

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1893/89

NEW DELHI THE 11TH DAY OF APRIL, 1994.

**HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.K.SINGH, MEMBER(A)**

Shri Bhudeo Singh
S/o Shri Khem Singh
Ex.Station Superintendent
R/o Qr.No.T-2/B Railway Station
Budhlada(Punjab)
...
BY ADVOCATE SHRI B.S.MAINEE.

APPLICANT

Vs.

Union of India & others:through

1. The General Manager
Northern Railway
Baroda House
New Delhi
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.
3. The Sr.Divisional Operating Superintendent
Northern Railway
D.R.M.Office, State Entry Road
New Delhi.

... RESPONDENTS

NONE FOR THE RESPONDENTS.

ORDER

JUSTICE S.K.DHAON:

Disciplinary proceedings were initiated against the applicant, an ex-Station Superintendent Budhlada(BLZ) under the Railway Servants(Discipline & Appeal) Rules, 1968(the Rules). An inquiry officer was appointed. He submitted his report. On 22.6.1989, the Senior Divisional Operating Superintendent passed an order imposing a penalty upon the applicant, the penalty being removal from service. On 8.8.1989, the applicant was informed that his appeal had been dismissed by the Additional Divisional Railway Manager. The orders of the disciplinary authority and the appellate authority are being impugned in the present application.

2. On 21.1.1992, this Tribunal relying upon the Judgement of the Hon'ble Supreme Court in the case of Union of India & ors. Vs.Mohd.Ramzan Khan allowed this OA

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and set aside the orders of the disciplinary authority as well as the appellate authority with a direction that it will be open to the disciplinary authority to revive the departmental proceedings and continue the same in accordance with law after serving a copy of the inquiry officer's report on the applicant. The Union of India & ors. (the respondents) felt aggrieved and, therefore, preferred a Special Leave Petition in the Supreme Court. On 13.1.1994, the Hon'ble Supreme Court in Civil Appeal No.242/94 set aside the judgement and order of this Tribunal on the ground that Mohd. Ramzan Khan's case had been wrongly applied by this Tribunal to the facts of this OA. It directed that this OA shall be heard and disposed of afresh by this Tribunal in accordance with law. We, therefore heard this case on merits and we are disposing of the same finally.

3. On the relevant dates, the applicant was working as Station Superintendent BLZ. In addition to other duties, he was assigned the duty of allotting wagons and was, therefore, required to maintain a priority register.

4. The Senior Divisional Operating Superintendent, through a memorandum, served upon the applicant, a statement of articles^{of} charges. In all, 7 charges were levelled against him. The inquiry officer found that charges No.2 & 6 remained unproved. Barring those charges, the remaining charges are being reproduced below along with the preamble to them:-

" Charge No.1:-You ignored the priority of the demand registered vide 2,3,5,6 & 7 at Page 63 of the priority register.

Charge No.3:-This relates to allotment of Wagon No.10562, 61429 and 63761 to the parties registered under item No.8 at page 71 and item No.1 at page 72 of the priority register. You ignored the priority of item No.8 of page No.70 and 5,6 & 7 of Page 71 of the priority register. The refusal given by Shri Ram Lal, Agent of the parties can not be given any weight as it was not brought out during

the investigations. You are responsible for not getting refusal from the parties in writing thereby the charge has been proved against you.

Charge No.4:- Allotment of Wagon No.10562, 61429 and 63761 laid on 8.9.1987 at 10 and 11A.M.while the wagons became available at 16.00 hrs.on 7.9.1987. Your plea that these wagons were loaded with live stock with non-water tight is not proved as two of the wagons were loaded with paddy and not live stock. You failed to offer these wagons against charge No.5,6 &7 of Page 71 of priority register on 7.9.87 and obtained their refusal in writing. This charge is, therefore, proved.

Charge No.5:- Relates to allotment of wagon No.WRC 63034 at 19.00 hrs. on 10.9.1987 to party at item No.9 page 72 ignoring earlier priority at item No.9 at page 72 of the priority register. In this case also you did not ensure the presentation of the written refusal of the parties during investigation. You are, therefore responsible for this charge.

