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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2356/89.

Date of decision. 18.5.1994.

Hon'ble Shri B.N. Dhoundiyal, Member (A)

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

Shri Kundan Lal,
s/o Shri Murari Lal,
Running Room Care Taker,
Northern Railway,
Tughlakabad. Applicant

(By Advocate Shri B.S. Maini)

versus

1. The General Manager (Mech.),
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
New Delhi. Respondents

(None for the Respondents)

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

The applicant being aggrieved by the order dated 17.11.1988 passed by the Senior Divisional Mechanical Engineer, Northern Railway, has filed this application for setting aside the order. The order had been passed by the disciplinary authority whereby the applicant had been found responsible for shortage of 254 bed sheets and the penalty of reduction to a lower stage in the time scale had been imposed on him for a period of 3 years from the date of the

order i.e. 17.11.1988 with postponing future increments.

2. The brief facts of the case are that the applicant was working as Running Room Care Taker in the scale of Rs. 950-1500. He was charge sheeted for major penalty on 3.2.1988 on the alleged ground that he 'mis-appropriated' 1 blanket, 2 pillows and 254 bed sheets which had been issued to him. The applicant had filed his statement of defence on 2.6.1988 denying all the charges and explaining the shortage. An enquiry had been held against him following which the impugned order had been passed. The applicant submitted an appeal to the Additional Divisional Railway Manager on 26.12.1988, who reduced the period of punishment from 3 years to 2 years. A copy of this order is, however, not available in the file. The applicant submitted another appeal to the Additional Divisional Railway Manager, who advised him to send another appeal to the General Manager (Mechanical). This was apparently treated as a revision petition and vide order dated 29.9.1989 the same was also rejected.

3. Though this case was peremptorily fixed among the 10 cases for final hearing, none appeared on behalf of the Respondents. However, we have carefully perused the record of the case and heard the learned counsel for the applicant.

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4. The main grievances of the applicant are -

- (i) that there was no evidence on which the disciplinary authority could have held that the charge was proved and to impose the penalty by the impugned order;
- (ii) that the findings of the enquiry officer were perverse and that the disciplinary authority's order and the appellate order are non-speaking and cryptic and, therefore, bad in law; and
- (iii) that the appellate order and the revision authority's order have been passed without application of mind and the appellate authority has not afforded the applicant of hearing reasonable opportunity/by giving him personal hearing.

5. In support of the first contention, the learned counsel for the applicant referred to the enquiry report. According to him, from the evidence of Shri P.K. Sharma, Vigilance Inspector, who was examined at the enquiry, the stock of the material in question is under the control of Shri Roshan Lal, Assistant Superintendent Incharge of Stores Loco Shed, Tughlakabad, under whom the applicant was working. Shri Sharma has in his examination in Chief

stated that the shortage of 254 bed sheets had been made good later on and hence actually there was no shortage.

The 254 bed sheets were kept in the Loco Foreman Office as these bed sheets were given to P.M.E.(Diesel) for using

as dusters. In the examination of Shri Gurdev Singh, Loco Foreman, who was Incharge of Loco Shed, Tughlakabad, and who

appeared as defence witness, ^{re} _L had also stated in his deposition

before the enquiry officer that the charge officer was not responsible for any shortage of the bed sheets. Shri Singh

has, in his letter dated 14.1.1988 i.e. shortly after the check by the Vigilance Inspector, clarified the position

that there was no shortage. The learned counsel for the

applicant, therefore, submitted that on this evidence, the charge against the applicant has not been proved as there

was, in fact, no shortage. He also stated that in any case

the charge being of that of misappropriation, even the

enquiry officer had not held the applicant responsible on

this charge but had only held ^{him} _L responsible for shortage of

the material, which shortage had been clarified by the said ^{evidence of} _L Sarvashri Roshan Lal and Gurdev Singh. Therefore, he submits

that the charge of misappropriation had not been proved against the applicant in the light of the evidence on record and,

therefore, the punishment is not sustainable.

