

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPURI

O.A.No. 480/1996

Date of order: 12-3-1998

Moolnarain Sharma son of late Shri Gaindi Lal Sharma, by caste Brahmin, residing in Railway Quarter No.L-80-B, Loco Colony, Phulera, the then Head T.T.E. Jaipur working under Divisional Chief Ticket Inspector, Jaipur.

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Headquarter Office, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Divisional Office, Jaipur.
3. The Senior Divisional Commercial Manager, Western Railway, Divisional Office, Jaipur.
4. Mr. R.M. Patel, Enquiry Officer (HQ), Vigilance Department, Headquarter Office, Old Building, Churchgate, Bombay.
5. The Senior Deputy General Manager, Vigilance Department, Headquarter Office, Old Building, Western Railway, Churchgate, Bombay.

: Respondents.

The applicant present in person  
Mr. Manish Bhandari, counsel for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)  
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O-R-D-E-R

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

The applicant herein Shri Mool Narain Sharma has  
approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to seek a direction that the departmental enquiry conducted by respondent No.4 Shri R.M. Patel Enquiry Officer, be declared illegal and the impugned order dated 22.12.1995 (Annx.A/1) passed by respondent No.2 Divisional Railway Manager, Western Railway, Divisional Office, Jaipur as Disciplinary Authority and the impugned order dated 24.1.1995 (Annx.A/2) passed by the Appellate Authority the Senior Divisional Commercial Manager, Western Railway, Divisional Office, Jaipur (respondent No.3)

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be quashed and set aside with a further prayer directing the respondents to reinstate him on the post of Head TTE, Jaipur with all consequential benefits.

2. Facts relevant for the disposal of this application in short are that the applicant was served with a chargesheet dated 30.3.1988 (Annx.A/3) interalia on the grounds that while functioning as Travelling Ticket Examiner (TTE) in the Divisional Squad under DCTI, Jaipur at Jaipur during the period between February to October, 1982, he collected Railway Cash from passengers against nine EFTs Books, issued to him; did not account for the amount so realised and remittance thereof for as many as 156 excess fare tickets (EFTs) for the said period and misappropriated the railway earnings by reflecting fictitious remittance by quoting number of money receipts pertaining to remittance made by other staff as detailed in the chargesheet and thereby failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a railway servant. A departmental enquiry, therefore, ensued. On the basis of the findings given by the enquiry officer and having found the first charge levelled against him to be proved and the second charge also established in part, the disciplinary authority Senior Divisional Commercial Manager imposed the penalty of removal from service of the applicant vide his order dated 24.1.1995 (Annx.A/2). His appeal to the Divisional Railway Manager, Western Railway, Jaipur Division, having been rejected vide order dated 22.12.1995 (Annx.A/1) he has been constrained to file this application to claim the aforesaid reliefs. He has challenged the aforesaid orders mainly on the ground of inordinate delay in the initiation and completion

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of the disciplinary proceedings as also on the ground that he has not been afforded a reasonable opportunity to defend himself; moreso that the proceedings before the Enquiry Officer have been held ex-parte. The challenge to the orders of the disciplinary authority and the appellate authority is also on the grounds that they have not applied their mind to the subject matter of disciplinary enquiry and to the grounds raised by him in the appeal. He has also tried to assail the impugned orders on the ground that great prejudice has occurred to him as he was not supplied documents sought for by him before submission of his written defence to the chargesheet served upon him.

3. The respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents has been that there has been no delay in the initiation of disciplinary action against the applicant and that the applicant has been afforded reasonable opportunity to defend himself throughout. The allegations of malafide against respondents Nos. 2 & 3 are without any justification as they have not been impleaded in personal capacity. It has also been averred that the applicant was given full opportunity to inspect and go through the original records/documents as asked for by him and that the allegation that the respondents have been influenced by extraneous considerations is without any foundation. The applicant having been duly represented by his Defence Assistant also, it cannot be said that the disciplinary proceedings were conducted ex-parte or that any prejudice has been caused to him.



