

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/31/2017 & MA/20/705/2017

**Order reserved on: 10.09.2018
Order pronounced on: 17. 09.2018**

Between:

Syed Illiyaz, S/o. Syed Mastan (late),
Aged 50 years, Occ: Office Superintendent,
O/o. The Assistant Divisional Engineer,
South Central Railway, Vijayawada Division,
Smalkot, East Godavari District, Andhra Pradesh.

... Applicant

And

1. Union of India, represented by
The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
2. The Senior Deputy General Manager &
Chief Vigilance Officer, O/o. The General Manager,
South Central Railway, Rail Nilayam, Secunderabad.
3. The Additional Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.
4. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada.
5. H.L.N. Prasad, Assistant Enquiry Officer (Head Quarters)/
Inquiry Officer, O/o. The Senior Deputy General Manager (Vigilance),
South Central Railway, Rail Nilayam, Secunderabad.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad
Counsel for the Respondents ... Mr. S.M. Patnaik, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***
Hon'ble Mr. Swarup Kumar Mishra ... ***Member (Judl.)***

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The spinal legal issue involved in this is whether in the absence of original documents referred to and relied upon by the prosecution, and compelling the

delinquent to participate in the inquiry proceedings, whether the charge sheet issued under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is liable to be quashed.

2. A silhouette of the facts of the case with terse sufficiency is as hereinafter narrated:

The applicant while working as Office Superintendent in the office of the 4th respondent was served with the Impugned memorandum dt 3.12.2015. The Memorandum listed the documents in annexure III based on which the charges were to be sustained. The 4th respondent who is the Disciplinary Authority, has appointed the 5th respondent as the Inquiry Officer. During the inquiry, the applicant sought for original copy of a particular document listed in Annexure – III and the 5th respondent tendered a ruling stating that the original was not available and that the applicant can peruse the certified copy. On being objected to, the 5th respondent advised the applicant to approach the 4th respondent for the original document and accordingly a representation was made. In response, the 4th respondent replied vide impugned reply dt 25.11.2016 stated that production of original documents are not necessary as per Railway Board Lr. dt 3.10.1996 (S1 Circular No.135/1996) and that certified copies will do. This grievance arising out of the impugned reply led to the emergence of the present O.A.

3. The contention of the applicant is that the document sought to be produced in original contains manipulated entries pertaining to leave salary and therefore attested Xerox copy of the said document will disable his defense. More so, when the document was handled by two different offices and therefore the alleged manipulations could have occurred anywhere. The alteration of the figure from 11 to 187 is so glaring that it is paradoxical and perplexing that it missed the attention of several officers who vetted the document for sanctioning the

leave salary. Applicant also points out that the respondents on one hand are charging him for the manipulations and the other hand stating that he has not noticed the manipulations. The Railway Board Sl. Circular 135/1996 was issued with reference to Section 191 of the Indian Railways act which has a different object of covering the carriers liability and other liabilities of the railways and cannot be used to deal with issues under Railway Servants (D&A) Rules which were framed under the provisions of art 309 of the constitution. Further, Section 191 of the cited act does also specify that the custodian of the original document should certify that that the originals are with him. In the present case the custodian is not certifying so and the Disciplinary Authority does not know as to where the document is. The applicant also contends that citing one Mr P. Subba Rao as the prosecution witness who worked as office Supdt. in the office of custodian of the original record namely Coaching depot officer, Vijayawada is unfair for the reason that there is conflict of interest since the said official has also been charged for handling of the document in question. The other objections taken by the applicant are that the vigilance and the Enquiry wing being under the control of 2nd respondent would not impart fairness to the inquiry and that one Mr. E. Haq though cited as witness does not find a mention in the charge sheet. The Inquiry Officer who is expected to be impartial has directed the applicant to seek the original from the 4th respondent instead of himself directing the 4th respondent to produce. Not supplying the original document is against the principals of natural justice and therefore the applicant demands quashing of the impugned order and reply be quashed.

