

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A./TXX. NO. 2326 /19 94 Decided on : 28-8-95

Surendra Kumar Sinha ... Applicant(s)

(By Shri H.P.Chakravorty, Advocate)

versus

U.O.I & Ors. ... Respondent(s)

(By Shri P.S.Mahendru, Advocate)

CORAM

THE HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN

THE HON'BLE SHRI N.SAHU, MEMBER(A)

1. ✓ To be referred to the Reporter or not ?
2. Whether to be circulated to other Benches of the Tribunal ?

(K.M.AGARWAL)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2326/1994.

NEW DELHI, THIS THE 20th DAY OF AUGUST, 1999.

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HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN
HON'BLE MR. N. SAHU, MEMBER (A)

Surendra Kumar Sinha
son of late Shri Hargovind Sinha
c/o P.C. Sinha,
106-F, Pocket-IV,
Mayur Vihar, Phase I,
NEW DELHI.

....APPLICANT

(BY ADVOCATE SHRI H.P.CHAKRAVORTI)

vs.

1. Union of India through the Secretary,
Ministry of Railways, Railway Board,
Rail Bhawan, New Delhi.
2. Sr. Divisional Personnel Officer,
Central Railway, Jhansi.
3. Additional Divisional Railway Manager (T),
Central Railway,
Jhansi.

.....RESPONDENTS

(BY ADVOCATE SHRI P.S. MAHENDRU)

ORDER

JUSTICE K.M. AGARWAL:

By this O.A. the applicant has made a prayer for quashing the order dated 6.9.1990 passed by the disciplinary authority, withholding his promotion for a period of one year and six months, as also for quashing the appellate order dated 11.11.1993, dismissing his appeal against the order of the disciplinary authority. The applicant has also claimed consequential reliefs after quashing the impugned orders.

2. Briefly stated, while the applicant was functioning as Office Superintendent Grade II, he was served with the chargesheet dated 21.9.1987, containing as many as 11 charges. The Enquiry Officer found that out of the 11

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charges, 9 charges were not proved. However, he found charge No.VII to have been proved and charge No.III to have been partly proved. The disciplinary authority did not agree with the Enquiry Officer's findings in regard to charges Nos.I and II. In other respects he agreed with him and accordingly passed the impugned order of punishment, withholding his promotion for a period of one year and six months. The appeal failed and, therefore, the applicant has filed the present O.A. for the aforesaid reliefs.

3. After hearing the learned counsel for the parties and perusing the record, we find that no prosecution witness was examined by the Enquiry Officer in the enquiry proceedings against the applicant. Charges I and II against the applicant were as follows:

"CHARGE I:

He attended duties late on 11.2.87, 27.2.87, 13.03.87, 31.03.87, 3.4.87, 14.4.87, 16.4.87, 22.4.87, 23.4.87, 1.5.87, 14.5.87, and 03.6.87 i.e. after 9.40 hours on each day and he was cross-marked in the attendance register. The respective attendance register establishes the fact of his attending duties late. He also deserted the office unauthorisedly on 21.5.87 from 9.45 hours to 16.45 hours and on 5.6.87 from 13.15 hours to 15.30 hours which he admitted in his own hand-writing."

"CHARGE II.

He was absent on 7.1.87, 18.2.87, 10.3.87, 23.3.87, 26.3.87, 27.3.87, 13.4.87, 14.4.87, 20.4.87, 29.4.87, 6.5.87, 7.5.87, 27.5.87, 28.5.87, 29.6.87, 30.6.87, 16.7.87 and 17.7.87, but mentioned in the muster with his own hand as 'SN', whereas he did not send the sick notes resulting in the period in question being not debited to his leave account."

The Enquiry Officer recorded following findings in his enquiry report against the said charges I and II:

"For Charge No.1, that he is in the habit of attending office late inasmuch as that he attended office late on 11/2, 27/2, 13/3, 31/3, 14/4, 16/4, 22/4, 23/4, 1/5, 14/5, & 3/6/87 i.e. after 9.40 Hrs.

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on each day and he was cross marked in the attendance register. He also deserted the office unauthorisedly on 21.5.87 from 9.45 Hrs. and on 5/6/87 from 13.15 Hrs. to 15.30 Hrs. which he admitted in his own handwriting. He has stated that the charge is not correct. He did not attend office late in Jan 87. In other months i.e. Feb., March, April, May, & June 87 he attended office late hardly one or two occasions in each months, which cannot be said as his habit.

