

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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ORDER SHEET

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ORDERS OF THE TRIBUNAL

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12.12.2007

Sukh Lal Arya vs. UOI

OA No. 230/2002

Mr. S.K.Jain, counsel for the applicant  
Mr. Anupam Agarwal, counsel for respondent No. ~~1~~ <sup>1 and</sup> 2  
Mr. V.S.Gurjar, counsel for respondent No.3 and 4

Heard the learned counsel for the parties.

ORDER RESERVED,

*Tarsem Lal*  
(TARSEM LAL)  
Admv. Member

*M.L. Chauhan*  
(M.L. CHAUHAN)  
Judl. Member

R/

*order pronounced  
today in the presence  
by the above said Bench.  
14/12/07.*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 14<sup>th</sup> day of December, 2007

ORIGINAL APPLICATION NO.230/2002

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Sukh Lal Arya  
s/o late Shri Ratan Lalji,  
aged about 51 years,  
r/o 734-B, Old Railway Colony,  
Kota Junction

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. Union of India  
through General Manager,  
Western Railway,  
Churchgate,  
Mumbai.
2. The Chief Mechanical Engineer,  
Headquarter Office,  
Churchgate,  
Mumbai.
3. The Additional Divisional Rail Manager,  
Kota
4. The Senior Divisional Mechanical Engineer,  
Kota.

.. Respondents

(By Advocate: Mr. Anupam Agarwal and Mr.V.S.Gurjar)

*[Handwritten signature]*

O R D E R

The applicant has challenged the order dated 29.8.2001 passed by respondent No.2 in revision petition dated 5.4.2001 whereby the respondent No.2 rejected the revision petition of the applicant and upheld the order dated 15.2.2001 passed by the Additional Divisional Railway Manager in appeal dated 22.12.2005 whereby the Additional Divisional Railway Manager, i.e. respondent No.3 partly allowed the appeal of the applicant and reduced the penalty as awarded vide order dated 7.11.2000 by the Sr.DME, Kota from reduction to five stages below the existing grade for a period of two years with future effect to that of reduction by 3 stages below the existing time scale for 2 years with future effect.

2. Briefly stated, facts of the case are that the applicant while working on the post of Loco Foreman at Loco Shed, Kota was served with chargesheet for violation of Rule 3.1(i), (ii) and (iii) of Railway Servants Conduct Rules, 1966. The gravamen of charges against the applicant were to the following effect:-

(i) that the applicant extended undue favour to Shri Dara Singh, Diesel Mechanic Grade-I, Kota by not rotating him in proper shift duties and keeping him mostly in night shifts or inter shifts during the period from 1.7.96 to 11.9.98, (ii) that the applicant

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demand and accepted illegal gratification of Rs. 300/- from Shri Dara Singh, Diesel Mechanic Grade.I on 2.11.98 for extending undue favour of changing his shift duty from day time to night time.

From the statement of imputation which was annexed as Ann.II with the chargesheet, it is borne out that on 11.9.98, the applicant ordered one Shri Harish Chanchlani, LF/Kota to deploy Shri Dara Singh in day shift only and when Shri Dara Singh approached the applicant for cancellation of this order, he demanded Rs. 300/- as bribe. On a complaint made by Shri Dara Singh to higher authority, raiding party was constituted and trap was laid for making payment to the applicant on 2.11.98 in the presence of shadow witnesses. The said amount was recovered from the applicant by the raiding party. The matter was enquired into and the Enquiry Officer found the charge as proved. Accordingly, the applicant was awarded the aforesaid penalty by the Disciplinary Authority, which was modified by the Appellate Authority and subsequently modified penalty was upheld by the revisional authority, as stated above. It is these orders which are under challenge in this OA.

