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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A.NO.2265/89

New Delhi this the 5th day of May, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member (A).

Dharampal Singh,
R/o House No.589,
Sector No.14. Sonipat-(Haryana)
Pin-131001.

... Petitioner.

By Advocate Shri R.K. Relan.

Versus

1. General Manager
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Traffic Supdt.,
N.Rly., DRM Office,
Chelmsford Road,
New Delhi.

3. Additional Divisional
Railway Manager,
D.R.M. Office,
Northern Railway,
Chelmsford Road,
New Delhi.

4. Senior Divisional
Personnel Officer, Northern
Railway, D.R.M. Office,
New Delhi.

... Respondents.

By Advocate Shri B.K. Aggarwal.

ORDER (ORAL)

Shri Justice V.S. Malimath.

The petitioner, Shri Dharampal Singh, was subjected to a disciplinary inquiry which culminated in an order being passed by the disciplinary authority on 9.12.1988 holding the petitioner guilty of the charge levelled against him and

imposing penalty of reduction in pay to initial stage in the scale of Rs.975-1540, from Rs.1200/- to Rs.975/- for 3 years without cumulative effect. The said order was modified by the appellate authority during the pendency of these proceedings, by an order dated 10.2.1990 as per Annexure P-I by which the penalty has been reduced to one of withholding of increments for a period of two years only.

2. The grievance of the petitioner is that he has been held guilty of the misconduct which he has not committed. He submitted that the real person who committed the misconduct which has been charged, is Shri Dharam Singh. It was urged that that is the clear effect of the finding recorded by the Inquiry Officer. To appreciate this argument it is necessary to acquaint ourselves with the charge that was levelled against the petitioner. Certain consignment was booked from Howrah to New Delhi vide R.R. No. 806725 dated 25.7.1987. Shri B.R. Nanda, Intelligence Officer, DRI, New Delhi had given a requisition to the Station Superintendent, Northern Railway, New Delhi as per Annexure A-6, informing them that he has reason to believe that the said consignment appears to be suspected, hence the same may be opened in his presence before its delivery to the party. It is further stated that the consignment may be treated as detained till clearance from him. This was given on 29.7.1987. The consignment was actually delivered to the party on the same date by the petitioner. The charge is that in spite of the detention for delivery as per the requisition of Shri Nanda, the petitioner delivered the goods to the party obviously for ulterior motives and an inference is drawn from this conduct that he has shown insubordination and lack of devotion to duty. The finding of the Inquiry Officer is at paragraph 5.1.3 which reads as follows:

"The plea of the CO that he was not informed verbally or in writing by anybody to detain the consignment is not convincing due to the fact that he himself had stated in his statement vide Ex.P-1 that Shri Nanda, IO/DRI had told him verbally to detain the said consignment. However, it has been noticed that the correct procedure was not adopted in this case by the DRI officials and Shri Dharam Singh who had received this letter vide Ex.P-3. In absence of any written instructions, the verbal request made by DRI officials to the CO cannot be given any weight. The real defaulter in this case appears to be Shri Dharam Singh, Shed Clerk who had received Ex.P-3 and did not obtain specific orders either from his Incharge or from the SS and did not get it noted from delivery clerk and Gate pass Clerk. However, the CO is responsible for book delivery of this consignment due to the fact that when he was aware that this had been detained by DRI staff, he should have obtained orders from CPS/Inward before making delivery".

"FINDINGS & CONCLUSION

Charge against the CO has been proved to the extent that he granted book delivery of consignment booked under RR No.806725 dated 25.7.87 when he was verbally requested by Shri B.R. Nanda, IO/DRI. Other part of the charge about insubordination and favour to the party has not been proved".

The learned counsel for the petitioner, Shri Relan, strongly relied upon the statement in the report of the Inquiry Officer that the real defaulter in this case appears to be Shri Dharam Singh. He submitted that this finding in substance conveys that the petitioner is not the real person who is guilty but it is Dharam Singh, Shed Clerk. After making the statement, the Inquiry Officer has noted the conduct of the petitioner and held him guilty. He has held him guilty because he has himself admitted in Ex.P-1 that he was orally requested by Shri Nanda to detain the goods as he had reason to suspect ✓ the same and given a requisition in that behalf. When a

responsible officer like Shri Nanda conveyed that he has given a formal requisition and made an oral request also not to make delivery of the goods to the consignee, the petitioner as a diligent officer should not have delivered the goods to the consignee without taking reasonable precautions in the matter. The least that was expected of ~~or superior officer~~ him was to ask Shri Dharam Singh/as to what has happened to the requisition. The purpose of requisition was to know what the consignment contains, as to whether there is something which is offensive or contrary to law. The petitioner by his conduct helped the consignee by delivering the goods. The Inquiry Officer has, therefore, found the petitioner guilty of acting in an irresponsible manner in delivering the goods to the consignee even though he was verbally told by Shri Nanda not to deliver the goods, as admitted by him in Ex.P-I. Though Shri Dharam Singh's conduct is certainly blameworthy as he did not act as expected of him, the petitioner cannot take shelter under the improper conduct of Shri Dharam Singh. He is a responsible officer who ought to have conducted himself in such a manner to aid the process of law and not to defeat the same. It is not, therefore, possible to take the view that the petitioner has been found not guilty and no part of his/is blameworthy. Hence, it is not possible to interfere with the findings of fact recorded by the Inquiry Officer and accepted by the disciplinary authority.

3. Another conduct of Shri Relan, learned counsel for the petitioner, is with regard to promotion. He submitted that his juniors at Serial Nos.17,18 and 19 of Annexure A-2 have been promoted by order passed on 10.12.1987. But then it is necessary to point out that as a decision was taken to hold a disciplinary inquiry and a charge memo was issued dated 8.12.1987 as per Annexure A-3, the failure to promote the

petitioner along with his juniors cannot be faulted. But then it is necessary to note that the order of the disciplinary authority which imposed a major penalty has been modified during the pendency of these proceedings by the appellate authority to a minor penalty of withholding of increments for a period of two years. Admittedly, this is a minor penalty. The petitioner's case for promotion had to be examined and considered after the said penalty of two years expired. There is no material before us to enable us to record a positive finding in this behalf. In the circumstances, we consider it just and proper to examine the case of the petitioner for higher cadre in the context of the appellate order which has reduced the penalty of the petitioner from a major penalty into a minor penalty.

4. For the reasons stated above, while dismissing the petitioner's claim for quashing the orders imposing penalty in disciplinary proceedings, we direct the respondents to consider the case of the petitioner for promotion in the light of the appellate order dated 10.2.1990 produced in the case as Annexure P-1 by which the major penalty has been reduced to minor penalty of withholding increments for a period of two years, ^{if not already done}. A decision in this behalf shall be taken with utmost expedition, preferably within a period of four months from the date of receipt of a copy of the order. No costs.

P. T. Thiruvengadam

(P. T. Thiruvengadam)
Member (A)

V. S. Malimath

(V. S. Malimath)
Chairman

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