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Central Administrative Tribunal, Principal Bench

Original Application No.955 of 2001

New Delhi, this the 6th day of December,2001

Hon'ble Mr.Justice Ashok Agarwal,Chairman
Hon'ble Mr.S.A.T.Rizvi,Member(A)

Shri S.P.Ahuja,
S/o Shri Shiv Dayal Ahuja
Working as DSKP (Printing & Stationery)
Northern Railway,
Shakurbasti,Delhi ....Applicant

(By Advocate: Shri S.K.Sawhney)

Versus

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

2.Deputy Controller of Stores
Northern Railway
Shakurbasti, New Delhi

3.Assistant Controller of Stores,
Northern Railway,
Diesel Shed,Shakurbasti,
Delhi.

4.Chief Materials Manager(C)
Northern Railway,
Baroda House, New Delhi. ....Respondents

(By Advocate: Shri B.S.Jain)

O R D E R(ORAL)

By Hon'ble Mr.S.A.T.Rizvi, Member (A)

The applicant who was initially appointed on 13.8.80 as Clerk/MC rose to become DSKP-III on 23.9.85 and thereafter DSKP-II on 29.10.93 in the pay grade of Rs.5500-9000. A chargesheet was served on him on 2.2.94 (Annexure A-6) for imposition of major penalty. It was alleged that due to negligence in the performance of duties, serious irregularities were found to have been committed in the stock of stores held by the applicant under his charge resulting in the financial loss of Rs.46,472/- to the Railways. Enquiry officer was duly

appointed to conduct the departmental proceedings against the applicant. His report became available on 17.3.98 (Annexure A-7). A copy of the same was supplied to the applicant in accordance with the procedure and his representation thereon was considered by the disciplinary authority who, by his order of 31.10.98 (Annexure A-1), found the applicant guilty of the charges levelled against him and has proceeded to impose on him a penalty of reduction in the time scale of pay by two stages for two years with cumulative effect. Additionally a sum of Rs.46,472/- being the amount of financial loss caused to the railways has also been ordered to be recovered from the applicant's salary. The aforesaid order was taken in appeal and thereafter in revision. The appellate authority has rejected the appeal preferred by the applicant on 15.12.98 by his order of 2.8.99 (Annexure A-2). The revisional authority has also rejected the applicant's petition by orders passed on 13.3.2001 (Annexure A-3).

2. The learned counsel appearing on behalf of the applicant contends that it is a case of no evidence and, therefore, the orders passed by the aforesaid authorities stand vitiated and deserve to be quashed and set aside. He places reliance on the provisions made in Rule 10(5) of the Railway Servants (Discipline & Appeal) Rules, 1968 for submitting that in accordance with the same, the disciplinary authority is required to form an opinion on the basis of the evidence adduced during the enquiry and the said authority can proceed to impose a penalty only after such an opinion has been formed by him. In the

circumstances of the present case, according to him, the disciplinary authority has failed to observe the aforesaid provision. Likewise, in respect of the orders passed by the appellate authority, the learned counsel submits that the appellate authority in the present case has not adhered to the requirements of procedure laid down in Rule 22 of the Railway Servants (Discipline & Appeal) Rules,1968. In accordance with the aforesaid rule position, the appellate authority is, according to the learned counsel, required to consider whether the procedure laid down in the Railway Servants (Discipline & Appeal) Rules,1968 has been complied with and if not, whether such non-compliance has resulted in the failure of justice. Similarly, in accordance with the same rule, the appellate authority is also required to satisfy himself whether the findings of the disciplinary authority are warranted by the evidence on record. According to him, the fact that rule 10 (5) has not been observed by the disciplinary authority has not been taken due note of by the appellate authority and to this extent, the appellate authority himself has failed to adhere to the provisions made in Rule 22 (2) (a). Inasmuch as the findings of the disciplinary authority are, according to him, not warranted by the evidence on record, the appellate authority has also failed,in his view,to adhere to the provision made in Rule 22 (2) (b).

3. In support of his contention, the learned counsel appearing on behalf of the applicant has taken us through the report of the enquiry officer as also the orders passed by the disciplinary authority, the appellate authority and the revisional authority. It

appears that at the time of vigilance check when the irregularities in question were detected, a stock sheet was prepared reflecting the status of stores available on the ground. The same was required to be fed in the computer so that with the help of entries available in the bin card, the actual shortage could be determined itemwise. Since the storage operations in the respondents' set up have been computerised, the shortage or excess as the case may be, could be determined only on the basis of computer feedback. Admittedly, the stock-sheet prepared at the material time, was not fed in the computer. On this basis, the learned counsel for the applicant submits that the determination of the shortages in stores for which the applicant has been held guilty, cannot be said to be reliable. A perusal of the statement of one Shri O.P.Goel, retired Stock Verified available in the report of the enquiry officer, shows that old bin cards are still maintained for the convenience of the officials concerned. The same witness, however, has expressed an opinion about the reliability of bin cards thus prepared even without the use of computer. According to the said witness, such bin cards cannot be said to be authentic. Placing reliance on this expression of opinion by the aforesaid witness who is a prosecution witness, the learned counsel has stressed that in the circumstances, the applicant cannot be held guilty of shortages discovered at the time of vigilance check.