3. Notice of this application was given to the respondents. The respondents have filed reply. According to the respondents, the charge against the applicant stands fully proved. Since the Tribunal does

not sit as an appellate authority over the factual findings recorded during the departmental proceeding while exercising the power of judicial review, the Tribunal cannot substitute its own conclusion, with regard to the guilt of the delinquent for that of the departmental authorities, and therefore, no interference in the matter is required for. The respondents have stated that the applicant was caught red handed and charge has been proved during the enquiry and the applicant has categorically admitted acceptance of gratification of Rs. 300/- from Shri Dara Singh, to extend undue benefits from 1.7.1996 to 11.9.1998 proves that the applicant is guilty of charges. The respondents laid great emphasis on the acceptance of Rs. 300/- by the applicant which fact he has admitted and was caught red handed by the vigilance team as per the details mentioned in Panchnama Part I and II. According to the respondents, the applicant accepted the aforesaid amount in order to extend illegal undue benefit of earning NDA continuously from 1.7.96 to 11.9.98 against the rules which fact has been found well proved during the course of enquiry conducted in accordance with rules and the prescribed procedure, as such, no interference is called for. On the plea taken by the applicant in the OA that it was Mr. Chanchlani who was exclusively responsible for this matter and booking of staff, the respondents have categorically stated that as per the

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version of the Senior DME, Kota, it was the applicant who was over all supervisor of Diesel Satellite Shed and applicant being the senior supervisor has committed continuous wrong and illegal utilization of services of Shri Dara Singh for the night duty for a long time only to extent illegal benefit of NDA and illegal favouritism to Shri Dara Singh and for this purpose the applicant accepted the illegal amount of Rs. 300/-.

4. We have heard the learned counsel for the parties and gone through the material placed on record. The applicant has raised three fold contentions in order to substantiate the plea that the charges against the applicants have not been established as per law. Firstly, according to the learned counsel for the applicant, there is no evidence to the effect that the applicant has in fact demanded the amount of Rs. 300/- in the presence of witnesses as illegal gratification from Shri Dara Singh. Secondly, the sum of Rs. 300/- which were recovered from the applicant were in fact given by him to Shri Dara Singh on 10.10.98 to bring material from the Military Canteen as he was member of the Army Unit and it was the said amount which was returned to the applicant on 2.11.98. Thirdly, that it was Shri Harish Chanchalani, who was overall incharge of the Diesel Satellite Shed and as such the applicant was not responsible. Lastly, there is non-compliance

of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, 1968 inasmuch as, the Enquiry Officer has not questioned the applicant on the circumstances appearing against him in the evidence for the purpose of enabling the applicant to explain any circumstances appearing in the evidence against him. For that purpose, the learned counsel for the applicant has placed reliance on the following cases:-

- 1) Ministry of Finance and Anr. Vs. S.B.Ramesh, 1998 (2) SLJ 67
- 2) Shri Ram Shanker Lal vs. UOI, 2006 (1) ATJ 350

whereby it has been held that said provision is mandatory and non-compliance of the said provision is fatal.

Further, it was argued that charges have been proved in suspicion and suspicion cannot be part of preponderance of evidence, therefore, the punishment awarded by the authorities is not based on facts and evidence adduced during the enquiry, as such, the order of punishment passed by various authorities is illegal and liable to be quashed and set aside.

We have given due consideration to the submission made by the learned counsel for the applicant but we are not at all impressed with the submissions so made by the learned counsel for the applicant, if the matter is looked into its entirety. From the facts as can be gathered from the statement of imputation in support of article of charges Ann.II it is clear that

allegation against the applicant was that the applicant allowed Shri Dara Singh from 1.7.96 to 11.9.98 in night shift/inter shift and also extended favour to said Shri Dara Singh altering his period of absence into leave of duty. That was sought to be proved on the basis of statement showing number of days working, shift wise details of Shri Dara Singh for the aforesaid period as well as alteration/manipulation in the said statement. The version of the applicant that direct control of diesel shed was with Mr. Harish Chanchlani, cannot be accepted, inasmuch as, Mr. Harish Chanchlani was posted in that Section in the year 1998 and he was given limited charge only as per Sr. DME letter dated 24.4.98 and not prior to that date, whereas the overall charge of Loco Shed including the Diesel Satellite Shed was with Shri S.L.Arya. At this stage, it will be useful to quote letter dated 24.4.98 which is to the following effect:-

" NOTE

The following will be in force with immediate effect:

1. Shri S.L.Arya, LF will be the overall incharge of RDI/Kota
2. Shri Harish Chandlani, LF(MW) will look after the over all work of Diesel Satellite Shed.
3. Shri S.L.Arya, LF, will be overall incharge of Kota Breakdown, he will be fully assisted by Shri Harish Chanchlani in his work after his initial pick up which already been given to him



4. Shri S.L.Arya and Shri Chanchlani will look after each others' work during their non-availability.

No.426/5

Dated: 24.4.98

Sr. DME/Kota"

Thus, from the letter dated 24.4.98, as reproduced above, it is clear that it was the applicant who was overall incharge of RDI/Kota. Shri Harish Chanchlani was asked to lookafter the work of Diesel Satellite Shed under the overall charge of the applicant that too w.e.f. 24.4.98 and not prior to that date, whereas the allegation pertains to the period from 1.7.96 to 11.9.98.

