IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 509/99 199
T.A. No.

DATE OF DECISION

Rajeev Lochan Kaushik — Petitioner

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

Versus

Union of India ando tohers — Respondent

Mr. U.D. Sharma — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

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

(A.P. Nagrath)
Administrative Member

(G.L.Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR

Original Application No. 509/99

Rajeev Lochan Kaushik
S/o Shri N.K. Kaushik
r/o Kota Soral Building
Gurudwara Road,
Kota Junction. : Applicant.

rep. by Mr. S.K. Jain : Counsel for the applicant.

-versus-

1. Union of India through the
General Manager,
Western Railway,
Church Gate,
Mumbai 20

2. Senior D.C.M.,
Western Railway Kota Division
Kota.

3. Additional Divisional Railway Manager,
Western Railway,
Kota Division,
Kota.

4. Shri D.S. Malvi,
Enquiry Officer/
Senior C.M.I.,
Kota Division,
Kota.

rep. by Mr. U.D. Sharma : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

Date of the order: 24.1.03

Per Mr. Justice G.L.Gupta :

In this O.A. which runs into 47 pages, the following reliefs have been claimed by the applicant:

i) by an appropriate Writ, order or direction, the impugned order of the Appellate Authority dated 13.10.99 Annex, A.3, the impugned charge sheet dated 20.1.98.

ii) Annex A.2 and the order of punishment dated 12.5.99 Annex A.1 be quashed and set aside.

iii) the respondents be directed to declare the applicant innocent and the applicant be granted all the consequential benefits.

iv) any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicant, looking to the facts and circumstances of the present case.

2. It is averred that the applicant was working as T.T.E Kota. In January 1998, he was served with a charge memo Annex. A.1 dated 20.1.98 by the respondent No. 2 with the allegation that while working as T.T.E in S.4 Coach on 31.12.97 in 193 Dn. Kota- Jaipur passenger train, he behaved indecently with a lady passenger who was travelling from Kota to Jaipur on her reserved berth. The applicant, it is stated, was preparing reply but without waiting for his reply, Respondent No. 2 appointed O.S. Malvi, C.M.I. Kota (respondent No.4 herein) as the Inquiry Officer vide letter dated 20.2.98. The Inquiry Officer on 20.3.98 questioned the applicant on the charges and about defence evidence. Thereafter the inquiry was adjourned on some dates for one reason or the other. Departmental Witnesses were examined on 26.8.98, 5.8.98 and the defence witnesses were examined on 24.10.98.

The case for the applicant is that Smt. Preeti, complainant was examined without prior information to the applicant, and that all the persons whose names were mentioned as defence witnesses, were not examined by the Inquiry Officer. It is averred that there could not be any justification for ex-parte proceedings on 4.12.98 and 9.12.98. It is also the case for the applicant that

a copy of the Inquiry report was not supplied to him, yet the Disciplinary Authority imposed the penalty of reversion to the lower pay scale for 3 years.

The applicant it is alleged, had challenged the said order of penalty before this Tribunal by filing O.A. No. 279/99 which was dismissed vide order dated 30.7.99, allowing the applicant to prefer departmental appeal against the impugned order of penalty, which would be decided by the Appellate Authority within a period of two months of its receipt. It is averred that the Appellate Authority did not decide the appeal within the period fixed by this Court and has also not considered all the points raised by him in the memo of appeal.

It is pointed out that the Inquiry Officer did not hold the applicant guilty on the basis of evidence recorded during the inquiry but held him guilty on the ground that he did not prefer written brief even after giving ample opportunities.

The orders of the Disciplinary Authority and the Appellate Authority have been challenged on various grounds which will be considered herein after.

3. In the counter, the respondents' case is that no irregularity had been committed in the conduct of the inquiry and Smt. Preeti Sharma being the complainant was rightly examined in the inquiry. It is stated that two defence witnesses were summoned and that the applicant had not indicated relevancy of summoning the other three witnesses. It is averred that there was no lapse in the procedure followed in the inquiry and if at all there was some irregularity it has not caused prejudice to the

applicant. It is denied that the respondents have contravened various sub-rules of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (RSDA Rules for short)

4. In the rejoinder which runs into 73 pages the facts stated in the O.A. have been reiterated, and some of the facts stated in the reply have been controverted.

