(21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 220/1994 **199**
T.A. No.

DATE OF DECISION 18.08.2000

Gaffor Khan **Petitioner**

Mr. S.K.Jain **Advocate for the Petitioner (s)**

Versus

Union of India and ors. **Respondent**

Mr. Manish Bhandari **Advocate for the Respondent (s)**

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. **Whether Reporters of local papers may be allowed to see the Judgement ?** X
2. **To be referred to the Reporter or not ?** Yes
3. **Whether their Lordships wish to see the fair copy of the Judgement ?** X
4. **Whether it needs to be circulated to other Benches of the Tribunal ?** X

(N.P.NAWANI)
Adm. Member

(S.K.AGARWAL)
Judl.Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 18.08.2000

OA No.220/94

Gaffor Khan S/o Shri Noor Mohammed, aged 44 years, Ex-Assistant Booking Clerk, Marwae Ranawas, R/o 26/284, New Govind Nagar, Behind Vishwakarma Bagichi, Ramganj, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Commercial Manager, Western Railway, Ajmer.
3. Asstt. Commercial Manager (I), Enquiry Officer, Western Railway, Ajmer Division, Ajmer.

.. Respondents

Mr. S.K.Jain, counsel for the applicant.

Mr. Manish Bhandari, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, the applicant prays for setting aside and quashing of the order of penalty dated 22.3.1994 (Ann.A1) by which he was removed from service as also for grant of consequential benefits.

2. A memorandum of charges was issued on 11.6.1990 against the applicant to the effect that while he was working as Assistant Booking Clerk, Bhuj he was caught red-handed on

8.1.1989 by the Police Inspector, Anti-Corruption Bureau (for short, PI) Bhuj demanding and accepting gratification of Rs. 20/- from the complainant, Shri Arvindbhai Ganeshidas Patel as a motive or reward for delivering the consignments to the complainant.

3. The applicant denied the charge. Thereafter an inquiry was held against the applicant and under the provisions of Railway Servants (Disciplinary and Appeal) Rules, 1968 (for short, the Rules) and on the basis of the findings recorded by the Enquiry Officer (for short, EO), the Disciplinary Authority, vide impugned order dated 22.3.1994 (Ann.A1), imposed the penalty of removal from service on the applicant.

4. We have carefully gone through the pleadings, the documents on record and heard the learned counsel for the parties at length. The learned counsel for the applicant has plainstakingly and vehemently assailed the impugned order at Ann.A1 on several grounds and the learned counsel for the respondents has also, with equal force, supported the validity of the impugned order.

5. The learned counsel for the respondents took a preliminary objection that the applicant has approached the Tribunal without filing the statutory appeal against the order of the Disciplinary Authority as provided in Rule 18 of the Rules and, therefore, the OA is not maintainable and should be dismissed on this ground alone. The learned counsel for the applicant, opposing this, stated that when the order of removal from service was ab-initio bad and principles of natural justice were violated, the OA could be straightaway admitted.

We have carefully considered this issue and feel that no useful purpose will be served by disposal of this OA by directing the applicant to file an appeal and for respondents to dispose it of, at this stage (emphasis supplied) when this OA was filed as far back as 26.4.1994 and it was also admitted immediately thereafter on 18.7.1994. We are, therefore, proceeding to dispose of the OA on merits.

6. The first ground taken by the learned counsel for the applicant was that the charge was regarding an incident on 8.1.1989 whereas the entire enquiry has been held about the so called raid etc. on 1.8.1989 and this by itself should be enough to throw out the chargesheet. We however, agree with the learned counsel for the respondents that there was a typographical mistake about the date in the chargesheet and the entire proceedings taken as a whole will confirm it.

