

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/01260/2012

Date of CAV : 24-10-2018
Date of Order : 01-11-2018

Between :

P.C. Bhaskar S/o P. Naganna,
Aged 58 years, Oc : Travelling Ticket Inspector,
(under the orders of compulsory retirement),
O/o The Divisional Railway Manager,
Guntakal Division, South Central Railway,
Guntakal.
R/o D.No.5/534, Vankgadda Street,
Gooty, Ananthpur District, A.P.

....Applicant

AND

1. Union of India represented by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Commercial Manager (PS),
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Additional Divisional Railway Manager,
South Central Railway,
Guntakal Division, Guntakal.
4. The Senior Divisional Commercial Manager,
South Central Railway,
Guntakal Division, Guntakal.
5. P. Chandrasekhar, Inquiry Officer,
O/o The Senior Deputy General Manager's Office,
(Now working as Senior Personnel Officer, HQ)
South Central Railway,
Rail Nilayam, Secunderabad.

...Respondents

Counsel for the Applicant: Mr. K.R.K.V.Prasad

Counsel for the Respondents : Mr. N.Srinatha Rao, 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 application is filed under section 19 of the A.T. Act, 1985 to call for the records pertaining to imposition of penalty of compulsory retirement vide letter No. GZ/II/51/GTL-070/2002/03(B.5), dated 31.07.2008 issued by the 4th respondent which has been confirmed vide order issued under letter No.GZ/D&A/II/GTL-070/2002/03(B-5), dated 05.06.2009 by the 3rd respondent and order issued under letter No.P.86/DAR/GTL/PSB/55/2010, dated 31.08.2010 by the 1st respondent and declare that imposition of penalty and confirming the penalty of compulsory retirement on the applicant as illegal, arbitrary and is in violation of principles of natural justice offending Articles 14, 16 and 311(2) of the Constitution and set aside the said penalty with the direction to the respondents to reinstate the applicant forthwith as Travelling Ticket Inspector with effect from 31.07.2008 with all consequential benefits and pass such other order or orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The brief facts of the case are that the applicant was appointed as Ticket Collector in the erstwhile Hubli Division of S. C. Railway. The applicant progressed to the post of Travelling Ticket Inspector in scale Rs.5500-9000 (5th CPC). He was subjected to a vigilance check by the vigilance officials of S. C. Railway on 26/27.05.2002 in Kolhapur-Pune Section while the applicant

was performing the duties as Conductor of Train No.7304 Express. The check against the applicant was conducted in May, 2002 however the applicant was issued with a major penalty Charge Memorandum by the 4th respondent in April, 20023 with reference to the check conducted against him by framing three Articles of charge against the applicant.

3. That the inquiry against the applicant was conducted ex-parte by the 5th respondent who submitted a report to the 4th respondent proving all the three Articles of charge against the applicant and the said Inquiry Report was endorsed to the applicant for his remarks by the 4th respondent on 18.03.2008. The applicant submitted his remarks on the Inquiry Officer's report to the 4th respondent brushing aside valid contentions made by the applicant during the disciplinary process, agreed with the findings of the Inquiry Officer holding all the Articles of Charge against the applicant as proved and imposed the strictest penalty of compulsory retirement from service on the applicant.

4. That the 4th respondent while passing order dated 31.07.2008 imposing the penalty of compulsory retirement from service on the applicant has not applied his mind is evident from the fact that the submissions made by the applicant have not been answered and not noticed the fact that non-answering of the submissions made by the applicant during the disciplinary process were the sole reason for the applicant not participating in the inquiry which should have been considered as an important fact for the 5th respondent to afford

reasonable opportunity, instead of conducting the inquiry ex-parte.

5. That the applicant and Defence Counsel were issued the certificate of attendance on the date on which the inquiry was clandestinely wind up by evading to supply various documents that were sought earlier on 14.02.2007, some of which were agreed by the Inquiry Officer demonstrating the attitude of bias of the Inquiry Officer against the applicant. The applicant made an appeal of bias against the Inquiry Officer on 09.05.2007 before the 1st respondent which is yet to be redressed. The presenting Officer was not appointed in the case resulting the 5th respondent assuming the role of Prosecutor and Judge and hurriedly concluding the inquiry in violation of the rule / procedure and did not properly examine the witnesses to elicit the truth knowing fully well that he was conducting ex-parte inquiry. There was no independent witness in the check is evident from the fact that the decoy (Railway employee) had sought berth reservation for himself and the so-called independent witness (Railway Office), therefore the so-called independent witness also becomes a decoy to the trap and therefore cannot be treated as independent witness. The check was conducted in violation of the provisions contained in Para 704, 705 and 708 (ii) of Indian Railway Vigilance Manual, there was no proper record of ticket purchased and the money spent / returned to the decoy and there were no record of site plan prepaid in respect of the check.

