

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
....

original Application No. 333 of 2001

Jabalpur, this the 15th day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

P.K. Warner son of late Elvin Warner
aged about 57 years,
R/o Rajhul Duplex 11,
IVth Bridge, Near Vaibhan Talkies,
Nepier Town, Jabalpur.

...Applicant

(By Advocate: Shri S. Paul through Sh. Manish Chawra)

-versus-

1. Union of India through
Secretary,
Ministry of Railways,
New Delhi.
2. Divisional Railway Manager,
Office of Divisional Railway Manager,
Jabalpur.
3. Additional Divisional Railway Manager,
Office of Divisional Railway Manager,
Jabalpur.
4. The Sr. Divisional Personnel Officer,
Central Railway, D.R.M. (P)'s office,
Jabalpur. ...Respondents

(By Advocate: Shri N.S. Ruprah)

O R D E R

By Madan Mohan, Member (Judicial) -

By filing the present original Application, the
applicant has sought the following main reliefs:

- i) To issue a writ of certiorary for quashing the order dated 9.1.2001 passed by R-3.
- ii) To issue a writ of certiorary for quashing the order dated 7.8.2000 passed by R.4.
- iii) To issue a writ of mandamus directing the respondents to produce the records of the departmental enquiry held against him.
- iv) To issue a writ of mandamus declaring the applicant to be deemed to be in continuous service till the age of superannuation and to reinstate him and pay all monetary consequential benefits arising therefrom together with interest at market rate."

2. The brief facts of the case are that the applicant was initially recruited as Junior Clerk through the Railway Recruitment Board on 22.2.1965. Ultimately he was promoted as Senior Office Superintendent Gr.II in the year 1996. According to the applicant, apart from the duties assigned to him, he was also to supervise the personal departmental work of the concerned employees. On 20.8.1999 at about 4.30 p.m. he received a telephonic message from the Station Manager, Jabalpur to produce the attendance register and muster-cum-pay sheet of one delinquent employee Sh. Kishorilal Bhalavi who was undergoing departmental enquiry at the chamber of Station Manager, Jabalpur. The aforesaid record was under the custody of the departmental clerk (Optg. Deptt) i.e. with Shri Rajendra Singh who was working under the applicant at that time. The applicant immediately directed Shri Rajender Singh to produce the aforesaid record to the Station Manager, Jabalpur. In return he was misled by the said dealing clerk that the record had already been submitted with the Station Manager, Jabalpur. In fact it was not done so by him and the enquiry had to be postponed for want of said record. After making false statement Shri Singh went on leave in second half on 23.8.1999 with permission of the Station Manager, Jabalpur and retruned on duty on 24.8.1999. On 24.8.1999 the applicant came to know about it and he immediately enquired from Sh. Singh as to why the record was not produced in the enquiry on 23.8.1999. This time he gave inwriting that he had already submitted the same with the Station Manager, Jabalpur. On 25.8.1999, there was an inspection made by the audit party. During inspection the DAR record of Shri Kishori Lal Bhallavi was found behind the seat of Sh. Singh. A seizure report of the same was prepared on the spot in presence of audit inspector and six witnesses. As the record was found the applicant was informed the respondent no. 4 about it and sought directions to produce it as and when

(Signature)

required vide letter dated 27.8.1999. The applicant had already informed respondent no. 4 on 27.8.1999 in writing, he again met him and narrated the whole incidence personally but it was taken otherwise and the applicant was issued with a chargesheet on 2.9.1999. The applicant was surprised to note that despite every caution and care the whole blame was put on him without any reason and rhyme. Before issuing the chargesheet, no enquiry was made from Rajinder Singh Clerk from whose possession the record was seized in presence of the audit party. The applicant submitted his reply to the chargesheet denying the charges in toto as there was no delay on his part to comply with the directions received from the Station Manager, Jabalpur. The respondents overlooked the reply of the applicant and a preliminary enquiry was held on 16.11.1999. The prayer of the applicant for calling of six defence witnesses in the enquiry proceedings was not considered by the Inquiry Officer. The enquiry was held in all post-haste. The applicant was not afforded proper opportunity of hearing or defence. The prayer for calling of six defence witnesses in whose presence the record was seized was also not considered by the enquiry officer. Even the statement of Shri Rajinder Singh, dealing clerk produced by the applicant was overlooked by the enquiry officer and a concocted report was submitted to the disciplinary authority vide letter dated 4.4.2000 (A/7). The enquiry officer failed to appreciate the evidence. Respondent no. 4 thereafter issued a show cause notice to the applicant vide Memo dated 19.5.2000 (A/8). The applicant submitted a detailed reply vide representation dated 1.6.2000 (A/9). The disciplinary authority without considering the reply of the applicant passed the final order of compulsory retirement vide order dated 7.8.2000 (A/10) which is bad in law. The applicant preferred an appeal against the impugned order passed by the disciplinary authority on 21.9.2001. The

order
appeal was also dismissed vide/dated 9.1.2001 by the appellate authority. According to the applicant, the authority who passed the order of compulsory retirement was not competent to pass such an order.

