63

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

O.A.NO. 1126/92. DATE OF JUDGMENT: 14-07-95.

BETWEEN:

Muniruddin .. Applicant.

AND

1. Divisional Railway Manager,
   Commercial Branch,
   Hyderabad (MG) at Secunderabad.
2. Divisional Commercial Suptd., (MG)
   SC Rly, Hyderabad at
   Secunderabad.
3. Chief Commercial Suptd.,
   SC Rly, Rail Nilayam,
   Secunderabad. .. Respondents.

COUNSEL FOR THE APPLICANT: SHRI V.Jegayya Sarma

COUNSEL FOR THE RESPONDENTS: SHRI V.Bhimanna,
Sr/Addl.CGSC.

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI R. VICE CHAIRMAN

HON'BLE SHRI A. [illegible] MEMBER (MN.)

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64

OA 1126/92

(AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO, VICE-CHAIRMAN)

Heard both the learned counsels.

2. The charge memo. dated 19-12-83 was issued to the applicant who was working as Booking clerk in Mudkhed Railway Station.

3. Annexures 1&2 which are relevant for consideration of this OA are as under:-

ANNEXURE I

(1) That Sri Muniruddin while functioning as BC at MUE Station on 14-12-1983 committed neglect of duty and violated Rule 3 I (ii) of Railway Services conduct Rules 1966 in that he fialed to adhere to the instructions contained in paras 241 and 245 pages 18 and 19 of Indian Railway Commercial Manual Volume 1 in regard to dating of and issue of printed card tickets Nos. 74543,74578, 74544,74586,74578 & 74580 EX.MUE to Bhokar.

(2) That the above said employee while functioning in the above said capacity on 15-12-1983 committed serious misconduct and violated rule 3 I (i) of Rly. Services conduct Rules 1966 in that he was in possession of printed card tickets Nos. 74543,74544,74646, 74580 EX.MUE to Bhokar which were sold for 578 of 14-12-83 and resold tickets 74543 & 74582 redating them for travel by 578 of 15-12-1983. Shri Mohd. Muniruddin, BC/MUE, by the above act exhibited his lack of absolute integrity and contravened Rule 3 I(ii) of Railway Service Conduct Rules, 1966.

ANNEXURE II

(i) Shri Muniruddin who was working as BC at MUE on 14-12-83 sold/printed card tickets numbers 74543,74544,74546,74578 and 74580 EX.MUE to Bhokar for travel by 578 of 14-12-83 and accounted for in the B.T.C. Book accordingly. In accordance with the instructions contained in para 241 and 245 of pages 18 and 19 of Indian Railway Commercial Manuel Vol. 1 date should be written in INK if the impression through the dating machine is not clear and under no circumstances the tickets once stamped seen from these tickets that these instructions have not been adhered to by him. He thus committed neglect of duty and violated Rule 3 I (ii) of Rly. Services conduct Rules 1966.

II. That the above said employee on 15-12-83 was in possession of printed card tickets Nos. 74543, 74544, 75646,74578,74580 EX.MUE to Bhokar which were sold and accounted for accordingly for 578 of 14-12-1983. This clearly indicates these tickets were brought back and offered for resale. He thus committed serious misco[illegible] and violated rule 3 I(i) of Railway Service[illegible] 1966.

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for transferring him from Mudkhed and to have the inquiry at a place other than Mudhkhed, the same was not agreed to and hence the case of the applicant that the Station Master is hostile to the applicant and as such the confession statement was taken by him by coercion has to be believed. The inquiry proceedings have to be held as vitiated as the delinquent applicant was examined first even before the witness for the Department was examined. It had to be held that the case against the applicant was not proved for the inquiry officer merely relied upon the alleged confession statement of the applicant eventhough he denied the same and to him, and as he passed only 9th class he cannot read the same.

