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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2163/1989

NEW DELHI, THIS 16th DAY OF SEPTEMBER, 94

SHRI N.V.KRISHNAN, VC(A)
SHRI C.J. ROY, MEMBER(J)

Shri Bhudeo Singh
s/o Shri Khem Singh
r/o Qr.No.T-2/B, Railway Station
Budhlada (Punjab) ... Applicant

By Shri B.S. Mainee, Advocate

VERSUS

Union of India, 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

By Shri B.K. Aggarwal, Advocate

ORDER

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

The applicant in this OA is aggrieved by the order dated 12.6.89 (Annexure A-1) imposing a penalty of reduction in rank, i.e. from the status of Station Superintendent (Rs.2000-3200) to that of Station Master (Rs.1600-2660) until he was found by the competent authority, after a period of two years from the date of the order, to be restored to the higher grade of Station Superintendent with postponing future increments permanently, and also the letter dated 2.8.89 (Annexure A-2) rejecting his appeal against the penalty order dated 12.6.89.

2. The facts leading to the filing of this case, as averred by the applicant, are that the applicant who joined the Respondents as Assistant Station Master in 1967 was promoted to the grade of Station Superintendent in June, 1987 and while so, he was issued with a charge-sheet dated 8/88 (Annexure A-3) alleging infringement of priority in the allotment and supply of railway wagons ignoring priority maintained in the advance priority register. Vide order dated 10/88 (Annexure A-4) an enquiry was ordered. The applicant denied the charge stating that the wagon was offered to the second party only after written refusal was given by the party of priority.. He further states that that the Inquiry Officer examined only one Sh. Veer Pal, Railway Sectional Officer in support of the charges and one Sh. Ram Lal, authorised agent of Budhlada, produced by the applicant, who deposed that the wagon was refused by the party of priority on the grounds of wagon being non-water tight (NWT) and when written refusal was given by that party, then only the said wagon was offered to the second party for utilisation. After the enquiry was over, the applicant also submitted a written statement dated 23.4.88 (Annexure A-6). However the applicant was shocked to receive the penalty order dated 12.6.89. He preferred an appeal dated 20.7.89 (Annexure A-8) which was rejected by Annexure A-2 letter dated 2.8.89, inter alia conveying the orders passed by ADM-I, which read as follows:

The charges against the employee are of serious nature. His contention vide para 9 of his appeal that "Such irregularity often occurs in case of NWT wagons" only indicates that the irregularities of such serious nature were committed by him with full knowledge and all intentions to this effect. He has been correctly held responsible in the DAR proceedings. The appeal is regretted."

3. Hence this application with a prayer for quashing the impugned order/letter mentioned above and for reinstating the applicant to his original post of Station Superintendent with all consequential benefits.

4. The respondents have not filed their reply but Shri B.K. Aggarwal, Advocate, appearing on behalf of the respondents, argued the case verbally. We have heard the counsel for the parties and perused the records available on the file.

5. The Article of Charge (Annexure-I to charge-sheet memo dated 8/88, which is the basis for imposing the penalty reads as follows:

"Shri Bhudev Singh SS/BLZ while working as such during 11.12.87 to 28.2.88 is charged for infringement of the priority in the allotment and for supply of Railway Wagons No.ERC-16129 and SEC 75604 ignoring the priority maintained in the advance priority Register.

Thus above acts of omission and commission reflect adversely on the integrity and Conduct of Sh. Bhudev Singh SS/BLZ and he thus failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and contravened Rule No. 1 (i), (ii) & (iii) of the Railway Servants (Conduct, Rules-1966."

6. The case of the applicant is that he being a supervisor (Station Superintendent) he had given instructions to the Goods Clerk to allot wagon to next party on the priority register in case the party on top priority gave written refusal to load the wagon on the grounds of NWT and therefore he was not responsible for any omission or commission. His contention is that there was no independent evidence during inquiry proceedings in support of the charge and even the key witness whose priority is alleged to have been infringed by him had not been produced during disciplinary proceedings, and also that he was not given reasonable opportunity of defence. He further alleges that the officer who imposed the penalty did not apply his mind and also the rejection letter to his appeal was by a non-speaking order.

7. The applicant was in the grade of ~~Rs. 2000-3200~~ and the disciplinary authority competent to impose the punishment is the General Manager as per Schedule III to the Railway Servants Discipline & Appeal Rules, 1968 (Rules for short) whereas the penalty order (Annexure a-1) was passed by the Sr. Dvl. Operating Superintendent. Again the appellate order cited supra is passed by Additional Divisional Railway Manager-I, whereas as per the above Schedule, the appellate authority is the President, Railway Board. The learned counsel for the applicant therefore categorically states that the officer who imposed the penalty is not competent to do so.

3. Apart from the above, the learned counsel for the applicant states that there is no independent witness placed before the enquiry officer. It is true that there is no independent evidence placed before the enquiry officer except the officer from the Vigilance who conducted the surprise check. It is seen from the records made available by the applicant that the alleged incident took place between 15.12.87 and 25.2.88, inspection was conducted on 23.3.88 and the charge-memo was issued in August, 1988. In the circumstances, we feel that in view of the time involved, there must be corroboration apart from the evidence of the Vigilance Officer who conducted the inspection. His deposition is as under.