5. We have heard the learned counsel for the parties and perused the documents placed on record. It is admitted position of the parties that the applicant Rajeev Lochan was the T.T.E on 31.12.97 in 193 DN Kota-Jaipur Passenger train and that he was in-charge of Coach No. S.4. It is also not disputed that Smt. Preeti Sharma was bonafide passenger in the coach S.4 along with her two children on berth Nos. 65,66 and 68. It is relevant to point out here that Smt. Preeti Sharma and her two children had been allotted berths in Coach No. S.1, but the same were changed to S.4 presumably on the request of Smt. Preeti Sharma or at the request of her relatives. Be that as it may, it is not disputed that on the date of the alleged incident Smt. Preeti Sharma and her two children were bonafide passengers in Coach No. S.4.

6. The charge framed against the applicant vide charge sheet dated 20.1.98 is reproduced hereunder:

मानक पत्र- 5

अनुबन्ध- I

आरोप अभिकथन:

श्री राजीव लोचन कौशिक टी.टी.ई. कोटा द्वारा दि: 31.12.97 को 193 डाउन कोटा जयपुर सवारी गाडी के शयनयान एस/4 में कोटा से सवाई माधोपुर के मध्य शयनयान कोच टी.टी.ई की ड्यूटी करते हुए, एक महिला यात्री जो कोटा से जयपुर अपनी आरक्षित बर्थ पर यात्रा कर रही थी, के साथ अशोभनीय व्यवहार करने के कारण 1966 के रेल सेवा आचरण नियम संख्या 3.1(1)(2) एवं (3) के उल्लंघन का दोषी पाया गया है ।

अनुबन्ध - II

आरोपों की व्याख्या:

श्री राजीव लोचन कौशिक टी.टी.ई कोटा ने दिनांक 31.10.97 को 193 डाउन कोटा जयपुर सवारी गाडी के शयनयान एस/4 में कोटा सवाईमाधोपुर के मध्य शयनयान टी.टी.ई की ड्यूटी करते हुए एक महिला यात्री डा0(श्रीमती) प्रीति शर्मा जो कोटा से जयपुर अपने दो बच्चों के साथ एस/4 कोच की/बर्थ 65, 66, व 68 पर यात्रा कर रही थी । श्री राजीव लोचन कौशिक ने किसी न किसी बहाने उसके समीप बैठने की चेष्टा की तथा अशोभनीय व्यवहार कर परेशान करने की कोशिश की जिसकी जन शिकायत इस महिला यात्री डा0(श्रीमती) प्रीति शर्मा ने कोटा वापसी पर मण्डल रेल प्रबन्धक महोदय से दिनांक 5.1.98 को की है ।

इस प्रकार श्री राजीव लोचन कौशिक टी.टी.ई ने एक अशोभनीय कृत्य कर एक रेल कर्मचारी का गैर जिम्मेदारी का निन्दनीय कृत्य किया है जिससे रेलवे की छवि धूमिल हुई है अत: श्री राजीव लोचन कौशिक अपने इस बुरे आचरण के कारण 1966 के रेल सेवा आचरण नियम सं. 3.1(ii) (1) एवं (3) के दोषी पाये गये हैं ।

अनुबन्ध-III

दस्तावेजों की सूची जिनके आधार पर अनुबन्ध में आक्षेण आरोपित है :

(1) डॉ0 श्रीमति प्रीति शर्मा कोटा की जन शिकायत दिनांक 5.11.97 .

(2) दिनांक 11.11.98 को परिवादी डॉ0 प्रीति शर्मा तथा अपरिवादी श्री राजीव लोचन कौशिक टी.टी.ई के आमने सामने लिये गये बयान तथा उनके आधार पर मण्डल वाणिज्य निरीक्षक, मण्डल कार्यालय कोटा द्वारा दी गई जांच रिपोर्ट दिनांक 10.1.98 .

अनुबन्ध - IV

लिस्ट ऑफ विट्नेजेज:

1. श्री नूर मोहम्मद म.वा.नि (सं.) कोटा ।
2. श्री नरेन्द्र भारद्वाज, वा.नि. (शि) कोटा ।

(बी.एल. मीना)
व.मं.वा.प्र.कोटा

7. In the memorandum it was directed that the applicant could inspect documents within 10 days and thereafter he could submit his reply to the aforesaid charge sheet.