Charge No.7:- Relates to non-allotment of wagon to the party at S.No.9 of page 74 of the priority register. When wagon No.62722 was allotted out of turn on 25.9.87 thereby granting refund to the party at S.No.9 page 74 without recording time of withdrawal of the demand in the priority register. After going through your defence and findings of the Enquiry Officer, I find that you have breached the priority of demand of Item No.9 at page 74 by allotting this wagon to item No.2 of Page 76."

5. Annexure-II to the charges contained the statement of imputation of misconduct/misbehaviour in support of each articles of charge. For the purpose of this OA, reproduction of para 1 of the statement will be enough. Therefore, the same is extracted:-

" M/s Basant Lal Rattan Lal had registered their demand for loading 2 wagons wheat to SZM on 22.8.87 vide entries item Nos.2 &3 of priority register page 65. There were similar demands registered under items Nos.2,3,5,6&7 at page 63 from M/s Dharam Pal Ashok Kumar, Kidar Nath Bishamber Dass, Arjan Dass, Pyare Lal and Paras Ram Lachhi Dass which were registered on 20.8.87 and 21.8.87. Shri Bheodev Singh SS allotted wagons Nos.NRC 23948 and ERC 59239 at 7AM on 26.8.87 to Sh.Basant Lal Rattan Lal ignoring the earlier registration of other firms which were registered on earlier dates and thus gave undue benefit to M/s Basant Lal Rattan Lal. During the enquiry on 12.3.88, the representative of these firms S/sh.Dharam Pal,Tej Ram & Mahinder Pal gave in writing to Sr.VI that though their demands were

registered earlier but they were not offered the allotment of these 2 wagons on 26.8.87 by the SS/BLZ and had the allotment been made, they would have loaded the same as per their turn. The plea taken by Sh.Bheodev Singh that these parties had refused to accept these wagons being the damaged one is not acceptable as neither any written refusal was taken by the SS from these parties nor there is any such remarks of damaged wagons passed on the RRs Nos.617254 dated 26.8.87 and RR 617255 dated 26.8.87 issued by the CGC. Rather on the forwarding note the remarks of wagons "jointly examined and found water tight" is there recorded by the sender. Thus Sh.Bheodev Singh SS made irregular allotment ignoring the priority. Shri Bheodev Singh SS should have also taken in writing from Sh.Ram Lal Broker if the parties had refused him to load the wagons."

6. Annexure-III to the charges contained at the list of documents relied upon, on the basis of which the articles of charge were to be sustained. These documents were extracts from the priority register, as relevant to the inquiry, extracts from the RR Book, as relevant, extracts from the wagon exchange register, as relevant, extracts from the wagon transfer register, as relevant, and extracts from the wagon registration fee statement, as relevant. Apart from the said documents, the copies of the statements of S/Sh. Mahinder Pal, Tej Ram, Dharam Pal as recorded were also furnished to the applicant. by the Vigilance Inspector on 12.3.1988. Copies of the statements of Sh.Joginder Singh, PWI dated 12.3.88 and 20.3.88 were also furnished to the applicant. A copy of the statement given by the applicant on 20.3.88 was also given to him. This statement of 20.3.88 of the applicant is of great relevance as will be seen hereinafter.

7. The applicant submitted a written statement. It appears to be an admitted case of the applicant that on different dates he had allotted wagons to different parties out of turn. The prosecution case is that the applicant made the said allotments irregularly with an ulterior motive whereas the applicant's case

is that he had violated the priority with the consent of the parties who had earlier got the registration of the wagons done. In a nut-shell, his case is that the parties, which were entitled to be allotted the wagons, themselves refused to accept the same as they considered the same to be defective in the sense that they were not water proof. We have, therefore, to appraise the evidence led before the inquiry officer and the assessment made by him in that behalf in the aforesaid backdrop. The short question, therefore, to be examined is whether there is some evidence or material to sustain the finding of the inquiry officer and the disciplinary authority that the applicant made out of turn allotments after violating the principles of priority without any justifiable cause.

