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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. No. 2071 of 1988

New Delhi, this the 22nd day of August, 1995.

Hon'ble Mr J. P. Sharma, Member (J)
Hon'ble Mr B. K. Singh, Member (A)

Hari Dutt Sharma,
Goods Supervisor,
Railway Station Hanuman Garh (Raj).
C/O Sh. Umesh Chander Sharma, QD-25, Janakpuri P. S.,
Janakpuri, N. Delhi. ... Applicant.

(through Mr G. D. Bhandari, Advocate).

vs.

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi;
 2. Area Railway Manager,
Northern Railway (Meter Gauge)
Queen Road, Delhi.
 3. Divisional Railway Manager,
Northern Railway,
Bikaner.
(through Mr R. L. Dhawan, Advocate).
- ... Respondents.

ORDER (ORAL)

J. P. Sharma, Member (J)

The applicant was a Goods Supervisor, Gurgaon Railway Station and was served with a minor penalty charge sheet dated 2.6.1986 alleging that while working as Goods Supervisor at Gurgaon Railway Station, the applicant registered demand in APR from 417 to 421 on 6.5.1986 and 422 to 426 on 7.5.1986 via Hissar and booked waggons deailed in the imputations of misconduct, nine in number. It is stated that this is in violation of para 9.1 of the rationalisation Scheme general

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order No.1 of 1986 issued by DRM/MBN No.398/T/O/RS/TG dated 31.3.1986 and as such he failed to maintain devotion to duty and violated para 3(1)(ii)&(iii) of the Railway Service Conduct Rules, 1966.

The applicant replied to the aforesaid imputations of misconduct stating therein that it was Shri Bajrang Lal Verma, Goods Clerk who booked 5 wagons 417 to 421 on 6.5.1986 and on 7.5.1986 the wagons have been registered and unloaded by Shri JP Gupta, Goods Clerk. He had no concern with the loading and booking of the above wagons. He also specifically mentioned that Shri Verma and Shri Gupta be inquired into. This reply is dated 4.7.1986. Shri R.K.Jain, Area Supdt./D.E. passed the following order:

" Shri Hari Dutt Sharma was on duty and was alone competent to make registration. He should not have allowed to make registration by goods Clerk who was not competent. Hence WIT 3 years is imposed.... "

A perusal of the above order will show that it does not relate to the charge or imputation of misconduct alleged against the applicant by the aforesaid memorandum dated 2.6.1986. It appears that the appellate authority conveyed to the applicant as under:

"The ADRM has not accepted his appeal"

The matter came before the Principal Bench of this Tribunal on 4th Feb., 1994 and vide order of even date the punishment was quashed only on the ground that the date of retirement of the applicant was within a period of three years and imposition of penalty would have affected the pensionary

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benefits and other terminal benefits of the applicant which cannot be done in imposing punishment in minor penalty proceedings. However, the Union of India filed a review that the period of retirement of the applicant after imposition of punishment was much beyond three years and the effect of the imposition of the punishment of withholding of increments for three years would not have affected the terminal benefits. We heard the review and allowed the review petition setting aside our order of 4.2.1994 directing that the matter will be re-heard on merits. The matter is therefore before us for hearing today. Shri G.D.Bhandari and has put in appearance on behalf of the applicant and Shri R.L.Dhawan for the respondents.

The respondents are not equipped with the original inquiry file from where we could gather the real contents of the appellate order as what was conveyed to the applicant has been placed on record as Annexure A-1 that the appeal has not been accepted by the ADRM. In the absence of an original order of the appellate authority we are unable to ascertain how the appellate authority framed its mind regarding the order passed by the Disciplinary Authority dated 21.7.1986. The disciplinary authority also in its order did not highlight by rejecting the reply in which finger was pointed out by the applicant on two subordinate goods Clerks Shri Verma and Shri Gupta who in fact admittedly registered and booked all the wagons on 5th and 7th May, 1986. It is also not in evidence

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whether Shri Verma and Shri Gupta who registered and booked the wagons in the alleged violation of instructions of para 9.1 of order 1 of 1986 on the basis of ADRM Bikaner memorandum dated 31.3.1986 have also been proceeded against in the departmental inquiry or not. The respondents in their reply have stated in para 6.4 that the applicant as a Goods Supervisor was lacking in efficient discharge of his supervisory duty and allowed the loading and booking by the subordinate staff of goods shed though they were not competent to do so. In fact this is not the charge that the applicant has committed misconduct in not performing his duty and was responsible for dereliction of duty in not controlling the registration and loading of wagons in the goods shed of Gurgaon.