The applicant, it seems did not submit his reply within the stipulated time. The Disciplinary Authority appinted the Inquiry Officer. During the course of inquiry the witnesses of the department were examined and thereafter the statements of the witnesses of the applicant were recorded. The Inquiry Officer submitted his report on 9.1.99. The Disciplinary Authority after supplying the copy of the Inquiry Report to the applicant passed the penalty order on 12.5.99. The appeal preferred by the applicant was dismissed vide communication dated 13.10.99 Annex. A.3.

8. The contentions of Mr. Jain learned counsel for the applicant may be summarised as follows:

i) In the preliminary inquiry conducted against the applicant it was found that no such alleged incident took place on 31.12.97 as alleged by Smt. Preeti Sharma in her complaint and there fore the charge sheet was issued under malafide exercise of power.

ii) The charge sheet was defective in as much as in the charge sheet the date of incident was stated as 31.12.97, but in the statement of the charges the date 31.10.97 was mentioned.

iii) The Disciplinary Authority committed illegality when the Inquiry Officer was appointed without waiting for the reply of the applicant to the charge sheet.

iv) The Inquiry Officer committed illegality when he examined Smt. Preeti Sharma, whose name was not mentioned in the list of witnesses to be examined.

v) The Inquiry Officer committed illegality when he did not examine all the five witnesses whose name had been shown in Annex. A.4

vi) The Disciplinary Authority did not record any reason whatsoever while accepting the report of the Inquiry Officer which shows that he did not apply his mind.

vii) The Appellate Authority did not decide the appeal within the time fixed by the Tribunal in its order dated 30.7.99 and the order passed by the Appellate Authority after the expiry of the period fixed by the Tribunal is without jurisdiction.

viii) The Appellate Authority did not consider the points raised by the applicant in his memo of appeal (Annex. A.8).

Mr. Jain relied on the following decisions in support of his contentions:

State of West Bengal vs Atul Krishna Shaw and another (AIR 1990 SC 2205); Union of India and others vs. Upendra Singh (1994 3 SCC 357); R.P Bhati vs. Union of India and others (1986 (1) SLJ SC 383); High Court of Judicature at Bombay through its Registrar vs. Shashikant S. Patil and another (2000 1 SCC 416); Smt. Naseem Bano vs. State of U.P. and others (AIR 1993 SC 2592); Kuldeep Singh vs. Commissioner of Police and others (1999 2 SCC 10); Muneshwar Dayal Misra vs. Union of India andothers (2000 (3) ATJ 509 - CAT Lucknow Bench); State of Punjab and others vs. Bawa Ram (1996 (6) SLR 775- (P&H)

9. Mr. Sharma learned counsel for the respondents on the other hand, contended that the scope of judicial review in such matters is very limited and the Court cannot be justified in re-appraising the evidence. He contended

that the inquiry has been conducted in accordance with the procedure prescribed under RS (DA) Rules and even if it is found that there were some irregularities in the conduct of the inquiry, the order of the Disciplinary Authority affirmed by the Appellate Authority should not be quashed. According to him, the irregularities pointed out by Mr. Jain do not vitiate the departmental inquiry. He took us through the proceedings recorded by the Inquiry Officer and emphasised that when the applicant or his defence assistant did not attend the inquiry on a particular date, ex-parte proceedings were rightly held. Relying on the following cases, Mr. Sharma prayed that the O.A. may be dismissed.

State Bank of Patiala vs. S.K. Sharma (1996 SCC (L&S) 717); State of U.P. vs. NarendraArora (2001 SCC (L&S) 959); High Court of Judicature vs. Uday Singh (1997 SCC (L&S) 1132) M.P. Venkataraman vs. Union of India (1992 (1) SLJ (CAT) 346); R.D. Gupta vs. Union ofIndia (1991 (3) SLJ (CAT)575 (FB); Chandra Kant Damodar Kale vs. Nagpur Improvement Trust (1997 (3) SLR 261); State Bank ofPatiala vs. Mahendra Kumar Singhal (1994 SCC (L&S) 1017); Sunil Kumar Banerji vs. State of West Bengal (1980 (2) SLR 147 (SC); S. Gopalan vs. Union of India (1990 (7) SLR 221); V.P. Kochar vs. Union of India (1993 (4) SLR 312); A.R. Singh vs. District Superintendent of Police (1994 (2) SLR 747)-(Gujarat High Court) Debotish Pal Chaudhry vs. Punjab National Bank (2002 (2) SC SLJ 362).

