

Central Administrative Tribunal
Principal Bench

OA No.3042/2003

New Delhi this the 13th day of July, 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri M.K. Meena
S/o Shri Gorkha Ram Meena,
R/o Q.No.2K-A, Railway Quarter,
Palwal.

-Applicant
(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the General Manager, Central Railway, Jhansi.
2. The Additional Divisional Railway Manager, Jhansi Division, Central Railway, Jhansi.
3. The Sr.Divisional Commercial Manager, DRM office, Jhansi Division, Jhansi.
4. The Divisional Commercial Manager, DRM Office, Jhansi Division, Jhansi.

-Respondents
(By Advocate: Shri R.L. Dhawan)

O R D E R

Shri Shanker Raju, Member (J)

Applicant impugns respondents' order of penalty dated 16.8.2001, appellate order dated 22.11.2001 and the order in revision, reducing the punishment from removal to reversion dated 23.9.2002.

2. While working as Travelling Ticket Examiner, applicant was proceeded against for a major penalty on the allegation that he demanded Rs.50/- extra from a decoy passenger to allot berth and over charge Rs.137/-. Another charge was that he declared his private cash on a higher side without actually owing it and adjusted the excess amount in railway cash against private cash. After examination of the

witnesses and on submission of defence statement, applicant was held guilty of the charge by the Enquiry Officer.

3. On representation to the Disciplinary Authority a penalty of removal from service was inflicted, which was upheld in appeal.

4. On revision holding that the charge of excess money could not be proved but as the charge of overcharging from decoy was proved punishment was reduced from removal to reduction in lowest grade of Rs.3050-4590 fixing his pay at Rs.3050/- for a period of 15 years with cumulative effect, giving rise to the present OA.

5. Though several grounds have been raised by the applicant's counsel Shri Yogesh Sharma yet by resorting to Paragraphs 704 and 705 of Indian Railway Vigilance Manual (IRVM), it is contended that in a trap if two Gazetted Officers as independent witnesses have not been associated the mandatory provision vitiates the trap and the penalty imposed by the Disciplinary Authority is liable to be set aside. This contention has been put-forth on the basis of a decision of the Division Bench of the High Court of Andhra Pradesh in W.P. No.1489/2002 decided on 4.9.2002 which has been relied upon by the Hyderabad Bench of this Tribunal in Sk.Abdul Salam Vs. The DRM, S.C. Railway, Guntakal & Ors. 2003 (2) ATJ 118.

6. On the other hand respondents' counsel Shri R.L. Dhawan, vehemently opposed the contentions. According to him, the charge against the applicant has been amply proved. The orders passed are speaking. It is, however, contended that the guidelines in Paragraphs-704 & 705 of the IRVM pertain to only a trap in a case where a secret information is available, specific against a person against whom a raid is conducted, but as the present is a decoy checking the decision is distinguishable.

7. On careful consideration of the rival contentions and on perusal of the record produced by respondents we find that in pursuance of decision to examine over-charging in passenger train a raid was conducted by the vigilance. A decoy witness alongwith three signed currency notes were prepared. Accordingly, as a result of the raid applicant was proceeded against in the enquiry.

8. The following observations have been made by the High Court of Andhra Pradesh as well as Tribunal in Abdul Salam's case (supra):

"9. It has been held by a Division Bench of the High Court of A.P. in W.P. Nos.1489/2002, 26165 and 25111/2001 dated 4.9.2001 wherein it was held that "the provisions of paragraphs 704 and 705 of the Indian Railway Vigilance Manual are mandatory in nature and non-observance with the said mandatory guidelines vitiates the trap conducted and the penalty imposed by the disciplinary authority is liable to be set aside." The relevant provisions of paras 704 and 705 are extracted hereunder:-

"Para 704:

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 red 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 approached as witnesses in earlier cases of the department or the police and are man of status considering the status of the accused. It is safer to take witnesses who are Government employees and of other Departments.

(e) xxxxxxxxxxxxxxx

Para. 705:

For Departmental traps, the following instructions in addition to those contained under paragraph 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 utilized.

(b) The decoy will present the money which he will give to the 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 G.C. 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 G.C. notes to the decoy will be prepared for making over the G.C. notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and Investigating Officer/Inspector. The independent witness will take up position at such a place where from they can see the transaction and also hear the conversation between the decoy and the 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, Railway 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 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.

(c) to (e) xxxxxxxxxxxxxxxx"

10. In the instant case, as it is found that the procedure prescribed under the above mandatory provisions has not been followed by the vigilance inspector in the departmental trap conducted by him for the reasons given in the above discussion, we find that the entire proceedings are vitiated and the impugned orders passed by the respondents on the basis of the said illegal trap conducted are liable to be set aside. Since the evidence adduced during the inquiry is based on the said illegal trap conduct by the vigilance inspector, the inquiry officer and the disciplinary authority were not justified in acting upon the said evidence adduced in the inquiry and in holding the said charge as are proved. Further we find that the findings recorded by the inquiry officer, which have been accepted by the disciplinary authority are not supported by any legally acceptable evidence."

9. If one has regard to the above, we do not find any difference in the case in hand with that of Abdul Salam (supra). A raid conducted by the Vigilance on a decoy witness on a specific information as to complaint of over-charging is nothing but all the ingredients of a trap. Accordingly, the only witness which had been associated in the raid in the decoy check were Sh. Balbir Singh, a RPF Constable and Sh. R.R. Singh, another R.P.F. Constable. In the aforesaid raid neither two gazetted officers from Railway as independent witnesses or even non-gazetted staff were associated. This was with a view that they must hear the conversation as to illegal gratification. The High Court of Andhra Pradesh's decision which has a binding precedent in absence of any ratio laid down to

the contrary by the Delhi High Court provisions of paras 704 and 705 IRVM being mandatory in nature are not followed as a procedure in the departmental trap. The enquiry as well as consequent orders are vitiated. Consequent orders passed on such illegal trap, which does not form an admissible evidence against applicant are also nullity in law.

10. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Applicant shall be entitled to all consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

V.K. Majotra

13.7.04
(V.K. Majotra)
Vice-Chairman (A)