Central Administrative Tribunal
Principal Bench

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O.A. No. 1973 of 2002

New Delhi, dated this the 28th July,2003.

HON'BLE MR. SHANKAR RAJU, MEMBER (J)
HON'BLE MR. R.K.UPADHYAYA, MEMBER (A)

Ashok Kumar Sabbharwal,
S/o Shri Kartar Singh,
Head Parcel Clerk,
Northern Railway,
Railway Station,
New Delhi
(By Advocate:Shri B.S.Mainee)
....Applicant.

Versus

1. The Union of India,
through
the General Manager,
Northern Railway,
Baroda House,
New Delhi

2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi
(By Advocate:Shri V.S.R.Krishna)
...Respondents.

ORDER(ORAL)

Shri R.K.Upadhyaya,M(A)

By this application under section 19 of Central Administrative Tribunal Act,1985, the applicant has claimed the following reliefs:-

> "8.1. That this Hon'ble Tribunal may be pleased to allow this application and quash the impugned orders.
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> 8.2. That this Hon'ble Tribunal may be pleased to direct the respondent to give consequential benefits including back wages and refund on the recovered amount.
>
> 8.3. That any other or further relief which this Hon'ble Tribunal may be deem fit and proper under the circumstances of the case may also be granted in favour of the applicant.

8.4. That the cost of the proceedings may also be awarded in favour of the applicant."

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2. The applicant, while working as Head Parcel Clerk at Railway Station, New Delhi, was issued a memorandum of charge sheet dated 2.6.2000 (Annexure A-4) for major penalty. This memo of charge sheet contained three charges of misconduct as follows:

"1.while working as Delivery Clerk at EIR Shed/DLI on 16.3.2000 Sh.A.K.Sabharwal demanded and accepted Rs.425/- against Rs.22/- the due wharfage from the decoy Shri Pankaj Kumar for delivering four packages booked by DIMAPUR to Delhi under R.R.No.574737. Out of Rs.425/- he kept Rs.400/- in his pocket and Rs.25/- were kept in cash drawer used for Govt. cash. Thus he demanded and accepted illegal gratification for his personal gain and ulterior motive.

2. He had declared his private case as R.100/- in private cash book, but when he was asked to produce his private cash, he refused to produce it a he was having more case in his packet than the actual declared private cash in his pocket. When he was insisted to show his private cash, he three Rs.725/- from hiss pocket and produced his private cash as Nil.

3. He was asked to show the Govt. cash as per detail prepared in him. But he refused to show the Govt. cash deliberately shipped from his sum and deposited the same to CBS/Cash even his duty hours were not completed Sh. Sabharwal did manipulation with the intention this to prevent the recovery of decoy money from the Govt. cash. This indicates his pralafied intention. Thus he did not cooperate with vigilance team during the check."

3. In view of the fact that the applicant denied the charges levelled against him, the Disciplinary Authority appointed an Enquiry Officer. The applicant claims that the Enquiry Officer did not conduct the enquiry in accordance with the prescribed rules and the prescribed procedure. However, the

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Enquiry Officer submitted an enquiry report dated 15.3.2001 (Annexure A-6) to the Disciplinary authority. In this enquiry report, the applicant was found guilty of certain charges in as much as the Enquiry Officer gave the following findings:

> "Charge No.1 is partially proved to extent that the C.O. charged Rs.25/- in lieu of Rs.22/- from decoy and same were deposited by him in the Government cash after completing his duty.
>
> Charge No.2 Could not be proved."

4. The applicant submitted his reply to Enquiry Officer vide his representation (Annexure A-7) in which it is claimed that he was quite innocent and deserved full exoneration. However, the Disciplinary Authority,Divisional Traffic Manager, New Delhi,by his order of punishment under Rule 6(v) of Railway Servants(Disciplinary & Appeal) Rules,1968 held the applicant responsible partially for two out of three charges and imposed punishment of reduction to lowest stage in the same scale of pay for a period of five years with cumulative effect. Accordingly, the pay of the applicant was reduced to Rs.5,000/-from the stage of Rs,5450/- . The applicant submitted an appeal against the order of punishment but the appellate authority, Senior Divisional Commercial Manager by order dated 15.6.2001 rejected the appeal observing that the punishment awarded by the Disciplinary authority was not on higher side. Thereafter, the applicant filed a revision petition which was also rejected by the Addl.Divisional Railway Manager (OP), Northern Railway, New Delhi Vide order dated 3.10.2001. In view of the rejection of the representations of the applicant against the

charge sheet by the Disciplinary Authority/Appellate Authority as well as Revisionary Authority, the applicant had filed this original application claiming the reliefs as stated earlier.