On perusal of the attendance register of these months i.e. Jan 87 to Jun 87 of W.T. Sec., it is material that he attended office late on the following dates - 11/2, 27/2, 13/3, 31/3, 3/4, 14/4, 16/4, 22/4, 23/4, 11/5, 14/5 and 3/6/87 i.e. after 9.40 Hrs, the charge is not proved as framed i.e. he is habitual of attending office late. He of course, attended office late on the days mentioned dates.

For charge No.2 - that he was absent on 7.1.87, 18/2, 10/3, 23/3, 26/3, 27/3, 13/4, 14/4, 20/4, 29/4, 6/5, 7/5, 27/5, 28/5, 29/6, 30/6, 16/7 & 17/7/87 but shown in the muster with his own hand as 'SN' whereas he did not send the sick notes resulting in the period in question being not debited to his leave account; he has denied of being guilty of the charge on the grounds that he had sent the proper sicknotes within time. But because there is not such procedure of obtaining acknowledgement of sicknotes, hence no acknowledgement was obtained. Besides this 'SN' was marked by Section Incharge on almost 11 dates except one or two instance where he marked 'SN' himself. Neither his hand writing was got examined by hand writing expert nor the Section Incharge was interrogated into the matter. However, on perusal, unauthenticate scrutiny it was felt that the word 'SN' marked against his name was not in his hand writing. Therefore, the charge is not proved against him on the basis of benefit of doubt."

While disagreeing with the findings of the Enquiry Officer, the disciplinary authority recorded following reasons in his impugned order:

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"Charge 1

The WT section was headed by OS/II. Shri S.K.Sinha was functioning as its OS. It was for Shri S.K.Sinha to set example by coming to the office in time (so that his subordinates could emulate) and creating a sense of discipline amongst staff. However, it is noticed from the Attendance Register that Shri Sinha was attending office late in almost every month. The particulars of his coming late, casual leave, sick notes are summarised below:-

MONTH	No. of working days	Number of days			Sick Note
		Late arrival in office	Casual leave		
Feb.,87	20	2	2		1
March,87	22	3	-		4
April,87	21	5	-		3
May,87	20	2	1		4
June,87	22	1	3		2

It is apparent from the above that it was not even a single month, in which he was regular in attending office on time. In his answer to Q.8 he has stated that he hardly came late twice a month. This shows how scant regard he had for his punctual attendance in office and office decorum.

How much regard he has for his attendance in office is also evident from the fact that he deserted the office on 21/5/87 almost throughout the day (9.45 hrs to 16.45 hrs) and on 5.6.87 from 13.15 hrs to 15.30 hrs.

His constantly attending late every month, absenting from office and not realising the impact of punctual attendance goes to prove that he is in the habit of attending his duties late and deserting the office unauthorisedly.

"Charge II.

A careful examination of his answer to Q.9 that "I have submitted all sick notes relating to the dates shown in para 2 well in time i.e. 48 hours" leads me to infer that he did not submit sick notes on the first day of his sickness. According to him, he was entitled to send the sick notes upto 48 hours i.e. even on his resumption after 2 days' sick period. Even if this plea is taken as valid, it was for Shri S.K.Sinha himself to have handed over/passed on sick notes not only of himself but all of his staff to EO

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section. Group Clerk no.12 of E.O. has stated in his Note dated 19/8/87 that he did not receive any sick note of Shri Sinha from Jan., 87 to July, 87 (12 sick notes). It is thus evident that Shri Sinha, in fact, did not submit any sick note for these dates and remained absent without any sick note. The plea advanced by Shri Sinha that he had sent sick notes within 48 hours is nothing but an after thought.

It is also observed that the muster was not being closed daily by anyone. Since Shri Sinha was the sectional head (OS-II) and he himself was accountable for the period of his absence, none else but Shri Sinha would have marked "SN" against these days to cover up the period of his unauthorised absence."

As pointed out at the beginning of this paragraph, no witness was examined in support of either charge No.1 or charge No.II and, therefore, there was no reason to disbelieve the answer of the applicant or to disagreeing with the findings recorded by the Enquiry Officer that those charges were not found proved. Accordingly we are of the view that the disciplinary authority committed a mistake in holding that charges I and III were proved on the basis of no material on record.

