

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 4-11-04

OA 259/2003

Fateh Singh s/o Late Shri Dan Singh r/o 47, Sindhi Colony, Chandani Chowk, Near Pankha, Jhotwara, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Sr.DCM, North-Western Railway, Jaipur.
3. Divisional Rly Manager, North-Western Railway, Jaipur.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant ... Mr.Ashok Gaur

For the Respondents ... Mr.N.C.Goyal

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 has been filed to seek following relief :

- "i) by appropriate order or direction the orders dated 10.7.97 (punishment order Ann.A/1), dated 1.5.98 (Ann.A/2) and 21.2.2003 (Ann.A/3) may kindly be quashed and set aside.
- ii) by appropriate order or direction the Hon'ble CAT may be pleased to direct the Railway Administration to reinstate the applicant back in service with all consequential benefits of back wages, seniority and other benefits.
- iii) by appropriate order or direction the Hon'ble Tribunal may be pleased to call for the entire record relating to disciplinary action against the applicant."

2. Brief facts of the case are that the applicant while posted as Booking Clerk at Jaipur Station (MG) was discharging his duties on 22.6.95 when a vigilance team came inside the booking office and conducted surprise check. That at about 17.30 hrs. a passenger was issued  $3\frac{1}{2}$  tickets for Sikar by Shekhawati Express. While paying fare the passenger stated that he wanted only  $2\frac{1}{2}$  tickets. The same



passenger again came at the Window and surrendered these  $2\frac{1}{2}$  tickets for cancellation and refund. The applicant cancelled these tickets and wrote remark "NIT with CC" (non-issue ticket with clarical charges). It is further stated that the above vigilance team started making inquiry about these cancellations. After a lapse of two months a charge-sheet dated 31.8.95 (Ann.A/4) was issued and the applicant was simultaneously placed under suspension. The charges pertain to collection of Rs.25/- extra on  $2\frac{1}{2}$  tickets for journey from Jaipur to Sikar. The second charge was relating to issuing ticket which was already issued and collecting Rs.29/- i.e. fare of II M/E-Class. Third charge related to shortage of amount of Rs.86/- as per DIC. The applicant submitted reply and denied charges. Enquiry Office (EO) was appointed. Ten documents and four witnesses were relied upon by prosecution. The applicant during inquiry pointed out contradiction between statements of prosecution witnesses and several procedural lapses like statements of witnesses were recorded in questionnaire form, proper opportunity of hearing was not given to the applicant as normal procedure of recording evidence i.e. examination in chief, cross examination and re-examination were not followed, which is clear violation of Rule-9(17) of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short, the Rules, 1968). However, EO concluded the inquiry and came to the conclusion that first two charges were proved and third allegation was found unfounded and meaningless (Ann.A/5). The applicant on receipt of inquiry report submitted his representation dated 5.11.96 (Ann.A/6) and among others raised four glaring shortcomings stated in para-14 of the OA. The disciplinary authority vide order dated 10.7.97 (Ann.A/1) imposed the penalty of removal from service. In this order it was observed that points raised by the applicant in his representation were nothing but repetition of points which were already discussed during the course of inquiry. From this it is clear that he did not apply his own mind while deciding the issue. Feeling aggrieved by this, the applicant preferred an appeal

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and raised several pleas against the punishment order, seven of which are listed in para-16 of the OA. The appellate authority however dismissed the appeal vide order dated 1.5.98 (Ann.A/2). The applicant then filed revision petition under Rule 24 of the Rules, 1968, which was also dismissed vide order dated 21.2.2003 (Ann.A/3). It is further stated that he came to know that the revisional authority had consulted RRT Chennai in the matter and as per their opinion the charges levelled against the applicant did not warrant stringent punishment of removal from service due to the fact that mere inference cannot substantiate a charge unless there is other corroborative/substantial evidence available. However, revisional authority did not follow this advise and sustained the punishment and appellate order.

3. In the grounds it is stated that the EO relied upon Panchnama part-I and II as sacrosanct documents without eliciting any independent, legal and corroborative evidence, due to which the illegalities committed by the vigilance team have been overlooked by him. He also did not take note of various contradictions in the statements of witnesses about the basic facts of the case. That Incharge Vigilance Team S.S.Rathore's statement revealed that there was no specific complaint nor source information for the vigilance activity. Similarly, PW-2 Mansoori did not hear the conversation and also stated that the transaction did not take place in his presence. In view of these facts the charges could not be considered proved. That EO did not consider the fact that Shekhawati Express train was ordinary train between Jaipur and Reengas and, Express train thereafter, due to which reason tickets were correctly issued by the applicant and fare was also charged for II M/E-Class. That recording of statements of witnesses in questionnaire form without giving opportunity of cross examination is against principles of natural justice and in violation of Rule-9(17) of the Rules, 1968. It is further stated that the order of disciplinary authority also suffers

