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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Date of decision: 10.2.1993.

O.A.No.1490/87.

Shri Tek Chand ... Applicant

Vs.

U.D.I & Another ... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN
THE HON'BLE MR. S.R.ADIGE, MEMBER(A).

For the applicant : Shri J.K.Bali, Counsel

For the respondents: Shri P.S.Mahendru, Counsel

JUDGMENT (ORAL)

(By Hon'ble Mr. Justice V.S.Malimath, Chairman):

The petitioner was Chief Goods Clerk on the Northern Railway at Sirsa Station. A disciplinary enquiry was held against him in regard to shortage of 87 Qunits of weight out of the consignment which he has booked from Sirsa. The charge memo dated the 3rd of October 1985 was served on him on 24.1.86 and he was to furnish his explanation. The petitioner made a representation on the 30th of January 1986 seeking permission to inspect the records at the Hissar Transmission Point and Jammu Tawi railway station before he could submit his reply. The petitioner's case is that he did not receive any permission or reply to his request. Instead, he was served with the order Annexure A-2 dated the 15th of July, 1986 imposing the minor penalty of withholding two increments without cumulative effect. The petitioner preferred an appeal which came to be rejected by the appellate authority on the 9th of September, 1986.

vide Annexure A-4. A further revision petition was submitted by him which came to be dismissed on 30.4.87 stating that there are no good grounds to interfere. It is in this background that the petitioner approached this Tribunal for appropriate reliefs.

2. The contention of Shri Bali, learned counsel for the petitioner, is that the disciplinary authority committed an obvious error in proceeding to hold the petitioner guilty of deemed admission of the charge levelled against the petitioner. The impugned order states "Ex-parte Non submission of defence is acceptance of charges". In other words, the disciplinary authority proceeds on the basis that there is admission by non-traverse of the allegations made in the charge. In the normal circumstances, the disciplinary authority would be justified in proceeding on the basis that the charge levelled against the delinquent officer must be deemed to have been proved if the delinquent official does not deny the charges levelled against him. Non-denial may justify an inference of acceptance of charges. But in a case like this, where the petitioner did respond to the charges and said that he would like to inspect the records concerning the consignment at two places, it is not possible to draw an adverse inference if in this background there is no reply and permission sought for was not granted. The only inference that can be drawn in such circumstances is that the petitioner deferred filing his statement until he was given an opportunity to inspect the records. Hence, no inference of admission of the guilt can be drawn in the circumstances. But it was maintained by Shri Mahendru, learned counsel for the respondents, that this is a case in

which permission was granted to the petitioner and inspite of the permission accorded for inspection of the records he did not inspect the records and did not file any reply whatsoever and so a legitimate inference of admission of the guilt can be drawn. If the respondents are right in making this averment in this behalf, we would be justified in accepting the case as put forward by the learned counsel for the respondents. Hence, the essential question for examination in this case is as to whether an order was passed granting permission to inspect the records and as to whether the same was served on the petitioner. The petitioner in his rejoinder stated that he was never served with any such order. The respondents have, no doubt, produced a copy of the order granting permission said to have been despatched to him. In the normal circumstances, we would have accepted the official version that permission was granted and communicated to the petitioner. But there are intrinsic circumstances in this case which indicate the contrary. Firstly, if as now put forward, the permission was granted and it was served on the petitioner and inspite of such opportunity granted, the petitioner did not avail of the opportunity and also did not file his reply, one would expect a statement in this behalf in the order of the disciplinary authority. Absence of reference to these facts in the order of disciplinary authority tells its own tale. All that the respondents stated in the order is that there is non-submission of the defence which amounts to acceptance of the charges. There is no advertance to the request made by the petitioner for opportunity to inspect the records and about grant of permission and communication of the same to the petitioner. There is another intrinsic circumstance which is worthy of consideration. After the disciplinary authority passed

the order, the petitioner preferred the appeal. The memorandum of appeal dated 21.7.86 has been produced as Annexure A-3. The petitioner has stated in his memorandum of appeal that authorities did not grant him permission to inspect the records to enable him to submit his defence and he has not received any reply so far. In the order made by the appellate authority, adverting to this contention, it is stated"... Now he writes that he wants to go to Hissar & Jammu Tawi. He wants to submit his defence after seeking the records there." It is obvious that the appellate authority has proceeded on the basis that for the first time in the memorandum of appeal petitioner has sought permission to go to Hissar and Jammu Tawi and to submit his defence after inspecting the records there. It is necessary to note that the petitioner has not made the request for the first time in his memorandum. The petitioner has specifically stated that he has not been granted permission though he had applied for the same. It is in this background that we would understand the finding in the appellate order. These circumstances justify the inference that the alleged order granting permission to the petitioner was not actually served on him, even assuming that such an order was made. If permission was granted to the petitioner, it is reasonable to draw the inference that the petitioner would have availed of the opportunity and would not have allowed an ex-parte punishment to be imposed. We have, therefore, no hesitation to hold that no permission was communicated to the petitioner. That being the position, an inference of admission of guilt cannot be drawn. Hence, the order of the disciplinary authority, the appellate authority and the revisional authority are liable to be quashed. Having regard to the minor misconduct involved and the lapse of time of nearly 7 years now, we do not consider it just and proper to permit further

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enquiry in this case.

3. For the reasons stated above, this petition is allowed and the impugned orders annexure A-2, A-4 and A-6 are hereby quashed. The respondents shall restore the benefit of increments which have been withheld and grant the petitioner the difference in emoluments to which he is entitled to within a period of four months from the date of receipt of a copy of this judgment. No costs.

Anil
(S.R. ADIGE)
MEMBER (A)

Pradeep
(V.S. MALIMATH)
CHAIRMAN

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