

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH

J A I P U R .

O.A.No.97/1993

Date of order: 23.2.96

Om Prakash Verma

: Applicant

versus

Union of India & Ors. : Respondents.

Mr. Ajay Rastogi, counsel for the applicant
Mr. J.D.Sherma, counsel for the respondents

CORAM:

HON'BLE SHRI N.K.VERMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL))

The applicant herein Shri O.P.Verma has filed this application under Section 19 of the Administrative Tribunals Act, 1985 to quash the order dated 27.1.1992 (Annexure A-1) and order dated 1.12.1992 (Annexure A-2) passed by respondent No.2 Senior Divisional Operating Superintendent, Western Railway, Jaipur Division, Jaipur and the Additional Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur respectively with a further direction to the respondents to reinstate him in service with all consequential benefits.

2. Facts leading to this application are that while the applicant was on duty on the post of Station Master Isarda on 24.3.1986 a trap was laid by the Vigilance wing of the Respondent Railways and on finding that he has dishonestly accepted an amount of Rs.2/- extra as bribe from one of the passengers-decoy Shri Tota Ram

for booking of one Basket of Vegetables from Isarda to Sanganer, he was issued a charge-sheet dated 3.10.1986 (Annexure A-3). The charge levelled against the applicant has been:

"That Shri Om Prakash, while functioning as SM-ISA on 24.7.86 committed serious misconduct in as much as that he dishonestly accepted the amount of Rs.2/- (Rs. two only) extra as bribe for booking one Basket F Vegetables under PW Bill No.901216 of 24.7.86 ex. ISA to Sanganer from Shri Tataram S/o Chajuram the Decoy sent CVI/JP on a complaint from Shri Gopal and others only Rs.2/- were found excess in his Railway cash which corroborated the acceptance of Rs.2/- towards illegal gratification. Thereupon Rs.3.97/- the private cash in his possession were not found declared in the private cash declaration register maintained at his station, which tantamounts to deliberate disregarding of CCS-CCG's existing instructions. Thereby he failed to maintain absolute integrity and devotion to duty violating the rules No.3(1)(i)&(ii) of Railway Services (Conduct) Rules, 1966."

On the denial of the charge by the applicant, a disciplinary enquiry was held and ultimately an enquiry report dated 4.4.1988 was given by the enquiry officer Shri M.L.Sharma. On the basis of the enquiry report, the Senior Divisional Operating Superintendent issued NIP dated 30.5.1988 and awarded him the penalty of removal from service. An appeal was preferred by the applicant to the Additional Divisional Railway Manager on 16.8.1988 which was rejected vide order dated 16.1.1989 whereby a penalty of removal from service was upheld. The applicant submitted a revision petition to the Divisional Railway Manager on 8.2.1989 which upheld the charges as proved against the applicant but reduced the penalty of removal from service to that of compulsory retirement vide its order dated 13.3.89.

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3. The applicant thereafter filed an OA 596/89 before the Tribunal which was disposed of by order dated 25.4.1991, operative portion of the order being as under:-

"Accordingly we hereby quash the order of removal from service and the order passed on the Revision Petition reducing the punishment to that of compulsory retirement but clarify that this would not preclude the disciplinary authority from regiving the proceedings and continuing with it in accordance with law from the stage of supply of the enquiry report. There shall be no order as to costs."

Thereupon respondent No.2 vide its order dated 3.10.1991 (Annexure A-5) placed the applicant under suspension w.e.f. 24.6.1988 and was supplied with the copy of the findings given by the enquiry officer. Applicant submitted a reply to it on 15.10.1991 and 30.10.1991 (Annexure A-6 & A-7). Thereafter respondent No.2 issued order dated 27.1.1992 (Annexure A-1) imposing the penalty of removal from service upon the applicant. The applicant against the order of punishment, preferred an appeal on 21.2.1992 (Annexure A-8). The Appellate Authority while partly allowing the appeal reduced the penalty of removal from service to that of compulsory retirement from service vide its order dated 1.12.1992 (Annexure A-2).

