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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD  
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O.A.No:1299/95.

Dt. of Decision : 03-03-98

G.Eswara Rao

.. Applicant.

Vs

1. The Union of India, rep. by its  
General Manager, SE Rly,  
Garden Reach, Calcutta-43.

2. The Divl. Rly. Manager,  
SE Rly, Visakhapatnam-4.

3. The Sr.Divl.Commercial Manager,  
SE Rly, Visakhapatnam-4.

.. Respondents.

Counsel for the applicant : Mr.P.B.Vijaya Kumar

Counsel for the respondents : Mr.V.Bhimanna, Addl.CGSC.

CORAM:-

THE HON.SHRI A.V.HARIDASAN : VICE CHAIRMAN (ERNAKULAM BENCH)

THE HON. SHRI H.RAJENDRA PRASAD : MEMBER (ADMN.)

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ORDER

ORAL ORDER (PER HON. Mr.A.V.HARIDASAN : VICE CHAIRMAN (EB))

The applicant, presently working as a Ticket Collector, under the South Eastern Railways has filed this application under Section 19 of the AT Act impugning the order dated 10-6-94 of the 2nd respondent upholding the order of the Disciplinary authority imposing on the applicant a penalty of reduction of from the post of Train Ticket Examiner to the post of Ticket Collector in the scale of Rs.950-1500/-, as a result of Departmental Disciplinary proceedings held against him. The applicant was proceeded under Rule 9 of Railway Servants (Disciplinary and Appeal) Rules, 1968 for the following charges:

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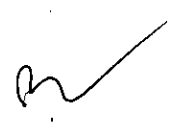
"ARTICLE-I

That the said G.Eswararao, TTE/WAT, while functioning by 2119 up Konark Express on 29-3-91 has failed to maintain absolute integrity and devotion to duty in as much as he demanded and accepted illegal gratification of Rs.11.00(Rupees Eleven only) from one passenger while granting reservation against IInd M/E ticket No.45533 Ex.Vizianagaram to Rajamandry, and thereby committed an act of misconduct in violation of Rule 3.1 (i & ii) of Railway Services Conduct Rules.

ARTICLE -II

That the above said Sri G.Eswararao, TTE/WAT, while functioning by 2119 Konark Express on 29.3.91, has failed to maintain absolute integrity and devotion to duty in as much as he possessed excess cash of Rs.171.00(Rupees one hundred seventy one only) which he earned by illegal means during the course of his duty and thereby committed an act of misconduct in violation of Rule.3.1(i&ii) Railway Services (Conduct) Rules, 1966."

2. The applicant denied the charges and an inquiry was held. On the basis of the evidence recorded the inquiry authority returned the findings of "not guilty" in regard to first article of charge and a finding of "guilty" in the second article of charge. Accepting the finding the Disciplinary authority imposed on the applicant a penalty of reduction to the lower post of Ticket Collector in the scale of Rs.950-1500/- for a period of 2 years with cumulative effect by his order dated 5.10.1993(Annexure-3). Against this order the applicant filed an appeal(Annexure-2) raising various grounds. The 2nd respondent has by the impugned order dated 10.6.94 rejected his appeal confirming the order of the Disciplinary authority. The applicant contends that the excess amount found in his possession was given to him by his father-in-law for the purpose of purchasing a gift for his wife and that though he had adduced sufficient evidence to establish that the inquiry authority has without application of mind rejected that evidence and found him guilty. As there is absolutely no evidence for finding him guilty of the charge, the impugned order is unsustainable in law, claimed the applicant.



3. Though the application was admitted after a notice on 1.11.95 the respondents did not care to file any reply. Therefore, we heard the applicant when the application came up for hearing today treating the pleadings to be complete.

4. Mr. Patro for Mr. P.B. Vijaya Kumar for the applicant and Mr. V. Bhimanna appeared for the respondents.

5. For the purpose of disposal of this application we find it not necessary to discuss the evidence adduced at the enquiry. Undisputedly, Articles of charge No.1 had not been established. Scanning through the inquiry report the order of the Disciplinary authority and of the Appellate Authority, we find that there was no finding that the sum of money which was found in excess in the possession of the applicant was earned by him by taking illegal means during the course of his duty. Since the first charge of taking illegal gratification is found to be not established, the second charge also has to be taken as not established because the gravamen of the second charge was that the money which was found in his possession was gained by illegal means during the course of his duty. Admittedly there is no evidence to establish that the applicant had made any illegal gain during the course of his duty. Hence the finding that Article 2 of the charge is proved is perverse.

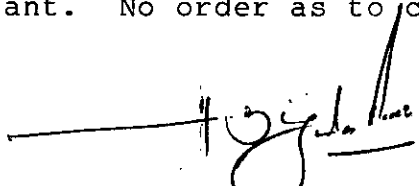
6. Shri V. Bhimanna learned counsel of the respondent argued that mere possession of excess money itself is a misconduct. But the charge was not that the applicant carried money which was not declared by him but that he carried money which was earned by him by illegal means during the course of his duty. As there is no finding that the applicant earned money illegally during the course of his duty, we are of the considered view that the finding of the inquiry officer which was accepted by the Disciplinary authority that the applicant was guilty of Charge No.2 is unsustainable.

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7. Before parting with this application, we deem it necessary to mention here that the order of the Appellate authority is cryptic , non-speaking and devoid of application of mind. The appellate authority is expected to consider whether the inquiry has been held in conformity with rules, whether the findings are warranted by evidence and whether the penalty imposed is commensurate with the charge proved.


8. In the light of what is stated above, we find that the order of the Disciplinary authority as also of the Appellate authority are unsustainable and that the application is bound to succeed.

9. In the result the application is allowed. The impugned order is set aside with all consequential benefits to the applicant. No order as to costs.

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMN.)

  
(A.V. HARIDASAN)  
VICE CHAIRMAN

Dated the 3rd March, 1998

  
Deputy Registrar

3/3/98



I Court

TYPED BY  
COMPALED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE *AV Narasimha*  
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

-100

DATED: 3-3-1998

ORDER/JUDGMENT:

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

O.A.No. 1299/95

T.A.No. (W.P)

Admitted and Interim directions  
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

