to know the real reason for refusal to make payment by the passenger on the spot. So, it amounts to allowing the said passenger without ticket in the first class compartment.

The petitioner stated that the passenger Shri Sony got down the train off side without his knowledge and came to him and paid the amount. In this connection, Shri Govardhan Ram Bux, Ticket Collector, Balharshah stated in the enquiry proceedings that the EFT No.128284 for Rs.436/- was made out by the petitioner after the passenger was caught by him (Shri Govardhan Ram Bux) on platform No.1 at Balharshah. The statement clearly shows that the passenger was having enough money in his possession for making payment of fare and penalty, but he wanted to sneak out of Railway premises without making of charges due to the Railways. The Divisional Railway Manager, revising authority, observed that the petitioner is responsible for slackness but there is no malafide intention in this transaction. The Enquiry Officer recorded in his findings that but for the vigilance check at Balharshah, the passenger would have gone unnoticed resulting in loss of charges of Rs.436/- due to the Railways. It is proved beyond doubt that the petitioner failed to perform his legitimate duty that he ought to do while on duty. Hence, there are no grounds to interfere with the punishment orders and the petition is liable to be dismissed.



3. Shri M.C.Pillai, learned counsel for the petitioner, and Shri N.R.Devaraj, learned Standing Counsel for the Railways/ Respondents, argued the matter. The admitted facts are that the passenger, Shri Sony, got into the first class compartment at Warangal and travelled upto Balharshah in the first class compartment with a platform ticket. While the train stopped at Balharshah, the ticketless traveller got down from the train off the side of the train and when he was going out, he was caught by the vigilance staff. After that, the petitioner wrote EFT ticket for Rs.436/- and collected the amount. Ofcourse, there is no financial loss to the Department. The only point urged by the respondents is that when the passenger got into the train, as per the rules, the ticket amount has to be collected from him and if the passenger has not paid the amount, he should not be allowed to travel further in the train. If for any reason, the passenger has no money with him and he promises to pay at the destination station, to that effect, he must get permission from the Guard of the train. Then only, he ~~xxx~~ should be permitted to travel. There are such rules to be followed with regard to the ticketless travellers travelling in the train. The passenger, Shri Sony, got into the train at Warangal with a platform ticket and according to the petitioner, when he demanded for the ticket amount of Rs.436/-, ~~xxx~~ the passenger was not getting convinced that he has to pay Rs.436/- It is absurd to say that the petitioner could not collect the amount since the passenger was not getting convinced. If the passenger could not pay the amount, the petitioner could have handed him over to the



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Railway Police authorities. The duty goes on the petitioner, when the passenger refused to pay the amount, to hand over him to the Railway Police at the intermediary Railway Station. But he did not do so. Suppose the passenger has no money, the petitioner ought to have produced him before the Guard for obtaining certificate for continuing his journey in the train. He failed to do the same and it amounts to violation of the established rules.

4. Apart from that, the petitioner contended that the Vigilance report was not made available to him and they did not record any statement from the passenger and the passenger was not examined and the material witnesses were not examined. On these technical grounds, he is entitled to be exonerated from the charges. As per the reports, the admitted facts are all clear that the passenger travelled from Warangal to Balharshah without ticket in the first class and the vigilance report and the statement of the petitioner ~~xxxx~~ is immaterial in this case, because the fact is established as per the statement of the petitioner ^{him} ~~itself~~. So, when the facts are established beyond doubt, there is no need to go into the technicalities in this case, because the petitioner allowed the passenger to travel in the train with ^{a platform} ticket from Warangal to Balharshah in the first class compartment without taking proper steps which amounts to violation of the rules. The revising authority correctly acted in this case and there are no grounds to interfere with the orders of the respondents. So we hold that there are ^{no} merits in the petition and the

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petition is liable to be dismissed. The petition is accordingly dismissed. No order as to costs.

B.N.Jayashimha

(B.N.JAYASIMHA)
VICE CHAIRMAN

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(J.NARASIMHA MURTHY)
MEMBER (JUDL.)

DATED: 11th APRIL, 1991

D. Deo
By Deputy Registrar (J)

To

1. The General Manager, S.C.Railway, Secunderabad.
2. The Divisional Railway Manager, S.C.Railway, B.G.Division, Secunderabad.
3. The Senior Divisional Commercial Superintendent, S.C.Railway, B.G.Division, Secunderabad.
4. The Divisional Commercial Superintendent, S.C.Railway, B.G.Division, Secunderabad.
5. One copy to Mr. M.C.Pillai, Advocate, CAT.Hyd.Bench.
6. One copy to Mr. N.R.Devraj, SC for Rlys, CAT.Hyd.Bench
7. One copy to Hon'ble Mr. J.Narasimha Murty, Member (J)CAT.Hyd
8. One spare copy.

vsn

pvm

*W.M. Deo
11/4/91*