

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.332/2003

This the 22nd day of April, 2004

HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

S. K. Mishra,
Ticket Collector,
Railway Station Mathura,
Central Railway.

... Applicant

(By Shri B. S. Mainee, Advocate)

-versus-

1. Union of India through
General Manager, Central Railway,
CST, Mumbai.
2. Chief Commercial Manager,
Central Railway,
CST, Mumbai.
3. Divisional Railway Manager,
Central Railway,
Jhansi.

... Respondents

(By Shri R. L. Dhawan, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, V.C.(A) :

While functioning as Head TTE in Train No.1016 Up
in between JHS-BHS of JHS-ET Section on 26.12.1997 in AC
coach A1 No.93023, applicant is alleged to have committed
the following misconduct :

"ARTICLE : I :-

He non-co-operated with the vigilance
team during vigilance check showing
unwillingness to check him and tried to flee
from the coach where the vigilance team
conducted the check.

ARTICLE : II :-

Rs.2000/- (Rupees two thousand) un
accounted and undeclared money was detected
in his possession.

h

ARTICLE : III :-

He was carrying two passengers without preparing their EFR from JHS.

ARTICLE : IV :-

He failed to collect the difference of fare between sleeper to AC II ex. JHS to CSTM from two passengers holding sleepers Class Ticket No.68135636 from GKP only, though the passengers were travelling from JHS.

Thus Shri S.K. Mishra, Hd. TTE failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a railway servant and thereby contravened the provision of Rule No. 3.1(i), 3.1(ii) and 3.1(iii) of Railway Service (Conduct) Rules, 1966."

2. Disciplinary proceedings were initiated against the applicant vide memorandum dated 18.12.1998. After conducting the disciplinary enquiry, the enquiry officer found the charge framed against applicant as proved. Thereupon, the disciplinary authority vide Annexure A-1 dated 30.3/9.4.2001 imposed the penalty of removal from service with immediate effect upon the applicant. Vide Annexure A-2 dated 20.5.2002, the punishment of removal from service was modified in appeal to reduction in rank to the initial grade of TC, i.e., grade Rs.3050-4590 (RSRP) fixing his pay at the initial stage of Rs.3050/- for a period of ten years with cumulative effect. Applicant's revision was rejected vide Annexure A-3 dated 28.11.2002. Applicant has challenged Annexures A-1, A-2 and A-3 whereby the penalty of reversion in grade as described above has been imposed upon him.

3. The learned counsel of applicant raised the following contentions :

W



- (1) Material witnesses such as Shri Nandan Singh to indicate whether he was transferred to the AC coach from Jhansi or from Bina and why and how he paid Rs.2000/-, and Shri B.P. Singh, TTE, in-charge of the sleeper coach to show whether Shri Nandan Singh was travelling in sleeper coach to Bina or not, were not examined despite applicant's request to the enquiry officer to call them.
- (2) Provisions of rule 9.21 of the Railway Servants (Discipline & Appeal) Rules, 1968 were violated in the enquiry. Statements of witnesses taken in the preliminary enquiry were not supplied to the applicant though the impugned orders relied upon such evidence.
- (3) Various points raised in the appeal and the defence brief were also not considered by the authorities.
- (4) The orders of the disciplinary authority and the appellate authority are non-speaking and non-reasoned.

4. On the other hand, the learned counsel of respondents contended as follows :

- (1) All material witnesses were examined in the enquiry.
- (2) It was not necessary to supply statements of witnesses taken in the preliminary enquiry to the

h




- 4 -

applicant. The enquiry officer did not violate the provisions of rule 9.21 ibid.

(3) Important points raised by the applicant in the appeal were considered, however, he did not submit any defence brief despite opportunity granted to him.

(4) The impugned orders are speaking and reasoned orders in which the joint note prepared at the time of vigilance check has been relied upon. It is not necessary to prove this document by examining any witness. This joint note bears the signatures of a passenger as well on the basis of which it has been stated by the authorities in the impugned orders that evidence against the applicant is corroborated by the joint note dated 26.12.1997 which was signed by one of the passengers besides the vigilance team.