"So far I remember I recorded the statement of the CO. I have seen Ex.P2 and the Wag. No.ERC 16129 and SEC 75604, and it is stated that the registration was for WT wagons. In Ex.P-2, i.e. priority register there is no mention that the wagons No.ERC 21707, ERC 16129, NRC 21533 and SEC 75604 were NT or NW. Against priority No.2/7 there is a remark in the remarks column "NT/not accepted ERC 16129 and SEC 75604". Against priority No.10/7 there is a remark "please supply NWT wagon at my risk at 6.00 a.m.". There was no need to examine the parties concerned when the priority register was available. I do not remember whether the CGC was present on 23.3.88 at BLZ or not. Regarding distribution of work concerning wagon allotment between SS it is stated that the priority register was maintained by the SS and booking and delivery was done by CGC. How the allotment of wagons is conveyed by SS to CGC is not known to me....The forwarding notes containing remarks by the party about NWT wagons were not shown to me by the CO during the check".

9. Besides the person in the priority list No 9 as mentioned in the priority register was not called for nor examined. The person who was deprived of the priority is the proper complainant to speak to this effect. He would be the key witness. In the absence of examination of key witness, the enquiry suffered from infirmity.

10. It is not unusual for the parties to refuse priority when their goods are perishable and if the wagon allotted is NWT. In this case, it is not clearly made out whether it was WT or NWT wagon entered in the priority register, since no record is placed before us. In this connection, it is relevant to reproduce the statement of Shri Ram Lal, authorised agent, whom the applicant has quoted as his defence defence as also the defence note of defence counsel Shri Ram Saran Dass, which read as follows:

Shri Ram Lal:

"Wagon No. EC756607 was initially offered to M/s. Moh. Ram Cotton Ginning & Pressing Mills on 28.2.88 but the party refused to accept this wagon as it was NWT and the written refusal of the party which was signed by me with the stamp of the party was handed over to CCC the same day. Therefore this wagon was offered to M/s Roshan Oil & Cotton Mills on 28.2.88 who had a greed to load their consignment of oil seed. The necessary remarks about NWT wagons were given in the forwarding note of RR No 502697 dt. 28.2.88. In addition, I had passed remarks about NWT wagon in the priority register. I have in my hand D III and D1 and confirm that on the signature of the party with the signature of the party of the firm"

Shri Ram Saran Dass:

"CO has attached the latest copy of the circular No.IC/70/M/CII/87 in which it has been stressed that wagons should be thoroughly examined and freely rejected where there is a slightest doubt about their water tightness further stressing that any disregard of these instructions will be seriously viewed"

11. Also the applicant has mentioned in his written statement that he has recorded on RR No.97594 and also in the forwarding note attached to it about the NWT wagon in addition to the remarks column of the priority register as admitted by PW-1 in the statement and that the written refusal of the party has been submitted as Ex.P-3.

12. In the circumstances, we fail to understand as to how this evidence has not been properly taken up in the inquiry report. Simply believing the evidence of Vigilance Officer and overlooking the defence evidence is not appropriate. All the evidences must have been discussed properly.

13. When the vigilance officer made a surprise check, it is on record to show that the applicant had stated to him that the concerned clerk was on leave. No evidence is produced by the respondents to refute this assertion. Had he not been on leave, he would have shown all notings to the vigilance officer. The vigilance officer has not even cared to record the statement of the said clerk. Therefore, we have no other option except to believe the assertion of the applicant, in the absence of any records.

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14. All the above extracts clearly prove that the party on the priority list refused to accept the NWT wagon, it gave in writing to that effect and therefore the wagon was allotted to the next party on priority list and after making a remark by the applicant in the priority register that the first party on the priority has refused to accept the wagon. Since the respondents have failed to produce the departmental file or the priority register in which the applicant had stated that he has made a remark to the above effect, or filed their reply denying the averments made by the applicant, we have no other alternative except to believe the words of the applicant.

15. On the point of key witness not examined, it is relevant to cite the decision in OA 206/1 decided on 26.7.91 (1991(2)-ATJ-580) holding that if a key witness was not produced in evidence and was not available for cross examination of charged employee, it is a serious lacuna vitiating the entire proceedings. Again, in OA 2043/91 dated 10.2.92 (ATR 1992(1)-CAT-648) it was held that non-summoning of the material witness for the defence in a bribery case vitiates the entire disciplinary proceedings especially when the evidence of the key-witness was also not taken into account while passing order of dismissal from service

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16. With reference to the contention that the penalty order and the appellate letter were not passed by the competent authority, we rely on the judgement of the Hon'ble Supreme Court (1991(15)ATC-799) holding that where the authority specified in the schedule delegated its power to make appointment to a lower authority and the delegated authority actually makes the appointments, such authority would be the authority competent to initiate disciplinary proceedings as well under the Rules". Again in 1975-SLJ-316, it has been held that if the chargesheet is not issued by the disciplinary authority, the disciplinary proceedings and punishment awarded as a consequence of the said disciplinary proceedings is struck down being contrary to statutory rules.

17. As stated supra, in the absence of any reply from the respondents or production of any records from them, we are at a loss to know whether the penalty order has the approval of the General Manager or the rejection order has the approval of the appellate authority. In the circumstances, we hold that both the orders were not passed by the competent authorities.

18. We also notice that the appellate order is apparently, on the face of it, a non-speaking order for the reasons it has not taken into account the several grounds made by the applicant in his representation and therefore this order suffers from illegality.

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19. In the circumstances, we quash the impugned order dated 12.6.89 (Annexure A-1) and order dated 2.8.89 (Annexure A-2). The respondents are directed to reinstate the applicant to his original grade of Station Superintendent from the date he was down-graded and pay him all consequential benefits. The OA is thus disposed of. No costs.

[Signature]
16/9/94
(C.J. Roy)
Member(J)

[Signature]
16/9/94
(N.V.Krishnan)
Vice-Chairman(A)

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