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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.1821/2002

New Delhi, this the 2nd day of September, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K. NAIK MEMBER (A)

M.R. Verma
S/o Shri Bharat Singh
R/o 295/28, Dev Nagar
Near Shiva School
Sonapat (Haryana)

.... Applicant

(By Shri Neeraj Shekhar, Advocate)

vs.

1. Union of India, through
General Manager
Northern Railway
New Delhi.
2. Chief Engineer
Construction-North
Northern Railway
New Delhi.
3. Deputy Chief Engineer,
Construction-I
Northern Railway
Jammu-Tawi.

... Respondents

(By Shri R.P. Aggarwal, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:

The applicant was served with the following three charges:-

- "
- i) Shri M.R. Verma while holding the charge of DSKP/C/JAT, did not maintain his stock properly which resulted into heavy shortages of steel of various size and sections valuing to Rs.35 Lacs approx. thus he failed to maintain minimum devotion and absolute integrity towards his duties.

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- ii) Shri M.R. Verma while holding the charge of DSKP/C/JAT has failed to maintain proper accountal of his stores resulting into heavy excess of steel of some specific sizes and sections resulting into the excess ground balance of approx. Rs.8.9 lacs for those sections. Thus he has failed to maintain minimum devotion and absolute integrity towards his duties.
- iii) Shri M.R.Verma failed to submit any reply for the stock sheet Nos.13(I) to 13(IV) despite reminders issued vide Dy.CEK/C-I/JAT's letter No.13-S/Dy CE/C-I/JAT dated 19.4.99 which is quite unbecoming of a Railway servant."

An enquiry officer had been appointed who investigated the matter and recorded that first two charges levelled against the applicant were substantiated while the third charge had not been substantiated. The disciplinary authority accepted the report of the inquiry officer and imposed the penalty of dismissal from service upon the applicant under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short, "the Rules"). The applicant preferred an appeal and the Chief Engineer/Construction on 11.8.2000 had dismissed the same.

2. Aggrieved by the same, the applicant preferred OA No.41/2001 in this Tribunal. This Tribunal had set aside the order passed by the appellate authority and directed that the appellate authority should marshal the evidence on record and apply his mind to the misconduct and thereupon pass

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a reasoned order in appeal. It was further directed that the Provident Fund should be released to the applicant.

3. In compliance of the directions of this Tribunal, on 24.5.2002, the appellate authority had again considered the relevant facts and dismissed the appeal. By virtue of the present application, the applicant seeks quashing of the orders passed by the disciplinary authority as well as the appellate authority.

4. The sequence of events has already been given above, but some of the other relevant facts can also be relisted. In 1998-1999, stock verification of the goods was held and it was reported that there was heavy shortage/excess of goods as reflected from the stock sheet. The applicant is stated to have been posted at the relevant place. This prompted the Deputy Chief Engineer, Construction to conduct an enquiry in this regard. The applicant's case is that the appellate authority has again not marshalled the facts. The relevant condition of the rules has not been specified and in any case the quantum of punishment is far too excessive even to the alleged dereliction of duty.

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5. In the reply filed, the application has been contested. It has been pointed that the applicant being the stock holder had the absolute responsibility to verify and assess the weight of the material before taking the account of the same. He should have assessed the weight of the material. He had never brought the discrepancies to the notice of any person. The enquiry was held in accordance with the procedure and the penalty imposed is in accordance with the alleged dereliction of duty on the part of the applicant.

6. The learned counsel for the applicant contended that the appellate authority is governed by Rule 22(2) of the Rules and, therefore, the order in question cannot be sustained. Rule 22(2) reads as under:-

"22(2). In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said Rule, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice.

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate, or severe;

and pass orders

(i) confirming, enhancing, reducing or setting aside the penalty, or

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(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."

It clearly shows that when the appeal is preferred, the appellate authority has to see that the procedure prescribed has been followed and whether the findings are based on evidence and whether the penalty is adequate, inadequate or too severe. We have already pointed above that on earlier occasion, this Tribunal had quashed the order of the appellate authority. It is in pursuance thereto that the present order dated 24.5.2002 has been passed.

7. We have gone through the said order. It clearly shows that the appellate authority has presently gone through the procedure, scanned the evidence and had approved the findings of the disciplinary authority. It has also specifically recorded a finding briefly agreeing with the penalty that had been imposed. The operative part of the said order reads:-

9. I have carefully gone through your reply and other records of the case and satisfied that proper procedure has been followed in this case. You have been given ample opportunity to present your case which has been availed also by you. You have not produced any substantial evidential record in your defence and have merely pleaded your case on the basis of assumptions and presumptions whereas there are strong and irrefutable evidences which prove that it was

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due to your sheer negligence and lack of devotion to duty that shortage/excess in the material resulted during the period when you were stock incharge. Your negligence/lack of devotion to duty has cost the railway administration heavy losses.

10. In view of the above I agree with the punishment imposed by the disciplinary authority. After due consideration of the facts and circumstances of the case I uphold the penalty of the DISMISSAL from service to meet the ends of the justice and accordingly your appeal is disposed of."

Therefore, the said argument of the learned counsel in the facts of the present case must be held to be without any merit.

8. The main argument in that event raised was that the applicant has rendered almost three decades of service to the respondents and for the one dereliction of duty, the penalty of dismissal from service is totally disproportionate to the alleged dereliction of duty.

9. We know from the decision rendered by the Supreme Court in the case of **State of Tripura and Others v. Priyabandhu Chakraborty**, (1997) 11 SCC 405 that the long service rendered by the employee must also be taken into consideration while imposing the penalty on him. In paragraph 7 of the judgment, the Supreme Court held:-

"7. We have, however, considered the charges that have been found established against the respondent. Having regard to the fact that the respondent had already put in

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nearly 33 years of service on the date when the order of dismissal was passed, we are of the view that this is a fit case in which instead of dismissal from service the penalty of compulsory retirement may be imposed on the respondent with the direction that the respondent would not be entitled to payment of any arrears of pension from the date of the passing of the order of dismissal, i.e. from 27.4.1982 till the date of this judgment and would be entitled to receive the pension with effect from 1.1.1996 only."

10. If the present argument and the facts are examined on the touch-stone of the findings of the Supreme Court, we are of the considered opinion that there is no ground to interfere even on the said count. The long service rendered by an employee is only one of the factors to be considered. The nature of the dereliction of duty cannot take a hind seat. It is always the totality of the facts and circumstances which has to be weighed before any such order is passed. In the present case before us, the applicant is alleged to have failed to maintain the proper stock. There is shortage of steel of various sizes and sections valuing Rs.35 lacks on one count and Rs.8.0 lacks on another count. When such is the situation, one is not surprised that a strict view in this regard had to be taken. The long service rendered, therefore, cannot be taken as an extenuating circumstance for lesser punishment. Our conscious is not shocked and we would not like to remit the matter to the disciplinary authority for passing a fresh order of penalty.

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11. No other argument was raised.

12. For these reasons, the application being without merit must fail and the same is dismissed.
No costs.

Announced.

S.K. Naik
(S.K. Naik)
Member (A)

/sns/

V.S. Aggarwal
(V.S. Aggarwal)
Chairman