10. We have considered the rival contentions. Before we proceed to consider the various contentions raised on behalf of the parties, it is profitable to study the scope of judicial review in the matter of disciplinary proceedings.

11. In the case of B.C. Chaturvedi vs. Union of India and others (1996 SCC (L&S) 80) a three Judge Bench observed that the Disciplinary Authority is the sole judge of facts and the Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The relevant observations appearing at para 12 and13 of the report are reproduced hereunder:

> Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When inquiry is conducted on charges of misconduct by a public servant the Court/Tribunal is concerned to determine whether the inquiry was held by a competent Officer or whether rules of natural justice are complied with. Whether the findings of conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may intervene where the authority held the proceeding against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing

or

the mode of inquiry/where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable persons would have ever reached the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence is not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/ Tribunal. In Union of India vs. H.C. Goel this Court held at p.728 that if the conclusion upon consideration of the evidence reached by the disciplinary authority, is preverse or suffers from patent error on the fact of the record or based on no evidence at all a writ of certiorari could be issued. "

(emphasis supplied.)

In the case of State Bank of Patiala and others vs. S.K. Sharma (supra) their Lordships observed that the procedure governing the departmental inquiry is nothing but elaboration of the principles of natural justice and its several facets and that in case of violation of procedural provisions, the question of prejudice is to be seen. The observations appearing at para 33 of the report are reproduced hereunder:-

> We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee).
>
> 1) An order passed imposing a punishment on an employee consequent upon a disciplinary/ departmental enquiry in violation of the rules/ regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
>
> 2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such case.

3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under-'no notice', 'no opportunity' and'no hearing'categories the complaint of violation of procedural provision should be examined from the point of view of prejudice viz whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom it obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgement, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice i.e. whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

4(a) In the case of procedural provisions which is not of a mandatory character, the complaint of violation has to be examined from the stand point of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it

is found to be former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him then the Court or tribunal should make appropriate directions(include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same viz test of prejudice or the test of fair hearing, as it may be called.

5. Where the enquiry is not governed by any rules/regulations statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgement. In other words, a distinction must be made between 'no opportunity' and'no adequate opportunity' i.e. between'no notice/ho hearing'and'no fair hearing'. (a) in the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to) In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law. i.e. in accordance with the said rule (audi alteram partem). (b). But in the later case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand point of prejudice; in other words, what the Court/Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have afair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (no.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

6. While applying the rule of audi alteram partem(the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over riding objective underlying the said rule viz. to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

7. There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision. "

In the case of R.S. Saini vs State of Punjab and others (1999 SCC (L&S) 1424), a three Judge Bench held that if there is some evidence to reasonably support the findings of the inquiring authority, the Court should not exercise its writ jurisdiction and should not reverse it on the ground of insufficient evidence. It was observed at para 16 of the report that adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings and if there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding.

In the case of Bank ofIndia vs. Degala Suryanarayana (1999 SCC (L&S) 1036) it was held that strict rules of evidence are not applicable to departmental enquiry proceedings and the Court exercising the jurisdiction ofjudicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. Reiterating the observations of the Constitution Bench in the case of Union of India vs. H.C.

Goel (AIR 1964 SC 364) it was observed as follows:

> " The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the inquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not ".
>
> (emphasis supplied.)

In the case of Secretary to Government of Tamil Nadu vs. Thiru M. Sannasi (2002 SCC (L&S) 902) their Lordships observed that the Tribunal is an institution created under the Act of 1985 and discharges the duties which were earlier being discharged by the High Court under Article 226 of the Constitution of India. It was further observed that a finding of an inferior tribunal can be interfered with if a superior forum comes to the conclusion either that the inferior tribunal has allowed in admissible evidence or has prevented the delinquent from adducing the admissible evidence or has based its conclusion on an erroneous view of law or that the conclusion is such which no reasonable man can come to on the existing material on record.

