

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

O.A.No.760/2012

Orders pronounced on : 29.7.2016
 (Orders reserved on: 25.07.2016)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. MEENAKSHI HOOJA, MEMBER (A)**

Surendra Singh Jangid

son of Shri R R Jangid, aged 42 years,
 resident of Plot No. 12-A, New Gopal Vihar Baran Road,
 Kota,
 at present employed on the post of TE at Kota Jn.
 Under DCTE, Kota, WCR

Applicant

Versus

1. Union of India through General Manager,
 West Central Railway Zone
 Jabalpur Zone,
 Jabalpur (M.P)-482001.
2. Divisional Commercial Manager, West Central Railway, Kota
 Division, Kota.
3. Senior Divisional-Commercial Manager, West Central Railway, Kota
 Division, Kota.
4. Additional Divisional Railway Manager, West Central Railway, Kota
 Division, Kota.
5. Chief Commercial Manager, West Central Railway Zone, Jabalpur
 Zone, Jabalpur (M.P)

... Respondents

Present: Mr. C.B. Sharma, Advocate, for the applicant.
 Mr. Tanveer Ahmed, Advocate for Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this O.A., inter-alia, for quashing the charge sheet dated 30.6.2008 (A-1), penalty order dated 21.6.2010 (A-2) imposing punishment of compulsory retirement, appellate order dated 7.3.2011 (A-3) reducing the penalty-to reduction to lower grade pay of Rs.2400 for 5 years with cumulative effect and order dated 20.12.2011 (A-4) vide which revision petition of the applicant was dismissed and order dated 7.6.2012 (A-5) vide which the intervening period was treated as dies non and he seeks all the consequential benefits etc.
2. The facts which lead to the filing of the present Original Application are that the applicant was initially appointed as Ticket Collector on 21.2.1992 at Kota and during the course of employment became Head TTE in 2003. A charge sheet dated 30.6.2008 was issued to the applicant with the allegations that a decoy check was conducted by the Vigilance Department in which the applicant was found responsible for demanding and accepting a bribe of Rs.400/- from Decoy passengers. The amount was accepted by him for not issuing any ticket to the decoy passenger.
3. On denial of the charges by the applicant, enquiry was initiated against him. The Inquiry Officer submitted his inquiry report as supplied to applicant vide letter dated 24.6.2009 (A-11) holding the charges as proved against the applicant stating that the applicant has taken baseless and

misleading averments in his defence which cannot be accepted and charges stand proved on the basis of documentary and oral evidence.

4. The applicant filed O.A. No. 278/2010 which was disposed of with a direction to file statutory appeal before the appellate authority. The appeal was filed on 3.8.2010. The appellate authority vide order dated 7.3.2011 (A-3) observed that there was a doubt whether the transaction was complete or not and penalty of compulsory retirement was reduced to that of reduction to lower grade pay of Rs.2400/- with pay in the pay Band being Rs.7440/- leading to basic pay of Rs.9840 for a period of 5 years with cumulative effect etc.
5. The applicant filed a revision petition on 18.4.2011 and it was sought to be withdrawn by him so that he could file a case in this Tribunal. However, a show cause notice dated 21.7.2011 was issued as to why punishment be not enhanced to compulsory retirement. The O.A. challenging the same was dismissed with liberty to him to avail departmental remedy. The applicant filed reply to the notice. The Revisional Authority maintained the order passed by Appellate Authority holding that only the charge of accepting Rs.400/- from the decoy passenger is substantiated and held that there was no ground to enhance the penalty and that the charge of illegal gratification cannot be substantiated, if there was no demand and mere acceptance or recovery is not sufficient.
6. Ultimately period from 23.6.2010 to 7.3.2011 was treated as dies non vide order dated 7.6.2012 which the applicant

terms as illegal and arbitrary and not based on any evidence and he has been punished only on the basis of conjectures and surmises in as much as he was not allowed to even complete transaction of issuing ticket after acceptance of money and was held within 3 minutes of taking money. The authorities have blindly followed the dictum of Vigilance Department instead of independent application of mind causing violation of principles of natural justice. Reliance is placed in **Nagaraj Shivarao Karjagi Vs. Syndicate Bank**

Head office, Manipal & Another, AIR 1991 SC 1507.

7. The applicant states that DA has not taken into consideration that procedure laid down in para 704 and 705 of IRVM was not followed while carrying out vigilance trap. When Revisional Authority has held that charge of acceptance of Rs.400/- only was proved, then there was no ground to uphold the illegal penalty imposed by disciplinary / appellate authority. When charge of illegal gratification was not even proved, then penalty could not be imposed.

Reliance is placed on **Banarsi Dass Vs. State of Haryana**, AIR 2010 SC 1589. When the penalty was softened by appellate authority, the adverse effect of compulsory retirement should have been made redundant. The 4th respondent has not followed para 13453 (FR 54) of IRREC-II before treating the relevant period as dies non. Hence the O.A.