4. Aggrieved, the applicant has now come up in this OA to quash the aforesaid orders Annexure A-1 & A-2 mainly on following grounds:

- i) That the order of removal from service by respondent No.2 and compulsory retirement by respondent No.3 is illegal and without jurisdiction;

- ii) That the applicant was not supplied with the statements relied upon by the authorities and has not been given reasonable opportunity to defend himself in the disciplinary proceedings;
- iii) That the applicant was not examined as per the provisions under rule 9(21) of the Railway Service (Discipline & Appeal) Rules, 1968;
- iv) That the trap conducted by the Chief Vigilance Officer, Jaipur has been a mechanical one and there is no corroboration of evidence by any independent witness and that it is violative of the provisions laid down under Rule 704 and 705 of the Vigilance Manual;
- v) That the enquiry officer has not given finding on each of the charges levelled against him and that the disciplinary authority has awarded the penalty of removal from service simply to please the Vigilance Department; the order of punishment being without application of mind;
- vi) That the revisional authority did not pass any speaking order and that the penalty imposed on the applicant is grossly dis-proportionate to the alleged mis-conduct as it was a matter of trivial nature just of Rs.2/- and there has been no commercial irregularity against the applicant through-out in his service;
- vii) That the disciplinary authority has not applied his mind independently and has simply acted on the version of the previous disciplinary authority.

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It has, therefore, been claimed that the OA should be allowed and the impugned orders should be quashed.

5. The respondents have contested the application by filing a written reply to which the applicant has also filed a rejoinder. In pursuance of the directions given lateron, the respondents have also filed additional reply alongwith the documents annexed thereto on 14.12.1995. The stand of the respondents has been that there has been no illegality or infirmity in the conduct of the disciplinary proceedings and the order of imposition of penalty has been passed in accordance with the law. It has been denied that the applicant has not been afforded due opportunity to defend himself or that there has been violation of any mandatory provisions in the conduct of disciplinary proceedings by the respondents.

6. We heard the learned counsel for the applicant Shri Ajay Rastogi as also Shri U.D.Sherma, the learned counsel for the respondents at great length and have examined the record in great detail.

7. It has been vehemently argued by the learned counsel for the applicant that the Vigilance trap conducted by the Respondent Railways has been done in a mechanical way and that the applicant did not retain Rs.2/- as alleged by the respondents in the incident which occurred on 24.7.86. It has also

been argued by the learned counsel for the applicant that at the time of alleged booking of the Vegetable Basket and on payment of twenty rupees note, the applicant booked the article and gave a receipt of Rs.12/- to the concerned individual and also returned him Rs.6/- at the same moment but he told the person to wait for sometime to collect the remaining amount of Rs.2/- ~~which~~ as he did not have the change at the relevant time. It has also been contended that soon thereafter the concerned individual gave an indication to the Vigilance party and thus the whole proceedings of drawing the memo of recovery etc. were conducted without there being any gap of time. It has also been argued by the learned counsel for the applicant that all the witnesses involved in the trap were departmental witnesses and they being interested, their statements cannot be relied upon as there has been no corroboration of their statements by any independent witnesses. The learned counsel for the applicant has also vehemently argued that as per Rule 704 of the Vigilance Manual trap has to be conducted in presence of two gazetted officers from the Railways to act as an independent witnesses and even if where two gazetted officers are not available assistance of non-gazetted staff could also be utilized. There has been no such attempt and as such the whole process of conducting the trap has been a mechanical one simply to cause irreparable loss to the applicant. Another argument has also been to the effect that there has not been any case of

bribe taking by the applicant. Neither he asked for bribe, nor he accepted any bribe and as such not only the finding of the enquiry officer but also of the disciplinary authority imposing penalty of removal from service and further of converting the penalty into that of compulsory retirement cannot be sustained.

8. In contrast to the arguments of the learned counsel for the applicant, it has been urged by the learned counsel for the respondents that there has been no illegality or irregularity in the conduct of the disciplinary proceedings; due opportunity has been given to the applicant to defend himself. It has been denied that respondent No.3 has not been a competent authority to impose the penalty of punishment upon the applicant. It has been also urged that the applicant has not filed the complete copy of the Schedule of the Powers which lists the extent to which the powers are delegated to Senior Scale Officers and Assistant Officers as contained in Col.5 of the said schedule. It has, therefore, been urged that merely there being departmental witnesses at the time of the conduct of the trap, it would not vitiate the whole proceedings conducted by the respondents officers and that the grievances raised by the applicant in his OA are without any substance and the OA deserves rejection. The learned counsel for the respondents in support of his argument has mainly relied upon the decisions in the case of Layak Ram Vs. Delhi Administration, 1995 (5) S.L.R. 489 (SC)

and Scientific Advisor vs. S. Daniel and others,
1991 (3) SLR 39.