4. We heard the applicant in person and also the learned counsel for the respondents at great length and have examined the record in great detail including the record which has been made available by the respondents as demanded by the applicant during the hearing.

5. In this OA, the only point for determination is "whether the applicant has been denied reasonable opportunity to defend himself and that there has been any violation of any statutory rule or principles of natural justice while finding him guilty of the charges levelled against him and consequential penalty imposed on him by the Disciplinary Authority followed by rejection of his appeal by the Appellate Authority?"

6. Before delineating on the grounds raised by the applicant in challenging the impugned orders of the Disciplinary and the Appellate Authority, it is necessary to mention, in brief, the background of this OA as highlighted by the applicant himself. According to the applicant, he was an active worker and office bearer of the Western Railway Employees Union and on account of the Trade Union rivalry, the Chairman of the rival Union known as 'Western Railway Mazdoor Sangh' managed with the Inspector of SPE who seized all his records i.e. original monthly returns, original records for EFTs, Stock Registers and connected records and started investigation. After this seizure, the Superintendent of Police, SPE, pressurised the respondents to place the applicant under suspension and to transfer him from Jaipur to some far away division. He was transferred. The transfer order was challenged by the applicant before the High Court



and by order dated 17.10.1985 in S.B.Civil Writ Petition No.131/85 his transfer was cancelled and Special Appeal filed by the respondents was also dismissed. That respondents Nos. 2 & 3 under the pressure and direction of respondent No.5 i.e. Senior Deputy General Manager, Vigilance Department, Headquarter Office, Western Railway, Churchgate, Bombay with malafide intention issued transfer orders and suspension orders against the applicant which were challenged by the applicant before this Tribunal by filing OAs and all those actions were set aside by the Tribunal. That the respondents having failed in their earlier attempts; Senior Divisional Commercial Manager at the instance of respondent No.5 issued a chargesheet to the applicant dated 30.3.1988 as stated above, relating to the violations pertaining to the year 1982 after a delay of six years. This chargesheet having been served without the documents relied upon therein; his repeated efforts to obtain them having gone futile, he ultimately had to file his written defence on 1.9.1992 (Annx.A/13A) before the Inquiry Officer.

7. The applicant, thereafter, challenged the chargesheet dated 30.3.1988 read with amendment made on 17.3.1989 and corrigendum dated 4.12.1992 by filing OA No.247/1993 which was decided by the Tribunal vide its order dated 27.4.1993 (Annx.A/14) directing the respondents to finalise the proceedings within a period of six months. The respondents having failed to abide by the aforesaid order of the Tribunal, he again approached this Tribunal by filing OA No.593/93 which was kept pending. When the applicant filed MA 325/94 in OA No. 689/93 the Tribunal treating it as a contempt petition passed an order on 27.9.1994 (Annx.A/15)

directing the respondents to complete the enquiry before the next date fixed i.e. 9.11.1994. On this background, it has been strenuously argued by the applicant that firstly there is inordinate delay in the initiation and completion of disciplinary proceedings; secondly he has been greatly prejudiced because of non-supply of documents sought for by him before submission of his written defence; thirdly the proceedings before the Enquiry Officer have been ex-parte more so when prosecution witnesses and defence witnesses were illegally dropped by the Inquiry Officer; fourthly the disciplinary authority and the appellate authority have not applied their mind before the issuance of the impugned orders dated 24.1.1995 (Annx.A/2) and 22.12.1995 (Annx.A/1) which deserve to be quashed.

