CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

AT HYDERABAD.

..

O.A.No. 740 of 1992,

Date: 7 October - 1996.

Between:

B.Prasada Rao .. .. Applicant.

and

1. Divisional Commercial Supdt.,
South Central Railway, Vijayawada.

2. Divisional Commercial Supdt.,(BG)
South Central Railway, Secunderabad.

3. Senior Divisional Commercial Supdt.,
South Central Railway, Secunderabad.

4. Additional Divisional Railway Manager (BG)
South Central Railway, Secunderabad.

5. Chief Commercial Supdt., South Central
Railway, Secunderabad. .. Respondents.

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

Counsel for the Respondents: Sri V.Rajeswara Rao, Standing Counsel for the Respondents.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (A)

...

JUDGMENT

(PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.

..

The applicant B.Prasada Rao challenges the penalty of reduction from the stage of Rs.1520 to 1400 in the scale of Rs.1400--2300 initially imposed by the Divisional Commercial Superintendent(BG) Secunderabad by Order d/12.4.1989.

for a period of two years and reduced to a period of one year by the revisional authority viz., Chief Commercial Superintendent by Order dated 9-8-1991. The O.A., has been filed on 24-8-1992.

2. The applicant is an employee of South Central Railway. At the material time i.e., during the month of May, 1985 he was working as ECRC (Enquiry-cum-Reservation Clerk) at Guntur Reservation Office. He was served with a chargesheet issued on 26-9-1985 under Rule 6(v) of the Railway Servants (D & A) Rules, 1968) for alleged misconduct resulting in violation of Rule 3(1) of the Railway Servants (Conduct) Rules, 1966.

3. There were three counts of the charge the substance of which was as follows:

(1) On 11-5-1985 while he was on duty at 12-20Hrs., a vigilance check was conducted and he was found in possession of two II M/Exp. Adult Tickets, Ex.GNT to MSB reserved for jouney on 13.5.1985 and 11.5.1985 respectively by 44 Express without cancelling the tickets and making necessary entries in the required documents though the parties had cancelled the same before the Vigillance check, with an intention to resale the same and thereby attempted to cause loss of revenue to the Railways for his pecuniary gain (as detailed in the statement of imputations)

(2) He was found in possession of Rs.121.25 short in the railway cash of which he remitted only Rs.49.25 after his shift duty at 19-30 hrs., as a

third handing over leaving Rs.72.00 unremitted which equals to the amount refundable on uncancelled tickets which amounted to temporary misappropriation as he attempted to cause loss of revenue to the railways (as detailed in the statement of imputations).

(3) While on duty he ~~resolved~~ resold the two tickets and thereby caused loss of revenue to the railways for his pecuniary gain (as detailed in the statement of imputations).

4. It was alleged that by committing the aforesaid acts of misconduct the applicant had failed to maintain absolute integrity and devotion to duty and had thereby violated Rule 3(1) of the Conduct Rules.

5. The applicant denied all the counts of the charge by his written statement filed in defence. An Enquiry Officer was nominated who conducted the disciplinary enquiry. A defence assistant Sri S.Rama Rao was nominated by the applicant. The applicant participated in the enquiry. Four witnesses were examined by the Department who were cross-examined by the applicant. Documentary evidence was let in by the prosecuting agency. The Enquiry Officer examined the ~~witnesses~~ applicant. The applicant did not adduce any defence evidence nor examined himself as a witness.

6. The Enquiry Officer held all the counts of charge proved. The Disciplinary authority agreed with the findings of the Enquiry Officer and imposed the penalty of reduction to the bottom of the grade in scale Rs.1400-2300 for a period

of two years with cumulative effect by Order dated 12-4-1989.

7. The applicant submitted an appeal against the aforesaid order on 11-5-1990. On 12-10-1990 the applicant seems to have submitted a copy of an appeal purportedly filed on 21-4-1989. By order dated 18-12-1990 the penalty imposed by the Disciplinary authority was upheld. However in that order Rule 25 of Railway Servants (D&A) Rules was wrongly mentioned and on noticing that defect a modification was issued on 22-4-1991 advising the applicant that the re-presentation disposed of on 18-12-1990 was considered under Rule 22(2) and that a revision could be filed against the same. The applicant then submitted a revision which was considered by the CCS/SC in terms of Rule 25 and the revisional authority has modified the penalty reducing the period of penalty from two years to one year by order dated 9-8-1991. The revisional authority has disagreed with the Disciplinary Authority as far as count No.3 of the Charge is concerned but upheld the findings on the other two counts.

8. The applicant prays that the order of penalty be set aside and his pay be restored.

9. The respondents resist the application and have filed counter to the O.A. The applicant has filed a re-joinder.

10. The learned counsel for the applicant, Sri G.V. Subba Rao has urged following grounds to assail the

impugned orders:

1. The enquiry report was not supplied to the applicant. That vitiates the entire disciplinary proceedings.

2. The enquiry is product of bias against the applicant hence it is vitiated.

3. There has been violation of principles of natural justice which also vitiates the enquiry.

4. Articles I and II (Counts 1 and 2) of the charge were interconnected with Article III (Count 3) and as the revisional authority has held that Article III has not been proved the other two articles of charge also ought to have been held as not proved hence the order of penalty is bad in law.

