

Central Administrative Tribunal
Principal Bench, New Delhi

D.A.No.1371/1989

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New Delhi, This the 18th Day of April 1994

Hon'ble Shri C.J. Roy, Member (J)

Hon'ble Shri P.T. Thiruvengadam, Member (A)

Shri Tara Chand S/o Shri Hari Chand
R/o Village & PO Khera Khurd, Delhi-82.

...Applicant

By Advocate Shri S. K. Gupta with
Shri Multan Singh

Versus

1. Union of India, through the Secretary
Ministry of Railway (Northern Railway)
Govt of India, Rail Bhawan, New Delhi.
2. The General Manager
Northern Railway, Baroda House,
New Delhi.
3. The Secretary, Canteen
Northern Railway, Printing Press
Shakurbasti, Delhi.
4. Chairman, Northern Railways,
Canteen (Printing Press), Shakurbasti
Delhi.

....Respondents

By Advocate Shri D.P. Kshatriya

O R D E R (Oral)

Hon'ble Shri P.T. Thiruvengadam, Member (A)

1. The applicant was working as a Canteen Manager in Northern Railway Printing Press, Shakurbasti Delhi-35. He was issued with a chargesheet dated 27.10.83 which reads as under:

"Article I. That the said Shri Tara Chand while functioning as Manager Canteen Ptg. Press/Shakurbasti during the period 22.10.1983 (Here enter definite and distinct article of charge).

1. Failed to perform his duties for running the canteen smoothly. Thus, he has failed to maintain devotion to duty and is liable to

be taken up under D & A Rules, 1968."

2. Annexure I¹ to the chargesheet is as under:-

(a) "The working and overall performance of Shri Tara Chand as Canteen Manager has not been satisfactory throughout. It was pointed out to him time to time for improving his working but no effect. On 10.8.82, he was advised in writing about his unsatisfactory performance and also to keep records in the Register showing daily sale and purchase and as well maintenance of Stock Registers. For these purposes new registers were also issued to him but the same have not been operated. Further it was pointed out that the Canteen is not maintained clean and tidy. Cups were not well washed. Halwai Department was dirty etc.etc.

(b) This notice did not have any effect on him and the state of Canteen affairs remained almost in the same condition although it was pointed out to him verbally by Canteen Secy many a times. Further, a written warning was issued to him again on 28.4.83. On 24.5.83 he was again given a notice to put up position of postings upto 5/83 by 1.6.83. Even then Canteen affairs remained in the same state of affairs for which many a complaint were received. Consequently Joint Secy of the Executive Committee of the Canteen was deputed on 29.7.83 to control the Canteen affairs with its daily sale and purchase as Manager failed to bring any improvement. Shri Tara Chand was also served with a notice to explain his conduct on 29.8.83 to which he replied on 7.9.83. Since his reply was vague and not on the facts of the case, an enquiry officer has been appointed to enquire into the matter and to put up his report which is awaited.

(c) Further, since it became difficult to manage the canteen as well to do the office work by the Joint Secy Canteen when there is post of a Manager who is attending the canteen daily as well as to give the canteen Manager another charge to bring him on the lines, a meeting of the Canteen Executive alongwith the Canteen Manager was called for on 19.10.83. In the meeting, it was assured by the Manager that he would take hold of sale and purchase daily and would control the canteen otherwise he would be responsible for the lapses. But on 22.10.83, it was found in the canteen that no item for sale and was prepared upto 10.30 A.m. On investigation it was found out that the manager Shri Tara Chand could not arrange purchase for 22.10.1983 (21.10.1983) being holiday) although he had taken Rs.46/- from the

canteen's sale of 20-10-83. He returned the money on 22-10-83 to Shri Mohinder Singh Sales Manager, without making any purchases. On verbal enquiry he failed to clarify his conduct satisfactorily. Thus he has failed to maintain devotion to duty and is liable to be taken up under D & AR 1968."

An enquiry was held and the enquiry officer gave his report in December 84 which came to the following conclusion:-

"Shri Tara Chand has failed in his duty as Manager of Canteen in maintaining proper records of daily sale/purchase stock register which is his primary duty. Thus Shri Tara Chand has committed serious misconduct thereby violated rule 3(i), (ii) & (iii) of Railway Servants Conduct of 1966."

Based on this, a penalty was awarded i.e. penalty of reduction of increment for one year on permanent basis. The memo inflicting penalty dated 2-8-86 reads as under:-

"Shri Tara Chand, Manager, Northern Railway, Railway Press Canteen, Shakurbasti is informed that the Enquiry Officer who was appointed to enquire into the charges against him, has submitted his report.