8. At this stage, it will be relevant to quote a portion of the inquiry officer's report as contained in para 5.1.2:

"The CO in his detailed clarification dated 20.3.88 vide Ex.P-7 had accepted in writing that he did not take the refusal from the parties for not loading the wagons and also could not explain as to how the wagons were not allotted as per priority. The CO has accepted breach of priority in the cases mentioned in the chargesheet vide Ex.P.7."

9. We have already referred to the fact that along with the chargesheet given to the applicant, a copy of the statement given by him on 20.3.1988 had been furnished to him. We may note that the chargesheet was given to the applicant some time in May, 1988 i.e after the statement given by him in writing on 20.3.1988.

10. We may now immediately refer to the written statement given by the applicant after receipt of the charge-sheet. This was given on 29.6.1989 and was addressed to the Senior D.O.S., DRM Office, New Delhi. In para 1 of the written statement, it is recited

that the parties as per priority register were offered wagon Nos. NRC-23948 and ERC-59239 and had refused to accept the said wagons being not water tight." Shri Ram Lal Broker nominated by these parties gave in writing that the parties have refused to accept." We may note that in the written statement greater emphasis has been laid upon the refusal statement given in writing by Shri Ram Lal Broker. It has also been stated in para 1 of the said written statement that "a copy of the statement of Shri Ram Lal Broker is attached herewith for reference". In para 3 of the written statement, it is again mentioned that "the refusal statement of Shri Ram Lal broker is attached herewith for reference". Then, it is mentioned: " as there was no practice of taking recorded refusal from parties, the refusal could not be maintained properly on record". It is noteworthy that at the foot of the said written statement, it is mentioned that " the following documents are attached in support of my reply". No less than 9 documents are alleged to have been attached. However, the alleged refusal in writing by Shri Ram Lal Broker, as much emphasised, in the written statement is conspicuous by its absence. However, at Sl.No.1 of the list of documents alleged to have been attached to the reply, the following is to be found:-

"Traders' authorization to Shri Ram Lal Broker to work and sign on behalf of Traders".

11. We may now deal with the submissions made on behalf of the applicant at the Bar that the circumstance that the department failed to produce any of the traders although some of them were cited as witnesses in the list of witnesses submitted along with the charge-sheet, coupled with the fact that Shri Ram Lal Broker had clearly deposed in his capacity as ^a defence witness in the departmental proceedings that he was an authorised agent of the

traders in the matter of registration and allotment of wagons and he had refused to accept the wagons as the same were defective. The fact that Shri Ram Lal Broker was acting on behalf of the merchants who had got their names registered for the allotment of wagons on priority basis and the fact that he had refused to accept the wagons on the ground that they were defective were in the knowledge of the applicant from the beginning. Therefore, one would have expected the applicant to take this defence at the earliest opportunity. However, for reasons best known to him, he did not do so when he made a detailed clarification on 20.3.1988, reference to which has been made above.

12. There is an apparent contradiction between the details given by the applicant on 20.3.1988 and in the written statement given by him in reply to the charge-sheet on the crucial question that Shri Ram Lal Broker was acting as an agent of the merchants in the matter of registration and allotment of wagons and he had refused to accept the wagons when offered to the merchants concerned. We have already indicated that the applicant had been furnished ^{with} a copy of this statement dated 20.3.1988 along with the charge-sheet, yet he made no attempt whatsoever to explain the said statement either in his written statement or in the witness box before the inquiry officer or in his memorandum of appeal or even in this OA. We are, therefore, satisfied that the inquiry officer was justified in rejecting the testimony of Shri Ram Lal Broker on the ground that he was ^{not} a truthful witness. It appears to us that the witness Shri Ram Lal Broker had been set up by the applicant after due deliberation. He is, therefore, an after-thought witness.

