

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00925/2017

Date of CAV : 08.08.2018
Date of Order : 11-09-2018

Between :

A.Sk.Abdul Salam S/o Late Mohd.Yousuf,
Aged : 54, Chief Ticket Inspector,
Guntakal Railway Station, Guntakal Division,
South Central Railway, Guntakal.

....Applicant

AND

1. Union of India represented by
The General Manager,
South Central Railway,
Rail Nilayam, 3rd Floor,
Secunderabad-500 025.
2. Divisional Commercial Manager,
Guntakal Division, South Central Railway,
Guntakal.
3. Divisional Railway Manager,
Guntakal Division,
South Central Railway,
Guntakal.
4. Chief Commercial Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
5. Gopal Das, Inquiry Officer,
Now working as Guard A Spl,
Secunderabad Rly station,
Secunderabad.

...Respondents

Counsel for the Applicant: Mr.G.TrinadhaRao

Counsel for the Respondents : Mr.S.M.Patnaik, SC for Rlys

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This applicant who was serving as Sleeper TTE has filed this Original Application challenging the order of removal from service by Respondent No. 2 dated 13.12.1999 and the same was confirmed by the order dated 19.09.2017 by the Revising Authority. Hence this application is filed for the following relief :

"Hence, in the interest of Justice, the applicant herein respectfully prays that this Hon'ble Tribunal may be pleased to call for records relating to Charge Memorandum issued in proceedings No.GZ/D&A/170/98(III) A.11 of 30.11.1998 the consequential Inquiry Proceedings, penalty order of removal from service issued in Memorandum No.GZ/D&A/170/98(III) A.11 of 10.1.2001 by the Appellate Authority confirming the penalty of removal by Disciplinary Authority and the order issued in Memorandum No.SCR/P.HQ/425(a)/DAR/C1/GTL/Vig/SF 5/SAS/50/2015, dated 19.9.2017 issued by the Revising Authority modifying the penalty of removal to that of compulsory retirement and to declare the same illegal, unjust, arbitrary contrary to the principles of natural justice violative of article 14 and 16 of the Constitution of India and consequently to quash and set aside the same and direct the respondent to reinstate the applicant into service with all consequential benefits including back wages and to pass such other order or orders as deemed fit in the facts and circumstances and interest of justice".

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

The applicant was initially appointed as Ticket Collector on compassionate grounds in the year 1987, promoted as Sr. Train Ticket Examiner, Head Train Ticket Examiner and as Chief Train Ticket Inspector in PB-1 Rs.9300-34800 with GP Rs.4600/- in the year 2015.

3. It has been pleaded by the applicant that he was issued with major penalty charge memo by the 2nd Respondent vide proceedings dated 30.11.1998 with the following Article of charges :-

“ Article-I

That the said Sri Sk. Abdul Salam, Sr.TTE/DNC while working as sleeper TTE of 303 passenger on 28.7.98 between Donakonda-Guntakal has failed to maintain absolute integrity and acted in a manner of unbecoming of a railway servant in that he had demanded and accepted Rs.10/- as against the actual amount of Rs.65/- due to be collected from Sri A.T.S. Narasimhulu who was travelling without a ticket in second class from Nandyal to Dronachallam in 303 passenger of 28.7.98 and thus violated the instructions contained in para 2430 (a) of IRCM Vol.II and para 111(c) of IRCM for Traffic (Comml) Department.

Thus, Sri Sk. Abdul Salam, Sr.TTE/DNC has violated rule no. 3(1)(i)(iii) of Railway Services (Conduct) Rules, 1966.

Article-II

That the said Sri Sk Abdul Salam, Sr.TTE/DNC while working as TTE of sleeper coach of 303 Passenger on 28.7.98 from Donakonda to Guntakal has failed to maintain absolute integrity and devotion to duty in that he has produced Rs.120/- excess in his railway cash which was remitted to the railway vide EFT No.649878 of 28.7.98 and thus liable vide para no.2429(a) of IRCM Vol.II and therefore Sri Sk.Abdul Salam, Sr.TTE/DNChas violated rule no.3(1)(i) & (ii) of Railway Services (Conduct) Rules, 1966.