7. It was then argued on behalf of the applicant that the witnesses examined were not subjected to the Examination-in-Chief but, instead, their statements recorded during the investigations by the PI, quite sometime back, were shown to the witnesses and they were asked whether it was their statement and whether all that is written in these was correct. Thus, according to the learned counsel for the applicant, there was violation of Rule 9(17) of the Rules and this by itself had vitiated the entire enquiry and was a good enough reason to quash the impugned order at Ann.A1. Our attention was invited to the order dated 9.5.1989 of the Jodhpur Bench of this Tribunal in TA Nos. 2303/86 and 2340/86 in support of this contention. At this stage, it may be useful to extract the concerned rule:

Rule 9(17) "On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross-examined by or on behalf of the Railway servant. The Presenting Officer, if any, shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

It is also worth pointing out that Rule 9 in Part IV of the Railway Servants (Discipline and Appeal) Rules, 1968 prescribes the "PROCEDURE FOR IMPOSING MAJOR PENALTIES". The procedure adopted by the EO in the present case was clearly not in consonance with the prescribed rules. Further, the Jodhpur Bench in the TA Nos. 2303 and 2340 of 1986 had examined this very aspect of the DAR enquiry (which incidently also concerned a railway servant) in detail and had observed that, "Thus, the Examination-in-Chief of the witnesses was dispensed with and the statement of the witnesses recorded in the vigilance enquiry behind the back of the plaintiff were accepted as statements recorded in DAR proceedings which was queer indeed..... This dispensing with the Examination-in-Chief of the witnesses is a major lacuna which tends to vitiates the entire DAR proceedings... Since this was not done and a questionable procedure adopted, the principles of natural justice were blatantly flouted." The Tribunal went

ahead accordingly and did set aside the concerned impugned order therein. In the case before us also, there has been similar flaw and the statutory provision in the Rules appears to have been violated. If that be so, the impugned order at Ann.A1 in this OA would also be liable to be set-aside and quashed on this count alone. In this regard AIR 1969 SC 983, Central Bank of India v. P.C.Jain also refers.

7. It has also been alleged by the applicant that the EO was biased against him from the very begining. His request for a change of EO was turned down vide EO's letter dated 2.12.1992 (Ann.A6) without even a word as to why the request had been rejected. In this connection our attention has been invited to the letter of the former Defence Assistant of the applicant (copy at Ann.A5). The letter appears to be addressed to the DCM, Ajmer (Disciplinary Authority in the case) and states that the EO told him, "you will get blows from 'danda' if you cross-examine policewallas" and goes on to say that such conversation on the part of EO astonished him which indicates that EO was biased and with such talk what to talk of the charged official, even the Defence Assistant was feeling insure at Bhuj" (approximate translation from original Hindi version). There is no doubt that this was a serious complaint against the EO, made not by the charged official but by the Defence Assistant, and should have been given much more serious consideration rather than the cryptic way it was rejected vide Ann.R1 by the Disciplinary Authority. In view of this background, the rejection of the request for change of EO was not really in tune with the well accepted golden rule that "justice should not only be done but should be seen to have been done". It is in reverence to the said golden rule that the law as has developed in this regard, requires a liberal view to be taken by the Courts/Tribunals when infractions as

mentioned come to the notice of Courts/Tribunals. Therefore, in the special circumstances of this case, we are of the considered view that the Disciplinary Authority should have changed the EO. It is not the respondents case that they were so short of officers that it was not possible to find somebody else to be entrusted with the enquiry in this case and a huge organisation like Railways could not have perhaps taken such a stand. We, therefore, feel that there has been violation of principles of natural justice by such refusal to change the EO and this has also vitiated the entire inquiry proceedings.

8. The learned counsel for the applicant has also laboriously taken us through the statements of the witnesses and showed as to how the EO has taken upon himself the task of cross-examination of the witnesses, even when the Presenting Officer was present, and tried to fill in the gaps in the statements and asked leading questions. In the result, it has been alleged that the EO has not functioned in the manner of an impartial judge, which he should be. We have gone through the questions pointed out by the learned counsel for the applicant which according to him are in the nature of filling up the lacuna in the replies of the witnesses and were patently leading in nature. To cite a few examples, we find that out of the total 20 questions put to prosecution witness Anthony Williams, as many as 9 were by the EO and some of these do appear to be supplementing the gaps left by the Presenting Officer. In the evidence of prosecution witness Satish Kumar Ramjilal Harsh, out of 46 questions, 7 were put by the EO. Most of these are clearly to fill up the gaps in the evidence of this witness and question No.45 even has got the reply corrected to suit the case of the prosecution. Similarly, in the evidence of Jagdish Dadubhai Paitaria the EO