4. The respondents contend that the O.A is premature since the charge sheet cannot be a matter of challenge and that the Disciplinary Authority has not passed the final order. Even the Tribunal cannot interfere in the disciplinary

proceedings at the interlocutory stage. The applicant on receipt of the charge sheet and copies of the documents has denied the charges and informed that he would participate in the inquiry. The photo copy of the document sought has been taken before it was misplaced and that the photocopy being the mirror image of the original and also having been attested there should not be any issue. Further it is not the only document and that there are other documents which substantiate the charges. The Inquiry Officer is independent and therefore the inquiry will be fair and just and that he is controlled by the 2nd respondent as alleged by the applicant is only a presumption. Averment of the applicant that the disciplinary case is controlled by the 2nd respondent is frivolous. Role of the 2nd respondent is only suggestive and not decisive. Objection to Mr.Haq being cited as witness is presumptive. Similarly Mr P. Subba Rao had to be quoted as prosecution witness as he was the custodian of the document sought in original. The applicant saw the original document as he has processed it and his signature on the document evidences it. The production of certified copies would suffice in an inquiry as per Railway board circular no 135/1996 and also as per section of 191 of Railway Act, 1989. As per Rule 9(7) of the Railway Servants (D&A) Rules 1968 the applicant should ask for inspection of documents before he submits his defense. The applicant neither questioned the authenticity of the certified copies of the documents nor did he ask for inspection of original documents before submitting his reply to the charge sheet and till the preliminary inquiry was over. Only when he came to know that the original could not be traced he is asking for the original. Evidence act states that the certified copies of documents are admitted as secondary evidence, if the original is lost. The charges are serious as they are about manipulating leave record and showing excess leave in the leave record of Mr R. Narayana, Khalasi. Non supply of the

original document to which the applicant is a signatory will cause injustice to the applicant is only his presumption. Respondents refer to the observation of Honorable High court of Delhi that Natural Justice prescribes only a minimum standard of fair procedure and this minimum cannot be bloated into a rigmarole of technicalities to vitiate the inquiry somehow or the other. Further the respondent state that the Honorable Apex court has also observed that even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non observance had prejudicially affected the applicant. The applicant can defend his case before the Inquiry Officer as well with other authorities like the disciplinary / appellate authority to appropriately present his case and get justice. Attempting to block the inquiry since a document sought has not been produced in original is only a way of wriggling out of the disciplinary case and therefore should be dismissed.

5. Heard the learned counsel for both sides. Their pleadings were in wavelength with the written submissions made.

6. The objection of the applicant that the 2nd respondent would dictate the directional orientation of the disciplinary proceedings, on the mere assumption that the vigilance and the enquiry wing are under his control is unfounded. There are many checks and balances in the form of the disciplinary authority, the appellate authority and the revisioning authority who are always available to the delinquent to redress his grievance at different levels with mandated authority. The respondents have every right to cite a witness as they deem fit. Objecting to citing of witness by the respondents is farfetched. On the contrary the applicant can cross examine them and prove what is required for him rather than objecting to them being cited.

7. Now, coming to the objection raised in regard to the jurisdiction of this Tribunal to inquire into the case at the time of issue of charge sheet. It has been contended that the OA is premature as the issue of charge sheet cannot be a challenge. True, under normal circumstances, at charge sheet level, judicial interference is not warranted. But, here is a proceeding, the foundation of which is shaky in that the very document in original relied upon is not available. The Tribunal has every jurisdiction to interfere with the proceedings, to ascertain the fact whether a case is of no evidence. And the charge relates to certain manipulations/insertions, to prove which, the original of the document is absolutely essential. In a disciplinary proceeding, the basic requirement is that charges are required to be proved by the prosecution. For proving a charge, if there be a lone crucial documentary evidence, needless to mention that documentary evidence shall have to be produced.. For proving a document, original of the same is required. In the absence of such original document, the fact that the said document was earlier viewed by the applicant or for that matter the copy available is a “doppelganger” and also being a photo copy cannot become the primary evidence. *It has been held by the Apex Court in the case of H. Siddiqui v. A. Ramalingam, (2011) 4 SCC 240 as under:*

12. *The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Vide Roman Catholic*

Mission v. State of Madras, State of Rajasthan v. Khemraj, LIC v. Ram Pal Singh Bisenand M. Chandra v. M. Thangamuthu.)

8. The respondents have failed to explain as to what action was taken to locate the misplaced original documents. Again, though contended that there are other evidences to prove the case, they have not specifically explained what they are and if they be sufficient, as to why should they rely upon a document, the original of which cannot be made available. With advanced technology at hand the attested photo copied document can be morphed to ones advantage and others disadvantage. In the case being dealt, the document has certain manipulated entries which form the main basis of the charge sheet. If they have been distorted to the disadvantage of the charged employee then it would be pervasive action to fix the delinquent. Particularly in the context of the Prosecution Witness Mr. Subba Rao being a custodian of the document and also having been proceeded against in the same issue. Therefore denying the request of the delinquent for the original copy is irrational, arbitrary, unreasonable, and reflects elements of bias as has been pointed out by Honorable Apex Court hereunder warranting review:

a) **Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517,** where the Apex Court has held as under:-

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides.

