

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 1025 of 2000

Jabalpur, this the 6th day of May, 2004

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

Nand Kishore Shrivats,
aged about 57 years,
S/o. late Shri S.L. Shrivats,
Ex-Asstt. Chief Ticket Inspector,
r/o. LIG-227, "B" Sector, Sonigiri,
Raisen Road, Bhopal (M.P.).

... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India,
through its Secretary,
Ministry of Railway,
Railway Board, New Delhi.
2. Chief Commercial Manager (PC),
(Revising Authority), General
Manager's Office, Mumbai CST.,
Mumbai - 400 001.
3. Additional Divisional Railway
Manager, Central Railway, DRM Office,
Bhopal (MP).
4. Senior Division Commercial Manager,
Central Railway, DRM Office,
Bhopal (MP).

... Respondents

(By Advocate - Shri H.B. Shrivastava)

O R D E R

By Madan Mohan, Judicial Member -

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

"(ii) set aside the orders dated 15.9.1999
Annexure A-1, 4.11.1999 Annexure A-2 and dated
12.10.2000 Annexure A-3;

(iii) direct the respondents to reinstate the
applicant with full back wages and other consequential
benefits."

2. The brief facts of the case are that the applicant was
working on the post of Assistant Chief Ticket Inspector
with the respondents. While working as such the applicant

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was served with a charge sheet dated 30.8.1994 (Annexure A-4). He submitted his reply and denied the charges in toto. Thereafter enquiry officer and presenting officer were appointed. Adequate opportunity of defence had not been given to the applicant. As per the allegation the applicant was caught red-handed while demanding and accepting bribe of Rs. 50/- from Shri Devendra Birole in in Compartment No. S-12 of Malwa Express Train No. 4067 Down on 29.12.1993 between Vidisha and Bina Railway Station. In support of the said charge sheet certain documents and witnesses were mentioned. The whole documents were not supplied to the applicant alongwith the charge sheet. The main witness i.e. the Complainant Shri Devendra Borle, did not enter the witness box nor deposed his independent statement. No other/witnesses also entered into the witness box. The CBI officers entered in the witness box and made their statements. only one independent witness Shri Rajendra Shinde deposed his statement. The perusal of the statement shows that he has not supported the story of the prosecution and narrated a new story which was not a subject matter of the charge sheet. Rest of the witnesses were the officers/employees of the CBI who had no other option but to support the story of the prosecution. The statement of Shri S.K. Tiwari shows that he was not a independent witness and alleged by the prosecution. But the enquiry officer came to the conclusion that the charges against the applicant are found to be proved. The applicant submitted his written statement of defence, wherein he has brought to the notice of the enquiry officer that if the complainant who alleged to have offered bribe to the officer is not examined then no charge can be said to have been established. There was no evidence at all against the applicant in the departmental enquiry. The enquiry officer

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without giving adequate reason as to why the defence of the applicant is not trustworthy held in the enquiry report that the applicant was guilty. The applicant submitted his representation against the enquiry officer's report. But the disciplinary authority without considering the defence of the applicant against the report of the enquiry officer inflicted the punishment of compulsory retirement ^{from service} on the applicant vide order dated 15.9.1999 (Annexure A-1).

Against this order the applicant preferred an appeal which was rejected vide order dated 4.9.1999, without assigning any reason. Against the said order of the appellate authority, the applicant preferred a revision petition and which was also rejected by non-speaking order by the revising authority on 12.10.2000. Aggrieved by this the applicant has approached this Tribunal claiming the aforesaid reliefs.

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

4. It is argued on behalf of the applicant that the main witness i.e. the complainant Shri Devendra Borle was not produced before the enquiry officer while he was necessary to prove the charge. The witnesses of the CBI were examined and they supported the version of the respondents as they were bound to support it. One passenger i.e. Shri Rajendra Shinde, has not supported the case of the respondents and he has established a new case which is beyond the case of the respondents. The statement of Shri S.K. Tiwari, who was not an independent witness cannot be relied upon. The learned counsel for the applicant has drawn our attention towards the judgment of the Hyderabad Bench of the Tribunal in the case of Sk. Abdul Salam vs. The Divisional



Railway Manager, S.C. Railway, Guntakal & ors. The Tribunal has held as under :

"(A) Indian Railway Vigilance Manual-Paras 704 & 705- Removal-Order of removal from service issued on the charge of demanding and accepting bribe-Challenged- Two gazetted officers of the department are not taken as independent witnesses at the time of conducting the departmental trap-Test check memo was not signed by the decoy check passenger-Evidence given by the defence witness ignored-Independent witness never claimed that he had seen the applicant demanding and accepting money from the decoy passenger-Mandatory procedure prescribed under paras 704 and 705 not followed- Recorded GC Notes indicated in the test check cannot be accepted as a proper currency notes and authority to book the applicant under corruption-Entire proceedings vitiated-Order of removal from service quashed-Reinstatement with all consequential benefits including arrears of salary ordered.

