

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1688/96

199

T.A. No.

(16)

DATE OF DECISION: 28.3.2000

A. Gabur

....Petitioner

None present

....Advocate for the
Petitioner(s)

VERSUS

Union of India & Ors.

....Respondent

None present

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The Hon'ble Shri V.K. Majotra, Member(A).

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

V.K. Majotra

Central Administrative Tribunal, Principal Bench

Original Application No.1688 of 1996

New Delhi, this the 28th day of March, 2000

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Mr. V.K. Majotra, Member (A)

Shri A. Gabur, son of Nabindra Gabur, aged 38 years resident of 79 B-3, Railway Colony, Tughlaquabad, New Delhi-110044, working as Chief Goods Clerk, DTPP siding, Tughlaqabad, Northern Railway. - Applicant

(By Advocate -None)

Versus

Union of India through

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Delhi Division, Northern Railway, State Entry Road, New Delhi. - Respondents

(By Advocate -None)

O R D E R (Oral)

By Mrs. Lakshmi Swaminathan Member (J) -

This OA was originally filed on 8.8.1996. Thereafter the applicant has filed MA 2225/1997 on 19.9.1997 seeking permission to amend the OA to include the revisional authority's order dated 19.2.1997 as one of the impugned orders. Accordingly, amended OA has been filed on 11.11.1997 impugning the penalty orders issued by the respondents dated 19.2.1997, 28.5.1996 and 29.2.1996 (Annexures-A-1 to A-3), after holding a departmental enquiry against him.

2. We note from the record, ^{that} _{none} has been appearing for the applicant on several dates, namely, on 27.1.98, 17.3.98, 8.2.99 and again today. However, we have perused the record and are disposing of the OA on merits rather than dismissing the case merely on default and non-prosecution.

3. The brief relevant facts of the case are that while the applicant was working as a Parcel Clerk with

the respondents he was proceeded against departmentally on a charge sheet for misconduct. In the statement of imputation annexed with the charge-sheet dated 18.5.1993, it was alleged against the applicant that while he was on duty on 1.4.1992 at NDLS P. Office, he unloaded 4 packages booked under PW Bill No. 770428 ex. Pune to Delhi correctly but out of the four packages, two packages were lost due to his negligence as he did not make over charge of the packages properly to his reliever, as a result of which the Railways suffered revenue loss. The applicant has taken part in the enquiry proceeding held against him. He has also made his submissions on the enquiry officer's report in which it was concluded that the charges against the applicant are proved, based on the evidence which was placed before the enquiry officer which has been discussed by him in his finding.

4. The applicant has alleged that the impugned order dated 29.2.96 passed by the disciplinary authority imposing the penalty of withholding of increments for 2 years with cumulative effect is a non-speaking order. On perusal of this order we are, however, unable to agree with his contention that the impugned penalty order is a non-speaking order, as the reasons, for which the penalty of withholding of increment for two years has been imposed, has been mentioned therein.

5. The applicant has contended that there is evidence on record that the packages in question along with 73 other packages were handed over by him to his reliever, Shri Mahender Singh, Parcel Clerk, who has accepted these in his statement during the enquiry

proceedings, which was further handed over to his reliever Shri Rameshwar Misra. The applicant has contended that merely because there was no clear receipt of two packages, which had been handed over to his reliever Shri Mahender Singh, a conclusion could be arrived at that a loss had been caused to the Railways of these two packages. One of the grounds taken by the applicant is that Shri Rameshwar Misra should have been called as a prosecution witness or a court witness to ascertain and explain the receipt of the packages, including the reasons as to how the two packages were missing. He has also submitted that two other witnesses had not been called in the enquiry proceedings, who are vital for eliciting the true facts, namely, S/Shri Arun Kumar and Ram Kishan.

6. The respondents in their reply have submitted that the applicant could not prove that he had made over the disputed packages to his reliever Shri Mahender Singh, and consequently the latter's reliever Shri Rameshwar Misra was not called as a witness. With regard to the other two witnesses, namely, Shri Ram Kishan and Shri Arun Kumar, they have submitted that they did not attend the enquiry and according to them they were not vital, as the applicant himself had not maintained any record of the packages which he had handed over to his reliever Shri Mahender Singh. The respondents have relied on the statement made by the applicant dated 12.3.1993 (Annexure-5). In the statement, to the question put to the applicant as to how he could say that he had also made over 4 packages to his reliever, he has replied, inter alia, that ".....no signature and acknowledgement was taken shed clerk as

well as from Sri Mahender PC/NDLS as per routing".

7. In the facts and circumstances of the case, the contention of the applicant, more specifically mentioned in the rejoinder that the enquiry had not been properly conducted and the findings are based on no evidence cannot be agreed to. It is clear from a perusal of the documents on record, including the findings of the enquiry officer and the applicant's own statement dated 12.3.1993 that this is not a case of no evidence. The applicant's contention that the findings of the competent authorities, while imposing the penalty are based on no evidence and are, therefore, perverse is rejected.

8. It is settled law that ^{the} ~~the~~ Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. In the present case the enquiry has been held against the applicant, which is consistent with the rules and in accordance with the principles of natural justice as he has been given reasonable opportunity to put forward his case. In the circumstances, we do not find any justification to interfere ⁱⁿ ~~with~~ the matter on the grounds as contended by the applicant. [See the decisions of the Hon'ble Supreme Court in the cases of Union of India Vs. Parma Nanda(AIR 1989 SC 1185), Union of India Vs. Upendra Singh {JT 1994 (1) SC 658}, State Bank of Patiala & ors Vs. S.K.Sharma {JT 1996 (3)SC 722} and Shriji Vidyalaya and another Vs. Patel Anil Kumar Lallubhai and another {JT 1998(8) SC 460}].

9. After the appellate authority had passed his order confirming the penalty imposed by the disciplinary

authority by order dated 28.5.1996, which has also been assailed by the applicant on the grounds that it is a non-speaking order and hearing had not been given to him as required under the rules, it is relevant to note that the revisional authority, acting under the provisions of Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968, had revised the penalty order. He has reduced the penalty of WIT two years imposed vide order of 29.2.1996 to that of WIT one year only. In this order the following remarks have been added - "[T]he process of booking and transfer/ loading of packages at NDLS is complex the loss cannot be directly attributed pin-pointedly to the CO. Hence punishment reduced to WIT - One year".

10. The above order passed by the revisional authority also shows that the same has been done after application of mind to the relevant facts, law and procedure. The contention of the applicant that the procedure evolved by the respondents is unsatisfactory which has resulted in the loss of the packages and, therefore, he should be exonerated, is untenable. The revisional authority has also taken into account these facts while reducing the penalty imposed by the disciplinary authority and the appellate authority from WIT two years to WIT one year.

11. We have also considered ^{the 15} other contentions raised by the applicant in the OA. But, taking into account the catena of judgments of the Apex Court laying down the principles under which the Tribunal/ Courts are to interfere in such matters where no proper enquiry has been held against the delinquent official, and considering the fact that the proof required in such

22
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enquiries is that ^{of} preponderance of probabilities, we find no justification to interfere in the present case.

12. For the reasons given above, the OA fails and is accordingly dismissed. No order as to costs.

V.K.Majotra

(V.K.Majotra)
Member (Admnv)

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

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