13. The Vigilance Inspector(PW 2) stated before the inquiry officer that some of the merchants had addressed complaints to him(the Vigilance Inspector) on 12.3.88 that their priority in the matter of allotment of wagons had been violated. The said documents had been exhibited in the departmental enquiry by the inquiry officer. Copies of some of the documents have been shown to us by the counsel for the applicant. They bear the alleged signatures of S/Sh.Paras Ram,Lachhi Dass and Dharam Pal. On the left side of the document, the following endorsement is to be found:-

"Before me.

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(S.N.Vatsa)
12.3.88 "

Similarly, the documents alleged to have been written by Shri Tej Ram and Shri Ashok Kumar partner of Shri Mohinder Pal have been shown us. It cannot be denied that the alleged complainants were merchants(the traders concerned). We are not impressed by the submission made by the counsel for the applicant that the documents are not admissible in evidence as they have/ been proved by the makers of the same, namely the traders. It is to be noted that in the departmental proceedings, the provisions of the Evidence Act are not strictly applicable. We have gone through the copy of the depositions of the aforesaid Vigilance Inspector (Sh.S.N.Vatsa) and we find that he was not cross examined at all on the statement of fact given by him in the examination-in-chief that the traders had signed the complaints in his presence. Moreover, Shri Ram Lal Broker having been produced by the applicant as one of his own witnesses and he, according to the applicant himself, was an authorised agent of the said merchants, it is to be presumed that he was well

9) conversant with the signatures of namely, his principals, the traders. It appears to us that the applicant made no attempt to show to Shri Ram Lal Broker, the documents, as exhibited, and inquired from him as to whether they bore the signature of his principals. There was nothing to prevent the applicant from doing so. if he was really anxious to demonstrate that the alleged complaints of the traders were not genuine and were forged documents. Lastly, there was nothing to prevent the applicant from requesting the inquiry officer to call either all or some of the traders as defence witnesses.

14. In departmental proceedings, the rule of evidence applicable is preponderance of probabilities. What has to be seen is whether the conclusion of the inquiry officer is based on evidence or material of probative value. In this case, the applicant himself accepted the case of the department half way in so far as he admitted that he had made out of turn allotment of the wagons. He, therefore, accepted the position that priority had not been given to those who had got themselves registered first. It cannot be said that the inquiry officer either acted illegally or irrationally in rejecting the defence of the applicant that the traders had themselves refused to accept the wagons which were duly allotted to them on their respective turns. We are not sitting as a court of appeal in these proceedings. We are forbidden from re-appreciating the evidence and coming to our own conclusion on facts.

15. The Vigilance Inspector(PW2) had stated that in connection with some verification of the source information, he visited Budladha Station and consulted the priority register and other goods record. During the course of checking he found that the applicant

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had made certain irregularities in allotment of wagons, as he did not allot wagons strictly according to the priority register which was being maintained by him. Thereafter, he made detailed enquiries in connection with violation of priorities in the allotment of wagons from the traders concerned. Therefore, it cannot be said that the inquiry had been set into motion on the basis of the complaints made by the traders. Furthermore, the traders, in the facts and circumstances of this case, cannot be termed as complainants in the real sense of the term.

16. We may indicate that the inquiry officer has pointed out that the traders S/Shri Mohinder Pal, Tej Ram and Dharam Pal did not turn up to get their deposition recorded on 24.10.88, 11.11.88, 6.12.88 and 24.1.89 and, therefore, their examination was dispensed with. Thus it will be seen that the inquiry officer gave no less than 4 opportunities to the traders to appear before him and get their statements recorded.

17. In the light of these facts, we may now examine the authorities cited by the learned counsel for the applicant.

(1) **MASALTI vs. STATE OF UTTAR PRADESH (AIR 1965 SC 202)**. This case emanates from a regular criminal trial. Nonetheless, in paragraph 12, their Lordships observed that it is not unknown that where serious offences are committed and a large number of accused persons are tried, attempts are made either to terrorise or win over prosecution witnesses, and if the prosecutor honestly and bona fide believes that some of his witnesses have been won over, it would be unreasonable to insist that he must tender such witnesses before the Court. It is undoubtedly the duty of the prosecution to lay

before the Court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised. In such a case, it is always open to the defence to examine such witnesses as their witnesses and the Court can also call such witnesses in the box in the interest of justice under Section 540 Cr.P.C. This case instead of helping the applicant goes against him. Moreover, the rule of evidence applicable in a criminal trial is not applicable to departmental proceedings.