5. This is a case of no evidence. The findings recorded are perverse. Inadmissible evidence has been relied upon. Material witnesses have not been examined. The penalty order is therefore arbitrary and illegal.

11. We shall now proceed to examine these points.

Point No.1: This case arose as a vigilance case. The charge-sheet was issued on 26-9-1985. The enquiry was concluded on 27-2-1987. The Disciplinary Authority passed the order imposing the penalty on 21-4-1989. Placing reliance on the decision of the Supreme Court in

UNION OF INDIA & OTHERS Vs. MOHD. RAMZAN KHAN AND OTHERS (ATR 1991(1)SC.120), Mr. G.V.Subba Rao, the learned counsel for the applicant submits that as the Enquiry report was not supplied to the applicant, the entire proceedings have been rendered a nullity. This ground was not taken in the appeal or revision nor it is taken in the O.A. However as the learned counsel submitted that it is a pure question of law and can be raised at any stage we have heard him and are examining the efficacy of the submission.

12. Sri V.Rajeswara Rao the learned standing counsel for the respondents tried to repel the argument by submitting that the ratio in Ramzan Khan case has prospective application from 20th November,1990 and therefore the case of the applicant is not covered by the same. We are inclined to accept this submission. This position has been clarified by the Supreme Court in the decision in MANAGING DIRECTOR ECIL vs. B.KARUNAKAR (1993 SCC (L&S) 1184). It is held in the majority opinion (para 43) thus:

> ".....the law was in an unsettled condition till at last November 20,1990 on which day the Mohd. Ramzan case was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment passed by the disciplinary authority after November 20,1990.... .... No order of punishment passed before that date would be challengeable on the ground that there

was a failure to fufnish the enquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd.Ramzan Khan case ....."

Same view has been expressed by His Lordship K.Ramaswamy,J in his opinion in following terms:

" Accordingly I hold that the ratio in Mohd. Ramzan Khan case would apply prospectively from the date of judgment only to the cases in which decisions are taken and orders made from that date and does not apply to all the matters which either have become final or are pending decision at the appellate forum or in the High Court or the Tribunal or in this Court

With respect, it is no longer open to Sri G.V. Subba Rao to assa the order of penalty on the ground of failure to furnish the Enquiry report to the applicant.

13. The learned counsel even so submitted that the 'fin Order' in the proceeding must be deemed to have been passed by revisional authority on 9-8-1991 and since the ratio in Mohd. Ramzan Khan case would apply on that date the failure to furnis the report vitiates the penalty. In our opinion there is no scope to entertain this argument having regard to the observat of the Supreme Court in MOHD. RAMZAN KHAN's case where it

is stated:

> "We make it clear that wherever there has been an Enquiry Officer and he has furnished a report to the Disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires ....."

The stage therefore to furnish the copy gets over after the Disciplinary Authority passes the order which has to be treated as the final order for the purpose. The Government of India, Department of Personnel & Training has also issued instructions for furnishing the copy of the Enquiry Officer's report under CCS(CCA)Rules prospectively from the date of issuance of O.M. No.11012/13/85-Est.(A)dated 26-6-1989. The stage for supply of copy of the report in the instant case was reached on 21-4-1989 on which date the order of imposition of penalty was passed by the Disciplinary Authority. The law then prevailed did not make it incumbent to supply the copy of the Inquiry Report. We also do not find any substance in the submission of the learned counsel that the words "are pending decision at the appellate forum" appearing in the observations of His Lordship Ramaswamy,J in MANAGING DIRECTOR ECIL case (supra) refer to appeals other than departmental appeal. There is no room to place such interpretation when the ratio flowing from the

discussion and observations preceeding that observation makes it clear that the re erence is to departmental appeal under the D.A Rules and there cannot be any other appeal to be contemplated

14. Apart from the above aspects it is revealed from the counter of the respondents that a copy of the enquiry report was supplied to the applicant along with the order of the Disciplinary Authority giving him an opportunity to make a representation to next higher authority. That is not denied in the rejoinder. Obviously therefore this contention has neither been taken in the revision or in the O.A.

15. We therefore reject the contention of the applicant that the Enquiry proceedings and the impugned orders are vitiated and are illegal for failure to supply the copy of the inquiry report. Point No.1 is decided accordingly.

16. POINT NO.2:

There is absolutely no material shown from which the allegation of bias can stand substantiated. As rightly submitted by Sri V.Rajeswara Rao the learned standing counsel for the respondents the allegation of bias does not relate to any particular person and is extremely vague. The learned counsel for the applicant submitted that the Inquiry Officer was himself from the Vigilance Branch and the charge was fabricated by the

Vigilance Inspector. Simply because the charge has been held proved it does not mean that everybody concerned has acted with a biased mind. There is nothing which can lead to that inference. Hence we have no hesitation in rejecting the argument based on the ground of alleged bias. Point No.2 is answered accordingly.

