

CENTRTAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1421/94

NEW DELHI THIS THE 29th DAY OF JANUARY, 1997.

HON'BLE MR.JUSTICE B.C.SAKSENA, ACTING CHAIRMAN
HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

Shri Hukam Chand
S/o Shri Tek Ram
Ex. Sr.Parcel Clerk
R/o Village Garhi Rajan
P.O.Rajpur, Distt.Sonepat
(Haryana)

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Applicant

(SHRI B.L.MADHOK, COUNSEL FOR
SHRI B.S.MAINEE, COUNSEL)

Vs.

Union of India:Through

1. The General Manager
Northern Railway
Baroda House
New Delhi

2. The Divisional Railway Manager
Northern Railway
New Delhi.

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Respondents

(BY ADVOCATE SHRI P.S.MAHENDRU)

ORDER

JUSTICE B.C.SAKSENA:

Through this OA, the applicant seeks quashing of order dated 12.4.1993 passed by the Divisional Traffic Superintendent, Northern Railway (Annexure A-1) removing the applicant from service as also order dated 23.6.1993 passed by the Chief Area Manager, Delhi by which his appeal was rejected.

2. The facts leading to the filing of this OA are that the applicant while working as Senior Parcel Clerk at Railway Station, New Delhi was served with chargesheet dated 18.5.1990. It was alleged against the applicant that he underweighed some consignment booked under LT. No.255239 and P.W.Bill No.829992 and 829993 dated 7.1.1990 on some consideration from the concerned party and thus failed to maintain integrity.

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3. The applicant denied the charge and submitted that the consignment booked by him had been correctly weighed on weighing machine No.77 XH while re-weighing was done by the Vigilance Inspector on another machine bearing No.88 XH which was out of order and giving wrong weight. The applicant during the disciplinary proceedings sought production of test card of the weighing machine. The disciplinary authority brushed aside the said request and nominated Shri B.R.Manchanda as Inquiry Officer to hold the disciplinary proceedings. The Inquiry Officer held the charges proved. The Inquiry Officer in his report observed as follows:

" The main stress of the defendant has been given on the plea that the machine on which re-weighment was made, was not in order. This plea is not tenable in view of the fact that specific number of machine on which it was weighed, could not be ascertained nor has it been mentioned anywhere in the record. Hence, his plea that it was done on 88-XH is not tenable."

The Vigilance Inspector in his statement during the disciplinary proceedings had stated that he was not aware of the number of weighing machine. Test card of the weighing machine on which packages were re-weighed was not seized.

4. At the hearing, the learned counsel for the applicant laid great emphasis on this aspect of the matter that the test card of machine number 88 XH was not given to the applicant and, therefore, he submitted that the document which was necessary for the defence was denied. The learned counsel cited a decision of the Division Bench of the Principal Bench of the Central Administrative Tribunal reported in A.T.R. 1990(2) C.A.T.255(S.K.Jain Vs.Unioin of India). In the said case, it was held that

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where the Inquiry Officer has not given any cogent or substantial reasons for refusing the documents for which the request was made, or for not summoning the witness cited by the applicant amounts to denial of reasonable opportunity and vitiates the entire proceedings.

5. In para 5.4 of the OA, the applicant has stated that most relevant documents of test card of machine number 88 XH as demanded by him was not made available by the disciplinary authority. The respondents in their counter-affidavit in reply to the said para have maintained that the weighing machine No.88 XH was in order. They have also pleaded that the weighment was done in the presence of the applicant as admitted by him in his statement, a copy of which has been appended as Annexure R-2. In his statement the applicant had stated " I have not made any report to higher authority reg: giving incorrect weight by weighing machine No.88-XH". The Inquiry Officer in his report had stated that both the defendant and Shri Bardan Singh had test checked the machine before making the re-weighment and were satisfied and had given in writing in their statements at Ex.P-7 and Ex.P-10. He further observed that even if the plea of weighing machine giving wrong weight was accepted, there was substantial difference in weight which arrived at as a result of measurement in respect of consignment booked under PW Bill No.829992. The weight shown in the PW Bill is 3612 Kgs. whereas it came to 5629 Kgs. on measurement. There can thus be no excuse about the correctness of the weight arrived at as a result of re-weighment. The Inquiry Officer further observed that it is evident that the party was aware of the actual weight of the consignment and had there been any doubt, they would have resisted to pay the under charges which arrived at as a result of re-weighment. Even the consignment