6. The issue raised by the applicant during the inquiry were not addressed by the 5th respondent and despite the applicant's presence on

many occasions, the 5th respondent held the inquiry ex-parte. The applicant preferred a Revision Petition to the 1st respondent under Rule 24(2) of the Railway Servants (D&A) Rules, 1968 on 27.02.2010. However, much to the dismay of the applicant, the 1st respondent by order dated 31.08.2010 confirmed the penalty of compulsory retirement imposed by the 4th respondent and upheld by the 3rd respondent. The 1st respondent in the said order did not analyse the case in the right perspective and got swayed by the inappropriate findings recorded by various authorities at various stages in the disciplinary process against the applicant. Though the 3rd respondent granted personal hearing and marked a copy to Defense Counsel, such letters were also not sent to the Defense Counsel. Thus, the opportunities in the form of personal hearing confined only to paper as there were no communication to that effect rendering it not possible for the applicant to utilize such opportunities. In the circumstances of the 1st respondent's stand resulting in failure in dispensing justice, the applicant is forced to file the present OA.

7. Respondents have filed reply statement stating that the allegations against the applicant in the article of charge relates to the misconduct of the applicant during a decoy check by the vigilance team in Train No.7304, Sahyadri Express from Kolhapur to Pune on 26/27.05.2002 wherein the applicant was working as conductor of the reserved coaches. On the said date while on duty, as per the articles of charges, applicant allowed two decoy passengers holding second class ticket from Sangli to Pune in the Air conditioned coach by collecting Rs.500 without issuing any railway receipt,

found in possession of unaccounted cash amounting Rs.2310/- other than the railway cash and declared private cash and Rs.70/- short in the railway cash thereby violating various provisions of Indian Railway Commercial Manual and conduct rules.

8. The Respondents further submit that on denial of said allegations by him the disciplinary authority appointed enquiry officer by proceeding dt. 04.06.2003 to conduct enquiry as per the rules. Applicant nominated his defence assistant to assist him in the enquiry. The enquiry officer conducted preliminary hearing on 23.09.2003 and for regular hearing on 12.05.2004 applicant did not attend. Consequent to transfer of the said enquiry officer, another inquiry officer was appointed by proceeding dt.15.07.2004 and said enquiry officer conducted regular hearing on 12.08.2004, 11.10.2004, 21.10.2004, 25.02.2005 and 06.07.2005. Another enquiry officer was appointed on his transfer consequent to the repatriation and again 5th respondent was appointed on 27.04.2006. In the meanwhile applicant wrote letters to the Disciplinary authority and the said authority directed the applicant to co-operate with the enquiry. The regular enquiry was fixed on 24.08.2006, 19.09.2006, 09.02.2007, 14.02.2007 and 24.04.2007. However there was no much progress in the enquiry in all these sittings and on 24.04.2007 applicant submitted bias application against the enquiry officer and as such enquiry officer adjourned the enquiry for appropriate orders on the said application by the competent authority. The competent authority considered the bias alleged and rejected the request of the applicant to change the enquiry officer by proceedings

dt.11.10.2007. In view of the same, enquiry was conducted on 14.12.2007 and PW-1 was examined. However, the applicant though was present in the enquiry did not cross examine the witness in spite of granting opportunity for doing so. In the enquiry held on 04.01.2008 from 1000 hrs, applicant and the defence counsel did not attend though notice was served on both with clear instructions that if they fail to attend the same it will be held exparte. On the said date witnesses for the prosecution PW-2 to PW-4 were examined. The applicant came to the office after the enquiry and departure of witnesses and as such he was informed that the enquiry is over and proceeding of the day was issued to him. Applicant never sought for further conducting of enquiry or for opportunity to cross examine the witnesses examined on that day. Subsequently applicant sent a telegram on 07.01.2008 intimating that he will be submitting his defence statement within 10 days. But no such statement is received by the enquiry officer even after 10 days or till submitting the enquiry report.

9. It is submitted that in the enquiry conducted against the applicant 14 documents were taken on record and 4 witnesses were examined as stated in the charge memorandum. Applicant has been given opportunity to defend his case in the enquiry. As the applicant was avoiding the enquiry, the last phase of the enquiry was held exparte and applicant never sought for further enquiry either to cross examine the witnesses examined in the enquiry or to produce any documents or witness on his behalf. Though he sent telegram for submitting defence statement, no such statement was sent. Based on the evidence adduced during the enquiry the article of

charge against the applicant is proved.