In the case of State of Tamil Nadu vs. S. Subramaniam a three Judge Bench of the Apex Court held that the Tribunal is devoid of power to re-appreciate the evidence and come to its own conclusion on the proof of the charge and the only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence.

12. In the instant case the allegation against the applicant is that he had indecently behaved with Smt. Preeti Sharma when the train was in motion. It has come in the evidence of Smt. Preeti Sharma that in the cabin she was the only lady and there was no other passenger except her two children.

13. Smt. Preeti Sharma says that the applicant had gone twice to her cabin after the train had left the station and the incident had taken place when the applicant had visited the cabin second time. She states that she had complained against the applicant. Smt. Preeti Sharma say that because of children, she could not make report at the intervening stations and also that she did not know about a Rule requiring reporting at the intermediary station.

A question has been asked in the cross examination of Smt. Preeti Sharma that her father-in-law was a retired railway servant and he might have worked with the applicant. It is not understood what was the purpose of question No. 42 put to Smt. Preeti Sharma. In any case it was not suggested nor it is averred by the applicant that the father-in-law of Smt. Preeti Sharma bore ill will against the applicant and he could involve the applicant in a false charge.

The fact remains that nothing has come in the cross examination of Smt. Preeti Sharma to disbelieve her. There could not be any cause to make

a complaint of indecent behaviour against the applicant, who was not known to the applicant before this incident.

Keeping in view the statement of Smt. Preeti Sharma it cannot be said to be a case of no evidence. Rather there was sufficient evidence before the Disciplinary Authority to hold the charge proved against the applicant.

14. Now it is to be seen if the enquiry was vitiated on the grounds canvassed by Mr. Jain.

15. Ground No. 1:

The contention has been advanced on the basis of the statement of Shri Noor Mohammed recorded during the course of the inquiry. Shri Noor Mohammed says that he had held preliminary inquiry in the matter and submitted his report on 10.1.98 and that according to him it was not established that Shri Rajeev Lochan had behaved indecently with Smt. Preeti Sharma and it appeared to be a dispute on the transfer of berths. In the connection our attention was drawn towards the preliminary inquiry report (Annex. A.9)

It is evident from the report Annex A.9 that Smt. Preeti Sharma had supported the allegations made in the complaint. It is further clear from the report that the applicant had tendered apology to Smt. Preeti Sharma. What Smt. Preeti Sharma stated was that she did not have any objection if the administration pardoned him.

We fail to understand how Shri Noor Mohammed could conclude from the statement of Smt. Preeti Sharma that there was no indecent behaviour with her by the applicant. Simply because the complainant had accepted the apology tendered by the applicant it could not held by the officer holding departmental inquiry that no incident as reported in the complaint had taken place. Shri Noor Mohammed being an officer of the Railway, it is obvious, had tried to help the applicant when he observed in the report that the facts that Smt. Preeti Sharma had accepted the pardon of the applicant and that she did not examine the other witnesses indicated that no such incident had taken place.

Even assuming that there was not enough material before the competent authority to issue the charge sheet, it cannot be said that the charge sheet was issued under the malafide exercise of power. That being so, there is no substance in the first ground canvassed by Mr. Jain.

16. Ground No. 2

It is seen that in the charge sheet the date of incident was stated as 31.12.97, whereas in the statement of charge the date was typed as 31.10.97. Obviously, it was a typographical error. The applicant knew fully well as to what charge he was required to meet and therefore it cannot be said that prejudice was caused to the applicant by the mistake committed in the statement of charge. It is significant to point out that in the whole of evidence the date of occurrence was stated as 31.10.97. The mistake in the statement of charge in the circumstance of the case did not cause prejudice to

the case of the applicant.

17. Ground No. 3:

It is an admitted fact that the applicant did not submit his reply to the charge sheet within the time stipulated in the memo Annex A.2. The Disciplinary Authority had no option but to take the next step of the inquiry. No fault can be found on the part of the Disciplinary Authority when the Inquiry Officer was appointed before the reply to the charge sheet was filed by the applicant.

18. Ground No. 4:

Mr Jain pointed out that the name of Smt. Preeti Sharma was not cited as witness in the list of witnesses mentioned below the charge and therefore she could not be examined as a witness without taking recourse to sub-rule 18 of Rule 9 of RS(DA) Rules.