7. In para 5 of the reply statement it was stated that the applicant's representation dated 6-1-1984 for conducting inquiry at a place other than Mudkhed station was not accpted as he has not given any valid reasons. The Station Master was examined before the inquiry officer and the applicant was assisted by the Defence Counsel at the time of inquiry. Nothing was elicited from the Station Master to indicate that he was hostile to the applicant or that he had an exe to grind against him. It is only in the appeal memo dated 9-4-1989 it was alleged that as the applicant had not obliged the Station Master financially for his daughter's marriage, the latter foisted a case against him. Even in the representation dated 6-1-1984 it is merely stated that the applicant cannot get justice due to the influence of the Station Master. It is not clarified either in the said representation or in the OA or during the course of argument, as to how the SM could

67

~~act~~ have acted prejudicially to the applicant if the inquiry is going to be conducted at Mudkhed. Hence, the contention for the applicant that the inquiry has to be held as vitiated as the request of the applicant for shifting the place of inquiry was not accepted, has to be negatived.

8. It may be noted that it is a case where the statement containing the signature of the applicant which is by way of confession was placed before the inquiry officer. For that reason the inquiry officer might have however felt that the applicant had to be confronted with the said statement to consider as to whether it is further necessary to proceed with the inquiry or he need not proceed further if that confession is going to be admitted. Thereby it cannot be stated that there is an irregularity in the procedure ~~and~~ when the applicant was inquired about the said statement before the Station Master was examined. Later the applicant was given opportunity to state his case. Thus, this contention is also not tenable.

9. The adequacy of evidence is not a matter for consideration in a proceeding under Article 226 of the Constitution. The inquiry officer solely relied upon the confession statement of the applicant to hold that the charge is proved. As already observed, nothing was ~~illicited~~ elicited from the Station Master during the course of the inquiry, when he was subjected to the cross examination, that the said Station Master had ~~grounds~~ or rise or oblique motive as against the applicant to implicate him in a disciplinary case. The applicant stated that he studied only upto 9th class. But he was working in Class-C post.

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Hence, his plea that he cannot read or understand the contents in the statement cannot be believed. Further, the said statement was scribed by ASM. Neither in the appeal memo nor in the OA, even a whisper was made against the said ASM to indicate that he had a motive behind in scribing such a statement ~~even for~~, the contents therein are not true. The ASM is also a responsible officer. No material is placed to show that the said ASM was hand$ in glove$ with the SM. Infact no motive was attributed even to the SM. When in those circumstances the confession statement of the applicant was believed, the same cannot be held as perverse.

10. It is true that neither the passengers to whom the tickets were said to have been resold are examined, nor there was any cash verification by the SM. But when the adequacy of the evidence is not a matter that can be agitated in this proceedings, there is ~~nothing~~ much to advert to ~~it~~. The same.

11. In the end, the learned counsel for the applicant submitted that as the value of the ticket from Mudkhed to Bokher was only 75 paise, and as the value of five tickets comes to only Rs.3/- and odd, the punishment by way of removal has to be held as disproportionate to the gravity of the charge. But we feel that the amount involved is not the criterion, ~~but~~ and the method adopted had to be the basis for consideration as to whether the charge is grave or not. Further, in the confession statement it is stated that the applicant is not going to resell the tickets indicating that it was going on from some time. ~~At best it can~~

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It smacks conspiracy. So we cannot accept the contention that the charge proved is not a grave one.

12. Accordingly this OA does not merit consideration and it is dismissed. No costs.

(A.B. Gorthi)
Member(Admn.)

(V. Neeladri Rao)
Vice Chairman

Dated : July 14, 95
Dictated in Open Court

Deputy Registrar(J)CC

To

1. The Divisional Railway Manager,
   Commercial Branch, Hyderabad(MG)
   at Secunderabad.
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   sk/
2. The Divisional Commercial Superintendent(MG)
   S.C.Rly, Hyderabad at Secunderabad.
3. The Chief Commercial Superintendent,
   S.C.Rly, Railnilayam, Secunderabad.
4. One copy to Mr.V.Jogayya Sarma, Advocate, CAT.Hyd.
5. One copyto Mr.V.Bhimanna, SC for Rlys, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

pvm.