b) Its purpose is to check whether choice or decision is made “lawfully” Judicial review is a review of the manner in which the decision is made. to ensure that the individual receives fair treatment The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the

finding, and mould the relief so as to make it appropriate to the facts of each case (B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749)

9. The apocryphal document decides the case and it being so crucial, it is surprising to note that the disciplinary authority, the 4th respondent, does not even know as to where the original document is and he is running from pillar to post to find the whereabouts of the vital document. If such is the state of affairs, then one can construe that the seriousness required to be bestowed in charging an official with consequences of undoing his future is conspicuously *absent*. With this patent inadequacy the manner in which the respondents are pressing to proceed with the departmental inquiry raises many questions and hence is liable to be questioned as was pointed by the Honorable Supreme Court in ***Surender Kumar v. Union of India, (2010) 1 SCC 158, at page 160***

In fact the only scope in such cases is to examine the manner in which the departmental enquiry is conducted.

10. Initiating proceedings on the basis of photocopy of a document, the original of which is not available, would bring in its train the following crucial legal issues:-

- (a) Whether a **fair treatment** would be given to the delinquent when he cannot compare the copy of a document with its original.
- (b) whether **sufficient defence** could be prepared by the delinquent.
- (c) Whether a decision in a departmental proceedings initiated without the original of the document which forms the fundamental basis of the inquiry would be without **perverse**.

(d) Would not a proceeding without the original of the crucial document amount to non disclosure the material documents which would prejudice the delinquent?

(e) Whether the provisions available in respect of carrier of goods in the Railway Act come to the rescue of the respondents in dealing with a disciplinary matter of a Railway employee?

(f) Is the non availability of the original document violative of procedural requirement or substantive requirement?

11. The following would address the above issues:

(a) **Fair Treatment:** Let us reiterate at this juncture, that this tribunal would like to ensure that the delinquents are given a fair treatment. Being fair would mean to be in accordance with rules, standards and that which is legitimate. The respondents are charging the applicant with reference to a document the original of which is stated to have been lost. A charge sheet without the crucial document it cites is baseless. The fundamental rule of initiating disciplinary action is thus flagrantly violated. It does not meet the standards prescribed nor is it legitimate in its full sense and hence it can be branded as unfair with all the might which English language can command. The fair treatment which the charged employee deserves is missing and hence is expansively covered by the Honorable Supreme Court observation in ***H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312***, wherein it has been held by the Apex Court as under:-

The purpose of judicial review is to ensure that the individual receives fair treatment

Let us not forget that before someone is condemned he should be given a fair chance to prove his innocence. Obliterating such an opportunity by denying

what is essentially due in this case –the original document sought -is condemning him before he is tried. Therefore the cardinal principle of fairness is manifestly missing.

12. Proper defence: Focusing our attention on the document relied upon by the prosecution, it is seen that it has passed through many hands including those who have related interest like Mr Subba Rao, the prosecution witness, on whom the dagger of disciplinary action is dangling. In such an event production of the relevant original document with all its virgin glory is a must as per the observations of the Honorable Supreme Court in ***Kashinath Dikshita vs Union of India (1986) 3 SCC 229***

d) And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible?

The above would be held to have been complied with in this case only when the applicant could have the opportunity of comparing the copy supplied to him with the original. That opportunity cannot be pressed into service in this case as the original of the document is not on record. This is a pertinent axiom to be followed but the respondents did not. Production of attested copies of the photo copy of the said document will not meet the standard of the Principles of Natural justice since he is being tried on the basis of a mirage of the document. The minimum standard of fair procedure as has stated by the respondents by quoting the High Court of Delhi judgment has not been maintained in not upholding the Principles of Natural Justice.

13. As regards C above, it is to be emphasized that by not providing the document which is intrinsic to the case will not ensure fair hearing and would entail only perverse decision. The finding thereof by completing the inquiry based on an evidence of doubtful authenticity (document Photo Copy) would be perverse as the respondents rely upon an unreliable document and thus proceeding with the inquiry would only be an exercise in futility. The observation of the Apex Court in *Kuldeep Singh vs Commissioner of Police &Ors*, (1999) 2 SCC as under is relevant and a reminder as to what ought to be done in disciplinary case.

Order is perverse, only if the decision is based on no evidence or is based on evidence which is thoroughly unreliable. Orders based on some acceptable evidence cannot be held to be perverse. (Emphasis supplied)

14. As regards (d) above, i.e. non disclosure of material, it is to be held that while dealing with a case of this nature where the applicant does apprehend that his defence would crumble without the requisite relevant original document cited, it is essential to disclose such a document as has been observed by the Apex Court in the case of *State of UP vs Saroj Kumar Sinha* (2010) 2 SCC 772, wherein the Apex Court has held as under:-

32. The affect of non-disclosure of relevant documents has been stated In Judicial Review of Administrative Action by De Smith, Woolf and Jowell, 5th Edn., p. 442 as follows:

*"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is *prima facie* unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence *ex parte* which is not fully disclosed, or holds *ex parte* inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very*

strong; the maxim that justice must be seen to be done can readily be invoked."

