IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 03.06.2002

OA No.287/95

Pradeep Kumar Sharma s/o Shri Radhey Shyam Sharma r/o Village Thingla Jatwara, Tehsil & Distt. Sawaimadhopur, last employed as Sr. Assistant Coaching Clerk under Station Superintendent, Sawaimadhopur JN., Western Rly.

.. Applicant

Versus

1. Union of India (Acting through General Manager, Western Railway, Churchgate, Bombay-1)
2. Divisional Rail Manager, Western Railway, DRM Office, Kota (W.Rly), Rajasthan.
3. Senior D.C.S., Western Railway, Kota.

.. Respondents

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

Mr. Anupam Agarwal, proxy counsel for Mr. Manish Bhandari - counsel for the respondents

CORAM:

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

Hon'ble Mr. H.O.Gupta, Member (Administrative)

O R D E R

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the order dated 8.5.1995 (Ann.A1) whereby the Appellate Authority based on the order of the Tribunal, imposed a penalty of compulsory retirement modifying the earlier penalty of removal from service. In relief, he has prayed for quashing the said order and for appropriate directions to the respondents to reinstate the applicant in service with all consequential benefits.

2. The facts of the case, in brief, are that a

major penalty chargesheet dated 18.2.88 (Ann.A2) was issued to the applicant when he was working as Senior Assistant Coaching Clerk at Sawaimadhopur Junction. Inquiry Officer, Shri C.R.Premi was appointed which was later on changed and one Shri K.R.Meena was appointed as Inquiry Officer. The Inquiry Officer submitted his findings (Ann.A8). The applicant submitted his representation dated 28.2.92 against the finding of the Inquiry Officer to the Disciplinary Authority (Ann.A9). Vide order dated 12.5.92 (Ann.A10), the Disciplinary Authority passed an order removing the applicant from service. He filed an appeal dated 14.6.92 (Ann.A11) against the said order. The penalty was upheld by the Appellate Authority vide his order dated 21.12.92 (Ann.A12). The applicant filed an OA No.208/93 before this Tribunal against the orders at Ann.A10 and A12. This Tribunal, vide judgment dated 15.12.94 (Ann.A14), set aside the order of the Appellate Authority and directed respondent No.2, the Appellate Authority, to decide the appeal of the applicant afresh after recording evidence of defence witnesses and give fresh finding after considering the points raised in the appeal as well as in the application and also after giving personal hearing to the applicant. The applicant submitted a list of his defence witnesses to the respondent No.2 vide letter dated 22.12.94 (Ann.A15). The respondent No.2 issued letter dated 9.2.95 (Ann.A16) to the applicant to attend his office at Kcta. The respondent No.2 did not call the defence witnesses cited by the applicant in his letter dated 22.12.94 and according to the applicant, he was deprived of the opportunity to rebut the charges and

allegation which were held as proved against him. He submitted his brief dated 6.3.95 (Ann.A17) to the respondent No.2 stating grounds in support of his pleas and submitting that there is no evidence to support the charges against him and he should be exonerated of the charges. As per the contention of the applicant, the respondent No.2 did not consider the points raised by him and passed the impugned order dated 8.5.95 (Ann.A1).

3. The main grounds taken by the applicant are that:-

3.1 There is no legally acceptable evidence adduced during the course of inquiry conducted in this case. The inquiry conducted is against the principles of natural justice, since the applicant was not allowed to produce the defence witnesses in the inquiry conducted by the Inquiry Officer and the respondent No.2.

3.2 He was not provided with a copy of the findings of the inquiry conducted by the respondent No.2 before imposition of penalty of compulsory retirement from service. The respondent No.2 did not consider the favourable evidence of Shri Prem Prakash Gautam, complainant, as recorded during the course of inquiry, exonerating the applicant from the charges and allegations but gave preference to the statement of Shri Prem Prakash Gautam which were recorded behind the back of the applicant. The respondent No.2 did not consider the plea of the applicant that there is no evidence adduced against him during the course of inquiry which is explicit from Ann.A6, A7 and A8. The respondent No.2 did not decide his appeal by a reasoned order and also did not consider the points in consequence of the directions of the Tribunal

and also as required under rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 and hence the impugned order passed by the respondent No.2 is illegal.