8. The respondents have filed a reply opposing the O.A. They claim that the applicant had demanded and accepted Rs.400/- as illegal gratification. In Annexure A-2 of O.A. the

applicant has mentioned that Vigilance Team had given Rs.800 to decoy passengers, but he accepted only Rs.400/- from decoy passenger and pocketed, which shows that his intention was malafide and as such he did not argue with passengers or made any efforts to realize railway dues from decoy passengers else he would have obtained at least Rs.800/- from the decoy passenger which was available with him. When lesser amount than the fare and penalty was given to decoy passengers, which does not disprove the charges against the applicant. Since he had demanded and accepted only Rs.400/- from decoy passengers and pocketed, while they were having Rs.800/- with them. The applicant was placed under suspension as he was trapped by Vigilance Department and matter was under investigation. Thereafter it was revoked by issuing a charge sheet. They deny that Vigilance Department issued any direction to the Disciplinary Authority, Appellate Authority or Revisional Authority. These authorities are required to consult with the Vigilance Department in case of deviation from vigilance advice as per rules, thereafter, they are free to take their own decision after consultation with vigilance department. In Vigilance Organization, enquiry officers work on tenure basis for the purpose of holding enquiries in disciplinary cases, when D&A action initiated by the disciplinary authority on the suggestion of vigilance department and inquiry officers have no role in the investigation or preventive checks, conducted by vigilance department. They submit

that the authorities have passed speaking orders which may be upheld.

9. We have heard learned counsel for the parties at length and have examined the pleadings on file.

10. On examination of the pleadings on file, it is clear that the authorities have passed the orders in a topsy-turvy manner in as much as there are findings accepting the plea taken by the applicant but in the same breath the authorities have decided to impose penalty upon the applicant which cannot be sustained in the eyes of law and in short it can safely be concluded that the same are non-speaking and do not meet the requirement of law. The view taken by the appellate authority is worthy of reproduction here:-

"On seeing the cash check memo of Vigilance Branch, book No. 00001 to 000015 as well as the test check memo No. prepared at the time of decoy, the charged employee was asked to stop the transaction. Since the train has left GGC station after 23.30 hours as per Control Chart and the EFT was blocked at 23.35 Hrs the whole exercise has taken less than 5 minutes. Therefore, it appears that reasonable time was not available with the charged employee to complete the transaction as protested by him during the statement recorded in the above two mentioned documents. Therefore, it creates a doubt in the mind that whether the transaction was completed or not.

In view of the above, another chance needs to be given to the charged employee more so on the basis that he has already completed 18 years of service and he is having family liability as mentioned in his application".

11. Thus, on the one hand the appellate authority records that the proceedings create a doubt in the mind that whether the transaction was completed or not and on the other hand he has proceeded to make the punishment milder observing that the applicant deserves to be given another chance. He has to take a call as to whether the charge was proved or not and there was no third option available with him to impose a punishment upon the applicant when he records that there is a fault in decision making process.

12. Similarly, the view taken by the Revisional Authority is also on similar lines. Though initially, it proceeded to issue a show cause notice as to why penalty be not enhanced but upon filing of reply by the applicant, it has recorded that the applicant has been given "reasonable opportunities at every stages for your defence and during the proceedings, provisions laid down in RS-(D&A) Rules, 1968 have been observed. Even personal hearing has also been given to you for your defense". However, the authority accepts the plea taken by the applicant that there was no sufficient time to complete the transaction as entire episode ended within 3 minutes. The plea of the applicant that the "decoy was conducted on the source information that you carries

irregular passenger taking illegal money in train No. 9019 but on 24.04.08 in train No. 9019 no irregular passenger or extra money in private cash was found" as convincing. The charge of only acceptance of Rs.400/- from decoy passenger has only been substantiated, is the further finding by the Revisional Authority. It can safely be concluded from these orders that the authorities have not paid proper attention to the facts and circumstances of the case and passed orders which, to say the least, are non-speaking.

13. Lord Denning M.R. in **Breen v. Amalgamated Engineering Union** (1971 (1) All E.R. 1148) has observed that the giving

of reasons is one of the fundamentals of good administration.

In **Alexander Machinery (Dudley) Ltd. v. Crabtree** (1974

LCR 120) it was held that failure to give reasons amounts to

denial of justice. Reasons are live links between the mind of

the decision taker to the controversy in question and the

decision or conclusion arrived at. Reasons substitute

subjectivity by objectivity. The emphasis on recording

reasons is that if the decision reveals the "inscrutable face of

the sphinx", it can, by its silence, render it virtually

impossible for the Courts to perform their appellate function

or exercise the power of judicial review in adjudging the

validity of the decision. Right to reason is an indispensable

part of a sound judicial system, reasons at least sufficient to

indicate an application of mind to the matter before Court.

Another rationale is that the affected party can know why the

decision has gone against him. One of the salutary

requirements of natural justice is spelling out reasons for the

order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

14. In view of the aforesaid discussion, we quash and set aside the impugned orders, Annexures A-3 dated 7.3.2011 and A-4 dated 20.12.2011 and relegate the matter to the Appellate Authority to have a re-look into the matter and pass a speaking and reasoned order in accordance with rules and law, within a period of three months from the date of receipt of a certified copy of this order.

15. The parties are left to bear their own costs.

Sanjeev Kaushik
(SANJEEV KAUSHIK)
MEMBER (J)

Meenakshi
(MRS. MEENAKSHI HOOJA)
MEMBER (A)

Place: Jaipur

Dated: 29.7.2016

HC*