6. It is well settled position that this Tribunal does

not sit in appeal to re-appraise the evidence in a departmental proceeding or substitute the findings of the competent authority. It is clear from the enquiry report that this is not a case of no evidence where the applicant cannot be held responsible for the missing stores on the date of inspection by the Vigilance Inspectors. Therefore, the conclusion arrived at by the disciplinary authority for the shortage of 254 bed sheets is based on the evidence placed before him and this Tribunal cannot sit in appeal to re-appraise the evidence or come to its own conclusion.

7. Another point urged by the learned counsel for the applicant was that in the evidence of Shri P.K.Sharma(PWI) the Vigilance Inspector he had stated that the material in question was under the control of Shri Roshan Lal, Assistant Superintendent, Tughlakabad. Shri Roshan Lal had also been held responsible for the stock in question and he has been charge-sheeted for a minor penalty and awarded the penalty of withholding of increment for

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one year temporarily (WIT) while the disciplinary authority has imposed a more severe penalty on the applicant by withholding the increments for 3 years, subsequently reduced to 2 years by the appellate authority, permanently.

He also drew our attention to para 7.1.4 of the enquiry officer's report in which he has stated that keeping all the factors in view, " while Shri Roshan Lal is majorly responsible for not keeping the proper account of the material and issuing the costly items to the CO without taking his signatures and also failing to take account of the material at intervals to keep the stock in check, the CO cannot escape the responsibility as a caretaker of the running room for the shortage." The learned counsel, therefore, submitted that while Shri Roshan Lal had been found guilty to a larger extent for the missing items, the applicant who was his subordinate and working under him had been given a more severe penalty than him. We find considerable force in this argument. The disciplinary authority ought to have considered this fact also while imposing the penalty on the charged officer which it appears to have failed to do. In the facts and circumstances of the case, the imposition of a more severe penalty on the applicant who was admittedly working under Shri Roshan Lal does not appear to be justified.

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8. So far as the orders of the disciplinary authority and the revision authority are concerned, the learned counsel for the applicant has relied upon the judgment of the Supreme Court in Ram Chander v. UOI & Ors. [ATR 1986 (2) SC 252 and 255] that they do not disclose any reasons and, are, therefore, liable to be set aside. In this case the Supreme Court held that the duty to give reasons is an incident of the judicial process. The Supreme Court observed that the order passed by the appellate authority, viz., the Railway Board, is "just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway (Discipline and Appeal) Rules, 1968 without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority

could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal of service for a single lapse There being non-compliance with the requirement of Rule 22(2) of the Railway Servant (Discipline & Appeal) Rules, the impugned order passed by the Railway Board is liable to be set aside."

8. In this case although the appellate authority had reduced the period of punishment from 3 to 2 years, since the order is not available in the record, it is not possible to say whether it was a speaking order or not. However, neither the disciplinary authority nor the revision authority have given any reasons or passed a speaking order in disposing of the applicant's case. Having regard to the observations of the Supreme Court in Ram Chander's case (supra) we find that there has been no application of mind by the competent authority. Apart from this, it is alleged that the appellate authority has also decided the appeal without affording personal hearing to the applicant. ¹⁸ Therefore, We find that the impugned orders have been passed without complying with the principle of

natural justice and the relevant rules in a mechanical fashion.

9. In the above facts and circumstances of the case, we dispose of this application with the following order. The application is allowed. The impugned order passed by the disciplinary authority dated 17.11.1988 and the subsequent orders passed by the appellate authority and the revision authority are hereby quashed and set aside. However, we make it clear that the respondents are at liberty to pass such orders as they may deem fit after affording the applicant reasonable opportunity of hearing and in accordance with the rules, keeping in view also the above observations regarding the nature of penalty. If the respondents chose to proceed with the matter, they shall take necessary action within 4 months from the date of receipt of a copy of this order. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member (A)