4. Thereafter inquiry officer was appointed, had proceeded with the inquiry and submitted his report to the Disciplinary Authority. The applicant submitted his representation on 14.07.1999 to the Inquiry Officer's report. However, the Disciplinary Authority i e the 2nd Respondent vide proceedings dated 13.12.1999 passed the orders removing the applicant from service. Challenging the order of removal from service, the applicant

filed OA No.301/2001 and the same was allowed vide order dated 25.03.2003. Thereafter the Railways have filed WP No.18072/2003 before the Hon'ble High Court of Andhra Pradesh praying for suspension of the order passed in OA No.301/2001. Vide order dated 29.08.2003, the Hon'ble High Court directed the Railway Authorities to reinstate the applicant herein into service subject to the decision of the pending SLPs before the Hon'ble Supreme Court. The Hon'ble Supreme Court, in the SLPs rendered the view that the instructions in vigilance manual are procedural in character and not of substantive nature. The violation thereof, if any, by the investigating officer in conducting departmental trap cases would not ipso facto vitiate the departmental proceedings. Following the judgment of the Hon'ble Supreme Court, the Hon'ble High Court by order dated 15.10.2014 allowed the Writ Petition directing the Railways to maintain the status quo and further granting liberty to the respondents to file revision petition against the order of the Appellate Authority dated 10.1.2001. In view of the liberty granted by the Hon'ble High Court the applicant had submitted revision petition to the 4th Respondent. The 4th Respondent ie the revising authority modified the penalty to that of compulsory retirement. Hence this application.

5. The Respondents have filed reply statement stating that as the applicant found violated instruction contained in para 2429 and 2430 (a) of Indian Railway Commercial Manual, Vo.II, charge memo was issued, inquiry was conducted and charges were proved. Accordingly the applicant was issued with the order of removal from service, the same was also confirmed

by the Appellate Authority. Consequent to the order of the Tribunal in OA No.301/2001, dated 25.03.2003, the applicant was reinstated into service with all consequential benefits. Thereafter the Railways have carried the matter in Writ Petition No.18072/2003 and the same allowed by order dated 15.10.2014 following the judgment of the Hon'ble Supreme Court. As per the directions in the WP No.18072/2013, the applicant filed revision petition dated 11.05.2015 to the 4th Respondent. Considering the said Revision Petition, the 4th Respondent reduced the penalty of removal from service to that of Compulsory Retirement and passed order dated 19.09.2017 and the same was communicated on 05.10.2017.

6. The Respondents further contended that the appointment of Presenting Officer is not mandatory, the applicant was given opportunity to cross examine the witness. Para 704 and 705 of the Vigilance Manual are only an executive instruction and do not create any legal right and it is admitted fact that the applicant has demanded an amount of Rs.10/- from the decoy passenger travelling without ticket. Accordingly the Respondents pray for dismissal of the OA.

7. We have heard Mr. G. Trinadha Rao, learned counsel for the applicant and Mr. S. M. Patnaik, learned Standing Counsel for Respondent Railways, gone through the material on record.

8. There is much force on the submissions of the learned Counsel for the applicant that the Divisional Commercial Manager in Senior Time Scale

was not competent to pass order of removal from service as the said authority is sub-ordinate to the Appointing Authority ie Divisional Personnel Officer. No Presenting Officer was appointed for conducting enquiry on behalf of the Department although major penalty has been imposed. Thus it is seen that the Disciplinary Proceedings are vitiated due to non compliance of the statutory provisions in question and the same has caused serious prejudice to the applicant. The Enquiry Report submitted by the Enquiry Officer is perverse, being based on no legally admissible evidence. The learned counsel for the applicant placed reliance on **Moni Shankar Vs. UoI & Another [2008 (3) SCC 484]**. Learned counsel for the applicant also relied on the decisions of Hon'ble Supreme Court in the case of **K.C.Bajaj & Others Vs. UoI & Others [2014 (3) SCC 777]**, in CA No.10530 of 2014, decided on 24.11.2014, and **Balsara Hygiene Products Ltd. Vs. The Appellate Authority**, dated 24.08.2001 by the Hon'ble High Court of Delhi [**2002 (92) FLR 676**] wherein it has been held that :