(B) Indian Railway Vigilance Manual-Paras 704 and 705- Departmental Traps-Corruption-Vigilance check by the Railway authorities-Procedure under paras 704 and 705 of Indian Railway Vigilance Manual is a mandatory one and must be followed while laying trap."

5. In reply the learned counsel for the respondents argued that the complainant Shri Devendra Borle did not appear in the enquiry inspite of all efforts having made to ensure his attendance. Several letters were issued to him on the address given in the complaint by registered AD as well as search was made by deputing staff to meet him. So far as the witnesses of the CBI team is concerned, they supported the version of the respondents and stated against the applicant. Hence mere on the ground that they were members of the CBI team, their statements before the enquiry officer should not be disbelieved. One Shri Rajendra Shinde has also stated in his statement that the applicant also demanded bribe from him. Shri S.K. Tiwari ^{Enunciated} was in Vigilance team of UCO Bank, Bhopal. He ^{Enunciated} ~~Enunciated~~ the currency notes. These ^{Enunciated} notes were recovered from the possession of the applicant and these notes were produced during the enquiry proceedings. Demanding and acceptance of bribe had been proved. So far as the ruling

cited by the applicant is concerned, the learned counsel for the respondents has drawn our attention towards the judgments of the Hon'ble Supreme Court in the case of Lalit Popli Vs. Canara Bank and others, (2003) 3 SCC 583, wherein the Hon'ble Supreme Court has held that "D. Service Law - Departmental enquiry - Nature of proof required - Preponderance of probabilities and some material on record are necessary to arrive at a conclusion about guilt of the delinquent - Technical rules of evidence not applicable - Criminal proceedings compared. E. Constitution of India - Art. 226 - Judicial review - Findings arrived at in disciplinary proceedings and punishment inflicted on delinquent employee on that basis - Scope of judicial review of High Court under Art. 226 - High Court does not act as an appellate authority - Service Law - Departmental enquiry - Judicial review." He has also drawn our attention towards the judgment of the Hon'ble Supreme Court in the case of Regional Manager, UPSRTC, Etawah and Others Vs. Hoti Lal and another, (2003) 3 SCC 605, wherein the Hon'ble Supreme Court has held that "Service Law - Misconduct - Penalty/Punishment - Scope of judicial review of - Test of proportionality - Held, is very limited and restricted to exceptional cases - The court must give reasons for holding the punishment to be not commensurate with the charges - A mere statement that the punishment was disproportionate, would not suffice - Not only the amount involved, but the mental set-up, the type of duty and similar relevant circumstances have to be taken into consideration to decide the proportionality of the punishment - If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, held, the matter should be dealt with iron hands and not leniently -

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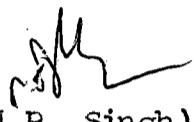
Hence, termination of the service of a bus conductor for carrying ticketless passengers in the SRTC bus, upheld - That such misconduct had caused to the State only a loss of Rs. 16, inconsequential."

6. We have given careful consideration to the rival contentions made on behalf of the parties, perused the departmental records of the respondents and we find that the main witness i.e. the complainant Shri Devendra Borle could not be produced during the departmental enquiry, because all efforts have been made by the respondents to ensure his attendance by issuing several letters by registered AD as well as search was made by deputing staff to meet him. Hence it cannot be said that the respondents deliberately did not produce the complainant during the departmental enquiry. We also find that many other responsible witnesses were produced during the enquiry who were Government employees and not passengers, but mere on the ground that they were the Government employees i.e. the members of the vigilance team, their statement cannot be disbelieved. Shri S.K. Tiwari, ~~himself~~ himself ^{initiated} enunciated the The same currency notes, were recovered from the possession of the applicant and these currency notes were also produced during the enquiry proceedings. We also gone through the paras 704 and 705 of the Indian Railway Vigilance Manual. In para 705 it is provided that the investigating officer/ Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilized. In the rulings cited by the respondents the Hon'ble Supreme Court has held that technical rules of evidence are not applicable and if the charged employee holds a position of trust where honesty and integrity are

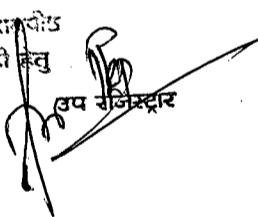
inbuilt requirements of functioning, the matter should be dealt with iron hands and not leniently.

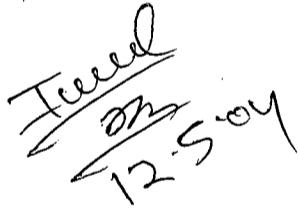
7. Coming to the conclusion, we are of the opinion that the applicant has failed to prove his case. Accordingly, the Original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

पृष्ठकला से ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि अब्दो छितः—
(1) सरिव, उच्च न्यायालय दर एसोसिएशन, जबलपुर
(2) लोकेश्वर मैट्रीट्रीटमेंट के काउंसल S. Paul
(3) लोकार्थी एवं विकासी एवं के काउंसल HJS (Shivnath) am
(4) कोशियार, कोशिया, जबलपुर एवं एवं
सूखना एवं अक्षयक कार्यालयी क्षेत्र

उप संसद्यार


T. S. Singh
12.5.04