The argument is without any substance. In the charge sheet, it was clearly stated that the applicant had indecently behaved with Smt. Preeti Sharma. In the list of documents also, it was clearly stated that there was a complaint from Smt. Preeti Sharma dated 5.11.97 It was stated that the statement of Smt. Preeti Sharma had been recorded. It is manifest that in the charge sheet it was clearly alleged that the applicant had shown indecent behaviour to Smt. Preeti Sharma. Copy of the complaint lodged by Smt. Preeti Sharma and copy of her statement recorded during inquiry had been supplied to the applicant. In such circumstances, it cannot be accepted that Smt. Preeti Sharma was additional witness and she could be examined during the inquiry by taking recourse to sub-rule 18.

When under the heading ' list of witnesses' the names of two persons were mentioned. It clearly meant that they were persons besides Smt. Preeti Sharma, to be examined. Smt. Preeti Sharma was kept in the category of complainant and was not named in the category of witnesses. It is true that the name of Smt. Preeti Sharma could be stated in the list of witnesses because she was also to be examined. The non-inclusion of the name of Smt. Preeti Sharma under the heading ' list of witnesses did not mean that the department did not want to examine Smt. Preeti Sharma in the Departmental Inquiry.

Sub-rule (18) of Rule 9 of the RS(DA) Rules applies when new witness is sought to be examined. Smt. Preeti Sharma was not a new witness. Therefore it was not necessary to follow the procedure prescribed under sub-rule (18) of Rule 9 of the RS(DA) Rules.

19. Ground No. 5

The contention of Mr. Jain was that the applicant had filed a list of 5 defence witnesses, but the Inquiry Officer examined only two of them and closed the evidence without assigning any reason. Relying on a decision of the learned Single Judge in the case of The State of Punjab and others vs. Bawa Ram (supra) he urged that the denial of the right of the examination of witnesses by the applicant amounted to violation of the principles of natural justice.

It is seen that Smt. Preeti Sharma was examined on 5.9.98. On that day, it was recorded that the delinquent officer(the applicant) could furnish

names of the defence witnesses within 10 days. It is further noticed that the inquiry was held thereafter on 24.10.98 and on that day, Lalit Kumar who was present was examined as a defence witness. It was recorded on that date that the inquiry would be conducted on 31.10.98 at the same place and the applicant was to appear along with his defence witness Maqsood Ali.

The record of the proceedings held on 31.10.98 and thereafter, has not been placed before us by either parties. However, the report of Inquiring Authority dated 9.1.99 Annex. A.6 indicates that on 31.10.98, the inquiry could not be held because of the indisposition of the Inquiry Officer. The inquiry was then fixed on 4.12.98. On that date, neither the applicant nor his defence assistant appeared and therefore the inquiry was fixed on 19.12.98. On that date also the applicant did not appear. His nominee though appeared but left the venue of the inquiry saying that the delinquent was not present. It is significant to point out that on that day Shri Maqsood Ali witness was present. On the request of the defence assistant, the inquiry was adjourned. On the next date also the applicant remained absent. Observing that the applicant was playing delaying tactics, it was ordered that the inquiry would proceed exparte.

During the course of arguments it was not disputed by the learned counsel for the applicant that Mr. Maqsood Ali was examined in the inquiry.

The contention was that since the other three witnesses named in the list, were not examined, it adversely prejudiced the case for the applicant.

It is evident from the facts stated above that the applicant did not appear on the dates fixed for the inquiry after 24.10.98. There was, therefore, no option for the Inquiry Officer but to proceed ex-parte and record his findings.

In this connection, the contention of Mr. Jain was that the letter Annex. R.7 fixing the date 4.12.98 andAnnex R.5 fixing the date 5.9.98 were not received by the applicant.

The contention hardly carries any substance. The letters Annex. R.5 and R.7 were addressed to the applicant himself and copies had been sent to various persons including the defence nominee. In any case, on 5.9.98, when Smt. Preeti Sharma was examined, and on 24.6.98 when Noor Mohammed was examined the defence nominee of the applicant was present and he had cross examined the witnesses. Therefore it cannot be said that any prejudice was caused to the applicant.