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from infirmities like impugned order is passed mechanically without considering the points raised by the applicant in his reply to show-cause notice, he also failed to notice that EO's finding was in violation of principles of natural justice as copy of statement of Dharmi Chand was not supplied but the same was relied upon, opportunity of cross examination was denied by following the procedure of questionnaire, his order is not a speaking order inasmuch as he has not given his finding on each charge separately and has not independently applied his mind but gone entirely by the conclusions of the EO. It is also stated that disciplinary authority was influenced by the vigilance report due to which he did not notice discrepancy in the inquiry report. It is stated that disciplinary authority failed to consider whether punishment of removal from service is justified in the facts and circumstances of the case because applicant has neither benefited personally nor he cheated any person. That in absence of intention to cause loss to the Railway or get personal gain, the punishment of removal from service is proportionate to the fault committed. More so, because vigilance staff found Rs.86/- short and no money was found in excess and charge No.3 was even found not proved. The applicant has also stated that the appellate order has been passed without application of mind in a slip shod manner. That points jotted down by the appellate authority during personal hearing have not been correctly noted and analysed as he has not recorded reasons for his disagreement over them, and has in fact given erroneous reasons for dismissing the appeal. For this, some examples are quoted like his observation that it was not a trap but a decoy check, he failed to consider that Dharmi Chand was a Vigilance Official working under direct subordination and supervision of S.S.Rathore and, therefore, he could not be treated as an independent and dis-interested person and that there should have been two and not one independent witness for the above vigilance activity. Also that appellate authority has wrongly observed that applicant contended that Vigilance Inspector's report was a forged

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document. On the contrary, applicant had contended that procedure adopted by vigilance was fraudulent. He also could not correctly appreciate the pressure of vigilance team working on the mind of the disciplinary authority while passing punishment order. Applicant also find fault with revisional authority's decision inasmuch as allegation of pocketing of Rs.25/- has never been alleged and proved by the Railway Administration during inquiry. The search conducted by vigilance team also found shortage of Rs.86/- in DTC and that search on person of the applicant did not result in recovery of the excess amount. Finally, it is stated that the revisional authority has ignored report of RRT Chennai, who clearly observed that more inference cannot be made basis of a charge unless there are other corroborative/substantial evidence available.

4. The respondents have filed a detailed reply denying any illegality in the punishment, appellate and revisional authorities order. It is stated that on 22.6.95 the applicant had sold  $2\frac{1}{2}$  tickets and he did not sale  $3\frac{1}{2}$  tickets, as stated by him in the OA. The person who purchased  $2\frac{1}{2}$  tickets subsequently cancelled them. The applicant again sold one of the cancelled tickets and this fact has been admitted by him. The Vigilance Inspector Jaipur made detailed inquiry and on the basis of his report a charge-sheet containing three charges was served upon the applicant. EO was appointed and he conducted inquiry as per extant rules wherein ten documents and four witnesses were examined. The applicant did not provide any list of defence witnesses and merely tried to point out contradictions between statements of the prosecution witnesses and defects in the defence of the prosecution. However, he could not show any such contradiction and defect and in fact he has admitted in his statement that after cancelling the tickets he had resold one of them. It is stoutly claimed that inquiry has been conducted in perfect abidence of rules and that applicant has failed to show any abrogation of procedure. That the EO came to the conclusion

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that first two charges of collecting Rs.25/- extra by way of charging fare of II M/E ticket as against issued 2½ ordinary tickets ex Jaipur to Sikar and reselling of one II ordinary ticket surrendered for cancellation were found proved. Applicant was given opportunity to submit his defence against inquiry report and his objections were considered by the disciplinary authority. He, however, after having detailed perusal of inquiry report and objections submitted by the applicant and after applying his mind passed a detailed speaking order (Ann.A/1). It is evident that applicant has been given sufficient opportunity to raise objections at the relevant time. Similarly, the appellate authority not only considered the points raised in the appeal but also gave personal hearing to the applicant alongwith his defence counsel before disposing of the same by a speaking order. It is also denied that the revisional authority did not pass a speaking order.

5. Replying to the grounds it is stated that the objections raised by the applicant in this OA are different from the objections raised before the disciplinary, appellate and revisional authority, which cannot be taken note of by the Tribunal at this stage. That the disciplinary authority in fact only after the detailed perusal and after analysing facts on record and applying his mind on them has passed a detailed speaking order (Ann.A/1). He has also noted that sufficient opportunity was given to the applicant during inquiry to raise objections which have also been considered in the punishment order (Ann.A/1). Similarly, the appellate authority gave personal hearing and considered all the points raised by the applicant in the appeal and dismissed the same through a speaking order. The revisional authority i.e. General Manager considered charge No.1 and 2 grave enough to warrant stringent punishment and due to the same reason penalty of removal from service imposed by disciplinary authority was sustained while not agreeing with the favourable opinion given by RRT Chennai regarding quantum of punishment. It is clarified that General

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Manager has given reasons for not accepting the advise of RRT Chennai in his well reasoned order.