3.3 The order of the Disciplinary Authority dated 12.5.92 (Ann.A10) merged in the order dated 14.6.92 of respondent No.2 which was set-aside by the Tribunal vide its judgment dated 15.12.94 and therefore, the applicant legally continues in service and Ann.A1 is, therefore, liable to be set-aside. The order dated 12.5.92 passed by the Disciplinary Authority based on the inquiry which suffers from legal infirmity of violation of Principles of nature justice and, therefore, it is illegal, inoperative and non-est. It is established law that there can be no ratification or rejuvenation or modification of an illegal act and hence the order dated 8.5.95 is liable to be set-aside.

3.4 The charge against the applicant was that he frudently sold the child ticket from Sawaimadhopur to Bikaner to Shri Prem Prakash Gautam by scratching the word 'child' printed on the ticket. The above ticket was not produced in the evidence to prove that the above ticket was child ticket and the word 'child' has been scratched on the child ticket. The Disciplinary Authority did not take into account the evidence of the complainant, Shri Prem Prakash Gautam, particularly the reply to Question No.12 wherein he has stated that it is possible due to huge rush the child ticket might have been received and his full ticket might have been given to sombody. Against answer to Question No.14, the complainant has stated that he wrote the complaint as directed by the railway employee of Bikaner Division. The learned Disciplinary Authority

failed to consider the material fact that the another employee Shri Triveni Prasad was found to have scratched the word 'child' on all the tickets and, therefore, applicant could not be held guilty for the above charge. This fact has been admitted by the Appellate Authority, respondent No.2, in Ann.A1.

3.5 The Disciplinary Authority had held him guilty only of issuing ticket No.00320 at Sawaimadhopur to complainant, Shri Prem Prakash Gautam. However, the charge is not only of selling the above ticket, but of scratching the word 'child'. The later part of the charge has not been found as proved by the Disciplinary Authority and, therefore, this charge could not said to have been proved against the applicant. The Disciplinary Authority committed grave error of law in not holding the applicant responsible for selling the child ticket even when the above child ticket was not produced during the inquiry or for inspection by the applicant.

3.6 The Inquiry Officer was required under the rules to ask the applicant whether he wanted to give his defence in writing or orally. He could not be examined orally without apprising him of his right to written defence, thereby the Inquiry Officer has committed error of law. From his statement at Ann.A5, it may be seen that he has been cross-examined by the Inquiry Officer and, therefore, the whole inquiry is vitiated.

4. The respondents have contested this application. Briefly stated, the respondents have submitted that:-

4.1 The applicant had inspected all the relied

documents which includes not only the statement of witnesses but also the photostat copy of the ticket. The complainant had surrendered his ticket and E.F.T. at the exit gate. However, prior to that he obtained a photostat copy of the same which was collected from the complainant and was available with the administration. The original ticket was neither relied upon nor shown to the delinquent employees due to its non-availability. Not only the photostat copy of the ticket, but other evidences including the statement of witnesses were sufficient to prove the charge. It is erroneous to say that the report of the Inquiry Officer is based on the perverse findings.

4.2 The contention of the applicant in para 6 of the OA need no reply, specially when the earlier OA filed by the applicant has already been decided containing such grievances and remedy thereof. The applicant has failed to substantiate that there was no evidence available on record to prove the charge. Before passing the punishment order, the Disciplinary Authority had gone through the representation so submitted by the applicant. It is erroneous to say that the Disciplinary Authority had failed to consider the evidence available on record.

4.3 The applicant had given a list of defence witnesses who are the Inquiry Officers, the Disciplinary Authority and the Defence Assistant, which clearly shows that all such witnesses were not concerned with the incident or the charge levelled against the applicant, because none of them were present at the place of incident or were directly concerned with it. Therefore, it clearly shows that the applicant had no defence witness to prove his version and, therefore, he requested for calling the

Inquiry Officer as well as the Disciplinary Authority as witnesses. The purpose of calling such witnesses was not to lead evidence in defence, but for the purpose of re-appropriation of the findings recorded in the inquiry and reconsideration of record, which cannot be made by the witness or through him. The list given by the applicant shows that he had given the same for the sake of giving, as he had earlier raised an objection regarding the inquiry in which he said to have not been given a chance to submit his evidence in defence.