9. We have given anxious thought to the arguments advanced by the learned counsel for both the parties.

10. Taking first the facts narrated by the applicant in the OA and the line of argument adopted by the learned counsel for the applicant at the time of hearing, it may be stated at the outset that there has been deviation of the applicant in the stand taken in the pleadings and as at hearing. In the OA the applicant has narrated that on the day of incident i.e. 24.7.1986 when he started his working he had a cash balance of Rs.666/- and the notes (currency) being of the denomination of rupees ten or more "except three notes of rupees two" (emphasis supplied). He further has given out that just on the opening of the counter, one gentleman wanted to book vegetable basket to Sanganer. It was very light and small. The applicant advised him to carry the same alongwith him. On the insistence of the person for booking, the applicant booked the same and gave a receipt of Rs.12/- to the individual and returned him Rs.6/- and told him that he can collect Rs. 3/- after sometime as he does not have the change at the relevant time. It is also given out by the applicant that thereafter the applicant continued the booking of parcels as well of the train i.e. 17 UP but the said gentleman did not turn up for collecting the balance of Rs.2/-. He further narrates that after the departure of the train, the applicant was faced with C.B.I. (Chief Vigilance Inspector) Jaipur and his

team and thereafter the cash was checked and the applicant was asked to give his statement as per their desire and the applicant was further forced to sign the statement under peculiar circumstances.

11. Although, it is beyond the scope of the powers of the Tribunal to evaluate the evidence tendered by the applicant and the prosecution witnesses in the disciplinary proceedings but it has become necessary to detract in order to evaluate the consistency/inconsistency of the stand taken by the applicant in the OA and as advanced at the time of arguments. Even if for arguments sake, it is accepted that the applicant was not obliged to pay the balance of Rs.2/- to the individual out of his private cash, yet it is also to be kept in mind that there is an accepted convention/practice as per the guidelines laid down by the Railways that before taking up the position of booking at the Railway Station, the individual officer is required to disclose the private cash with him. It is undisputed that the applicant has not disclosed his private cash. Moreover at the time of arguments, it was vehemently urged by the learned counsel for the applicant that except currency notes of bigger denomination, the applicant was not in possession of currency notes of lesser denomination than Rs.10/-, whereas in the OA itself, the applicant has given out that except three notes of Rs.2/- he had no other currency notes of lesser denomination in his personal cash than Rs.10/-. It is thus clear that at that moment when

the decoy individual booked the vegetable basket he was the first person to arrive at the booking window and at that moment the applicant was in possession of three currency notes of Rs.2/- (although in his personal cash). Had his intention been clear, he could have instead of asking the decoy Shri Tata Ram to wait and come after sometime, could have given and later adjusted Rs.2/- out of his personal cash. It is not understandable as to how, at the time of arguments it was urged that there has been no time gap in the transaction of booking of the Vegetable Basket, handing over of the receipt of Rs.12/- and returning Rs.6/- and telling the person to wait for returning of Rs.2/- followed by an immediate signal by the decoy to the Vigilance party; when in the OA the applicant himself narrates that it was after the departure of the train that the applicant was faced with the Chief Vigilance Inspector Jaipur and his team and that in between he continued with the booking of parcels upto the departure of the Train 17 UP. This contradiction in the narration of the sequence of events and urged on behalf of the applicant in the OA and at the time of arguments leads us to believe that there has been no mechanical conduct of trap as urged on behalf of the applicant and that the trap was conducted in the usual manner. Absence of any independent witnesses at the time of conduct of the trap cannot be said to be fatal; more so when the Vigilance Wing of the Respondents Railways has to conduct such traps on definite informations. The reliance placed by the learned counsel for the applicant on the relevant paras of

Vigilance Manual issued by the Railway Board are of persuasive value and those provisions cannot be termed as mandatory. This view of ours also finds support from the decision of the Principal Bench in the case of Layak Ram Vs. Delhi Administration, 1995 (5) SLR 489, wherein similar issue was raised. Repelling the contentions made on behalf of the applicant, it has been observed in para 19 at page 494 of the decision:

"19. The learned counsel for the applicant finds fault with the raid organised by the team on three counts- (1) the raiding party did not comprise any non-official; (2) it did not record the statements of witnesses of the alleged graft; and (3) seizure memo of the currency note was not prepared. These requirements may be relevant for the purposes of a criminal trial but, in our opinion, they are not relevant for a disciplinary enquiry."