6. The applicant has filed a rejoinder and has largely repeated the points and defence raised in the OA and repeated that there was inadequate application of mind by the disciplinary, appellate and revisional authorities as they have, largely under influence of the Vigilance Inspector's report, failed to notice non-application of relevant rules governing opportunities that are required to give to the delinquent officer and that they were premeditated in their minds to punish the applicant.

7. Learned counsel for parties were heard at length during arguments. Counsel for applicant read through the statements of witnesses in the inquiry report to point out contradiction between them, and read out portions of punishment, appellate and revisional orders to show that the disciplinary, appellate and revisional authorities had gone by the line drawn by the EO/Vigilance Inspector. He also pointed out that by doing so all the three authorities have violated principles of natural justice, followed the procedure only in form but not in substance and that the punishment is based only on surmises and inferences. He also pointed out that charge No.1 and 2 are related to each other which is clear from the reading of imputation of charges. That there was no mala fide or intention to fraud the Railway but the mistakes committed by the applicant were due to inadvertence. That the report of the vigilance team was not duly supported by independent corroborated evidence, the EO has at more than one place stated that not due to evidence but by inference and the circumstances of the case charge No.1 and 2 are found proved. These facts coupled with absence of mala fide prove no illegality or wilful irregularity for which punishment of removal from service could be considered good in law. For this contention, he relied upon decision

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in the case of Kailash-Nath Gupta v. Enquiry Officer, Allahabad Bank, AIR 2003 SC 1377. in which proportionality of punishment has been considered and held that inspite of limited power of Courts and Tribunals they can direct reconsideration of quantum of punishment in appropriate cases where malafide is not proved but only procedural irregularity is found to be proved against the charged officer. He also pleaded that the EO followed the procedure of questionnaire for recording statements of witnesses which preclude opportunity of cross examination, which is not only violation of rules but also denial of natural justice. For this, he placed reliance on S.C.Girotra v. United Commercial Bank (Uco Bank) & Ors., 1995 SCC (L&S) 1140. That such omission was held amounting to denial of reasonable opportunity of defence due to which reason the Court directed the inquiry to be conducted afresh from the stage of inquiry report after affording opportunity of cross examination. Lastly, it was stated that for the reasons already stated above it is clear that the disciplinary authority and appellate authority did not in detail consider the objections raised by the applicant in his submissions after receipt of inquiry report and punishment order respectively and that the appellate authority in particular has gone so mechanically that he has failed to fully appreciate what was stated by the applicant during personal hearing and the points raised by him in the memo of appeal. He has in fact in a very mechanical manner disposed of very important points in one line explanations thereby causing miscarriage of justice. That the revisional authority has given some reasons for disagreeing with the RRT Chennai's report but he has also more or less towed the line drawn by the EO while paying scant regard to the defence of the applicant. This has caused serious prejudice to the applicant. In support of this argument, he placed reliance on Manju Dhariwal v. Hindustan Zinc Limited, 2003 (Vol.II) WLC 41, In this case the inquiry report and order of disciplinary authority did not consider the grounds raised by the charged officer. Some mistake was found committed by the appellate

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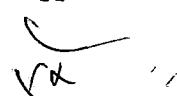
authority. It was held that misconduct is not proved and the punishment was set aside. In the end he sought permission to read through the duties of the appellate authority mentioned in detail in the Rules, 1968 to prove how the appellate authority in this case has not discharged his responsibilities correctly and prayed that the applicant may be exonerated.

8. Learned counsel for the respondents, on the other hand, contended that applicant had in fact admitted charge No.1 and 2 by stating that the mistakes were caused inadvertently and without any mala fide intentions. It was further stated that the evidence of admission is the best evidence and in departmental inquiries with some corroboration of such admission punishment can be awarded because the degree of proof in such cases is required to be to the extent of preponderance of probability unlike in criminal cases and the principles of Evidence Act as sought to be applied by the counsel for applicant while showing alleged contradictions are not very relevant here. Regarding objection about cross examination, it was stated that although this point has been raised in the OA in the facts of the case as well as grounds, no objection was raised by the applicant in his representation after receipt of inquiry report, appellate or revision memo and he cannot be allowed to raise the same now. He also mentioned that in one of the above representations reference to cross examination done has been made due to which reason this contention of the applicant is wrong.