Vide Annex. R.1 it was intimated to the applicant that the inquiry would be conducted on 4th and 5th December 1998, and the applicant could appear along with his defence nominee and witnesses. Neither the applicant nor his defence assistant appeared on those days and also on the adjourned dates the applicant did not appear. Therefore it cannot be said that the Inquiry Officer committed illegality in ordering the inquiry to proceed ex-parte.

It is significant to point out that it was not stated in the list of witnessess A.4 as to what evidence was to be given by the defence witnesses named therein. On the dates fixed for the inquiry for the defence evidence, neither the applicant, nor his defence nominee was present and therefore it could not be known to the Inquiry Officer as to what was the relevancy of the other witnesses.

According to the facts stated in the list Annex. A.4 the first three persons were ticket collectors posted at Kota. They were not in the coach at the time, the alleged incident took place. Therefore their evidences could not be treated as essential by the Inquiry Officer, without specific request of the applicant. When the applicant did not appear on the dates fixed for defence evidence it cannot be accepted that the right of the applicant, of examining witnesses of his choice, was infringed and it vitiated the inquiry.

The case of Bawa Ram (supra), was decided by a Single Judge of the Punjab and Haryana High Court. The fact situation there was very differnet. In that case, the delinquent had protested against the closure of the defence witness. It is in those circumstances, it was held that procedural lapse was committed by the Inquiry Officer.

In the instant case, it is not the case for the applicant that he had been prevented from examining his witnesses. Therefore the ruling does not help the applicant. It may be stated that in the case of S.K. Sharma (supra) the Apex Court has clearly held that procedural lapse does not vitiate the inquiry.

It is significant to point out that, the ground of non-examination of defence witnesses was not taken by the applicant in his appeal Annex. A.8 preferred against the order of the Disciplinary Authority. This circumstance shows that the applicant never wanted to examine those witnesses.

20. Ground No. 6

The contention of Mr. Jain was that the Disciplinary Authority did not record reasons in the order in Annex. A.1 and therefore it should be inferred that it had not applied its mind.

The inquiry was held in accordance with Rule 9 of the RS(DA) Rules. Under Sec. 10, the Disciplinary Authority is required to pass the order of penalty. The wordings of Rule 10 clearly indicate that it is only when the Disciplinary Authority does not agree with the findings of the Inquiry Officer that reasons are to be recorded by the Disciplinary Authority.

Sub Rule (1) says where the inquiry is held by the inquiry officer, the Disciplinary Authority on the basis of the findings of the Inquiry Officer, may impose on the railway servant, such penalty as is within its competence in accordance with the rules.

Sub Rule (2) says that if the Disciplinary Authority is not the inquiring authority, may for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry.

Sub Rule (3) says in case the disciplinary authority disagrees with the findings of the inquiry officer on any articles of charge record its reasons for

such disagreement and record its own findings on such charge.

In the instant case, the disciplinary authority fully agreed with the findings recorded by the inquiring authority and therefore it was not necessary for the disciplinary authority for recording its own findings on the charge. The disciplinary authority opined that it had gone through the statement of article of charge and the inquiry report. It further observed that it was satisfied that the delinquent employee had been given opportunity to submit his brief, followed by reminder. The disciplinary authority further observed that it had come to the conclusion that the applicant was responsible for the charges levelled against him. It also observed that the applicant did not submit his brief even after giving opportunity to him.

On the basis of the last sentence, recorded by the disciplinary authority, it was contended that the Disciplinary Authority decided the matter against the applicant only on the ground that the applicant had not submitted his written defence.

This is absolutely incorrect. A reading of the entire order shows that the disciplinary authority had considered the charge, Inquiry Officer's report and was satisfied that correct procedure was followed and therefore it agreed with the conclusions arrived at by the Inquiry Officer. It was the additional ground recorded by the Disciplinary Authority that the applicant had not chosen to file written defence brief. In our opinion, it cannot be said that the Disciplinary Authority had not applied its mind, before passing the

order Annex. A.1.