The respondents have justified their action by further highlighting in para 6.5 that the applicant is responsible for the acts of his subordinates for booking/loading against the restrictions at the station. In fact the question of vicarious liability is not available in official acts unless they are performed under the direct direction and order of the superiors. This is not the case here. What calls out from the record is this that registration and loading of wagons was done at Gurgaon Station goods-shed of which the applicant was supervisor but by the subordinate staff of the goods shed. The applicant may be responsible to the extent of not devoting his attention primarily of supervising the action of his subordinates but this is not the charge against him. A person cannot be punished without

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informing him, the imputations alleged and he cannot be punished on other counts. The principles of natural justice clearly lay down that a person has to be told clearly and unambiguously regarding the defence he has to put in for the alleged act of commission or omission amounting to misconduct. The whole principles of natural justice, therefore, shall stand violated if the punishment imposed on certain allegations not confronted to the delinquent.

The question would have been different had the disciplinary authority held a confronted inquiry by calling the witnesses to establish the fact that the applicant connived at the acts of his subordinate staff in breach and dereliction of his duties. That has not been done. Though the Tribunal cannot go into the appreciation of the evidence as also the inferences drawn by the Disciplinary Authority but at the same time the Tribunal can go into the question whether the principles of natural justice have been duly followed and the procedure laid down under the Discipline and Appeal Rules has been duly observed. This is the case where the violation of the principles of natural justice as well as the procedure laid down for confronted inquiry has not been followed in acts where in the reply filed by the delinquent the act of omission has not been referred to to other subordinate Shri Verma and Shri Gupta who were also working as Goods Clerk at Gurgaon Station.

The purpose of the appellate authority is to see whether the procedure prescribed under the rules has been followed and further the delinquent has been

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given due opportunity to defend in regard to the allegations levelled against him. It appears that the appellate authority, calling from the order conveyed to the applicant, also did not consider this matter in the right perspective. We are not commenting directly on the order of the appellate authority as the same is not before us, only the result of the order of the appellate authority has been conveyed to the applicant and it was the primary concern of the respondents to annex that order with the counter if they desired that the appellate order will go in support of the order of the disciplinary authority. If that has not been done, adverse inference may be drawn against a party who withholds a document which may help substantiation of the averments made in the reply. The document is a primary evidence and may go a long way in corroborating the averments made but if the document is withheld by a person who is in the proper custody of that document, reliance cannot be placed that the appellate authority did consider the appeal of the applicant which runs into two or three full-scape pages and considered the various contentions raised therein by proper application of mind rejecting the points raised by a reasoned order.

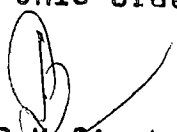
In view of this fact, the conclusion, to which we are arriving in this case after re-hearing is the same which we had arrived earlier in quashing the impugned order of punishment dated 21.7.1986 and 16.6.1988.

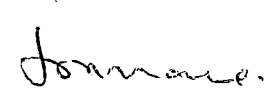
Since the charge against the applicant was not made out and the applicant has been inflicted punishment entirely on different allegation made in

the imputation of charge, there is no scope now after retirement of the applicant to remand the matter for fresh inquiry. We know that the alleged omission on the part of the applicant will go without any proceeding or departmental inquiry but for this, the respondents are themselves at fault.

Certain other contentions have also been raised relating to the competence of the authority on the commercial side in issuing the memorandum of charge but we are not entering into that aspect since we have already come to a conclusion on the key point that the imputation of misconduct alleged against the applicant was something other than on which the punishment has been imposed and upheld by the appellate authority.

The application is, therefore, allowed. The punishment order is quashed and set aside and the applicant shall be restored to his original pay and will get the benefit of the withheld pay and arrears etc. The orders be complied ^{with} within a period of three months from the communication of this order. Costs on parties.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)