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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1473/90

New Delhi, 31st day of 1994

CCRAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Nanak Chand,
Assistant Superintendent
under Assistant Engineer,
Northern Railway,
New Delhi.

... Applicant

By Advocate Shri B. S. Mainee

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
State Entry Road, New Delhi.
3. Divl. Suptd. Engineer (II I),
Northern Railway, DRM's Office,
New Delhi.

... Respondents

By Advocate Shri Shyam Moorjani

ORDER

Shri S. R. Adige, Member (A) -

In this application, Shri Nanak Chand, Assistant Superintendent, Northern Railway, New Delhi, has impugned the order dated 13.11.1987 passed by the Divisional Suptd. Engineer, Northern Railway (Ann. A-1) which has been upheld in appeal by the Addl. Divl. Rly. Suptd., Northern Railway, New Delhi, in his order dated 17.1.1989 (Ann. A-2) imposing the penalty of reduction in salary from Rs.1000/- to Rs.1750/- in the time scale of Rs.1600-2660 for a period of three years w.e.f. 13.11.1987 without postponing future increments.

2. The applicant was proceeded against departmentally on the charge that while functioning as Divisional Clerk during April, 1981 to March, 1982 he prepared an inflated bill for Rs.49647.00 whereas the amount of the bill as worked out by the I.O.W. was Rs.7104/- and thus put the department to a loss of Rs.42000/- (approx.), and also altered the figure of Rs.7109/- to Rs.49647/- in the allocation sheet and furthermore added a false entry of $39 \times 29 = 1139$ mtrs. in the measurement book. The enquiry officer held that the charges against the applicant were not proved except the portion relating to the alteration of figures in the allocation sheet, but even there the E.O. held that no adverse view could be taken as the final amount paid to the contractor underwent an upward change on account of various factors discussed in the report. The disciplinary authority in its impugned order dated 13.11.1987 stated that he was agreeing with the report but held the applicant guilty of this charge and imposed the impugned penalty which was upheld in appeal by the A.D.R.M. vide his impugned order dated 17.1.1989, who noted that no loss was caused to the Railways owing to timely action for recovery.

3. We note that the E.O. had in fact exonerated the applicant of any misconduct. The disciplinary authority while stating he was agreeing with the E.O.'s report, actually disagreed with it and imposed the impugned penalty. It is settled law that where the disciplinary authority disagrees with the findings of the E.O. it should communicate the reasons for disagreement to the

charged official and give him an opportunity to show cause before imposing a penalty. In the instant case this was not done. The fact that the applicant was given an opportunity of filing an appeal under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968 does not cure this proceeding of the infirmity which is fatal to it.

4. In the result this application succeeds and is allowed. The impugned orders dated 13.11.1987 and appellate order dated 17.1.1989 are set aside. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)

/as/