3. Heard the learned counsel for both the parties.

4. Learned counsel for the applicant has drawn our attention towards letter dt. 20.8.1999 written by Rajinder Singh i.e. the concerned dealing clerk/to the applicant in which he has mentioned that the required record relating to enquiry of Sh. Kishori Lal Bhallavi has been sent to the Station Manager, Jabalpur. He has further drawn our attention towards letter dated 25.8.1999 (A/2) in which it is mentioned that on 25.8.1999 Accounts Audit inspection was being done in the office of Station Manager, and the relevant record in question was found at the back seat of the clerk concerned and that record was seized in the presence of Shri G.P. Vishwakarma, Audit Clerk and five other persons. He has further drawn our attention towards the statement of PW1 Shri Meena, Station Manager recorded by the enquiry officer during the enquiry proceedings. During the enquiry, he was put a question to kindly explain as to why whole concerned documents were not produced in the proceedings and who is the guilty for it. Shri Meena, Station Manager answered that according to him, concerned dealing clerk Rajinder Singh is guilty for it. Though the applicant was the official head at that time but the concerned record was kept by the dealing clerk and whenever the said record was required to be produced it was produced by the said Clerk concerned. The applicant was not the custodian of the record at any point of time. Learned counsel argued that Rajinder Singh, clerk wrongly informed that the required documents had already been sent to the Station Manager, Jabalpur while the same was found behind the seat of the said clerk at the time of inspection of the Audit party. Shri Meena, the Station Manager has also

clearly admitted that for this fault Shri Rajinder Singh is guilty. He has not said any word against the applicant in the enquiry proceedings. Hence, this is a case of 'no evidence' and applicant was not afforded the particulars of six witnesses in whose presence the relevant record was seized by the enquiry officer while it was requested by him to do so even then the Station Manager has himself admitted the guilt of the dealing clerk. It is surprising that on what ground the applicant was guilty and was punished while he had to do nothing with the records and rather it was not his duty to produce any record personally. Hence, no charges are proved against the applicant and the impugned orders are illegal and in violation of the rules.

5. On the contrary, learned counsel for the respondents argued that the respondents had conducted the enquiry in a proper manner and due opportunity of hearing was given to the applicant. Hence, no irregularity or illegality has been committed by the respondents. The applicant negligently and carelessly accepted the version of the dealing clerk without verifying the fact that the record required in the enquiry proceedings have already been made available to the Station Manager. It was the duty of the applicant to check and ensure that the requirement record have been made available which he failed to do and accepted the version of his Assistant without verification. The averments made by the applicant that the record was seized in the presence of the Audit Party and others are all after thought. The story has been made out to cover his lapse in not producing the record on 23.8.1999 when the enquiry was fixed. All the clerical staff of the personal branch posted at Jabalpur Station were working directly under the control of the applicant. He should have ensured that the records are made available on 23.8.1999 during enquiry. Since he failed to do so he cannot escape from the responsibility by



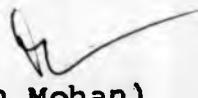
burden on his Assistant. It is immaterial as to what was done by Rajinder Singh who was working under his control. It is a fact that the applicant failed in his duties to produce the required record. The explanation of the applicant has been taken into consideration. The applicant cannot escape from the charge that the record was not produced on 23.8.1999 as required by the Station Manager, Jabalpur. There was no violation of any principles of natural justice. The averments that the enquiry officer's findings were perverse and bad in law is without substance. This is not a case of 'no evidence' as reasonable opportunity of hearing was given to the applicant. Hence, no irregularity or illegality has been committed by the respondents, while passing the impugned orders.

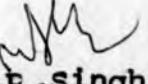
6. After hearing the learned counsel for the parties and carefully perusing the record, we find that the applicant was though official head but he was not the custodian of the record himself. The concerned record was kept by Shri Rajinder Singh, dealing clerk. On receiving information from the Station Manager, the applicant immediately informed/ directed the dealing clerk to send the required record to the Station Manager but the dealing clerk informed in writing vide Annexure A-1 dated 20.8.1999 that the relevant records had already been sent to the Station Manager, Jabalpur but during the inspection of the audit party the same found was/lying behind the back of the seat of the dealing clerk in the presence of six persons. We have perused the statement of Shri Meena, Station Manager, to whom concerned record was to be sent by the applicant, in which he has admitted that according to him the dealing clerk Rajinder Singh was guilty for the alleged incident. The applicant requested the enquiry officer to produce all the six witnesses in whose presence the relevant record was seized from the custody of Sh. Rajinder Singh but as to why this opportunity was not given to the applicant is not explained by the



respondents. Though it was the duty of the applicant to get the record produced by the dealing clerk and he should have been vigilant and careful enough to obey the orders of his seniors i.e. Station Manager but when the concerned dealing clerk had given in writing that the record had already been sent to the Station Manager, the applicant was convinced that the said record is with the Station Manager. Moreover, on 25.8.1999 there was an inspection made by the audit party and during inspection the DAR record of Shri Kishori Lal Bhallavi was found behind the seat of the dealing clerk Sh. Rajinder Singh. A seizure report of the same was also prepared on the spot in the presence of the audit inspector and six witnesses and the Station Manager Sh. Meena has also clearly stated that the dealing clerk Sh. Rajinder Singh was guilty of the alleged incident. Hence, we are of the opinion that the applicant was vigilant and he cannot be held responsible in any way for not producing / sending the required record to the Station Manager, Jabalpur because the lapse was on the part of the said dealing clerk only.

7. In the light of the above observations and in the facts and circumstances, we allow the Original Application and quash the impugned orders dated 9.1.2001 and 7.8.2000 passed by the respondents nos. 3 and 4 respectively and direct the respondents to pay the applicant all the consequential benefits flowing from the quashment of the above impugned orders. This order of the Tribunal should be complied with by the respondents within a period of four months from the date of receipt of a copy of this order. No costs.


(Madan Mohan)
Member (Judicial)


(M.P. Singh)
Vice Chairman

/na/