

16

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.821/97

New Delhi this the 1<sup>st</sup> day of <sup>JUNE</sup> May, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN  
HON'BLE MRS. SHANTA SHAstry, MEMBER (ADMNV)

Shri S.P. Garg,  
S/o Shri J.M. Prasad,  
R/o C-61, Inder Puri,  
New Delhi-110 012.

...Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through:

1. The Chairman,  
Railway Board,  
Ministry of Railways,  
Rail Bhavan, Raisina Road,  
New Delhi-110 001.
2. Member (Engineering),  
Railway Board,  
Ministry of Railways,  
Rail Bhavan,  
Raisina Road,  
New Delhi-110 001.
3. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi-110 001.
4. The Divisional Railway Manager,  
Northern Railway,  
Delhi Division,  
State Entry Road,  
New Delhi-110 001.

...Respondents

(By Advocate Ms. Anju Bhushan)

O R D E R

By Reddy, J.-

While the applicant was working as Inspector of Works in the Northern Railway, a chargesheet dated 26.9.84 for major penalty was served upon him. The main allegation against the applicant was that he was responsible for shortage of 1265 bags of cement and for misappropriation of 2024 Kgs. of steel and 400 bags of cement. The applicant denied the charges and hence a departmental enquiry was



17

conducted against him, which resulted in his removal by order dated 16.9.98. The applicant filed an appeal against the said order but the same was rejected by order dated 31.5.93. The said order of appeal was quashed in OA-2269/90 by order dated 3.4.95, directing the appellate authority to dispose of the appeal in accordance with law. Thereafter the appellate authority accordingly considered the appeal and rejected the appeal in the impugned order.

2. The learned counsel for the applicant Shri B.S. Mainee vehemently contends that the applicant was deprived of his right to properly defend the case, as the material documents were not supplied by the respondents. It is further contended that the enquiry is vitiated, as the enquiry officer had relied upon the previous statements made in the preliminary enquiry by PWI Mohinder Lal, who was not examined in the enquiry. Lastly, it is contended that as the enquiry officer himself has found that there was no shortage of cement the charge No.1 should have been held as not proved.

3. The learned counsel for the respondents, however, contends that the enquiry officer has supplied all the relevant documents asked for and that the proper procedure was adopted in conducting the enquiry and there is no violation of the relevant rules. There is sufficient evidence in the case and depending upon the same the enquiry officer arrived at the findings which cannot be interfered with by the Tribunal.



4. We have given careful consideration to the pleadings, the material documents and the arguments advanced by the learned counsel of both the sides. We have perused the enquiry officer's report as well as the impugned orders of the disciplinary authority as well as the appellate authority. The applicant was charged with six articles of charge, alleging him responsible for the shortage of cement, steel and also misappropriation of the same.

5. As regards the contention of non-supply of the material documents, it is seen that the applicant had made an application for supply of 11 additional documents by his application dated 25.6.86. The application has been considered and out of the 11 documents 7 documents have been given to the applicant other than 1,2,6 & 7. Those four documents were not available with the respondents hence they could not be supplied. Thus the enquiry officer has considered the request of the applicant for production of the documents and supplied the relevant and available documents to the applicant. It cannot, therefore, be said that the applicant was not given sufficient opportunity in his defence. In Vikram Singh v. Union of India & Others, (1991) 17 ATC (CAT-PB) 714 the Tribunal has held that reasons should be assigned for refusal of the documents. As stated supra the enquiry officer after considering his application directed to supply the documents and accordingly whatever documents were available with the department were supplied. This case, therefore, has no application to the facts of the present case.



6. The contention that the statements recorded during the PE by the witnesses who were not examined during the disciplinary enquiry were wrongly relied upon by the EO and that there is no evidence in the case, is unfounded. In the present case there is voluminous evidence. The EO examined several witnesses for prosecution and exhibited almost 20 documents in support of the charge. Basing upon the evidence both oral and documentary the EO held that the charge was proved. It is not open to us, to appreciate the evidence, and to arrive at different findings.

7. The decision cited by the learned counsel in Kuldeep Singh v. The Commissioner of Police & Ors., 1999 (3) AISLJ SC 111 has no application to the facts of the present case. In the said case the EO relied upon Rule 16 (3) of the Delhi Police (Punishment & Appeal) Rules, 1980 without calling the witnesses, even though, their whereabouts were known to him. In the circumstances the Supreme Court held that Rule 16 (3) was not attracted. In the present case, however, it is not correct to say that the enquiry officer relying upon the previous statements of witnesses who were not called during the DE, were relied upon. In fact, as discussed supra, there is voluminous evidence in support of the case, which was relied upon by the enquiry officer.

8. The E.O., after assessing the evidence found that:

Charge No.1 : proved

Charge No.2 : partially proved to the extent of misappropriation of 2024 Kgs. steel scrap.



Charge No.3 : partially proved, responsible for showing 200 bags of cement.

Charge No.4 : proved.

Charge No.5: partially proved, responsible for showing 18675 of SSM round 25MM, whereas no such material was issued.

Charge No.6 : proved.

9. The disciplinary authority again considered the evidence with reference to each charge, accepted the report of the enquiry officer and finding that the applicant was "extremely negligent in discharge of his duties which has resulted in both confused recordings in the accountal of materials as well as heavy loss to the Railways", found him guilty and awarded the penalty of removal from service. The appellate authority after hearing the applicant, as per the directions of the Tribunal in its order dated 3.4.95 in the OA filed by the applicant, he passed a detailed and reasoned order, rejecting the appeal. The contention that the appellate authority has not considered all the pleas raised by the applicant cannot be accepted. We do not, therefore, see any basis for the contention raised by the learned counsel.

10. The O.A., therefore, fails and is dismissed.

No costs.

*Shanta*

(Smt. Shanta Shatry)  
Member (A)

'San.'

*Mr. Rajagopal Reddy*

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