10. The Respondents further state that, in the enquiry held on 14.12.2007 PW-1 was examined but applicant refused to cross examine said witness. In the enquiry held at 10 hrs on 04.01.2008, applicant and the defence assistant were duly relieved to attend the enquiry by the authorities both of them did not attend the enquiry till 11.00 am and no information and as such other witnesses were examined in the enquiry. Applicant came for the enquiry after the closure and departure of witnesses and he was provided with the proceedings of the said date. Applicant never made any request to any authority to grant him opportunity to cross examine the witnesses examined before preparing the enquiry report by the enquiry officer. The bias application submitted by the applicant against the enquiry officer was disposed of by the competent authority. In view of these submissions, respondents pray for dismissal of the O.A.

11. We have heard Mr.KRKV Prasad, learned counsel for the applicant and Mr.N. Srinatha Rao, learned Standing Counsel for Respondents.

12. There is much force in the submission of the learned counsel for the applicant that there has been non compliance with the provisions of para-704 and 705 of Railway Manual. Even though those procedures are not mandatory in all cases, still then the cumulative effect of the non compliance of the said instructions is to be considered. The 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 and the Hon'ble High Court of Delhi [**2002 (92) FLR 676]** have 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 contained signatures of decoy, witnesses and investigating officer/Inspector. The independent witnesses will stake up position at such a place wherefrom 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.”

13. 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.

14. The Inquiry Officer has a still more onerous and mandatory responsibility in terms of the provisions of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, 1968. The said Rule reads as under:-

(21) The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him.

The above is pari materia with Rule 14(18) of the CCS (CC&A) Rules, 1965.

15. Both the rules came up for consideration of the Apex Court in two different cases. In so far as the Railway Rules are concerned, the Apex Court dealing with the said rule in the case of *Moni Shankar vs Union of India* (2008) 3 SCC 484, where, the Apex Court has held as under:-

20. The enquiry officer had put the following questions to the appellant:

“Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the enquiry?”

21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.)

Again, in the case of *Ministry of Finance vs S.B. Ramesh* (1998) 3 SCC 227, the Apex Court, dealing with the requirement of complying with the provisions of Rule 14(18) of the CCS(CC&A) Rules, 1965 has held as under :-

“13. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:

"After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6- 1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the

respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed.....”

In the present case there is no material to show that after closure of the case of the Department, the case was adjourned to any other date to enable the applicant to explain the circumstances which were appearing against him in the evidence adduced to in Prosecution Witnesses. This assumes more importance in view of the fact that the Departmental Enquiry was virtually conducted ex-parte. The reason for which the applicant did not participate loses importance and pails into insignificance in view of the fact that it was obligatory on the part of the Inquiry Officer as well as the Respondents to see that the procedural, formalities, the guidelines as given by the Hon’ble Supreme Court in the decision referred to earlier and the principles of natural justice are followed. The same having not being done, the impugned orders have become vulnerable as the cumulative effect of non compliance of the provisions and rules goes to the root of the matter.

16. From the perusal of the material available on record, it is apparent and crystal clear that the Departmental Enquiry was conducted in violation of principles of natural justice and there has been non compliance of the

rules. The said non compliance has resulted in miscarriage of justice and has vitiated the entire Disciplinary Proceedings. These facts have also not been taken into consideration by the Appellate Authority / Disciplinary Authority. The noncompliance of the minimum standards required to be followed has deprived the applicant reasonable opportunity to explain the allegations made against him and the evidence appearing in the departmental proceedings. In normal course, this Tribunal could have remanded the matter back to the concerned authority, since the applicant was 58 years old in the year 2012 and the alleged incident took place in the year 2002, it will not be just and proper to remand the matter for another fresh enquiry. Therefore this Tribunal has no hesitation to quash the impugned orders vide letter No. GZ/II/51/GTL-070/2002/03(B.5), dated 31.07.2008 issued by the 4th respondent which has been confirmed vide order issued under letter No.GZ/D&A/II/GTL-070/2002/03(B-5), dated 05.06.2009 by the 3rd respondent and order issued under letter No.P.86/DAR/GTL/PSB/55/2010, dated 31.08.2010 are quashed and set aside. The applicant is also entitled for all consequential financial and service benefits.

18. O.A allowed accordingly with no order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)
JUDICIAL MEMBER ADMINISTRATIVE MEMBER

Dated : November, 2018.

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