Further from the facts which can be gathered from the statement of imputation is that when the said arrangement was sought to be discontinued after 11.9.98 at the instance of the applicant who ordered Shri Harish Chanchlani, to shift Shri Dara Singh and deploy him in day shift, it was only then that Shri Dara Singh approached the applicant and applicant demanded bribe for again posting him in the night shift. It is also borne out from the material placed on record that the trap was laid, Panchnamma was duly recorded and a sum of Rs. 300/- were recovered by the raiding party from the applicant. The applicant has also admitted this fact of recovery of amount from his possession. However, the applicant has given explanation to the effect that the said amount was given by him to Shri Dara Singh on 10.10.98 to bring

material from Military Canteen. Since the material was not available in the Military Canteen, the said amount was returned to him by Shri Dara Singh on 2.11.98.

The question which requires our consideration is whether the explanation of the applicant can be accepted. According to us, if the matter is viewed in its entirety and in view of the fact that the applicant has shown undue favour to Shri Dara Singh since 1.7.96 till 11.9.98 by deploying him in night shift/inter shifts and also extending favour to him by altering the period of absence to that of leave of duty which fact is proved by the documentary evidence, the only irresistible conclusion which can be drawn is that explanation of the applicant cannot be accepted. Further, it is not the case of the applicant that he has been falsely implicated at the instance of someone else or Shri Dara Singh has falsely implicated him by making false complaint, if any, to the higher authorities. Thus, the explanation so given by the applicant regarding recovery of amount cannot be accepted.

Further, the contention of the learned counsel for the applicant that there is no evidence regarding demand of the amount, as such, the impugned orders are required to be quashed, cannot be accepted. It has been repeatedly held by the Apex Court that there cannot be any direct evidence of demand. Admittedly, the amount is not demanded in the presence of a

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person. Thus, the submission that there is no witness to the demand can neither be accepted nor it is the requirement of the law. The charge stands proved on the basis of documentary evidence as well as the statement made by the witnesses. Thus, it cannot be said that it is a case of no evidence.

Regarding the contention raised by the learned counsel for the applicant that there is violation of the provisions of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, suffice it to say that the applicant has not raised this plea before the authorities, as such, he cannot be permitted to raise such a plea during the course of arguments, in view of the law laid down by the Hon'ble Apex Court in the following case:-

- 1) Ratan Lal Sharma, vs. Managing Committee, Dr. Hari Ram Higher Secondary School and Ors, 1993 SC 2155

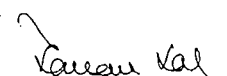
It may be stated here that even in the OA the applicant has not taken this ground, as such, whether there was non-compliance of Rule 9(21) or not cannot be ascertained as the respondents were never put to the notice to this effect. Further, it is settled law that a party cannot be allowed to raise a point which he has not pleaded in the OA and the issue has to be decided on the basis of the case set up by the parties in the pleadings and court is bound to decide the matter on the basis of the issues and pleas raised in a case and not dehors the pleadings. Thus, even on

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this score also the plea of the applicant regarding non-compliance of the provisions of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, cannot be entertained.

The scope of interference in such matters is very limited. Even re-appreciation of the evidence is impermissible. The High Court and Tribunals while exercising judicial review do not act as an appellate authority. As already stated above, the scope for interference by the Court or Tribunal with the conclusion of guilt is limited to the situation where the proceedings were held in violation of the principle of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion of findings recorded by the Disciplinary Authority is based on no evidence or reason or no reasonable person would have reached to the conclusion. This is not the case of such nature,

5. Therefore, we are of the view that there is no infirmity in the order(s) passed by the Disciplinary Authority, Appellate Authority and Revisional Authority, as such the OA is bereft of merit and the same is accordingly dismissed with no order as to costs.

  
(TARSEM LAL)

Admv. Member

  
(M.L. CHAUHAN)

Judl. Member