4. Charge No.III was as follows:

"CHARGE III.

He deliberately avoided to carry out the orders given by Sr. DPO/APO by absenting himself and not supervising/monitoring on 4.4.87 and 5.4.87 the work of IVth Pay Commission of W/T section with the result the work could not be completed within the target date."

The finding recorded by the Enquiry Officer was as follows:

For charge No.3, that he did not carry out written/verbal orders of Sr DPO inasmuch as that he did not attend office on 4/4 and 5/4/87 to supervise the work of 4th Pay Commission, he stated that he has done the work on 3.4.87 only by sitting late in the office. On 4/4/87, of course, he could not attend office due to unavoidable circumstances. On 5.4.87, he had attended office and completed the work. His

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attendance on 5/4/87 is supported by the Register in which he has been shown as present on 5/4/87.

The charge is, therefore, partly proved because he did not attend office on 4.4.87 as ordered. In case he had completed the work of IV Pay Commission on 3.4.87, he should have taken exemption from Sr. D.P.O. on this ground."

This finding was accepted by the disciplinary authority. However, we are of the view that in absence of any witness to support the allegations and on the face of the finding of the Enquiry Officer that the applicant attended and completed the work of IVth Pay Commission given to him on 3.4.87 and 5.4.87, there was no reason to hold him guilty of the charge, only because he did not attend the office on 4.4.87, particularly when as a result thereof there was no dislocation or delay in completion of the work given to him.

5. The charge No.VII was as follows:

"CHARGE VII.

- (i) OS incharge of the section is supposed to ensure, as per his duty list, prompt reply of court cases but he failed to furnish parawise remarks in the case of Shri S.N. Saxena Ex. WOP.
- (ii) He carelessly did not attend the court of ALC AGC in time on 15.7.87 in case of Shri S.N. Saxena, Ex WOP AGC. He attended duty on 15.7.87 as seen from the attendance register signed by him and in his office note put up to APO/E on 20.7.87, he has stated that he did not find the Rly. Advocate either in the court or at his residence. He reached Agra only at 15.30 hours so naturally court was closed."

The findings recorded by the Enquiry Officer were as follows:

For charge No.7, he stated that as per his duties, he was always attending the court cases promptly. In the case of Shri S.N. Saxena, WOP AGC, who was removed from service by the DRM, the original final orders of removal were required in his case for preparation of WS. The copy of final orders were made available by the DAR Cell to him on 13.7.87 only hence it was delayed. As far as not attending court case on 15.7.87, he stated that his 'line programme' was though put up by him on 14.7.87 but

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was not approved by APO 'E' on 14.7.87. He therefore, attended office on 15.7.87. He proceeded AGC on 15.7.87 after his 'line programme' was approved.

In any view he did not take proper action in the Court case of Mr. Saxena. In case he was not being supplied the copy of Final Orders of Removal by the DAR Cell, he should have reported the matter to officer, who in turn would have solved his problem. Since he failed, he is responsible of the charge.

Similarly if his 'Line Programme' was not approved by APO 'E' on 14.7.87, he should have approached to APO 'E' personally & explained the position. Since he failed, he is responsible of the charge.

Charge No.7, is therefore, proved against him."

There was no witness to prove charge No.VII and, therefore, only on the basis of non-exhibited private documents produced by the prosecution, the applicant could not be held guilty of the charge against him. The finding of the Enquiry Officer was, thus, based on no material on record and, therefore, could not be acted upon by the disciplinary authority.

6. For the foregoing reasons we are of the view that no charge was proved against the applicant in accordance with law and, therefore, the punishment awarded to the applicant by the disciplinary authority was illegal and without any jurisdiction. Accordingly the impugned order of punishment passed by the disciplinary authority as also the appellate order affirming the same deserves to be quashed.

7. In the result, this O.A. succeeds and it is hereby allowed. The impugned orders dated 6.9.1990 and 11.11.1993 passed by the disciplinary authority and the appellate authority are quashed. The applicant shall be entitled to consequential reliefs also and accordingly we direct that if till the date of his retirement or during the period of one year and six months any of his junior was

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promoted, the applicant shall also be given promotion from that date with all consequential monetary benefits. No costs.

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(K.M. AGARWAL)
CHAIRMAN

N. Sahu

(N. SAHU)
MEMBER (A)