8. In contrast, it has been vehemently argued by the learned counsel for the respondents that as there has been a direction by the Tribunal in OA No.247/93 and further also in OA No. 689/93 to complete the enquiry within the stipulated period i.e. by 9.11.1994; the respondents were under bounden duty to complete the disciplinary proceedings within the given time frame. The applicant was afforded full opportunity to produce his defence witnesses, but instead he did not cooperate in the right spirit of the direction given by the Tribunal by its order dated 27.9.1994 (Annx.A/15). The argument that the Inquiry Officer dropped the prosecution witnesses without authority, according to the learned counsel for the respondents is also without any force. This according to him, has been done to complete the enquiry within the stipulated period. Similarly in the case of dropping of the defence witnesses the same approach has been adopted by the

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enquiry officer since the applicant failed to produce the defence witnesses in time and gave wrong addresses of two defence witnesses. It is argued by the learned counsel that thus it cannot be said that the applicant was not allowed proper opportunity to defend himself. On the point of non-supply of documents to the applicant before submission of his written defence, it has been urged that as is evident from the record, the applicant was repeatedly asked to inspect and obtain the copies of the documents as the record was in the office of Superintendent of Police, SPE, Jaipur, but instead the applicant chose it better not to take full advantage of the opportunities provided by the enquiry officer. According to the learned counsel this grievance also is of no substance; more so when delivery of the copies of all documents listed with the chargesheet has been admitted by the applicant himself as is evident by the preliminary examination of the applicant before the Inquiry Officer dated 6.9.1993 (Annx.R/1). It has, therefore, been urged that there is no merit in this OA and that the OA deserves rejection.

9. We have given due consideration and thought to the arguments advanced on behalf of both the sides.

10. At the outset it may be mentioned that the scope of the Tribunal in disciplinary proceedings is very limited. It is settled law that the Tribunal does not act as an Appellate Authority over the orders passed by the Disciplinary Authority or the Appellate Authority. The Tribunal is also forbidden to evaluate, analyse or re-appreciate the evidence tendered before the Inquiry Officer or in the disciplinary proceedings by

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by both the parties. The scope of the Tribunal in the matter of orders passed in the disciplinary proceedings is only to examine whether there has been any violation of statutory provisions made in the manner of conduct of disciplinary proceedings by the department and that there are no procedural irregularities which may vitiate the enquiry. It has also to be seen whether due adherence has been given to the principles of natural justice during the disciplinary proceedings. It is not that every irregularity may vitiate the disciplinary proceedings. The Courts/Tribunals do not interfere in the findings arrived at in the disciplinary proceedings unless it is apparent that the disciplinary proceedings are vitiated on account of malafides or violation of a statutory rule.

11. In the instant case from the pleadings of the applicant himself, it is borne out that when the applicant made an application on 25.4.1988 (Annx.A/4) for supply of documents, the respondent No.3 directed the Controlling Officer i.e. DCTI, Jaipur to ask the applicant to attend SPE's office on 20.7.1988 to obtain the copies of the relied upon documents as they were not with the respondents. The applicant did not attend the SPE's office on the plea that he was undergoing treatment under a Railway Doctor. He was again intimated vide letter dated 5.10.1988 to attend SPE's office on 10.10.1988 whereupon the applicant vide application dated 7.10.1988 (Annx.A/5) asked the respondents to supply him the photo copies of the original documents and also to permit him to inspect the same but when the applicant attended the SPE's office he was not supplied these documents. According to the applicant, respondent No.3 again issued letter dated 17.3.1989 (Annx.A/7) revising the list of documents and also the list of witnesses of the chargesheet dated 30.3.1988. Thereafter the respondent No.3 again issued letter dated 22.6.1989 (Annx.A/8) asking the

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applicant to inspect the documents in the office of SPE's Jaipur but when the applicant attended the office, according to him, he was again not supplied these documents. It is on this background that it is urged by the applicant that a great prejudice has occurred to him because of the non-supply of the documents sought for by him. However, from the record it is made out that on 16.3.1990 the Inquiry Officer directed the applicant to take copies of the documents from the Presenting Officer in the office of SPE Jaipur on 23.3.1990, but still the applicant could not take advantage of it. He, however, filed his written defence before the Inquiry Officer on 1.9.1992 (Annx.A/13A).