5. We have considered the rival contentions and perused the relevant record of the enquiry produced by the respondents. It appears from the record that the respondents have not made any efforts to procure the presence of Shri Nandan Singh and Shri B.P.Singh, TTE who indeed are material witnesses. Shri Nandan Singh was to indicate whether Shri Nandan Singh was transferred in the AC coach from Jhansi or from Bina and why and how he had paid Rs.2000/-. Similarly, Shri B.P.Singh, TTE was in-charge of the sleeper coach. He too was a material witness to show whether Shri Nandan Singh was travelling



in sleeper coach to Bina or not. Applicant had requested for calling these witnesses vide Annexure A-6 dated 27.7.2000 which was rejected vide Annexure A-7 dated 24.8.2000. These witnesses indeed are material witnesses to establish the charges against applicant. They were neither called by the enquiry officer nor was applicant given an opportunity to call them as defence witnesses. For this, we draw support from **Hardwari Lal v. State of U.P.**, 1999 (8) SCC 582.

6. From the records, it is established that only a joint note was recorded by the vigilance team and signatures of a passenger obtained on the joint note. No statements of any witnesses were recorded during the vigilance check.

7. As to the factum of compliance of rule 9.21 *ibid*, it is appropriate to reproduce this rule as under :

"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."

8. The import of this provision is that on conclusion of the disciplinary authority's case, a railway servant has to state his defence and also to give statement of defence. Thereafter, he is at liberty to examine himself. Thereupon, it is mandatory for the enquiring authority, in the event of the railway servant not having examined himself, to generally question him on

h

22

the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances appearing in the evidence against him. This view is strengthened by the ratio in the case of **Shri S.K.Jain v. Union of India & Ors.**, 2003 (3) ATJ 155 (CAT, New Delhi). Annexure R-4 dated 21.7.2000 is a statement of the applicant which is stated on behalf of the respondents to be a statement in pursuance of the provisions of rule 9.21 *ibid*. We have gone through the contents of this statement. By no stretch of imagination, this statement can be said to be in accordance with the provisions of rule 9.21. The enquiring authority has not generally questioned the applicant on any circumstances appearing against him in the evidence and as such, no opportunity has been granted to the applicant to explain the circumstances appearing in the evidence, if any, against him.

9. Respondents have denied to have received any statement of defence from the applicant. However, from the original copy of Annexure R-3 produced before us by the respondents, it is established that applicant had appended a note thereon in acknowledgement of receipt of Annexure R-3 to the effect that he had sent his statement of defence to the enquiry officer. If the enquiry officer had not received that, he should have told the applicant so. He did not do so, nor has the above remark made by the applicant on the original copy of Annexure R-3 been commented upon by the respondents either in the enquiry or in the case before us. It has to be deemed that applicant had submitted his statement of defence


11

which had not been dealt with by the respondents in any manner.

10. In his appeal (Annexure A-10) applicant had made several points such as demanded documents not having been supplied or declared irrelevant; why the statements of passengers were not recorded by the vigilance team; non examination of the passengers and applicant's colleagues, etc. The appellate authority has not dealt with these points raised by the applicant. We have also carefully gone through the impugned orders passed by the disciplinary authority and the appellate authority. They are indeed non speaking and non reasoned.

11. The authorities have relied upon the joint note recorded at the time of vigilance check on which signatures of a passenger were also obtained. This document has not been proved in the departmental enquiry. The learned counsel of the respondents stated that this document need not have been proved by anyone as its genuineness had not been challenged. The contention of the respondents cannot be accepted. In our view, any document which is produced in an enquiry cannot be validly proved if the maker of that document is not summoned in the enquiry for the purpose of affording a reasonable opportunity to the charged officer to cross examine him. For this, we place reliance on **Latoor Singh v. Union of India**, 2003 (1) ATJ 105 (CAT, Lucknow).

12. We are fully conscious of our constraints in a judicial review pertaining to disciplinary proceedings.



24

In the event of non examination of material witnesses and violation of the provisions of rule 9.21 ibid, and the impugned orders of the disciplinary and the appellate authorities having been passed without considering the points raised in appeal and the defence brief, we have no hesitation in holding that findings of the enquiry officer and the conclusions of the authorities have been perverse. The disciplinary and the appellate authorities have acted with a closed mind in a mechanical manner and imposed the penalty challenged before us.

13. In result, for the foregoing reasons, the OA is allowed. Impugned orders are quashed and set aside. Applicant shall be entitled to all consequential benefits which shall be paid to him within a period of three months from the date of receipt of these orders. No costs.

S. Raju
(Shanker Raju)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

22.4.04