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booked against PW Bill No.829992 was found misdeclared and a total amount of Rs.13052/- including charges were got realised from them against this consignment.

6. The disciplinary authority in his order has also dealt with this defence of the applicant and he observed:

" You are familiar with the rules of working, and you should have ensured that machine is in order. Since you had verified the re-weighment, it is presumed that the required tests proving the machine to be correct, were done, and as such, the reweighments are accepted as correct. The memo of the previous day has no meaning, and could be malafide manipulation also."

7. The appellate authority in his order has also dealt with this part of defence and he observed:

" In his appeal Shri Hukam Chand is asking for further proof of correctness of re-weighment which has no relevance in the case as at that time every one was satisfied that machine was O.K. Further there is large difference in weight on re-weight which itself is a proof of his guilt."

8. It is fairly well settled that the Tribunal's scope of judicial review is very limited. The Tribunal does not sit in appeal over the decisions of the authorities. Even in the decision in S.K.Jain's case which the learned counsel for the applicant has cited in support of some other plea it has been laid down that where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge. it is not the function of the court to review the evidence and to arrive at

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an independent finding on the evidence. The Inquiry Officer has based his finding on the evidence recorded during the disciplinary proceedings. May be some evidence to the contrary was available on record but the Inquiry Officer has based his report on a consideration of the evidence adduced during the disciplinary proceedings. The conclusion arrived at by the Inquiry Officer or the disciplinary authority as also the appellate authority cannot be interfered with only on the ground that the Tribunal on its own may reach on a different conclusion. The scope of judicial review is very limited. The finding against the applicant cannot be said to be based on no evidence or to be perverse.

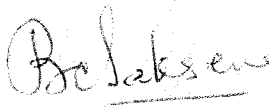
9. The learned counsel for the respondents submitted that a revision against the order passed by the appellate authority had been filed and it has been decided. Copy of the order passed in the revision has been annexed as Annexure -I to the counter-affidavit. The submission of the learned counsel was that this order passed in the revision petition has not been challenged. The impugned orders have merged in the said order and the last operative order would be the order passed in the revision petition. As far as this plea is concerned we find that the applicant has stated in his OA that a revision petition has been filed but it has not been decided. The order in the revision petition is dated 6.7.1994 whereas the OA was filed on

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which the order passed in the revision petition had been annexed, the applicant should have been vigilant enough to seek amendment of the OA and to challenge the order passed in the revision petition. That has not been done. Consequently we are persuaded to hold that there is merit in the submission of the learned counsel for the respondents. The operative order which upheld the order of punishment as also the order passed by the appellate authority has not been challenged. The revisional authority also came to the conclusion that the applicant has recorded his statement in his own handwriting at the time of vigilance check but he did not bring out his contention that the weighing machine No.88 XH was giving incorrect weight and that he had requested the Vigilance team to weigh the package on 77 XH. The authority had reached the conclusion that all this is afterthought and concocted. In the order in the revision petition also it has been observed that if the re-weighment was not correct the customers would not have paid the under charges willingly and they would have protested there and then. The conclusion reached by the revisional authority suffers from no illegality. The reasons given by him deserve due consideration.

10. In view of the discussion hereinabove, we do not find any merit in the OA which is accordingly dismissed. The parties shall bear their own costs.


(R.K. AHOOJA)
MEMBER(A)


(B.C. SAKSENA)
ACTING CHAIRMAN