

(C.A.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 142/91..

Dt. of Decision : 24.6.94.

Mr. M.J. Chary

.. Applicant.

Vs

1. The Divisional Commercial
Superintendent, SC Rly,
Vijayawada.
2. The Sr. Divisional Commercial
Superintendent, SC Rly,
Vijayawada.

.. Respondents.

Counsel for the Applicant : Mr. G.V. Subba Rao

Counsel for the Respondents : Mr. N.V. Ramana, SC for Rlys.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

J U D G M E N T

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

The applicant joined Railway Service as Office Clerk with effect from 25.10.1967 and he was given a change of Grade as Ticket Collector in the year 1979 at his request. He was promoted as Travelling Ticket Examiner in the year 1983 in the scale of Rs.330-560. It is stated for the applicant that he is a recipient of cash awards for his meritorious service in the past and he has a good record of service.

2. On 26.1.1987, he was put in charge as Travelling Ticket Examiner to man the Cochin-Hyderabad Coach by Train No.53 Express in place of one Sri Lakshman Rao. At the time of taking over charge of the Coach as T.T.E. on that day, he declared his private cash as Rs.16/- and entered the same in the rough journal witnessed by the concerned authority at Madras.

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3. In the said Train No.53 Express there were 75 berths and 16 were vacant while the train left Madras. He allotted the Berths to various passengers and collected excess fares. For the 16 berths he collected Rs.272/- as ticket and reservation charges. Eight EFTs were issued and 8 open tickets were also issued for Rs.16/-. Thus a total of Rs.304/- comprising of Rs.272/- for ticket and reservation charges, Rs.16/- from issue of open tickets and Rs.16/- his personal cash declared by him at Madras can only be available with him when the train reached Gudur. One Sri Sivaiah, R.P.F. Rakshak who was a decoy of the Vigilance Branch was employed by the Vigilance Organisation to get a ticket for him from Madras to Warangal. The allegation is that the R.P.F. Rakshak, the decoy of the Vigilance Branch paid Rs.50/- and a balance

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amount of Rs.18/- due to him was not paid back by the applicant while working as T.T.E. on that day. A Vigilance Check was conducted at Gudur by the Vigilance Organisation by Vigilance Inspectors S/Shri Nagendra Rao and K.R.K.Prasad. Though the applicant did not declare excess cash of Rs.92/- over and above the tallied amount of Rs.304/- in his possession a search of the hand-bag of the applicant on that day showed that he was having Rs.92/- in his bag in addition to the tallied amount of Rs.304/- which includes Rs.16/- which he had declared at Madras. The excess amount was asked to be remitted as Station earnings, which he did.

4. As he possessed excess amount of Rs.92/- revealed during the vigilance check, he was issued with a major penalty charge-sheet for failing to maintain integrity and violation of Rule 3(1) of the Railway (Conduct) Rules, 1966. The articles of charge framed against him are as follows:

"Article-i:

That Sri M.J.Chary while functioning as TTE/Vijayawada during January, 1987 committed a serious misconduct in that on 26.1.1987 in respect of Berth No.55 allotted in Cochin-Hyderabad Coach by Train No.53 Express, the said TTE had collected Rs.18/- in excess of the authorised charge on II M/E ticket No.60762 Ex.Madras to Warangal with an ulterior motive to secure pecuniary gain to himself.

Article-ii:

Sri M.J.Chary while functioning as TTE/Vijayawada during January, 1987 committed serious misconduct, in that on 26.1.87 the said TTE collected Rs.32/- for allotment of berth No.30 on IIM/Express ticket No.63440 by 53 Express in Cochin-Hyderabad Coach failed to return the balance amount of Rs.15/- to the party with a motive to secure pecuniary gain to himself and caused a public complaint.

Article-iii:

That Sri M.J. Chary while functioning as TTE/Vijayawada during January, 1987 committed a serious misconduct in that on 26-1-87 while manning Cochin-Hyderabad Coach by Train No.53 Express in respect of allotment of Berth Nos.73, 74, and 75 against II M/E ticket Nos.63469/63470 and 63471 Ex.Madras to Secunderabad, the said TTE collected Rs.9/- in excess of the authorised charges with an ulterior motive to secure a pecuniary gain to himself.