17. POINT NO.3:

There is no merit in the contention that there has been violation of principles of natural justice either. The enquiry proceedings have been carried out in accordance with the prescribed procedure under the rules. The applicant had availed the assistance of a defence assistant. He had cross-examined the witnesses. He was examined by the Inquiry Officer. His representation and revision have been considered on merits. Presumably this argument was based on the point relating to failure to supply copy of enquiry report. We find that the argument of violation of natural justice has no leg to stand. Hence it is rejected. Point No.3 is answered accordingly.

18. POINT No.4:

It is true that the revisional authority has held that the charge contained in Article III suffered from material infirmity. It follows from this conclusion that Article III has not been proved. However, that does not mean that the other two articles would fail automatically Although the allegation contained in Article III may have

been interrelated to the other articles yet the three articles related to distinct acts each resulting in misconduct. Moreover the penalty can be upheld ~~on the basis of~~ where even one act of alleged misconduct stands proved which is the case with concurrent findings on articles I and II having been recorded against the applicant. Hence we hold that the penalty is not rendered illegal by reason of the negative finding recorded by the revisional authority on Article III of the charge and answer Point No.4 accordingly.

19. Point No.5:

The argument of the learned counsel for the applicant that this is a case of 'no evidence' must be rejected on the face of it as the enquiry report which is produced before us shows that as many as 4 witnesses have been examined besides documentary evidence being tendered. The argument that the findings recorded on articles I and II of the Charge are erroneous or contrary to evidence does not mean that there is no evidence.

20. As far as appreciation of evidence is concerned after going through the evidence and statement of the applicant we find it difficult to say that the conclusions drawn therefrom by the Inquiry Officer could not be arrived at reasonably. The assessment of evidence is based on detailed discussion of the evidence. Sri Subba Rao argued that two persons TRV Prasad and K.Adiseshu were not examined but their statements recorded by Vigilance Officer have been relied upon. Likewise no statement

of K. Akka Rao was recorded nor he was examined yet the statement of imputations had mentioned him and that has influenced the appreciation of the evidence by the Inquiry Officer. Similarly the learned counsel submits that Dr.Dhananjaya Rao was not cited as a witness yet he was examined and his evidence has been relied upon. Shri Subba Rao further submitted that the circumstance that the applicant had lost some amount and he could know about it at the breaking of duties at the end of the day and had made good the shortage by paying Rs.49.25 has not been properly considered. According to him the allegation of shortage of an amount of Rs.121.25 is erroneous as the amount of Rs.72.00 was due to the parties for the tickets that were surrendered for refund and the amount he had lost which he made good namely Rs.49.25. Hence according to him there was no shortage at all and therefore article II was itself defective and the finding that it has been proved is perverse. All these arguments relate to appreciation of evidence. In the process of wanting to show these defects the learned counsel took us virtually through the entire evidence and extensively commented on the evidence. We are, however unable to hold that the appreciation and assessment of the evidence made by the Inquiry Officer is perverse ~~and~~ or warrants reappreciation of the evidence by us to arrive at different conclusions. In so far as the evidence of

Dhanjaya Rao is concerned it is not open to the applicant to contend that it was not admissible after he has cross-examined the said witness. K.Akka Rao was not examined nor his statement has been relied. Reference to him in the statement of imputation and in narration of facts did not amount to evidence nor results in illegality of procedure. We cannot also read perversity in reference being made to the statements of T.R.V.Prasad and K.Adisesh.

21. It is well established under the decisions of the Supreme Court that it is not open to the Tribunal to reappreciate the evidence and interfere with findings of fact nor to interfere with the quantum of punishment by examining its proportionality.

22. It is also well established that the test to be applied in disciplinary proceedings is not of strict proof but the test is of preponderance of probabilities. Similarly it is not necessary that each and every count of the charge where these are distinct should be proved for imposition of penalty. It can be justified on proof of any act of misconduct alleged. The quantum of evidence is also immaterial. What is material is its trustworthiness It has been observed by His Lordship Ramaswamy,J in his opinion in Managing Director ECIL case (supra)

as follows:

> "It is settled law that the Evidence Act has no application to the inquiry conducted during the disciplinary proceedings. The evidence is not in strict conformity with the Indian Evidence Act, though the essential principles of fair play envisaged in the Evidence Act are applicable"

In a disciplinary proceeding the evidence therefore would mean totality of the material collected. We thefefore hold that the order of imposition of penalty cannot be interfered with on the ground that the findings on which it is based are not supported by legally admissible evidence as sought to be urged by Sri G.V.Subba Rao and aswerx point No.5 accordingly.

23. Sri G.V.Subba Rao lastly submitted that the penalty imposed upon the applicant results in causing permanent monetary loss to him and thus it is unjust. As we do not find the penalty imposed to be either arbitrary or illegal nor the quantum of it can be discribed so disproportionate as to make it perverse the quantum is not open to be interfered with by the Tribunal nor it can be set aside on that ground.

24. For the foregoing discussion we hold that there is no merit in this application. Hence the

following Order.

ORDER.

O.A., is dismissed. No order as to costs.

MEMBER(J)

MEMBER(A)

Dated: 27th June, 1991

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न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

3/12/91

sss.