Accordingly in the present OA also, we are of the view that no prejudice whatsoever has been caused to the applicant on account of non-inclusion of any independent witnesses at the time of the alleged trap conducted by the Vigilance wing of the respondents. Further on behalf of the applicant no malafide or ill-will has been alleged against any of the witnesses of the Vigilance team which conducted the trap on the date of incident. Hence the arguments to the contrary have no force and are rejected.

12. Coming now to the main ground taken on behalf of the applicant of having afforded no opportunity to defend himself in the disciplinary proceedings, it can be safely said that due opportunity has been

afforded to the applicant to defend himself. Not only the disciplinary enquiry has been conducted from the stage from which it was directed to be conducted as per directions given by this bench in its earlier order dated 26.4.1991 in the applicant's OA No.586/89 also but due opportunity to defend himself was provided to him. There has been neither any ambiguity in the direction, nor there has been any violation of the directions by the respondents department in the conduct of the disciplinary enquiry from the stage from which it was directed to be completed. The applicant was duly furnished with the enquiry officer's report as directed by the Tribunal to which the applicant gave written replies on 15.10.1991 and 13.10.1991 and further according to his own wishes he was allowed to give a written brief and it cannot be said that he was not afforded due opportunity to contest the disciplinary proceedings. The argument of the learned counsel for the applicant that the order of punishment has been issued by an incompetent authority is also not borne out on the record. As stated above, a perusal of the complete Schedule of Powers placed by the respondents alongwith their additional reply as at Annexure R-5, it is abundantly clear that Divisional Officers (Sr. scale) and other Senior scale Officers in charge of Districts, DAOs, SAC (was) and others have been delegated powers of appointment of Non-gazetted Officers. The Divisional Operating Superintendent being a Divisional Officer, is the competent authority in respect of the applicant who was the holder of the

Non-Gazetted post, in accordance with the Schedule of Powers of delegation issued by the Railways (incomplete copy of which was placed on behalf of the applicant alongwith the OA). We are, therefore, of the ~~firm~~ firm view that there is no illegality or infirmity in the order of punishment issued by the disciplinary authority which is the competent authority in the case of the applicant. The argument of the learned counsel for the applicant that the order of the disciplinary authority or for that matter of the Revisional Authority are not speaking orders is also not borne out from the perusal of the impugned orders Annexures A-1 and A-2. Both the orders are elaborate and every plea raised on behalf of the applicant has been duly considered by the respective authorities and they have applied their mind and exercised their discretion dis-passionately and in perfect conformity with the rules.

13. Before parting with this OA, it may be stated that it is now the settled law that the Tribunal cannot go into the question of quantum of punishment imposed by the disciplinary authority it being the exclusive domain of the Executive Authority which has to impose a penalty after weighing all the pros and cons of the allegations made against the individual and the charges proved. The law on this point has been recently laid down by Hon'ble the Supreme Court in the case of B.C.Chaturvedi Vs. Union of India and others, 1995(5) SLR 778 (789) as under:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities

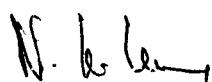
have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude of gravity of the misconduct. The High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing disciplinary/appellate authority to re-consider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Consequently the arguments to the contrary of the learned counsel for the applicant has no force whatsoever.

14. For all the aforesaid reasons, we are of the considered opinion that there is no infirmity or illegality as alleged on behalf of the applicant in the alleged impugned orders Annexure A-1 dated 27.1.1992 and Annexure A-2 dated 1.12.1992. The OA being devoid of any merits, is hereby rejected with no order as to costs.



(PATTAN PRAFASH)
MEMBER (J)



(N.K.VERMA)
MEMBER (A)