12. It is in this background that the grievance of the applicant regarding non-supply of documents has to be examined. As analysed above, it appears that instead of the respondents; it is the applicant himself who is responsible for not taking the advantage of the repeated opportunities afforded to the applicant to inspect/obtain copies of the documents sought for by him before submission of his written defence to the chargesheet served. His admission in his preliminary examination recorded by the Inquiry Officer dated 6.9.1993 as at Annexure R/1 exhibits that not only the applicant received the chargesheet with its annexures, but also inspected and obtained photo copies of the documents relied upon by the respondents. The contention, therefore, of the applicant that he was not supplied the documents is belied by his own conduct. Moreover, as held by Hon'ble the Supreme Court in the case of State of Tamilnadu Vs. K.V. Peerumal, 1996(4) SLR 603; "the duty of competent authority is to supply only the relevant documents and not each and every documents that may be asked for by the delinquent officer/employee. It is the duty of the

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delinquent officer to point out how each and every document was relevant to the charges or the enquiry being held against him and how their non-supply has prejudiced his case." We, therefore, find that in the instant case there has been no prejudice to the applicant as has been stressed upon by him during the arguments. His argument to this effect is, therefore, rejected.

13. The other grievance of the applicant that the disciplinary proceedings were held in his absence or in an ex parte manner is also not supported by the pleadings and material made available by the parties in this OA. From a perusal of the Record notes prepared by the Inquiry Officer and filed by the applicant alongwith the OA, it is made out that the applicant has been represented through his Defence Assistant in almost all the material sittings held by the Inquiry Officer. Merely on the alleged basis that the Defence Assistant was not accommodated by the Inquiry Officer or that he was not afforded full opportunity to act in the manner desired by the applicant, it cannot be termed that the proceedings before the Inquiry Officer were held in absence of the applicant or that the proceedings were held in an ex parte manner. The contention, therefore, to this effect has no substance and is rejected.

14. Another ground raised by the applicant in challenging the impugned orders is that the Inquiry Officer dropped the prosecution witnesses which were material to the case and also that he did not afford the applicant opportunity to examine all his defence witnesses, is also not borne out by the record of this OA. As analysed above, there being a constraint of the Inquiry Officer to complete the disciplinary proceedings within

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the fixed time frame i.e. by 9.11.1994 as directed by this Tribunal in MA No.325/94 in OA 689/93; it was bounden duty of the Inquiry Officer to complete it within the specified period else the respondents could have been taken to task. The record note of the Inquiry Officer as at Annexure A/16 dated 6.9.1994, Annx.A/17 dated 8.10.1994, Annx.A/18 dated 19.10.1994 and Annexure A/19 dated 31.10.1994 exhibit that under the circumstances the approach of the Inquiry Officer in the conduct of disciplinary proceedings against the applicant has not been unusual. As pointed out above, there being a rider to complete the disciplinary proceedings before 9.11.1994, the Inquiry Officer was within his right to control the proceedings so that the enquiry could be finished by the date fixed by the Tribunal. If the applicant felt that the Inquiry Officer has been partial, he could have approached the Tribunal to seek a suitable direction which he has not done. The Inquiry Officer not only dropped five witnesses of the prosecution, but also gave opportunity to examine his defence witnesses. It was because of the wrong addresses given in respect of two defence witnesses by the applicant; that the Inquiry Officer had to drop these two defence witnesses. If the applicant felt that the five prosecution witnesses dropped by the Inquiry Officer are material witnesses, he could have made a request to the Inquiry Officer to summon these witnesses as defence witnesses. This was also not done by the applicant. Examining this aspect of the matter in the perspective as brought on record; it cannot be said that the proceedings conducted by the Inquiry Officer have been ex parte or that a prejudice has been caused to the applicant. The contention, therefore, to the contrary by the applicant is also unacceptable and dis-allowed.