15. As regards (e) above, sufficient emphasis has been placed by the counsel for the respondent as to reference of Sec 191 of the Indian Railway Act in the Railway Board Circular No. 135/196. The said section of the Act reads as under:-

191. Entries made in the records or other documents of a railway administration shall be admitted in evidence -in all proceedings by or against the railway administration, and all such entries may be proved either by the production of the records or other documents of the railway administration containing such entries or by the production of a Copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession, . oz. Any notice or other document required or authorised by this Act

16. The above provision confirms the availability of the original document, as required to be so authenticated by the authority in possession of the original. For, in case of any doubt as to the copy of the document, one can always compare the same with the original. This possibility in the instant case is not at all available.

17. Now, coming to the last issue itemized at (f) above, there is a difference between procedural and substantive requirements. Substantive requirement has to be necessarily met to uphold justice. In this case the production of the missing document is a substantive requirement and cannot be given a go by. Going further the inquiry officer has a quasi judicial responsibility. He cannot abdicate his responsibility by directing the applicant to approach the disciplinary authority for the original document as seen in the present case. The spirit of Art 311 (2) of the Constitution has to be upheld in departmental inquiries. The inquiry cannot be a casual exercise as is observed from the respondents affirmation that the

applicant can jolly well go ahead with the attested copy and the other documents annexed to the charge sheet. The Honorable supreme court judgement in *State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772* makes it much more explicit that the disciplinary proceedings have to be more than a casual exercise.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

18. In addition to the above, in dealing with disciplinary proceedings the respondents have to ensure that it is objective, rules are not violated, reasonable opportunity is given to defend and the principles of natural justice are upheld. Inquiry officer has to consider relevant facts and tender his rulings in an impartial manner. The Inquiry officer did initially take a stand that original can be sought by the applicant from the disciplinary authority but later being aware that the document is not traceable and that his decision of the Xerox copy would do is untenable. Changing stand with the shifting sand dunes smacks of deficiency in

the process of decision making and therefore the inquiry loses its credibility. The inquiry officer has to only consider the relevant and not the irrelevant facts. The relevant fact is the original and the irrelevant is the photo copy. It is this aspect which The Honorable Supreme Court by its observation in **(M.V. Bijlani vs Union of India (2006) 5 SCC 88) has emphasized.**

Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. The enquiry officer cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

For, it is trite law that a document not confronted to the delinquent cannot be relied upon for establishing the fact that the delinquent is guilty of a misconduct (see Nicks (India) Tool vs Ram Surat, (2004) 8 SCC 222 at page 227.) In that case an alleged receipt in token of having received full and final payment of dues on voluntary retirement was relied upon, whereas such a receipt was not shown to the workman to rebut the same

19. Before we conclude it must be stated that the principles of natural justice form the fundamental fabric in disciplinary cases. The fabric has to be protected in the interest of justice. The disciplinary authority has to apply his mind to the material on record to uphold the principles of natural justice. Here is a case where there is apparent absence of original record for which he is knocking at the doors of different offices but not looking at the stark reality staring at him that proceeding with the inquiry without the said document is violative of principles of Natural justice and that it is irrational and unreasonable as was pointed out by the Hon'ble Supreme court in **Ranjit Singh v. Union of India, (2006) 4 SCC 153**

“....it is now well settled that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. “

and in *Union of India v. Flight Cadet Ashish Rai, (2006) 2 SCC 364, Honorable Apex court held:*

“Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:

(i) Illegality: this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

20. Therefore as can be seen from the facts deliberated above and the pronouncements of the Honorable Supreme court on different aspects of the issue we are disinclined to agree with the stance of the respondents. The inquiry proceedings to the extent they have occurred are vitiated, arbitrary, irrational, unreasonable and against the Principles of Natural Justice.

21. Hence to uphold justice, we in our considered view have no hesitation to quash the charge memorandum dt 3.12.2015 quoted at para 1 of O.A and accede to the prayer of the applicant. It is open to the respondents to proceed against the applicant as they deem fit by following the norms laid in Railway Servant (D&A) rules 1968 and by providing documents required.

22. The O.A is accordingly allowed. MA stands disposed of. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 17th day of September, 2018

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