again appears to have tried to fill in the lacuna in the replies of the prosecution witness. The learned counsel for the respondents contended that the EO can ask any questions as the Rule 9(17) itself provides that the inquiring authority may also put such questions to the witness as he thinks fit. However, we are of the view that the "fit" question have to remain within certain parameters, the inquiring authority cannot put question which are leading and serve to remove any "weaknesses" in the evidence put forward by the prosecution. We, therefore, are of the considered opinion that such cross-examination by the EO has also resulted in violation of principles of natural justice. In reaching this conclusion, we get support from the decision rendered by the Principal Bench (New Delhi) of this Tribunal in the case of Prembabu v. Union of India reported in (1987) 4 ATC 727, wherein it was held that where the inquiry authority himself cross-examines the delinquent by incrimnating and leading questions, there is violatiion of principles of natural justice.

9. It has also been contended by the learned counsel for the applicant that this is a case of no evidence and the EO as well as the Disciplinary Authority committed a grave error in holding that the charge stood proved when the alleged currency notes of Rs. 20/- were not produced in the enquiry and two key witnesses, the complainant, Arvindbhai Patel and the 'panch' witness No.1, M.S.Patel were not examined and an overall reading of the statement of the witness examined will reveal that there is no evidence to prove that the applicant had received Rs. 20/- from Arvindbhai Patel as a motive or reward for delivering the booked parcel to the complainant. It has further been alleged that the EO did not at all consider and evaluate the replies of the witnesses which appeared to

him to be going in favour of the applicant and without even a word about such statements, the EO suddenly arrives at the brief conclusion that the charge is proved. The learned counsel has taken us through the evidence of the witnesses and pointed out a large number of shortcomings, inconsistencies and contradictions which will establish that there was really no evidence to prove the charge. The learned counsel for the respondents, on the other hand, strongly argued that there was adequate evidence and preponderance of probabilities do prove the charge and also mentioned that the well settled legal position is that standard of evidence in departmental proceedings is not as rigid as in criminal cases and the Courts/Tribunals are prevented from evaluation of evidence and interfere with the finding if some evidence is available. We have carefully considered the rival contentions in this regard also. We are aware of the dangers of our re-appreciating the evidence produced before the EO. However, we cannot help noticing from the report of the EO that he has failed to take note of the replies of the witnesses which seemingly weaken the case of the prosecution like for example the other non-official independent witness, Vanraj Gopalji Joshi, stating that there was no talk between the applicant and the complainant regarding demand of money before arrival of the raiding party, denies that the applicant asked for money from the complainant for giving delivery of parcel, that the applicant neither asked for nor took any money and that this was the truth and in reply to the question as to why he was deviating from his statement dated 1.8.1989, his stating that he was afraid he may also be beaten up (like the applicant during the process of taking the applicant's handprint), so he just signed on the recorded statement, although he had sought to read it, which was not allowed. The EO should have at least

made a mention of such damaging statements against the prosecution case and come to a reasoned conclusion that these were not material lacuna because of other colloborating/supporting evidence. Instead of evaluating the evidence, he just reproduced it in brief. Further, in 8.8 of the report titled "Remarks for Administration", the EO himself observes as under:

> 1) During the trap, Rly. and private cash was not counted by Shri N.K.Gohil, PI/ACB/BVJ. Hence exact excess cash with Shri Gafforkhan cannot be confirmed.
>
> 2) However the key witnesses Shri Arvindbhai Patel and Shri M.S.Patel were summoned 13 times to attend enquiry but they did not attend the enquiry fixed by undersigned resulting they could not be examined and allegation made by him against Shri G.Khan could not be ascertained.
>
> 3) Since the mark of anthracene powder was available on G.C.notes as per report of ACB and that delivery was given by him as per initials in Col. No.25 at local delivery book page No.36, it goes to indicate that there was no other reason to lodge complaint by the complainant if money was not demanded.
>
> 4) It is pertinent to point out that g.c.tainted notes were recovered from the table and not from the pocket of Shri Gafforkhan where his declared private cash of Rs. 50/- was kept by him."