Mr. Jain contended that the order should be a speaking one and if it is not a speaking one it means that the authority did not apply its mind. For this proposition, he cited the case of State of West Bengal vs, Atul Krishna Shaw and another (supra)

That was not the case of disciplinary proceedings. In any case, what was noticed by their Lordships of the Apex Court was that the District Judge, who was the Appellate Authority in the matter had foresaken his salutary duty which the legislature had entrusted to him. It was held that giving of reasons is an essential element of administration of justice. It was also observed that reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. It is evident from the observations that it was a matter decided by the District Judge in judicial proceedings.

In a disciplinary case it is not expected that the Disciplinary Authority gives detailed reasons even when it agrees with the findings of the Inquiry Officer.

We have already seen that the rule does not require that the Disciplinary Authority records reasons if it agrees with the findings of the Inquiry Officer.

21. Ground No. 8

Pointing out that in the memo of appeal the applicant had raised various points but the Appellate Authority did not consider the same in the

order Annex A.3 it was canvassed that it amounted to infringement of Rule 22 of the RS(DA) Rules.

Rule 22 (2) of RS (DA) Rules says that the appeal is to be considered on the following three aspects of the inquiry:

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record: and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe: and pass orders -

(i) confirming, enhancing, reducing or setting aside the panalty; or

(ii) remitting the case to the authority which imposed or enhanced the panalty or to any other authority with such directions as it may deem fit in the circumstances of the case;

In the instant case, the Appellate Authority has considered all the three aspects. It is noteworthy that the Disciplinary Authority has considered all the points raised in the memo of appeal one by one. Therefore it cannot be said that the Appellate Authority had committed error while deciding the appeal.

In this connection our attention was drawn to this fact that the Appellate Authority had asked certain questions on 24.9.98 to the applicant. It was urged that this procedure was not permitted by the Rules. Mr. Jain invited our attention to Rule 22 wherein it is not provided that the Appellate Authority can question the delinquent while deciding the appeal.

alternative remedy available to him under the disciplinary rules. The Tribunal showed favour to the applicant by permitting him to file an appeal even after the expiry of the period of limitation for filing appeal. It was directed that the Appellate Authority should entertain the appeal and decide the same within two months from the date of receipt of such an appeal.

It is noticed that the Appellate Authority passed the order on 13.10.99(Annex. A.3). According to the applicant he had filed the appeal on 10.8.99. The two months period expired on 10.10.99. The Appellate Authority passed the order on 13.10.99 and thus there was delay of not more than 3 days. The Tribunal in its order had not stated that if the Appellate Authority did not pass the order within two months, the Appellate Authority did not have a right to decide the appeal. The order of the Tribunal was directory in nature and not mandatory. That being so, even if the Appellate Authority decided the appeal after the expiry of the period stipulated by the Tribunal, it cannot be said that the Appellate Authority's order is without jurisdiction.

23. No other point was urged before us.

24. Having considered the entire material on record, we are of the view that there is absolutely no merit in this application which is hereby dismissed with no order as to costs.

(A.P. Nagrath)
Administrative Member

(G.L.Gupta)
Vice Chairman

jsv.

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It cannot be accepted that the Appellate Authority committed mistake when it asked the applicant to argue the matter. If during the course of hearing the Appellate Authority questioned the applicant on certain points how can it be said that it had acted beyond its powers under the rules. It was rather in the interest of the applicant that certain clarifications were sought by the Appellate Authority. It is not the case for the applicant that the Appellate Authority had forced him to say certain facts. Thus, there is no merit in this contention also.

The ruling in R.P. Bhati (supra); Muneshwar Dayal Misra (supra) in no way assist the applicant.

22. Ground No. 7.

Mr. Jain pointing out that the applicant had filed O.A. No. 279/99 against the order of penalty, which was dismissed by the Tribunal vide order dated 30.7.99 directing the applicant to file an appeal and the respondents therein were directed to dispose of the appeal within two months from the date of receipt of such appeal, contended that the appeal was not decided within the period fixed by the Tribunal and the order passed after the expiry of the period rendered the appellate order a nullity

The Order of the Tribunal Annex. A.7 is placed on record. It is noticed that the Tribunal had held that the applicant had failed to avail of the

alternative remedy available to him under the disciplinary rules. The Tribunal showed favour to the applicant by permitting him to file an appeal even after the expiry of the period of limitation for filing appeal. It was directed that the Appellate Authority should entertain the appeal and decide the same within two months from the date of receipt of such an appeal.

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