

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR,
JABALPUR

Original Application No. 78 of 2003

Jabalpur, this the 20th day of April, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Rahul, S/o. Baboolal Kethwas,
Aged 45 years, Ex. Railway Travelling
Ticket Examiner, C-9, Vinoba Nagar,
Ratlam. Applicant

(By Advocate – Shri A.N. Bhatt)

V e r s u s

Union of India – Represented by

1. The General Manager, Western Railway,
Headquarter Office, Churchgate
Mumbai-20.
2. The Divisional Rail Manager,
Western Railway, Do-batti, Ratlam. Respondents

(By Advocate – Shri Y.I. Mehta)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :

“1. the Hon'ble Tribunal very graciously set aside and quash the impugned orders of removal from service dated 3.3.1999 appellate authority's order dated 18.1.2000, reviewing authority's order dated 22.3.2002 and the charge sheet dated 21.12.1994,

2. the orders may kindly be passed for re-instatement of the applicant with all consequential benefits,

3. wages for the period from the date of removal to re-instatement may kindly be ordered to pay to the petitioner.”



2. The brief facts of the case are that the applicant was employed in the Railway Department as a Traveling Ticket Examiner having headquarter at Indore. Now he has been removed from services on 3.3.1999 and is residing at Ratlam. The applicant was allotted two coaches Nos. 7402 and 5570 in 90 Up. Ex. Bhopal to Indore. These coaches were non-vestibule coaches. The applicant boarded in his coach and started working, checking recovering the sleeper charges, preparing receipt of money and allotting berths as per turn and vacancies existing in the chart supplied at Bhopal Station. The applicant being busy in his work, at Sehore when the train started, one Deputy Superintendent, two Inspectors, two Sub-Inspectors, one Head Constable and five constables boarded in the coaches to carry out surprise check. After disclosing their identity cards, they stopped the applicant from working inspite of his repeated request that primary check has not yet been completed. They kept the applicant in custody and at once confiscated complete cash, all the receipts books etc. The CBI official conducted check and examined the passengers all alone at their own, during the running train at 2.00 hrs. night between Sehore and Shujalpur stations. They were not empowered to examine the tickets of the traveling passengers in the train at the restricted time. There was no complaint from any passenger for demanding any illegal or extra money by the staff on duty. The CBI officials not drawn any Panchnama in the presence of two independent and impartial witnesses in the running train. On the basis of false and fabricated documents prepared at Shujalpur station and at Bhopal by the CBI officials, the Department has issued charge sheet for major penalty on 21.12.1994 against the applicant. The charge sheet was not having all the enclosures of documents relied upon. The applicant submitted a representation dated 5.1.1994 and requested the disciplinary authority to furnish the copies of the documents relied upon together with copies of the statements of the listed witnesses. But the disciplinary authority did not pay any heed and appointed the enquiry officer and the presenting officer. The enquiry officer himself acted as presenting officer without

any lawful authority. The enquiry officer at his own accord dispensed with the examination-in-chief of the witnesses and instead of recording fresh statements, their pre-recorded statements were taken on record and obtained their signatures during the course of the enquiry in token of its confirmation without offering the opportunity of cross-examination. The Chief Ticket Inspector, Indore delivered to the applicant only a copy of the enquiry report dated 26.11.1998. The enquiry officer has proved the charges on the basis of the statements/depositions made by the Investigating Inspector-CBI behind the back of the applicant, placing the facts incorrectly. The enquiry officer has failed to mention as to which article of charge is proved and on what basis. The findings of the enquiry officer are no findings and on these findings of the enquiry officer the disciplinary authority has passed the order of removal from service on the applicant. The disciplinary authority in the said order has contended that the enquiry officer has proved the charges on the basis of undisputable evidence and there is no hesitation to accept the findings of the enquiry officer. He has not discussed about the material on which he has reached to the conclusion to impose this harsh penalty. The appellate authority also denied the opportunity of personal hearing without assigning any reason despite the specific request made in the appeal. Thereafter the applicant submitted a revision petition and the same was also rejected. Hence, this Original Application is filed.

3. Heard the learned counsel for both the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that the authorities concerned had not prepared the details of the alleged cash recovered from the applicant, while it was a mandatory requirement according to the rules. The presenting officer was also changed and the enquiry officer himself examined and cross examined the witnesses produced by the applicant. He himself acted as the presenting officer without any lawful authority.