9. We have carefully gone through the records and pleadings of the case and after careful consideration of the arguments feel that the departmental inquiry has been conducted as per rules and prescribed procedure. There is no denial of the fact that a mistake had been committed by the applicant and whether the same was wilful and with mala fide intention or an inadvertent one can be best gauged from the

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result of such a mistake. On the basis of this, it is clear that but for the trap by vigilance staff the applicant would have ended up earning illegal money. As was discussed during arguments, applicant's mistake cannot be considered inadvertent because for journey from Jaipur to Sikar he was required to issue Mail/Express category of tickets because the lap of journey between Reengas to Sikar is of Mail/Express category and even though both ordinary and Mail/Express category of tickets were being sold, the former were required to be sold only for the lap of journey between Jaipur to Reengas. Since this mistake constituted serious procedural lapse concerning money matters, it could not be taken lightly. The applicant compounded the matter by re-selling one of the cancelled tickets at Mail/Express category rate and even for the sake of argument if it is believed that initial transaction was by mistake, such a mistake in the second round cannot be considered inadvertent. For obvious reasons it is well known that vigilance staff pry in areas where scope for corruption abounds. Due to the circumstances of this particular train for which two categories of fare are applicable, the scope for mal practice existed. Therefore, the action of the vigilance staff cannot be questioned and considered motivated. We also feel that the applicant having conceded his mistake has forfeited his right to raise objection regarding procedure followed or wrongly followed by the respondents. However, as already stated above, the respondents have not faulted in this, and there has been complete abidance of rules and in the course of inquiry, appeal and revision, adequate opportunity was given to the delinquent officer. For example, adequate opportunity as required under rules was given to him to put up his defence. He was given personal hearing by the appellate authority and as a matter of abundant precaution opinion of the RRT Chennai was obtained by the revisional authority even though he disagreed with their opinion, but reasons for this have been clearly stated in his order. Counsel for applicant argued at length about denial of opportunity to cross examine the witnesses but the same is

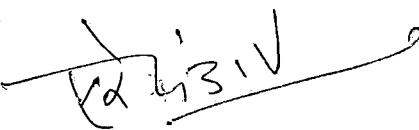
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factualy incorrect because in his representation dated 5.11.96, addressed to Senior Divisional Commercial Manager, after receipt of inquiry report, while describing contradiction in the statements of prosecution witness Shri Dinesh Khatri TNCR it is stated that; "during cross examination Shri Khatri was specifically asked, but his reply (Ans. to Q.No.13) was evasive". These renders this plea baseless. The plea regarding cross examination is understood to have not been taken as per the counsel for respondents in the memo of appeal and revision and the same has to be believed by us in absence of citing of these documents as annexures to the OA by the applicant. Thus, the contention that there has been denial of opportunity and abrogation of principles of natural justice do not stand. The contention that the disciplinary authority and subsequently the appellate and revisional authority did not apply their mind and specifically the appellate authority failed in his duty by not carefully considering the arguments putforth by the applicant in his memo of appeal, are also not considered well founded. For this, reliance is placed on the judgement by Hon'ble Supreme Court in the case of State Bank of India Bhopal v. S.S. Koshal, reported vide 1995 (4) SCT 818, according to which even though it is desirable that the appellate authority analysis each point in the speaking order but their Lordship have also observed that if appellate authority largely agrees with the findings of the disciplinary authority he need not go over each point separately as long as he finds sufficient evidence and is satisfied with the punishment orders by the disciplinary authority. The contention that revisional authority's order is not well reasoned is also wrong because he has clearly stated his reasons for disagreeing with the opinion of the RRT Chennai and endorsed the punishment of removal from service. Our reaction to the case law cited by the counsel for applicant is that after reading these judgements we feel that the circumstances of the case of Kailash Nath Gupta (supra) are entirely different from the facts of this case inasmuch as the lapses committed by Shri Kailash Nath

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Gupta were entirely procedural due to which there was difficulty in realisation of loaned money by the Bank subsequently. In the facts of instant case, the mistakes of the applicant cannot be considered purely procedural and when in the same transaction a mistake is made twice it cannot be considered inadvertent and when such mistakes affect the revenue/charging excess money from public for personal gain, which is evident in this case, no mercy can be shown. In other words, it was a case of attempt of corruption but the same was aborted by vigilance raid. The case pertaining to S.C.Girotra (supra) is obviously not applicable because it is proved that applicant was given the opportunity to cross examine witnesses. Similarly, for the reasons stated above, it cannot be considered that defence of the applicant was not considered at all while taking decisions and due to this reason the finding in Smt. Manju Dhariwal's case (supra) also does not apply here.

10. On the basis of reasons stated in the foregoing paras, the OA is dismissed with no order as to costs.

  
(A.K.BHANDARI)

MEMBER (A)

  
(M.L.CHATURVEDI)

MEMBER (J)