“10. We may at the outset notice that with a view to protect innocent employees from such traps, appropriate safeguards have been provided in the Railway Manual. Paras 704 and 705 thereof read thus :

“704. Traps – (i)-(iv) * * *

(v) When laying a trap, the following important points have to be kept in view :

- (a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.
- (b) The transaction should be within the sight and hearing of two independent witnesses.
- (c) There should be an opportunity to catch the culprit re-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose

it of.

(d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the Department or the police and are men of status, considering the status of the accused. It is safer to take witnesses who are government employees and of other departments.

(e) After satisfying the above conditions, the investigating officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the SP, SPE, is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the SPE or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

(vi)-(vii) * * *

705. Departmental traps.- For departmental traps, the following instructions in addition to those contained under Para 704 are to be followed.

(a) 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 utilised.

All employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of Branch should detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause / without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

(b) The decoy will present the money which he will give to be defaulting officers / employees as bribe money on demand. A memo should be prepared by the investigating officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the GSC notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the investigating officer/Inspector. Another memo, for returning the GD notes to the decoy will be prepared for making over the GC notes to the delinquent employee on demand. This memo should also contain

signatures of decoy, witnesses and investigating officer/Inspector. The independent witnesses will stake up position at such a pace wherfrom they can see the transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the investigating officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.”

9. The Hon’ble Supreme Court in the above referred decision has held that the purpose of sub Rule-21 of Rule-9 of the Railway Servants (D&A) Rules, 1968 was to afford an opportunity to explain the circumstances appearing against him. In the present case the applicant has been totally denied the said opportunity. Thus the manner in which the enquiry proceedings were conducted has to be considered by this Tribunal. It is seen that the trap conducted in terms of Manual. The Inquiry Officer did not comply with sub-rule-21 of Rule 9 of the Rules. Accordingly this Tribunal has gone into the said aspect as to whether the statutory requirement has been complied with or not. While appreciation of evidence is not within the domain of the Tribunal, the manner in which the trap was laid, the legality of the enquiry proceedings which were part of the decision making process can be considered by this Tribunal. For the said purpose paras 704 and 705 of the Manual has also to be looked into. Substantial compliance of the said paras was necessary as held by the

Hon'ble Supreme Court in the case of Moni Shankar Vs. Union of India (2008 (3) SCC 484). Admittedly instructions in this regard cannot totally be ignored. This Tribunal is entitled to take the same into consideration along with other material brought on record, as already discussed for the purpose of arriving at a decision as to whether the normal rules or instructions have been complied with or not.

10. The trap was laid by the members of the Railway Protection Force (RPF). It was a pre-arranged trap. It was, therefore, not a case which can be said to be an exceptional one where two gazetted officers as independent witnesses were not available.

11. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. This Tribunal is entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. This Tribunal thus is entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, do not meet the requirements of burden of proof, namely, preponderance of probability.