Article-iv:

That Sri M.J. Chary while functioning as TTE/Vijayawada during January 1987 committed a serious misconduct in that on 26-1-87 while he was manning Cochin-Hyderabad Coach during a vigilance check produced a sum of Rs.92/- as excess cash which was remitted to Railways vide EET No. C 834262 of 26-1-87."

5. An enquiry was conducted by the Enquiry Officer, Secunderabad, who had held that the applicant is guilty of all the charges. The disciplinary authority viz. D.C.S., Vijayawada had held that Article of Charges-I and IV only proved and the article of charges-II and III were not proved and hence dropped. On the basis of this he was imposed the penalty of reverting him to the grade of Rs.950-1500 (R.S.R.P.) fixing his pay at Rs.1350/- for a period of 3 years (recurring) with loss of seniority. The Senior D.C.S., Vijayawada, the appellate authority confirmed the above punishment.

6. Assailing the above orders of punishment imposed on him, he has filed this OA for quashing the penalty advice No.B/C/DGS/CON/24/87 dt. 2.6.1989 issued by the disciplinary authority and the order No.B/P.86/I/89/8 dt. 20.12.1989 of the appellate authority declaring them as arbitrary, illegal and unconstitutional and violative of articles 311(2), 14 and 16 of the Constitution of India and to grant him all consequential benefits such as arrears of salary, seniority, promotion etc.

7. As the disciplinary authority has dropped the charges-II and III of the charge-sheet which was also confirmed by the appellate authority, the analysis of the contention is restricted to the rest of the charges-I and IV only.

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8. The contention of the applicant in assailing the punishment orders are:

(i) The amount of Rs.92/- excess cash found in his bag on that day was the cash handed over to him by one Sri Poornachandra Rao who was the member of DRUCC, for purchasing Protinex for his ailing mother from Vijayawada as Protinex tins were not available either at Nellore or Gudur. This amount was kept with him in his bag which he received at Gudur Station. This has been noticed by one Sri Narsaiah Naidu who travelled in that Cochin Coach in Berth No.64. The applicant has also produced at the time of enquiry, a letter purported to have been written by Sri Poornachandra Rao to the effect that the amount was given to the applicant at Gudur station for the purchase of Protinex. The contention here is that these evidences were not taken note of and Sri Poornachandra Rao was not even called as witnesses and given due weightage by the Enquiry Officer.

(ii) The Statement of Sri Sivaiah, the decoy of the Vigilance Branch was not recorded during the enquiry and the statement was recorded earlier by the said witnesses behind the back of the applicant. Hence, the enquiry has to be held as illegal as observed in X 1983(1) SLR 32 - S.D.Bharadwaj Vs. Union of India and Ors. X.

(iii) The statement of Shri Sivaiah that the applicant had collected money from other passengers also cannot be given any credence as he was sitting in a place from where he cannot see such transactions. Hence, the statement of Sri Sivaiah is false and cannot be relied upon by the Enquiry Officer to come to the conclusion that he collected money

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from other passengers also to allot them berths in the said Coach.

(iv) There were 7 witnesses mentioned from the prosecution side in the charge-sheet. But only two witnesses namely Shri N.Sivaiah and Sri K.R.K.Prasad, Vigilance Inspector were examined. The Enquiry Officer conducted the enquiry without examining all the witnesses and came to the conclusion without any evidence.

(v) The Vigilance Inspector, R.P.F. Rakshak and the Enquiry Officer are all belonging to Vigilance Organisation and hence they colluded to hold him guilty of charges.

(vi) Principles of natural justice were not followed as envisaged in [ATR 1990(2) CAT 255 - S.K.Jain Vs. Union of India].

9. The thrust of the argument of the applicant's counsel is that the excess amount of Rs.92/- was given by Sri Poornachandra Rao and that money has been kept by the applicant in his bag separately for purchasing Protinex for Shri Rao from Vijayawada and this amount had been wrongly taken as having been collected by the applicant for showing favours to the Passengers in allotting berths.

10. The applicant himself has given a statement on the same day viz. 26.1.1987 wherein he has not mentioned anything regarding the money given by Sri Poornachandra Rao. In that proceeding he is the lone signatory (Exhibit P-13 of the Enquiry Proceedings). If he has received that money from Sri Poornachandra Rao for the above mentioned purpose,

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he could have easily stated in that proceedings that excess cash was taken from Sri Poornachandra Rao at Gudur for the purchase of Protinex from Vijayawada. For reasons best known to him he has not indicated anything about this transaction in his statement dt. 26.1.87.