This action of the enquiry officer is against the rules. The witnesses who were Railway employees and are under direct control and supervision of the respondents were examined by the enquiry officer and the public witnesses were not examined. The list of the documents was also not supplied to the applicant. When the applicant was completing the concerned records at the time of surprise check, the authorities concerned stopped him from doing so and immediately arrested him. Due opportunity of hearing was not given to the applicant. The enquiry officer has not conducted the enquiry according to the mandatory rules and the charges against the applicant were not proved as the public witnesses were not examined by the enquiry officer. The CBI authorities had no authority to examine the tickets of the traveling passengers in train. The authorities concerned have passed the impugned orders without considering the contentions of the applicant and these orders are non-speaking orders. It is further argued on behalf of the applicant that the punishment awarded to the applicant is harsh. Hence, the OA deserves to be allowed.

5. It is argued on behalf of the respondents that there has been no irregularity or illegality in conducting the departmental enquiry much less causing any prejudice to the applicant as he fully participated in the enquiry and had full opportunity of defending his case. He was given full opportunity to cross-examine the witnesses. The absence of the presenting officer did not cause prejudice to the applicant. The applicant was given full opportunity to cross-examine the witnesses and he exercised his right without protest and no prejudice is caused to him. The applicant was supplied with the report of the enquiry officer alongwith the covering letter duly engaged by him. There was no violation of any rules or principles of natural justice. The charges against the applicant were proved and the public witnesses cited in the FIR were not necessary to be examined as the Railway employees (other witnesses) were examined as witnesses against the applicant during the departmental enquiry



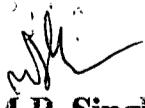
proceedings. Their evidence cannot be disagreed on the ground that the charge against the applicant is of defalcation to the Railway administration. This type of conduct adversely affects the integrity of the applicant. The authorities concerned have passed the impugned orders after considering the contentions of the applicant and the impugned orders passed are speaking and have sufficient reasons. The whole action of the respondents is legal and justified.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that changing of the enquiry officer and the presenting officer is not at all against the rules and provisions prescribed in CCS (CCA) rules. The argument advanced on behalf of the respondents that the documents dated 13.6.1997 & 19.1.1998 Annexure R-4 and Annexure R-5 respectively clearly shows that there are signatures of the presenting officer and of the applicant, seems to the correct. On these days the relied upon documents were ~~dually~~ supplied to the applicant and the statements of the witnesses were recorded. If the panchnama is ~~also~~ not prepared then also it does not amount to any prejudice to the applicant as it is not a criminal trial, and this is departmental enquiry proceedings. The respondents have stated that the public witnesses were not traceable, hence the departmental witnesses were examined. The evidence of the departmental witnesses cannot be ignored or disbelieved merely on the ground that these witnesses belong to the department and it is quite possible that the public witnesses might not have been available or traceable to the respondents because the passengers travelling in the trains have no interest after the said incidence occurred. The trap was conducted by the CBI team. The document filed by the applicant at Annexure A-5 is not a complete document. We find that the applicant was supplied with all concerned and relevant documents. The applicant was trapped suddenly by the team of CBI and he was rightly stopped by them from further functioning as some excess cash was recovered from him for which he could not give any proper

explanation. If some time would have been given to the applicant, then he could have manipulated the concerned documents. The learned counsel for the applicant has drawn our attention towards the judgment of the Hon'ble Supreme Court in the case Hardwari Lal Vs. State of U.P. and Others, 2000 SCC (L&S) 85, in which the Hon'ble Supreme Court has held that the "Departmental enquiry – Evidence – Failure to examine material witness – Appellant, a police constable, charged of having abused his colleague while he (appellant) was under the influence of liquor – However, neither complainant nor the other employee who accompanied the appellant to hospital for medical examination, examined as witnesses – Inquiry held vitiated being in violation of natural justice – Plea rejected that there was other material sufficient to come to the conclusion one way or the other, observing that impact of complainant's testimony could not be visualized and also evidence of the employee who accompanied the appellant to hospital would also bear upon the appellant's state of inebriation, if any." The facts of this ruling is not similar to the present OA as the charge leveled against the applicant is serious in nature which adversely affects his integrity. It is a settled legal proposition that the Courts/Tribunals cannot re-appraise the evidence and also cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

7. Considering all the facts and circumstances of the case, we are of the opinion that this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.


 (Madan Mohan)
 Judicial Member


 (M.P. Singh)
 Vice Chairman