

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1098/98

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 13th day of October, 2000

Shri R.B.Lal
s/o late Shri Lakmi Chand
Sr. Commercial Manager (Claims)
Northern Railway
N.D.C.R.Bldg.
New Delhi.
r/o D-369, Anand Vihar
New Delhi - 92. ... Applicant

(By Shri B.S.Mainee, Advocate)

vs.

1. Union of India through
The Secretary
Ministry of Railways
Rail Bhawan
New Delhi.
2. The General Manager
Northern Railway
Baroda House
New Delhi.
3. The Chief Commercial Manager
Northern Railway
Headquarters office Baroda House
New Delhi. Respondents.

(By Shri R.L.Dhawan, Advocate)

ORDER (Oral)

By Justice V. Rajagopala Reddy:

While the applicant was working as Commercial Inspector in the Railways, a Memorandum of Chargesheet for minor penalty was served upon him in 1989 alleging that his report on the claim regarding the loss of consignment of 'Zeera' made by a Consignor was found as not based on facts and that the report was given without proper verification as such the applicant was alleged to have committed dereliction of duty. Subsequently, a chargesheet for major penalty was issued in 1991 on the same charges and an enquiry has

been conducted which resulted in the imposition of the minor penalty of withholding of one increment with cumulative affect. The order has been upheld by the appellate authority and the same is under challenge in this OA.

2. Several contentions were raised by the counsel for the applicant, Shri Mainee. It was contended that the enquiry was not held in accordance with the rules. The issuance of the second charge sheet without withdrawing the first vitiates the enquiry. The material documents asked for have not been supplied, thus the applicant was not afforded reasonable opportunity to defend his case. It was also contended that the enquiry officer having exonerated him, the disciplinary authority went wrong in imposing the penalty disagreeing with the findings of the enquiry officer. The disciplinary authority has not properly appreciated the case of the applicant. Therefore, he contended that the enquiry should be held as vitiated.

3. The learned counsel for the respondents, however, supports the impugned order. Contending that the disciplinary authority was right in holding that the applicant could not be exonerated since it was expected of the applicant to exercise prudence in verifying the claim, which it was found utterly lacking in the applicant. Lastly it is argued that the Hon'ble Tribunal would not normally interfere with the findings arrived by the Enquiry Officer on the basis of the evidence on record.

4. We have given careful consideration to the contentions advanced on either side. The first charge sheet was issued for a minor penalty. Subsequently, in pursuance of which further enquiries that may have been conducted, the 2nd charge sheet was issued for a major penalty as the authorities may have found that the allegations were punishable with the major penalty. It is true as contended by the learned counsel for the applicant that the authority should have withdrawn the earlier chargesheet while issuing the second charge sheet. This omission on the part of the authorities however will not in any way vitiate the enquiry.

5. The applicant had verified the claim of loss of Zeera and found the claim as correct and gave the report stating that the claim was correct. Subsequently, in a report given by the vigilance, it was found that the claim was inflated and the applicant had supported the false claim by the claimant. The crucial question in this case is whether the consignment was of Black Zeera or ordinary Zeera. Black Zeera is an imported variety and the other is local ordinary white Zeera. Black Zeera is costlier than ordinary Zeera. The applicant had certified the claim made by the consignor as Black Zeera and the Railways had to pay the heavy cost for Black Zeera which was ultimately found to be not correctly reported by the applicant. The enquiry officer having examined the witnesses including the vigilance officer, was not prepared to hold that the charge was proved against him. He therefore exonerated him. The disciplinary authority disagreed

with the findings of the enquiry officer and after affording proper opportunity to the applicant, to make his representation against the note of disagreement and considering the representation found that the applicant had not properly exercised his prudence in verification and made the Railways to pay for the Black Zeera.

6. We have gone through the enquiry officer's report and we find that the findings are based upon the evidence including the documents exhibited during the enquiry. The learned counsel for the applicant submits that he was not afforded the proper opportunity for his defence as the material documents were not made available to him. He asked for the supply of the statements made by the witnesses in the preliminary enquiry in order to submit his explanation to the charge. It was stated by the learned counsel that the enquiry officer has allowed the request but the presenting officer had not supplied the documents to him on the ground that they were not available in his record. Two vigilance Inspectors have been examined during the preliminary enquiry and whose reports were exhibited during the enquiry were supplied to him during the enquiry. As regards the statements of two other witnesses who were examined by the vigilance officer during the investigation, he made a specific request in his application dated 8.3.1994 for the supply of the copy of the statements made by the witnesses during the preliminary enquiry. It is not in dispute that an enquiry was held by the vigilance inspectors and on the basis of which the charge sheet has been laid. In this case though the

enquiry officer has allowed for supply of these documents ultimately they were not made available to him.

7. The learned counsel submits that due to non supply of these documents, he was seriously prejudiced in his defence as he could not make proper representation to the charge sheet and also not able effectively cross-examine the witnesses during the enquiry with reference to their previous statements. In the State of Uttar Pradesh Vs. Shatrughan Lal and Another, 1998(6) SCC 651 the Supreme Court held as under:

"6. Preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in Kashinath Dikshita v. Union of India wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence."

8. From the above decision, it is clear that the statements of witnesses recorded during the preliminary enquiry should be supplied to the charged officer and failure to do so would cause serious prejudice to the applicant. The departmental proceedings would be vitiated unless it was shown that

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the non supply of copies of those documents had not caused any prejudice to the charged officer. Thus prejudice is implied by the non supply of those documents. In the present case nothing is brought out by the respondents that prejudice was not caused to the applicant. The applicant, in this case has, more than once, requested the enquiry officer to supply the copies of the these documents but they were not made available to him. It is seen that though the report of the applicant had been approved by the senior officers, the charge sheet has been laid only on the basis of the report of the Vigilance Officer. In the circumstances, we find that the statements of the witnesses should have been supplied in order to afford the applicant a proper opportunity to defend his case. Relying upon the above judgment of the Supreme Court the enquiry has to be held as vitiated. The OA therefore succeeds and the impugned orders are quashed. The OA is accordingly allowed. We do not order costs.

(GOVINDAN S. TAMPI)
MEMBER(A)

Om Prakash
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/