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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.1904/89.

Date of decision. 28.4.1994

HON'BLE SHRI S.R. ADIGE, MEMBER (A)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Kamal Narain Maheshwari,
M-9, Phase III,
Nanglói,
DELHI-110 041.

(Shri G.D. Bhandari, Counsel)

versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

(Advocate by Shri R.S. Mahendru)

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(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

This application has been filed under Section 19 of the Administrative Tribunal Act, 1985 for quashing the penalty order passed by the Disciplinary Authority dated 17.2.1989 (Annexure A-1) in which recovery of Rs.26,518/- (Rupees Twentysix thousand five hundred and eighteen) has been ordered from the pay of the applicant and the rejection of the appeal by the Appellate Authority against this order.

2. The brief facts of the case are that the applicant was a Parcel Clerk in the Commercial Department of the Northern Railway posted at Delhi Junction Station. In 1988, the applicant was served with a charge-sheet dated 10/88 (Annexure A-1) proposing to take action against the applicant under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. The charges levelled against him are that while on duty he failed to record the entries 623950/4 MAS/NDLS and consequently the consignment was stolen and Railway Administration had to pay a claim of Rs. 29531/- for which it was alleged that the applicant had violated Rule 3(i), ^{and} 3(ii)(iii) of the Conduct Rules. According to the applicant, he submitted his defence to the Disciplinary Authority that on the relevant date ^{ie} 30.12.1986, the applicant was deployed in the evening shift in the Cloak Room and he was not in the Parcel Office nor that he received the consignment in question. He further alleged that the consignment which arrived on 30.12.1986 was handled by one Shri Ranjit, Parcel Clerk, New Delhi and hence he had requested that charges against him may be withdrawn.

3. The ATS/Disciplinary Authority vide ~~his~~ order dated 17.2.1989 passed the following order :-

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" With reference to your reply to this office memorandum no. even no. dated 10.88 (following orders)

Debit Rs. 26578/- only (Twenty six thousand five hundred seventy eight) only.

Sd/- ATS "

4. Against the aforesaid order of the Disciplinary Authority, the applicant filed an appeal to the Divisional Traffic Superintendent on 6.4.1989 in which he had stated, inter-alia, that he was performing his duty on deluxe section 15/23 hours in which no South bound Train outgoing or incoming is rolled into the Roster. In the appeal, however, he has admitted that the subject consignment was unloaded, recorded by him but the disposal of the same is not proved. The order passed by the Appellate Authority is not available in the file but vide the letter of the Chief Parcel Supervisor, Northern Railway, New Delhi dated 24.6.1989 (Annexure A-7) the applicant was informed that his appeal on the subject has been rejected by the competent authority.
5. One of the grounds on which the applicant has challenged the penalty order passed by the ATS is that he was not the competent authority under the rules as he was not holding independent charge. However, on this point the applicant could not satisfactorily explain as to how the ATS was not the competent authority in

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his case. The second ground of challenge taken by the applicant was regarding the non-compliance of procedural rules by the disciplinary authority. For reasons as set out below, we do not consider it necessary to express any view on the first question raised here.

6. The procedure for imposing minor penalty, which includes the penalty as provided under rule 6(iii) of recovery of any pecuniary loss caused to the Government or railway administration by negligence or breach of order on the part of the delinquent official, has been prescribed in rule 11 of the Railway Servant (Disciplinary and Appeal) Rules, 1968. Sub-rule (1) of this rule lays down the detailed procedure which the disciplinary authority is to follow before imposing any such penalty and clauses (b), (c) and (d) are relevant in this case. These read as follows :-

" 11. Procedure for imposing minor penalties:-

(1) Subject to the provisions of sub-clause (iv) of clause (a) of sub-rule (7) of rule 9 of sub-rule (4) of rule 10, no order imposing on a Railway servant any of the penalties specified in clauses (i) to (iv) of rule 6 shall be made except after -

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(b) holding an inquiry in the manner laid down in sub-rules (3) to (19) of rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary.

(c) taking the representation, if any, submitted by the Railway servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration.

(d) recording a finding on each imputation of misconduct or misbehaviour."

From Rule 11, it is clear that the disciplinary authority imposing the penalty must apply its mind to the facts and circumstances and records of the case, and then record a finding on each imputation of misconduct and misbehaviour and also take into account the representation, if any, submitted by the railway servant before imposing the penalty. In this case, the disciplinary authority has given ^a pre-emptory order and not a speaking order which ~~the~~ ^{was} required to do under the rules.

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He has failed to comply with the requirements of Rule 11
the penalty order

(1) (b), (c) & (d) and is, therefore, illegal and is accordingly
quashed and set aside.

7. Consequentially, the appellate order based on the
disciplinary authority's order, copy of which is not available
on the record, but which has been communicated vide letter
dated 24.6.1989 is also quashed and set aside.

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8. In view of the above, the respondents are directed
to return any amount which they might have debited from the
salary of the applicant, prior to the interim order of
this Tribunal dated 1.12.1989 within a period of one month
from the date of receipt of this order. However, the
Respondents are at liberty to initiate such action as they
deem fit against the applicant in accordance with law. There
will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (Judicial)

S.R. Adige
(S.R. Adige)
Member (A)