4. We have considered the above submission and find that just because the aforesaid witness who is a retired officer had expressed an opinion about the authenticity

or otherwise of a document maintained in the respondents' set up, it cannot be successfully argued that the bin card which was prepared otherwise than by the use of computer, was necessarily unreliable. The duty to maintain stores and the bin cards was that of the applicant. This is not disputed. Thus in our view, the plea advanced by the learned counsel will not hold good. In regard to the important allegation of excess issue of silver ruptam by one kilogram, again the report prepared by the enquiry officer, is sufficiently detailed and clearly,in our view,brings out the guilt of the applicant though in this matter, according to the enquiry officer, he is supposed to have acted in collusion with the staff at the receiving end. In the circumstances, the aforementioned important charge is also in our view proved on the basis of evidence on record.

5. We are constrained to make the aforesaid observations in regard to the charges levelled against the applicant as the learned counsel appearing on his behalf has been insistent that the present proceedings are based on no evidence. While observing as above, we have by no means, arrogated to ourselves the right to reappreciate the evidence in any manner. We have only tried to satisfy ourselves that sufficient evidence did exist for bringing home the charge levelled against the applicant.

6. The order passed by the disciplinary authority refers to the report furnished by the enquiry officer and clearly enumerates the charges proved against the applicant. Though the same does not in so many words

state that the disciplinary authority has relied on the report supplied by the enquiry officer, yet the conclusion is self-~~confident~~ evident as well as irresistible that he has done so or else he could never have reached the conclusion which he has actually recorded as part of his order.

7. In the circumstances, we find nothing wrong with the order passed by the disciplinary authority which is a reasoned order and derives its sustenance from the report of the enquiry officer. It was not necessary for him to analyse the evidence once again while passing the order imposing penalty on the applicant. Accordingly, the plea advanced by the learned counsel based on rule 10 (5) of the Railway Servants (Discipline and Appeal) Rules, 1968 cannot be sustained. For the same reason, the appellate authority cannot also be seen to be guilty of non-observance of the provisions available in Rule 22 (2) (a) & (b) of the Railway Servants (Discipline & Appeal) Rules, 1968.

8. In so far as the order passed by the appellate authority is concerned, the same also, we find, places reliance on the report of the enquiry officer. In the circumstances, it was not necessary for the appellate authority either to go into the details of the evidence and try to record his own findings in respect of each charge. It was, in our view, sufficient for the appellate authority to conclude that the applicant has failed to produce any concrete evidence against the findings arrived at by the enquiry officer. The same authority has, in his order, further gone on to observe

that the punishment imposed on the applicant was a bit lenient. ~~On that score~~, in the peculiar circumstances of this case, the appellate authority has in fact applied his mind carefully enough and has passed orders only on the basis of his own satisfaction in the matter.

9. What we have held above with regard to the orders passed by the disciplinary authority and the appellate authority is found by us to be true in respect of the order passed by the revisional authority as well. The order dated 13.3.2001 (Annexure A-3) is a sufficiently detailed order and clearly shows application of mind to the relevant issues which have arisen in the present case. We cannot, therefore, find any fault with the order passed by the revisional authority either.

10. On the point of discussion of evidence by the disciplinary authority, the learned counsel appearing on behalf of the respondents has proceeded to place reliance on Indian Institute of Technology, Bombay vs. Union of India & ors., 1991 (17) ATC 352 and Ram Kumar vs. State of Haryana, AIR 1987 SC 2043, the latter judgement having been delivered by a bench of three Supreme Court judges. The sum and substance of the law ~~laid~~ in these cases is that it is by no means necessary for the disciplinary authority to discuss the evidence in detail if he agreed with the report made by the enquiry officer and further that in such an event it is not necessary either to furnish detailed reasons in support of the findings of guilt. If one has regard to the law laid

down by the Supreme Court in the aforesaid cases, no fault can be found with the orders passed by the disciplinary authority in this case.

11. For all the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit and is accordingly dismissed. There will be no order as to costs.

(S.A.T. Rizvi)
Member(A)

(Ashok Agarwal)
Chairman

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