11. Once again on 26.5.1987, he has written a letter to the D.C.S., Vijayawada regarding the S.F.5 dt.5.5.1987 issued to him. Even here, while denying the charges, he states that the excess amount of Rs.92/- was given to him by a friend at Gudur for getting him Protinex tins. Even in this letter, he has not stated who the friend is. If Sri Poornachandra Rao had given him the money, at this stage atleast he could have revealed the name and identity of the person who had given him Rs.92/- instead of stating that the money was given to him by a friend. This statement goes to prove that the money was given to him by Sri Poornachandra Rao appears to be an afterthought.

12. Normally, when some personal cash is given, it has to be entered in the rough journal witnessed by the guard of the train. The contention that he could not reach the Guard due to the distance and the stoppage of the train at Gudur being limited cannot be taken at face value as he could have easily entered the transaction in the rough journal atleast and got witnessed by some of his colleagues or the station staff. As can be seen by Q.40 put to Sri Narsaiah Naidu in the enquiry, it can be seen that the applicant (T.T.E.) did not reveal that this money was given by Sri Poornachandra Rao when the Vigilance check took place on 26.1.1987. If he had revealed it on that day and certified by Sri Nannaiah Naidu in the presence of the V.I. it would have given credence to the statement that

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Rs.92/- was given by Sri Poornachandra Rao. This was not done. Hence, it is to be stated that the support of the defence witness Sri Nanniah Naidu in this connection is an after thought.

13. The letter purported to have been written by Sri Poornachandra Rao is rightly rejected by the Enquiry Officer as it is not authenticated by Sri Poornachandra Rao himself as a defence witness and did not turn up for the enquiry when called for.

14. The applicant's contention that enquiry should have been postponed as requested by him to enable Sri Poornachandra Rao to attend the enquiry cannot be accepted as it is the responsibility of the applicant to produce the defence witness. Even here the respondents state that two opportunities were given by the Enquiry Officer to the applicant for producing his defence witnesses viz. Sri Poornachandra Rao, but the applicant failed to produce him. This statement is not controverted by the applicant. If Sri Poornachandra Rao had given the money to get Protinex for him, we are of the opinion that Sri Poornachandra Rao himself would have come voluntarily to give evidence to rescue an employee who wanted to help him. The very fact that he has not volunteered to come and give evidence during the enquiry shows that the transaction as stated by the applicant cannot be relied upon. Hence, we feel that this contention cannot stand.

15. The second contention is that Sri Sivaiah's statement was not recorded at the time of enquiry and was recorded behind his back. The statement of witness recorded during the repliminary enquiry behind the back of the delinquent

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employee if taken into consideration by the Enquiry Officer will be considered as illegal as observed in [1983(1) SLR 32 - S.D.Bharadwaj Vs. Union of India and Ors.]. It will be seen from para-16 of the Judgment quoted above that the witnesses in that case were not present during the enquiry and their written statements were relied upon. In that context it was observed that in the absence of witnesses whose evidence have been relied upon if not corroborated at the time of enquiry by cross-examination, the same cannot be held as affording reasonable opportunity to the delinquent employee. The position is entirely different in this case. The statement of Sri Sivaiah dated 26.1.1987 which was marked as P-10 was identified at the time of enquiry and his statement is also one of the documents supplied along with the charge-sheet to the applicant. Hence, the applicant is fully aware of the statement of Sri Sivaiah even before the enquiry and was also identified ~~the same~~ at the time of enquiry. Had he got any reservation about the statement, he had an opportunity to cross examine him at the time of enquiry. It is evident from the enquiry proceedings that Sri Sivaiah was cross-examined by the applicant. Hence, non recording of the statement at the time of enquiry especially when the statement of witness was readily available to the applicant even before the enquiry, cannot vitiate the enquiry proceedings. The above is also in accordance with letter dt. 11.6.1976 bearing O.M. No.134/7/75-AVD I issued by the Department of Personnel and Administrative Reforms, Government of India. The gist of it is given in para-26 Under Rule 14 of CCS(CCA) Rules, 1965.

