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Central Administrative Tribunal, Principal Bench

Original Application No.2123 of 2002

New Delhi, this the 12th day of March, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. A.P. Nagrath, Member(A)

Mukh Ram Singh,
S/o Shri Ram Roop
Railway Colony,
Near Pani-Ki-Tanki,
Budh Bazar,
Gajraula (UP)

..... Applicant

(By Advocate: Shri G.D. Bhandari)

Versus.

Union of India, through

1. The General Manager,
Northern Railway
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway
Moradabad
3. The Sr. Divl. Commercial Manager,
Northern Railway,
DRM's Office,
Moradabad

..... Respondents

(By Advocate: Shri B.S. Jain)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

On 23.3.95, the applicant was posted at Moradabad. He was deployed in the Outward Parcel Booking Office in the shift duty from 12.00 Noon to 8.30PM. For the alleged dereliction of duty regarding which we are not dwelling for the purposes of the present order, disciplinary proceedings had been initiated against the applicant. The enquiry officer had exonerated the applicant with respect to the three charges against him. When the matter went to the disciplinary authority, it had not agreed with the findings of the enquiry officer and

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passed the following order:

"I am only in partial agreement with E.O. in both the cases, in particular E.O.'s version and remarks on shortage of cash are rather weak. The responsibility for proper charge and accountal vests with the staff."

2. It is thereafter that the disciplinary authority had passed the impugned order imposing a penalty of reducing the pay of the applicant to the lower stage i.e. from Rs.6050/- to Rs.5300/- in the scale of Rs.5000-8000 for a period of period of five years. The appeal had been dismissed. The operative part of the order reads:

"After going through your above appeal, punishment is reduced to "Reduction by five stage below in same time scale for a period of two years without cumulative effect" i.e. "Reduction from the stage of Rs.6,050/- to the stage of Rs.5,300/- in the scale of Rs.5000-8000 for a period of two years without cumulative effect."

3. Needless to state that the application has been contested.

4. Learned counsel for the applicant contended that the disciplinary authority had disagreed with the findings of the enquiry officer but it was a non-speaking order and, therefore, the said orders so passed should be quashed in this regard.

5. Learned counsel for the respondents vehemently contended that the disciplinary authority is not bound to pass a speaking order when it chooses to disagree with the report of the enquiry officer. In support of his argument, learned counsel for the respondents has drawn our attention



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towards the decision of the apex court in the case of High Court of Judicature at Bombay vs. Shashikant S. Patil & anr., 2000 SCC (L&S) 144.

6. It must be stated at the outset that the decision of the apex court binds but the binding nature of the decision is applicable only when a principle of law is laid. If a particular decision is confined to the facts of a particular case, in that event Article 141 of the Constitution cannot be pressed into service.

7. In the case of Shashikant S. Patil (supra), the facts were that disciplinary proceedings had been initiated against a Joint Civil Judge (Junior Division) in the Maharashtra Judicial Service. Certain charges were drawn against him. The enquiry report was submitted, but the Disciplinary Committee consisting of the five Judges of the Bombay High Court did not approve of the findings of the enquiry officer. They proposed to proceed in the matter. A notice was issued to the said delinquent calling upon to show cause as to why the findings of the enquiry officer on the crucial points should not be repudiated and major penalty of dismissal from service be not imposed. A representation was received and considered. Thereupon the penalty of compulsorily retiring the said person had been imposed. The alleged delinquent Shashikant had filed a petition in the Bombay High Court against the imposition of penalty of compulsory retirement. It was primarily on the ground that the disciplinary committee had not put forward adequate reasons for differing from the findings of the

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enquiry officer and that the disciplinary committee did not discuss as to how the enquiry officer went wrong and why his findings were not acceptable to the Committee. The Bombay High Court held:

"when the disciplinary authority differed from the findings entered by an enquiry officer, it is imperative to discuss materials in detail and contest the conclusions of the enquiry officer and then record their own conclusions."