5. It is stated by the learned counsel of the applicant that the Enquiry Officer by his report dated 15.3.2001 (Annexure-A6) has wrongly concluded that the Charge No.1 was partially proved. The applicant was paid Rs.25/- instead of Rs.22/- by decoy customer. According to him, the entire amount was deposited in Government cash. Therefore, there is no personal gain to the applicant. The rest of the charge had also not been found to be proved by the Enquiry Officer. The second charge was also not established to be proved. So far as the third charge is concerned, it is argued that the conclusion,drawn by the Enquiry Officer,is against his own findings given in respect of Charge No. 3 . The Enquiry Officer has stated that "all the PWs stated that the C.O. refused to show his Govt. cash to the vigilance and also refused to prepare the cash details. Proceedings of the inquiry indicates that there is cash details (i.e. Ex. P-8) available on record. None of the PW stated during inquiry that those cash details were incomplete or wrong, even them Shri R.S.Dhull stated that the vigilance team told the C.O. to prepare these details a fresh which was the C.O.refused." The Enquiry Officer has further observed that "this dealing of vigilance team seems wrong and intactfully otherwise when the C.O. prepared once the cash detail what was the necessity to prepare it again. Here it is also pertinent that

the C.O. also did not cooperate with the vigilance team otherwise why he deposited the Government Cash directly. However, PW-1 stated that the C.O. deposited his Government cash under the due permission of vigilance team. Other than PW1 no other witness stated during enquiry that the C.O. deposited the Government cash without the permission of the vigilance team. There is no evidence on the record that the C.O. left his duty before finishing his duty hour with the permission of vigilance team. In view of the above discussion and oral evidence on the record, the charge is proved." According to the learned counsel, the conclusion of the Enquiry Officer that the Charge No.3 stands proved, is against the material available on record and against his own findings. If the Enquiry Officer left his duty after office hours at 17' O clock, there is no mis-conduct. So far as this part of charge No.3 is concerned, the same is not established before the Enquiry Officer.The other part of the Charge No.3 regarding non completion of Government account is also not against the findings of the Enquiry Officer. In other words, learned counsel stated that the Enquiry Officer's report is either perverse or based on no material. Therefore, the final conclusion regarding Charge No.3 having been proved, is incorrect.

6. The respondents have contested the claim of the applicant and have filed reply in which they have stated that the Enquiry Officer had found Charges No.1 and 3 as proved. Therefore, the Disciplinary Authority awarded the punishment of reduction to

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lowest stage in the same scale for a period of five years with cumulative effect. The appeal as well as the revision were rejected as some of the charges stood proved. The charges were also very serious in nature and,therefore, the same were also considered to be commensurate with the misconduct. Learned counsel stated that against due wharfage of Rs.22/-, the applicant received Rs.25/- from the decoy which was deposited in Govt. cash without any personal gain to the applicant. Learned counsel of the respondents further invited our attention to the fact that an amount of Rs.725/- found near the almirah of delivery office containing Rs.400/- of decoy money. According to the learned counsel of the respondents, the charged official did not fully cooperate with the vigilance team. When the charged official declared a cash of Rs.100/-, the same should have been produced by him on demand. However, since the applicant had thrown the entire amount of Rs.725/-, he declared 'Nil' as personal cash. Therefore, the conclusion drawn by the respondents in this case are commensurate with the grave mis-conduct of the applicant. Learned counsel stated that this Tribunal may not reappraise the facts as the departmental authorities had followed the prescribed rules and procedure and had not violated the principles of natural justice.

7. We have heard the learned counsel of both the parties and have perused the material available on record.

8. The respondents had issued a memorandum of charge sheet dated 2.6.2000 (Annexure-A4). This contained three articles of charges. So far as Article No.2 is concerned, the Enquiry Officer had held that the same was not proved. For this original application, we may confine ourselves to articles of charges bearing Nos.1 and 3 only.

8.1 The Enquiry Officer has held the first charge as partially proved to the extent that the applicant charged Rs.25/- instead of Rs.22/- from decoy and the same were deposited by him in the Government cash after completing his duty. The limited issue for our consideration is whether the applicant is liable for major penalty for this excess charge of Rs.3/-. We agree with the learned counsel of the applicant that there is no personal gain to the applicant as the admitted position is that the entire amount of Rs.25/- charged by the applicant was deposited in the Government cash. If there is no personal gain to the applicant, there is no element of men rea, in charging excess amount of Rs.3/-.

8.2 So far as the third article of charge is concerned, we find that the Enquiry Officer had recorded contradictory findings. Once he says that the charged official prepared the cash details, so there was no necessity to prepare the same again. Therefore, there is no refusal to obey the direction of the vigilance team. So far as the first part of Charge No.3 regarding preparation of cash details is concerned, we find that the Enquiry Officer had not

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recorded any findings against the applicant. The second part of Charge No.3 relates to the fact that the applicant 'slipped away from his seat'....... "even his duty hours were not completed." In the conclusion of the findings of Enquiry Officer in the report, he observed that "there is no evidence on record that the charged official left his duty before finishing his duty hrs." If there is no evidence on record, the finding of the Enquiry Officer that the charge is proved, is incorrect being based on no evidence.

9. For all these reasons as stated in the preceding paragraphs, we hold that the basis of punishment order of the Disciplinary Authority is not sound. Therefore, the order of the Disciplinary Authority as well the orders of appeal and revision deserve to be quashed. We order accordingly. The applicant is also directed to be allowed consequential benefits, if any, within three months from the date of receipt of a copy of this order.

10. In the result, the O.A. is allowed without any order as to costs.

(R.K.Upadhyaya)
Member (A)

S. Raju
(Shankar Raju)
Member (J)

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