Immediately thereafter in para 8.9 titled 'CONCLUSION' without making an appreciation of these points, including as

to why the hand of the applicant were not examined for anthracene marks, the EO records a finding that the charge stands proved. In view of this and the observation in this paragraph, we are of the opinion that the finding of the EO are perverse.

10. The learned counsel for the applicant also cited the following judgments:

(i) AIR 1990 SC 2205, State of West Bengal v. Atul Krishna Shaw and anr. - findings based on no evidence or beset with surmises are perverse.

(ii) 1990(2) SLJ (CAT) 100 Ram Das Singh v. Union of India and ors. - charges can either be proved or not proved - nothing in between is allowed.

(iii) 1991 (2) SLR 192 (CAT), Hansu Mondal v. Union of India and ors. - Allegation of bias against inquiry officer - completion of enquiry by the same officer - should have been forwarded to appropriate reviewing authority- in the absence inquiry vitiated.

(iv) (1992) 21 ATC 326 (CAT), Sarla Devi (Smt) v. Commissioner of Police, New Delhi - duty to examine material witnesses- charged official received Rs. 5/- from the Truck Driver - Truck Driver not examined nor effort made to know his whereabouts - held inquiry vitiated.

(v) (1993) 24 ATC 918 (CAT) Ram Mehar v. Commissioner of Police, Delhi - mere recovery of money from the charged employee itself is not a sufficient evidence - the alleged bribe giver retracting his earlier statement - no other witnesses saw the transaction - punishment set-

aside.

(vi) (1994) 27 ATC 188 (SC), Registrar of Cooperative Societies, Madras and anr. v. F.X.Fernando - Allegation of bias made against the inquiry officer - no material available before the court to support this allegation yet appellant directed to change the Enquiry Officer.

(vii) 1999 (1) ATJ 413, Nawab Singh Meena v. Union of India and ors. - Cross examining the charged officer before the evidence in support of the charge, held irregular and unjustified.

(viii) 1999 (2) ATJ 177 (SC) Kuldeep Singh v. The Commissioner of Police - Findings recorded by Enquiry Officer not supported by any evidence - non production of complainants - on facts inquiry officer acted arbitrarily.

11. In view of the discussions as recorded above and the conclusions we have arrived at in the preceding paragraphs, we hold that this is a fit case where our intervention is required in the interest of justice. We have reached this conclusion after being fully aware of the limited role the Courts/Tribunal have in the matter of intervening with the departmental enquiries as set out by the Apex Court in a catena of judgments. In the case before us, there has been violation of Rule 9(17) of the Rules, findings of the EO appear perverse and the principles of natural justice have also been violated as discussed earlier. In fact, in a recent judgment of a three-Judges Bench of Hon'ble the Supreme Court in The High Court of Judicature at Bombay, through its Registrar vs. Shashikant S.Patil and anr. decided on 28.10.1999 in Civil Appeal No. 1656 of 1998, interference

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under Article 226 of the Constitution of India has been permitted in certain circumstances including violation of principles of natural justice or violation of statutory regulations prescribing the mode of such enquiry.

12. In the result, the Original Application is allowed and the order of removal from service in respect of the applicant dated 22.3.1994 (Ann.A1) is hereby set-aside and quashed and the respondents are directed to reinstate the applicant within one month of the receipt of a copy of this order. On such reinstatement pay of the applicant will be notionally fixed but no arrear will be paid for the period when the applicant did not actually perform any duties viz. from the date of removal from service to the date of reinstatement.

Parties to bear their own costs.

(N.P.NAWANI)
Adm. Member

(S.K.AGARWAL)
Judl.Member