15. On the point of delay in the initiation of the

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disciplinary proceedings after six years and the delay in its completion, it is suffice to mention that in the instant case the applicant who has been working as a Travelling Ticket Examiner (TTE) has been served with a chargesheet which relates to the misappropriation of earnings of the Railway department wherein the matter related to collection of fares from the railway passengers by issuance of excess fare tickets (EFTs) and also its complicated procedural steps in the issuance of EFTs Books, submission of the Counter Foils thereof and submission of various Returns required under the Railway Rules governing such transactions on a day to day basis. The period involved in the chargesheet has been between February to October, 1982 during which period numerous EFTs are alleged to have been issued by the applicant and correspondingly the record foils were required to be submitted by the applicant to the different branches of the Railways. Looking to the working nature involved in the issuance and deposit of cash and record by the employees, it cannot be said that the enquiry initiated against the applicant in the month of March, 1988 has been a delayed matter. In the facts and circumstances as have come on record and looking to the nature of charges levelled against the applicant which involve misappropriation of money, it cannot be said that the delay in initiating the disciplinary proceedings against the applicant in March, 1988 and completion has been fatal to the respondents. The argument, therefore, of the applicant in this regard is rejected.

16. So far as the argument of the applicant which relates to the non-application of mind by the disciplinary authority or by the appellate authority is concerned, it may be pointed out that from a perusal of the orders of the disciplinary authority as at Annexure A/2 dated 24.1.1995 and the order Annexure A/1

dated 22.12.1995, it cannot be said that these authorities were actuated by any malice or that they did not apply their mind to the material made available to them while taking decision in their respective jurisdiction. It is also the settled law as held by Hon'ble the Supreme Court in the case of B.C. Chaturvedi Vs. Union of India, 1996 S.C.C. (L&S) 80 that the Courts/Tribunals cannot interfere with the findings of fact based on evidence, nor substitute its own independent finding. In the case of N. Raj-Rathinam Vs. State of Tamilnadu, 1997(1) SLJ-10-(SC), it has been held by Hon'ble the Supreme Court that so long as there is preponderance of probability even on the basis of one evidence; the court cannot interfere. In the instant case also it cannot be said that the chargesheet served on the applicant has been without any substance and it is a case of no evidence.

17. Before parting with this case, it is necessary to observe that the applicant has given a long list of cases on which he purports to rely in support of his arguments without ascertaining as to what exactly has been held in them and whether the principles laid in any of them does really help him. For example; in his list he has given the citation of Government of Tamilnadu Vs. Rajpandian, (1995) 1 S.C.C. page 216 in which principle of law laid down therein go against the arguments raised by the applicant in support of his O.A. Similarly in (1996) 5 S.C.C. page 474, it has also been held by Hon'ble the Supreme Court that the Administrative Tribunals are not the Appellate Authority over the departmental authorities. Thus, these two citations really help the respondents and not the applicant. The applicant having failed to produce any authorities in the list given and also having been unable to point out as to which particular ruling or its principle does



actually help his case; it would be a futile exercise to give simply the list of cases tendered by him, more so when the facts have been found by us contrary to the allegations made by the applicant in his O.A.

18. For all the aforesaid reasons, we are of the considered opinion that the applicant has been afforded full opportunity to defend himself in the disciplinary proceedings held against him and there has neither been any violation of statutory rule, nor principles of natural justice while finding him guilty of the charges levelled against him and consequential penalty imposed by the disciplinary authority, nor in the rejection of his appeal by the Appellate Authority. The issue, therefore, raised in this OA is answered in the negative.

19. Accordingly, we hold that there is no merit in this OA which is dismissed with no order as to costs.



(RATAN PRAKASH)

JUDICIAL MEMBER



(O.P. SHARMA)

ADMINISTRATIVE MEMBER