

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-880/95

New Delhi this the 29th day of October, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Shri Kiran Pal,
Parcel Clerk,
Northern Railway,
Railway Station,
Delhi.

...Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Rly Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Chief Parcel Supervisor,
Railway Station,
Delhi.

...Respondents

(By Advocate Shri R.L. Dhawan)

ORDER

By Reddy, J.-

The applicant while working as a Parcel Clerk in the Railways was chargesheeted on ^{23.11.91} ~~27.12.93~~ on the allegation that the consignment of 2 bundles of brass scrap booked by him on 5.10.91 Ex-Delhi to Aligarh was not shown in the Junction Book and as such the applicant was responsible for the loss of the consignment by which the Railways suffered a loss of Rs.10.800/-. It is the case of the applicant that he has submitted an explanation to the charge, stating that on 5.10.91 he was on duty in the outward parcel office from 16th to 24th (2400 hours) as a Junction Clerk and he made over the 2 packages along with 234 packages to Shri Karam

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Singh for despatch by ATD. Out of the aforesaid 234 packages Shri Karam Singh despatched 28 packages and made over the remaining 206 packages to Shri Ram Dutt, Parcel Clerk in his charge on 6.10.91 who in turn made over those packages to the applicant. It is further stated that the applicant had made over 206 packages to Sh. Karan Singh for despatch by ATD, who subsequently showed the disposal of 29 packages only. On 7.10.91 the applicant received 177 packages in which the consignments in question were not there. The applicant submits that he has sent a written statement, which, however has been misplaced.

2. It is submitted that the disciplinary authority without considering the above representation passed the impugned order dated 27.12.92^{93 h}, directing to debit the amount of Rs.10,800/- against the applicant towards the loss suffered by the Railways. The applicant's appeal was also dismissed by the order dated 5.5.94 (Annexure A-6). The O.A. is filed, challenging the above orders.

3. The main ground of attack made by the learned counsel for the applicant Shri B.S. Mainee, is that as both the orders have been passed without considering the explanation given by the applicant to the charge memo and as no reason was assigned in the orders and as they are non-speaking orders, they are liable to be set aside.

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4. The learned counsel for the respondents, however, submits that the applicant was issued a chargesheet alleging that the consignment of two bundles of brass scrap booked on 5.10.91 accepted by the applicant were not shown in the Junction Book. The chargesheet was issued on ^{23.11.93}~~23.11.92~~. The applicant failed to submit his reply to the chargesheet within the stipulated period. Hence the disciplinary authority passed the impugned order holding that the applicant was liable for the loss suffered by the Railways. The appeal submitted by him was also rightly rejected. It is, therefore, contended that in the absence of any explanation given by the applicant for not showing the consignment in the Junction Book it was not found necessary to have written an elaborate order either by the disciplinary authority or by the appellate authority and that in any event the applicant did not suffer any prejudice in the case for this Tribunal warranting interference with the impugned orders and that the applicant was rightly held responsible for the loss caused to the Railways.

5. We have carefully examined the arguments of the learned counsel for the applicant and the respondents and also perused the record in the case. It is evident from the foregoing and it is not disputed by the applicant that he has not shown the consignments which have been accepted by him in the Junction Book and that he was asked to submit his explanation to the charge by 20.12.93. In the absence of any explanation or any application for extension of time for filing his explanation to the charge memo, the disciplinary

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authority, considering that the applicant had no answer to the charge and in the absence of any reason given by the applicant for not showing the parcels in the Junction Book passed the impugned order.

6. Though the applicant states in the OA that he has given a plausible explanation exculpating himself from the charge, by stating that he has handed over the packages to the other Parcel Clerks, no such explanation has been filed by him. The only reason given was that it has been misplaced and was, therefore, not filed in the OA. But, even till today, it has not seen the light of the day. The said defence statement being an important document in the case which would have exonerated him, the applicant cannot be heard to say in a casual way that it has been misplaced. It has been clearly stated by the respondents that the applicant has not given any explanation to the charge memo. In the absence of any explanation to the charge nothing further need to have been added in the impugned order by the disciplinary authority other than what was stated in the charge memo. It is not in dispute that the applicant had accepted the parcel for despatch. When the same has not been found in the Junction Book the only inference that can be drawn was that the applicant had not despatched the same, hence he was responsible for the loss caused to the Railways by making good the cost to the consigners. The contention that the impugned order or the appellate order are non-speaking orders is not tenable, in view of the facts of the present case. The learned counsel for the applicant has cited several decisions of the Supreme Court, namely, AIR 1970 SC

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1302, Sh. Mahavir Prasad v. State of A.P.; S.L.R. 1982 (3) 222, P.K. Mittal v. State of Punjab; S.L.R. 1983 (2) 473, R.S. Sehgal v. D.G. P&T; ATR 1986 (2) 252, Ram Chander v. Union of India; JT 1990 (3) SC 630 Sh. S.N. Mukerjee v. Union of India and also certain unreported decisions of the various Benches of the Tribunal, in support of his contention that the order of disciplinary authority as well as the appellate authority should contain reason. It is no doubt well settled that any quasi judicial order should contain reasons to show that the decision was reached in accordance with law and is not a result of caprice, whim or fancy. But, as held by us supra, in the absence of any explanation from the applicant no reasons could have been given in the order except drawing the inference that the applicant was guilty of the charge as alleged in the charge memo. But it should be kept in mind that the principles of natural justice are designed only to see that the delinquent is not subjected to any prejudice. In State Bank of Patiala & Ors. vs. S.K. Sharma, JT 1996 (3) SC 722, the Supreme Court, after elaborately considering the case law on the subject, held that all procedural rules are designed to afford a full and proper opportunity to the delinquent officer to defend himself and are, therefore, conceived in his interest. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. Violation of any and

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every procedural provision cannot be said to automatically vitiate the enquiry held or order passed except when such violation has prejudiced the delinquent in defending himself properly and effectively.

7. In view of the absence of any prejudice that is brought to our notice except pointing out the irregularity in the order, we are of the opinion that the impugned orders are not vitiated.

8. The learned counsel for the applicant also places reliance upon Rule 22 (2) (c) of the Railway Servants (Discipline & Appeal) Rules, 1968 read with Railway Board instructions to contend that the respondents have complied with them only in their breach as they ^{orders} do not contain any reason and he also placed reliance upon the judgement of the Tribunal in this regard. But in view, of the decision of the Supreme Court in S.K. Sharma's case (supra) and as we have taken the view that the applicant has not suffered any prejudice in the present case, it cannot be said that without showing any attendant prejudice that was caused to the applicant, the applicant who was found responsible for the loss caused to the Railways, cannot be allowed to defeat the ends of justice. The applicant thought that he is too clever when he attempted to mislead the Tribunal by stating that he has given a plausible explanation for the charge, while in fact he has not given any explanation to the charge. We are, therefore, of the view, that the applicant, does not deserve any indulgence from this Tribunal. In the

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circumstances we do not find any merit in the OA. The O.A. is, therefore, dismissed, in the circumstances, no costs.

Shanta J-

(Smt. Shanta Shastry)
Member (A)

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman (J)

'San.'