

THE CENTRAL ADMINISTRATIVE TRIBUNAL?, JABALPUR
BENCH, JABALPUR

OA No.630/2002

Dated this the 16th day of July 2004.

CORAM

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

Narayan Nair
S/o Late K.V.Nair
Senior Booking Clerk
R/o 596, Chhoti Omti
in front of Primary School
Bhartipur, Jabalpur.
(By advocate Shri S.Paul)

...Applicant

Versus

1. Union of India through
its Secretary
Ministry of Railways
Railway Board
New Delhi.
2. The General Manager
Central Railway
Mumbai CST, Mumbai
3. Assistant Divisional Railway Manager
(Appellate Authority)
O/O Divisional Railway Manager
Central Railway, Jabalpur.
4. The Sr.Divisional Commercial Manager
Central Railway
Jabalpur Division
Jabalpur.

...Respondents

(By advocate Shri M.N.Banerji)

O R D E R (oral)

By Madan Mohan, Judicial Member

The applicant seeks the following reliefs:

- (i) Summon the entire relevant records from the respondents including the record of domestic enquiry held against the applicant.
- (ii) Issue a writ of certiorari or any other appropriate writ/writs, direction/orders setting aside the entire disciplinary proceedings including the punishment order dated 15.3.02 Annexure A1 and appellate order dated 20.8.02 Annexure A2.
- (iii) Command the respondents to reinstate the applicant with full back wages and other consequential benefits as if the impugned disciplinary proceedings are never initiated against the applicant.



2. The brief facts of the OA are as follows:

The applicant was initially appointed on 27.3.1979. He was served with a major penalty under Rule 9 of Railway Servant (Discipline & Appeal) Rules, 1968. Copy of the charge sheet dated 22.3.2001 is Annexure A-3. The applicant denied the charges in toto and accordingly a departmental enquiry was instituted against the applicant. The enquiry officer acted as a presenting officer as well as inquiry officer. Four charges were made against the applicant, which were all false. There was no detailed examination in chief of the prosecution witnesses in the departmental enquiry and on the basis of prepared material/ statement, they confirmed those pre-recorded statement deposed by them. This procedure is not in accordance with rules. The applicant submitted representation against the enquiry report to the Divisional Commercial Manager, Jabalpur. But the disciplinary authority passed the impugned order dated 15.3.2002 whereby a punishment of dismissal from service was inflicted on the applicant with immediate effect. The disciplinary authority completely failed to appreciate the grounds raised by the applicant in his representation. The applicant preferred an appeal before the Assistant Divisional Railway Manager. No charge was proved against the applicant. As per para 705 of the Railway Vigilance Manual for conducting departmental trap, it is mandatory to have a gazetted officer as independent witness. This mandate of the provision has not been followed. Hence this OA was filed.

3. Heard the learned counsel for both parties. It was argued on behalf of the applicant that according to para 705 of the Railway Vigilance Manual for conducting



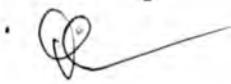
departmental enquiry, it is mandatory to have gazetted officers as independent witnesses. The respondents have not followed this procedure. They should have made available at least two gazetted officers for the alleged action as witnesses, but simply taking the plea that the particular station being very small no gazetted officer was available. When a particular provision provides that the procedure must be followed, the respondents should have secured the attendance of two gazetted officers from any station. Our attention is drawn towards 2003 (2) ATJ page 118 CAT Hyderabad Bench's decision and argued that this is not a case of trap by the CBI. The applicant is said to have not returned Rs.10 to a passenger and he did not count for his personal amount and so on. The whole charges against the applicant are false and baseless. He further argued that filing a revision petition is not mandatory and in support of his claim, he has relied upon the judgement of the Ernakulam Bench of the Tribunal in the case of M.Sidhan Vs. UCI & Ors reported in (1998) 37 ATC 256.

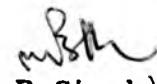
4. In reply, the learned counsel for the respondents argued that due opportunity was given to the applicant. Copies of the relevant documents were also supplied to him. The charges against the applicant are proved and hence this is not a case of no evidence and further argued that procurement of two gazetted officers is merely desirable but not mandatory and the alleged station was very small where gazetted officers were not available. Not returning due amount to passengers who had purchased tickets is a serious offence. The applicant could have filed revision petition which he did not. The respondents have not committed any irregularity or illegality in passing the impugned orders.



5. After hearing the learned counsel for both parties and carefully perusing the records, we find that revision petition is not mandatory. According to the judgement of the Ernakulam Bench of the Tribunal cited by the applicant, only appeal is mandatory against the order passed by the disciplinary authority. We further find that in view of para 705 of the Railway Vigilance Manual for conducting departmental trial, it is necessary to have a gazetted officer as an independent witness, which has not been followed by the respondents and the arguments raised in this behalf on behalf of the respondents that the said station was small one where no gazetted officers were available seem to be untenable. The respondents could have secured the attendance of two gazetted officers from any other station nearby. But they have not mentioned anything to the effect that they had made efforts to secure the gazetted officers. Hence they have not complied with the procedure.

6. Considering the facts and circumstances of the case, the OA is allowed and the orders passed by the disciplinary authority dated 15.3.2002 (Annexure A1), the order passed by the appellate authority dated 20.8.2002 (Annexure A2) are quashed and set aside.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

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Issued
on 31.8.04
B

पूर्णकल में ओ/ल्या..... जलपुर, दि.....
प्रतिनिधि जायी हित.....
(1) राजित, उन व्यावहारिक वार एवं दूसरा, जलपुर
(2) आवेदक श्री/महिला/कु..... के तांडिसल S. Paul
(3) प्रत्यार्थी श्री/महिला/कु..... के काउंसल M. N. Banniger
(4) ग्रंथालय, कोपता, जलपुर कर्मचारी
सूचना एवं आवायक कार्यवाही हेतु 17/2-8-04
उप दिनिकार