12. Test check memo dated 28.07.1998 was not signed by the Decoy passenger and the witnesses before initiation of test check, the recorded GC notes indicated in the test check memo cannot be accepted as proper currency notes. The Disciplinary Authority and Inquiry Officer ignored the evidence given by the defence witness. Inquiry Officer refused to admit the vital evidence viz rough Journal where in the vigilance Inspector himself signed evidencing that private cash declared was Rs.250/-. Objective consideration of the grounds raised by the applicant and giving reason for the decision arrived at by them are required under Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968. The inquiry officer played the role of prosecutor in the absence of the presenting officer. As the appointment of the presenting officer was mandatory specially in Decoy check and vigilance cases the entire inquiry proceedings are vitiated in the absence of the presenting officer having been appointed. It is settled law by the Apex Court that the orders of the Disciplinary Authority, Appellate Authority and Revising Authority concluding that the charges are proved without establishing no correlation between the findings and the evidence showing the application of mind are not reasoned orders and are liable to be quashed. The inquiring authority, after the closure of case, has not questioned the applicant on the circumstances appearing against him in the evidence for the purpose of enabling the Applicant to explain any circumstances appearing in the evidence against him which is mandatory and hence the inquiry proceedings are liable to be quashed.

13. The cumulative effect of the illegalities / irregularities committed by the concerned authorities while dealing with departmental enquiry against the applicant completely vitiates the said proceeding.

14. The alleged incident took place in the year 1998. The allegation that the applicant had illegally received an amount of Rs.10/- from decoy passenger has not at all been proved by any legally acceptable evidence and the finding given by the Inquiry Officer is virtually based on 'no evidence'. In these circumstances, this Tribunal is not of the opinion to remand the case back to the Inquiry Officer as the same cause undue hardship to the applicant.

15. Accordingly the impugned orders dated 13.12.1999 of the Disciplinary Authority, order dated 10.01.2001 of the Appellate Authority confirming the penalty of removal from service and order dated 19.09.2017 of the 4th Respondent modifying the penalty of removal from service to compulsory retirement from service are set aside. There is no proof that the applicant was not gainfully employed during the period in question. Accordingly the applicant is deemed to be in service with effect from the date he was removed from service the said period will be calculated for pensionary benefits and other service benefits, but he will not be entitled to back wages for that period.

16. No order as to costs.

Dated : 11th September, 2018.

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Enquiry Officer had put the following question to the applicant :

“Q.95 : You have heard the deposition of all the prosecution witnesses and gone through the documents, do you still deny the charges levelled against you ?

Ans : Yes. I still deny the charges levelled against me. However, I submit my defence brief duly explaining as to how the evidence is adduced and the documents do not substantiate the charges levelled against me.”

The examination of the charged employee was complete and so also the enquiry. The Hon’ble Supreme Court in the above referred decision has held that the purpose of sub Rule-21 of Rule-9 of the Railway Servants (D&A) Rules, 1968 was to afford an opportunity to explain the circumstances appearing against him. In the present case the applicant has been totally denied the said opportunity. Thus the manner in which the enquiry proceedings were conducted has to be considered by this Tribunal. It is seen that the trap conducted in terms of Manual. The Inquiry Officer did not comply with sub-rule-21 of Rule 9 of the Rules. Accordingly this Tribunal has gone into the said aspect as to whether the statutory requirement has been complied with or not. While appreciation of evidence is not within the domain of the Tribunal, the manner in which the trap was laid, the legality of the enquiry proceedings which were part of the decision making process can be considered by this Tribunal. For the said purpose paras 704 and 705 of the Manual has also to be looked into. Substantial compliance of the said paras was necessary as held by the Hon’ble Supreme Court in the case of Moni Shankar Vs. Union of India (2008 (3) SCC 484). Admittedly instructions in this regard cannot totally be ignored. This Tribunal is entitled to take the same into consideration along with other material brought on record, as already discussed for the purpose of arriving at a decision as to whether the normal rules or instructions have

been complied with or not.

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Accordingly the impugned orders dated 13.12.1999 of the Disciplinary Authority, order dated 10.01.2001 of the Appellate Authority confirming the penalty of removal from service and order dated 19.09.2017 of the 4th Respondent modifying the penalty of removal from service to compulsory retirement from service are set aside. Accordingly the applicant is deemed to be in service with effect from the date he was removed from service without backwages but the said period will be calculated for pensionary benefits and other service benefits.