4.4 The applicant had attended the office of the Appellate Authority alongwith his Defence Assistant. The applicant and his Defence Assistant were given full opportunity by the Appellate Authority to put forward the case. During the course of personal hearing granted to him, the applicant did not press for summoning the witnesses. If the applicant was so anxious then he should have asked for summoning of the witnesses before making his statement before the Appellate Authority. During the course of inquiry, the applicant was not precluded to produce his witnesses. He also failed to produce such witnesses before the Appellate Authority when called for personal hearing. The Appellate Authority has rightly dealt with the matter when arriving at the findings regarding prove of misconduct.

4.5 It is erroneous to say that the Hon'ble Tribunal had quashed all the orders by which punishment was imposed and the applicant should have been treated as continuous in service. The last line of the order makes it clear "we are not setting aside the order passed by the disciplinary authority". In such circumstances, it is

erroneous to say that the applicant should be treated as continuous in service.

5. No rejoinder has been filed by the applicant.

6. Heard the learned counsel for the parties and perused the record.

6.1 The applicant had agitated the similar grievance in OA No.208/93 which was decided by this Tribunal vide order dated 15.12.94. The relevant portion of the order is as under:-

> "4. In the circumstances, we set aside the order of the appellate authority Annexure A/2 and direct the appellate authority to record the statment of the defence witnesses and the applicant may give the list of defence witnesses to the appellate authority within a period of one week after the receipt of a copy of the order. The appellate authority should summon the witnesses and the applicant should also take necessary steps for the production of the witnesses. The appellate authority should record the statements of the witnesses and should give a fresh finding after considering the points made in the appeal as well as in the Application. If the applicant prays for personal hearing, the personal hearing may be given to him. However, we are not setting aside the order of the disciplinary authority as we are only setting aside the order of the appellate authority and remit the case

accordingly. O.A. is disposed of accordingly".

6.2 Pursuant to this judgment, the Appellate Authority passed the order dated 08th ~~March~~ May, 95 (Ann.A1) in which the Appellate Authority has stated that "The delinquent employee was given an opportunity of personal hearing alongwith his defence counsel. The main point raised by the employee was that he was only invclved in accountal of one child ticket". The order further states that "Surprise inspection was carried out at the same booking counter and the four tickets, which were tampered, were found where an effort was made to erase the markings of tampering. That one ticket was issued in the shift of the delinquent employee". The order further stipulates that "Obvicusly if the ticket was accounted for in the shift of the delinquent employee, it is also correct that the ticket was issued by the same employee. This fact is corroborated by having four more tickets where tampering had been admitted". The Appellate Authority further stated that "This is a clear-cut case where an effort was made to cheat the railway administration. This practice must have been going on without getting detected. By sheer chance, a man was penalised and he decided to report, otherwise it would have been difficult to have come to know of this case".

6.3 It is not disputed that the ticket, which was tarmpered, was issued in the shift of the applicant. The averment of the respondents that the applicant inspected the photostat copy of the alleged ticket, has not been refuted by the applicant by filing rejoinder. The photostat copy of this ticket was a part of the documents

annexed to the chargesheet.

6.4 With regard to the contention of the applicant that he was not given an opportunity for adducing the evidence of his defence witnesses before the Appellate Authority, there is some force in the contention of the respondents that the witnesses sought, such as Disciplinary Authority, the Inquiry Officers and the Defence Assistant were not for the purpose of adducing the defence, but for examining them for the purpose of reconsideration of records of the inquiry conducted and the order passed. The Appellate Authority in his order stated that the main point raised by the applicant during the personal hearing was that he was only involved in the accountal of one child ticket, but notwithstanding the contention of the respondents now given in the reply, there is no mention in the order of the Appellate Authority as to why the defence witnesses were not allowed, even such witnesses were considered irrelevant. Be that it may, the fact remains that the alleged ticket was issued during the shift of the applicant and he accounted for this ticket and based on this fact, we are of the opinion that even if some procedural errors existed, these would not have prejudiced the case of the applicant.

7. In the facts and circumstances and aforesaid discussions, we do not think that any judicial interference is called for and accordingly, this OA is dismissed with no order as to costs.

(H.O.GUPTA)
Member (Administrative)

(S.K.AGARWAL)
Member (Judicial)