8. Keeping in view the said decision whereby the petition of Shashikant had been allowed, the apex court held:

"19. The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the enquiry officer it is imperative to discuss the materials in detail and contest the conclusion of the enquiry officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the enquiry officer's report. It must be borne in mind that the enquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such enquiry as well as the view expressed by the enquiry officer thereon. The findings of the enquiry officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision-making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the enquiry officer. But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the enquiry officer". Otherwise the position of the disciplinary authority would get relegated to a subordinate level."

9. It is abundantly clear from the aforesaid that the ratio decidendi of the decision so much relied upon by

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the respondents' learned counsel is that:

- "(a) the ultimate decision lies with the disciplinary authority;
- (b) the disciplinary authority is not bound by the findings of the enquiry officer who has to come to its own conclusion; and
- (c) it is not necessary that the disciplinary authority should discuss the material in detail and contest the conclusions of the enquiry officer."

These are the propositions laid by the Supreme Court in the above said decision.

10. What is the position herein? We have already reproduced above the alleged note of disagreement. For keeping the record straight, we deem it necessary to mention that alongwith the order imposing the penalty, the disciplinary authority had appended Annexure A-1 dated 13.9.99 which reads:

"I have carefully gone through the entire case, including the charges, enquiry proceedings/findings of the I.O. and the defence objections against my views on the IO's findings.

I.O. in his report could not prove any of the charges against the C.O. In my note to the CO about the enquiry report, I mentioned that I do not agree with the enquiry report because the contention that the shortage of money occurred during check at the time when the CO was not on duty and at the time of check the alleged amount was not exactly apportioned between the CO and the CW. I feel this is an irrelevant defence because CO & CW, it is on record worked on this seat jointly and they put their cash proceedings in the same drawers on their volition. Hence for any shortage in the Govt. cash, the two shall have joint responsibility for the entire amount and neither can take protection under the garb that it is not known how much shortage is due against whom. The question of apportionment is irrelevant. This disagreement, I indicated in my observation letter No.VC/Conf/Coml/78-95 dated 19.07.99, in which I have mentioned that responsibility for proper charge and accountal

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vests with the staff, which is crucial in deciding the Charge No.1, which the EO tended to ignore.

Hence for causing shortage of Rs.2,323/- in the Govt. cash, I hold Sh.M.R.Singh, OSI/MB, fully responsible.

I agree with the EO findings in respect of charge No.2 & 3 and accept that for these charges Sh.M.R.Singh is not responsible.

On the basis of the above decision, I consider Sh.M.R.Singh responsible and award following punishment:-

Sh.M.R.Singh is reduced by five stages in the present time scale for a period of 5 years without having cumulative effect."

11. The observation in the case of Shashikant S.Patil, as already referred to above, is that the disciplinary authority has a right to differ from the enquiry officer. In order to keep the scales even and to adhere to the well settled principles of fair enquiry, necessarily when the disciplinary authority differs, an opportunity is given to the delinquent to show cause as to why further action, if any contemplated, be not taken. If this opportunity is not provided or is provided in a half-hearted manner, the necessary conclusion would be that the delinquent can well complain that the order suffers from the vice of fair opportunity having been granted.

12. The disciplinary authority herein simply recorded in the note of disagreement which was communicated that responsibility for proper charge is with the staff. It does not mention at any stage, even briefly, that how the enquiry report is not to be accepted. We are conscious of the fact that such detailed reasoning is not necessary because only a tentative opinion has to be formulated but once the order of the disciplinary authority/note of the


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disciplinary authority disagreeing with the report does not convey anything to the delinquent, he can reasonably come forward complaining in this regard that fair opportunity to represent has not been awarded. Conscious of this fact, as already referred to above, the disciplinary authority herein added the reasons subsequently by appending to Annexure A-1, imposing the penalty on the applicant. Necessarily, therefore, the impugned order cannot be sustained.

13. Keeping in view the aforesaid, we are not dwelling into the other controversies because findings therein would be embarrassing to either side.

14. For these reasons, on this short ground, we allow the O.A. and quash the impugned orders but make it clear that nothing said herein would prevent the disciplinary authority to pick up the loose threads and from the stage of the note of disagreement, take further steps in accordance with law.


(A.P. Nagrath)
Member (A)


(V.S. Aggarwal)
Chairman

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