On a careful consideration of the finding of the enquiry officer, the undersigned agrees with the findings of the E.O. and held Shri Tara Chand guilty of the charges levelled against him and imposed the following penalty.

"W.I.P. for one year w.e.f. 1-4-87
19-4-87.

His suspension was revoked w.e.f. 1-5-84 F.N. Suspension period from 22-1-83 to 6-5-84 is treated as leave due.

Any representation which he wish to make on the penalty proposed will be considered by the undersigned within 7 days."

The appeal against the punishment of order was rejected. This O.A. has been filed with a prayer for the following relief:-

"That the order dated 2-8-86 passed in Memo No.974-E/Canteen/Rectt. Manager/Press be quashed with costs and the applicant be given all benefits pay and allowances

difference of the suspension period from 22-10-83 to 7-5-84 and stopped increment of W.I.P. of year be given from period w.e.f. 1-4-87/19-4-87."

3. The learned counsel for the applicant argued that in the statement of imputation attached to the charge sheet (An.II) for the items mentioned in paras ~~5~~ (a) and (b) of the imputation, separately another charge sheet dated 29-8-83 had been issued. This could be seen from para ~~5~~(b) of the imputation itself wherein reference to notice dated 29-8-83 has been made. The applicant pointed out that it was not a 'notice' but a regular charge sheet in standard form No.5 dated 29-8-83 which was issued to him. A copy of this charge sheet has been attached (as An.'Q') to the O.A. The inquiry into the earlier charges is still in progress and the charge sheet dated 29-8-83 has not been concluded, even on date.

4. The learned counsel for the respondents tried to explain that with the issue of the charge sheet dated 27-10-83 (which is the subject matter of this O.A), the earlier charge sheet dated 29-8-83 got automatically merged with the latter charge sheet and accordingly the respondents proceeded with the inquiry to go into the earlier charges as well as the further charges listed out in the charge sheet dated 27-10-83. We are not convinced with this argument. We are concerned only with the charge sheet dated 27-10-83 and accordingly the only imputation which has to be considered is the imputation in para ~~5~~(c). The other paras, namely paras ~~5~~(a) and ~~5~~(b) are admittedly being inquired into separately. We also note that in the Article of charges attached

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to the charge sheet dated 27-10-83, the functioning of the applicant as Canteen Manager during the period 22-10-83 alone is being gone into. Thus, the conduct prior to 22-10-83 cannot be the subject matter of this charge sheet.

5. As per the imputation at para 5(c), there was no item for sale in the canteen even upto ⁴ 10-30 ~~on~~ ^{Am} 22-10-83 and thus the applicant failed to perform his duty. On this aspect, the plea of the applicant is that he had been suspended on 22-10-83 and hence the charge of his non-performance on that date cannot be sustained. However, the respondents argued that the applicant was on duty on 22-10-83 from 7-30 a.m. and was suspended only at 10-00 a.m. as per suspension order (An-'A'). Thus, the applicant cannot escape the blame for not arranging the preparations by 10-00 a.m.

6. We called for the departmental proceedings and looked into the findings- conclusion of the enquiry officer. The conclusion reads as under:-

"Shri Tara Chand has failed in his duty as Manager of Canteen in maintaining proper records of daily sale/purchase stock register, which is his primary duty. Thus Shri Tara Chand has committed serious misconduct, thereby violated rule 3(i), (ii) and (iii) of Railway Servants Conduct of 1966."

This conclusion related only to non-maintenance of records- daily sale/purchase stock registers which is the primary duty of the charged officer. There is no ~~other~~ discussion with regard to the actual charge that can be sustained namely the alleged misconduct of the charged official on 22-10-83. Even in the paragraph on the 'result of investigation' forming part of the enquiry report, there is no discussion regarding the non-availability

of the prepared items on 22-10-83 or on any aspect of failure of the charged official on this date.

7. In the circumstances of the case, we find that the enquiry report in connection with the aspect of misconduct which is relevant to the charge sheet dated 27-10-83 does not establish any charge. We have no hesitation in holding that the impugned order of punishment dated 2-8-86 is not sustainable. We also note that the charge relates to a period almost 11 years back and the nature of charge is such that it would not be fair to allow a fresh enquiry at this stage. Accordingly, we quash the impugned order of punishment dated 2-8-86. We also direct that no fresh enquiry shall be conducted in the circumstances of this case. The applicant will be entitled to all consequential benefits as per law. These should be paid within three months of the receipt of this order.

8. There will be no order as to costs.

P. T. Thiruvengadam

(P.T.THIRUVENGADAM)
Member(A).

C.J.Roy
(C.J.ROY)
Member(J)

LCP