(2) **M.SAIBABA Vs. COMMISSIONER OF INCOME TAX, ANDHRA PRADESH & ANR** (1990 SLJ(3) CAT 313). In this case, it is laid down that the complainant is a material witness and he must be examined. We have already indicated that, in this case, in the technical sense, no trader is a complainant.

(3) **MANGAL SINGH Vs. THE COMMISSIONER OF HIMACHAL PRADESH GOVT.TRANSPORT** (1975 (1) SLR 500). This is a case where a report of the Deputy Superintendent of Police was relied upon against a delinquent servant without the said officer being produced in the inquiry. This case has no application to the facts of the present case.

(4) **DR.O.P.S.LUTHRA Vs.UNION OF INDIA** (1989 (1) ATR C.A.T 29). This is a case where key witness had not been examined in the inquiry and the statement alleged to have been made behind the back of the applicant was relied upon. This case too is distinguishable.

(5) **MUKESH KUMAR Vs.UNION OF INDIA & ORS.** (1990 (2) ATJ 1). This was again a case where a key witness

had not been examined. This case is also distinguishable.

(6) **SHRI LAKHI RAM Vs. UNION OF INDIA & ORS.**

(1989 (3) SLJ CAT 321). This was a case where a material witness had not been examined. In the present case, nothing will turn upon the non-production of the traders as prosecution did its best to bring them to the witness box. Moreover, according to applicant's own case, Shri Ram Lal Broker, in his capacity as an agent of the traders, had refused to accept the wagons as and when allotted to the respective traders. His testimony having been rejected by the inquiry officer and we having recorded the opinion that it was rightly rejected, the departmental proceedings, in the instant case, will not stand vitiated on the ground that the traders had not entered the witness box.

18. The learned counsel for the applicant urged that the appellate authority has passed a non-speaking order and dismissed the appeal of the applicant mechanically and without any application of mind. We have gone through the appellate order and we are of the view that it does not disclose non-application of mind and it is not mechanical. It also contains reasons though not elaborate. The order being of affirmance cannot be interfered on the said grounds.

19. It is also urged that in view of the judgement of the Supreme Court in the case of **RAM CHANDER Vs. U.O.I & ORS.** (SLR 1986(2) SC 608), the appellate authority should have given an opportunity of hearing to the applicant before deciding his appeal. In the memorandum of appeal, we do not find any request having been made in that behalf. Moreover, there

is no averment in this application that the applicant asked for an oral hearing and he was refused. In these circumstances and keeping in view the fact that the matter pertains to the year 1989, we do not consider it a fit case for interference on the sole ground that the applicant was not afforded an oral hearing.

20. Lastly, it is urged that the punishment awarded to the applicant is too severe. We have considered this submission with due care and we are satisfied that it cannot be said that the punishment awarded to the applicant is not commensurate with the misconduct attributed to him. In any view of the matter, it cannot be said that the disciplinary authority acted either arbitrarily or irrationally or perversely in removing the applicant from service.

21. On 22.9.1989, this Tribunal passed an interim order of status quo being maintained as regards the applicant's continuance in the Government accommodation. It appears to us that this order continues to operate even now. It is unfortunate that this OA is being disposed of in the year 1994. The applicant shall now hand over peaceful possession of the Government accommodation under his occupation within a period of two months from today. If he vacates the accommodation

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within the time specified above, the respondents shall realise from him rent for use and occupation of the government accommodation on the normal rates i.e. those rates which were applicable to him on or before the date of passing of the interim order. We make it clear that if the applicant fails to vacate the accommodation within the time specified above, it will be open to the respondents to realise the rent/damages from the applicant which should be otherwise payable by him.

22. In the event, this application fails and is dismissed. However, there shall be no order as to costs.


(B.K.SINGH)
MEMBER(A)

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(S.K.DHAON)
VICE-CHAIRMAN(J)