

(56)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

DA 1168/91.

Dt. of Order: 25-10-94.

K.Radhakrishnan

...Applicant

Vs.

1. Divisional Commercial Superintendent,
S.C.Railway, Secunderabad.
2. Senior Divisional Commercial Superintendent,
S.C.Railway, Secunderabad.
3. Additional Divisional Railway Manager,
S.C.Railway, Secunderabad.

...Respondents

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

Counsel for the Respondents : Shri D.F.Paul, SC for Rlys.

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CORAM:

THE HON'BLE SHRI A.V.HARIDASAN : MEMBER (J)

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

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QA 1168/91.

Dt. of Order:25-10-94.

(Order passed by Hon'ble Shri A.V.Haridasan,
Member (J)).

- - -

The order dt.8-11-90 of the Respondent No.1 imposing on the applicant a penalty of reduction in pay from the stage Rs.1,600/- to Rs.1,520/- in the time scale of pay of Rs.1400-2300 (Annexure A-I). ^{which was} ~~It is~~ confirmed by the Respondent No.2 by his order dt.18-4-91 (Annexure A-II) and the order dt.19-7-91 of the 3rd Respondent rejecting the request of the applicant for review of the order of the Appellate Authority are under challenge in this application. The applicant who was working as Ticket Booking Clerk, Hyderabad, was served with a memorandum of charges dt.21-7-88. There were two heads of charges. The first charge was that while functioning as HBC in Hyderabad during March, 1988, while he was on duty in counter No.26, he demanded and collected Rs.10/- over and above the requisite fair while issuing tickets bearing Nos.84378 to 84385 from Sri Sivaiah for gaining pecuniary benefit for himself and the 2nd charge was that ^{accusation} on the ~~acquisition~~ that he had produced an amount of Rs.16/- as un accounted cash. The applicant denied the charges. An enquiry was held and the Enquiry Authority submitted the report holding the applicant guilty of charges. On the basis of the Enquiry Report and on the basis of the evidence on record, the 1st Respondent issued the impugned order of punishment on 8-11-90. The applicant has filed this application aggrieved by the Disciplinary Authority and

Appellate Authority's orders on the ground that the enquiry was not held in conformity with the Principles of Natural Justice in as much as witnesses were not really examined and that the case is ^{one} ~~full~~ of nil evidence and that the Appellate ~~Authority~~ and Revisional ~~Authority~~ orders are not speaking orders.

2. We have perused the pleadings and heard learned counsel for both the parties. Shri G.V.Subba Rao, learned counsel for the applicant mainly urged that the Enquiry was not held in conformity with the principles of natural justice and the documents relied upon by the Enquiry Authority were not furnished to the applicant and the ^{statements of} ~~witnesses~~ were not recorded in the presence of the applicant. Sri Subba Rao's second contention is that the case ^{is one of} ~~of the applicant~~ is nil evidence and ~~finally~~ that the Appellate and Revising Authorities orders are not speaking orders. We shall deal with these contentions. The first contention of the applicant ^{is} ~~is~~ that the documents ^{were} ~~was~~ not relied on by the Disciplinary Authority ~~was~~ made available to him is obviously incorrect because the applicant has stated that he had perused all the documents during the enquiry. Shri G.V.Subba Rao, learned counsel for the applicant, with considerable force argued that the procedure in marking the statement of witnesses recorded during the preliminary investigation is ^{law} ~~un~~ known to the ~~applicant~~ and this has caused great prejudice to him. He argued that there is a decision of the Supreme Court, wherein it has

been held that a statement of witness recorded behind the person facing departmental proceedings is not admissible ^{in evidence}.

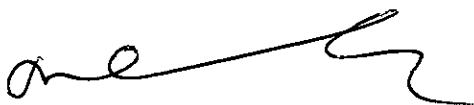
This legal position is well settled but it has been held in a ^{Calcutta} ~~all the~~ rulings that the statements of the witnesses in the preliminary enquiry is not ~~an~~ admissible if the maker of the statement is not made available for ^{Cross examination for} testing the veracity of the statement alleged to have been made in the preliminary investigation. In this case instead of re-producing the entire ^{S Calcutta} ~~enquiry~~ the witnesses were offered for ~~an~~ cross examination and were ~~cross~~-examined on behalf of the applicant. Therefore the argument of the learned counsel for the applicant that the procedure adopted by the Enquiry Authority is erroneous and ⁱⁿ violation of principles of natural justice ^{has} ~~is~~ absolutely no force as the applicant has cross examined the witnesses ~~during~~ in the regular enquiry and therefore no prejudice has been caused. Sri Sivaiah, decoy, R.P.F. Constable ^{has} given evidence to the effect that the applicant demanded Rs.522/- instead of Rs.512/- for 8 tickets. He had also stated that the applicant gave a slip of paper for the amount totaling to Rs.522/- instead of Rs.512/- ~~has been~~ recovered by the Vigilance Authorities, which has been produced as evidence ^{that he used the same} and other witnesses also been cross-examined by the defence counsel of the applicant. The testimony of the witnesses established that the applicant had collected Rs.10/- in excess of the required amount from Sri Sivaiah. It is also established that ^{an excess of} ~~another~~ sum of Rs.16/- was ^{also} found with the applicant. On a perusal of the records, we are

convinced that the finding of the Disciplinary Authority that the charge against the applicant was proved cannot be held as perverse. The records disclose that the decision was arrived at by the Disciplinary Authority on the basis of cogent and convincing evidence. The Enquiry Authority in his finding observed that the applicant was in the habit of collecting excess money. That this discloses bias on the part of the Enquiry Authority against the applicant is the next contention of Sri G.V.Subba Rao, learned counsel for the applicant. The applicant was given all opportunities to defend his case properly. Though the Enquiry Authority stated in his report that the applicant was in the habit of demanding excess money, without any evidence in that regard that alone will not make his attitude biased. The only consequence is that observation will not be taken into account for arriving at a finding by the disciplinary authority. It is for the Disciplinary Authority to reach a final conclusion basing on the evidence on record. We are convinced that the finding of the Disciplinary Authority is supported by legal evidence.

3. The next argument is that the Appellate and Revision orders are not speaking orders. We have perused these orders. The appellate authority has considered the relevant question raised in the appeal and before passing Appellate order, the applicant was given an opportunity of personal hearing. The Appellate order contained a fair discussion of all the

material points raised in the appeal. Therefore the contention that the appellee order is not speaking order has only to be rejected. The Revisional Authority in his order has stated that as no new material has been brought out in the revision petition, he did not find any reason to interfere with the Appellee Authority's order. We do not find any infirmity in the revisional order.

4. In the light of what is stated in the forgoing paragraphs, we do not find any merit in this application. Hence the same is dismissed without any order as to costs.



(R. RANGARAJAN)
Member (A)



(A.V. HARIDASAN)
Member (J)

Dt. 25th October, 1994.
Dictated in open Court.


15-12-94.
Deputy Registrar(Judl.)

avl/

Copy to:-

1. Divisional Commercial Superintendent, S.C. Railway, Sec'bad.
2. Senior Divisional Commercial Superintendent, S.C. Railway, Secunderabad.
3. Additional Divisional Railway Manager, S.C. Railway, Sec'bad.
4. One copy to Sri. G.V. Subba Rao, advocate, CAT, Hyd.
5. One copy to Sri. D.F. Paul SC for Railways, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