16. The applicant contends that Sri Sivaiah could not have witnessed the transaction of the applicant with the passengers as he was sitting at one end of the bogie is

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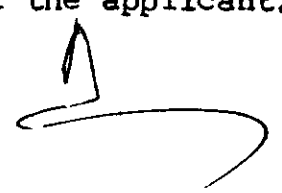
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admitted. But, the charges II and III have been dropped by the disciplinary authority. Hence, this contention has no relevance now.

17. The applicant's contention is that the passengers who had given in writing about the collection of money by him have not turned up for the enquiry and hence charges cannot be sustained. If the Enquiry Officer is of the opinion that the record is available to prove the charges, he may drop some of the witnesses to be present during the enquiry proceedings. The applicant can have a grievance only if the witnesses mentioned in the charge-sheet have been dropped due to oblique motive. No such plea has been taken by the applicant in this case. Further, as the charges II and III had been dropped by the disciplinary authority, we see no irregularity in not calling some of the witnesses by the Enquiry Officer.

18. Two Vigilance Inspectors viz. S/Sri Nagendra Rao and K.R.K.Prasad were quoted as prosecution witnesses in the charge-sheet, but only one Sri K.R.K.Prasad was examined. It is stated for the applicant that the enquiry has been vitiated because of the fact that Sri Nagendra Rao was not examined during the enquiry. As stated earlier, if the Department/^{Presenting Officer} is of the opinion that sufficient material is available, he may, need not call some of the witnesses for the enquiry and he is at liberty to do so. Here, both S/Sri Nagendra Rao and Prasad were present at the time of vigilance check. Even if Sri Nagendra Rao had been called to give evidence at the time of enquiry, he would not have stated anything new than what is stated by Sri Prasad. Hence, non calling of Sri Nagendra Rao to give evidence at the time of enquiry in no way prejudices the cause of the applicant.

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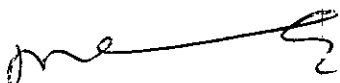
contention that all
19. The ~~the~~ three officials viz. Vigilance Inspector, R.P.F. Rakshak of the Vigilance Branch and Enquiry Officer belong to Vigilance organisation and hence they colluded to hold him guilty of the charges, cannot hold water as no malafides have been attributed to any of them. The mere fact that the officials belonged to one Branch and hence will discharge their duties perversely cannot be accepted as each one of them have got a specific function to perform. Unless any malafide intention on their part is brought on record, it cannot be said that they acted against the interest of the applicant. Hence, this contention is also rejected.

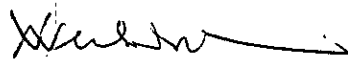
20. The last contention of the applicant is that the principles of natural justice were not followed in his case. He relied to substantiate this contention on the observations of CAT, Principal Bench reported in [ATR 1990(2) CAT 255 - S.K.Jain Vs. UOI]. The power of judicial review over a decision taken by an authority in a disciplinary proceedings is limited. The Tribunal will only determine whether the enquiry was held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice have been complied with. The Tribunal will undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner in-consistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves in reaching a fair decision by some consideration extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant consideration or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person would

ever have arrived at that conclusion or on similar grounds. In view of the above, we see no reason to interfere with the enquiry proceedings.

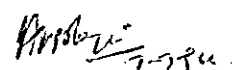
21. The last contention of the applicant is that, since articles of charges II and III have been dropped it would mean dropping of the charges I and IV also as collection of money from the passengers could not have been proved and hence the excess amount of Rs.92/- belong to the applicant as his personal cash. This assumption is not in order. There is a proof that Rs.18/- was not returned to Sri Sivaiah, the R.P.F.Rakshak. Similarly it is possible that same money could have been collected from other passengers also for showing favours. As the amount of Rs.92/- reported to have been given by Sri Poornachandra Rao is not proved, it has to be held that the dropping of charges II and III cannot automatically wash away the charges I and IV also.

22. In the result, the O.A. is dismissed as having no merits. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 24th June, 1994.


Deputy Registrar (J) CC

Grh.
To

1. The Divisional Commercial Superintendent, S.C.Rly, vijayawada.
2. The Sr. Divisional Commercial Superintendent, S.C.Rly, vijayawada.
3. One copy to Mr. G.V. Subba Rao, Advocate, CAT.Hyd.
4. One copy to Mr. N.V. Ramana, SC for Rlys. CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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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. G. RTHI : MEMBER(A)

AND

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

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated: 24.6 -1994.

~~ORDER~~/JUDGMENT:

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

in

O.A.No.

142/91

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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