

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.2231/90

NEW DELHI THIS THE 21ST DAY OF DECEMBER, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)  
HON'BLE SHRI B.K. SINGH, MEMBER (A)

(By Advocate : Shri B.S. Maine)

## VERSUS

UNION OF INDIA, THROUGH

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi
  
2. The Divisional Railway Manager,  
Northern Railway,  
State Entry Road,  
New Delhi. .... Respondents

(By Advocate :Shri B.K. Aggarwal)

JUDGEMENT (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

While the applicant was working as a Parcel Clerk at Delhi Railway Station, he was served with memo of minor penalty chargesheet by the Assistant Traffic Superintendent Delhi vide letter No. IC-151-HQ-NDIS-86-E, Dated 11.5.89 alleging that the applicant

received 2 consignments booked under Lt No. 752186 and 752187, which were despatched in FSLR No. ER-8801 in 154 DN on 19.9.85 in a sealed van. The destination station was Gorakhpur. These LT packages either were not found left at the station of region nor the packages reached the station of destination. The applicant therefore was asked to explain, as the conduct of the applicant amounted to misconduct under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968. The applicant submitted his reply on 31.7.89 pleading that it was Parcel Clerk Mr Bhalla who was on duty, who loaded packages in the Break-van and the break-van has gone to the yard. When the said break-van came back to the station, he (applicant) sealed the van. He was not aware of the fact that whether these packages were loaded in the break-van or not. These explanations of the applicant were submitted to the Competent Disciplinary Authority along with the earlier complaint sent to the Chief Parcel Superintendent for loading & Unloading for the parcels in the Breakvan. On the aforesaid explanations given by the applicant, the Disciplinary Authority by the order dated 11.8.89 passed the following

order : "debit rupees Twenty thousand only in (70 instalments)". The applicant as alleged has preferred an appeal to Divisional Manager, Northern Railway through CPC, New Delhi taking certain grounds against the Order of Punishment imposed for recovery. This appeal is undated but there is an endorsement of receipt at the top of the photostat copy of letter, bearing the date 25.10.89. When the applicant did not receive any reply and, the amount was to be recovered from him, he filed this application in October, 1990 praying for the grant of relief for quashing the impugned order of punishment and to refund the amount which has already been recovered from his salary.

2. The matter came before the Tribunal on 30.10.90 and while admitting this case an interim direction was issued to the respondents restraining from making further recoveries from the salary of the applicant.

3. On notice the respondents contested this application and referred to the facts which resulted in issuing of SF-11 against the applicant that the consignee has filed

a claim of Rs.60,408/- for the non-delivery of the consignments booked under LT No.752186 and 752187, referred to above.

The counter also detailed the circumstances under which the applicant was held liable that he has not loaded these articles in the break-van 154 Dn nor were these found left on the station. It is said that the enquiry was held properly and impugned order needs no interference . Along with the counter, the respondents have also annexed Memo sent by applicant which is said to be an appeal forwarded on 25.01.90 by the Chief Parcel Superintendent. This was considered by the Competent Appellate Authority and the following Order was passed :-

"Please inform the above named official that his his appeal is considered by the competent authority but regretted."

4. The applicant has filed rejoinder.

5. We heard the counsel for the parties at length and pursued the record. The respondents have also filed along with the counter, a report dated 17.12.86 which was made on enquiry at New Delhi Rly Station by the Parcel Commerical Inspector.

6. The learned counsel for the applicant fervently argued that the Order passed by the disciplinary authority and Appellate

Authority are cryptic and did not take into account the explanation furnished by the applicant in reply to the memo of chargesheet. When a show-cause notice was given to the applicant and reply was submitted by him, it is expected of the concerned authorities to look into the reply and come to the conclusion after giving certain reasons as to the explanations furnished could not be accepted because it is violative of established rules relating to the loading and unloading of the parcels by the Parcel Clerk. This also does not take into account the report made by the applicant earlier to Chief Parcel Superintendent regarding the procedure in loading and unloading of the parcel and which is to pass through two hands at one point of time. The loading is done in the break van by one parcel clerk and the same is sealed by another parcel clerk who had no knowledge of consignments loaded.

7. In view of this, the order of the Disciplinary Authority which is no order in the eye of law cannot be sustained. We have also enquired from the learned counsel Shri Aggarwal, for the respondents that

there is a detailed order on the departmental enquiry and state that only this order appeared in the same language and phraseology.

8. A right of an appeal is a sacred right and the Appellate Authority has to apply its mind under Rule 19 of the DAR 1968 where it is laid down that it is the duty of the Appellate Authority to see whether the procedure prescribed has been fully followed or not and the disciplinary authority to give reasons in arriving at a conclusion of guilt. We are aware of the fact that this was a minor penalty chargesheet where on the basis of an explanation the order could have been passed. But where an explanation has been given by the delinquent which should find a mention, may be by rejection in the order of the disciplinary authority. That has not been done. We have heard Shri Aggarwal, counsel for the respondents. He could not substantiate the impugned order on the touch stone of the decision given by the Hon'ble Supreme Court which lays down that the Orders of the Disciplinary Authority should be a speaking order, that when the Appellate

Authority considers an appeal it should apply its mind and pass a speaking-order after giving personal hearing, if so desired by the delinquent and either affirm or reject the order of the disciplinary authority.

Thus, both the orders passed by the Railway authorities are not according to law and are in clear violation of the law laid down by the Supreme Court and heavily infringes on the principle of natural justice being arbitrary and non-speaking based on surmises and conjectures. We have been told that the applicant is still in service and is a young man. In view this we are disposing of this application with the following directions :-

(i) The impugned order of punishment dated 11.5.89 passed by the disciplinary authority and, the order of the Appellate Authority conveyed to the applicant dated 24.4.90 be quashed and set-aside.

(ii) No further recoveries will be made from the salaries of the applicant. However, if after an enquiry if held as said hereinafter this relief will be subject to the final order passed in the said enquiry.

(iii) The respondents are at liberty to proceed with the enquiry from the

stage of memo of chargesheet. In case no enquiry is held then the amount already recovered from the applicant should be refunded to him.

(iv) The respondents are directed to comply with the directions as expeditiously as possible.

(v) In the circumstances, the parties are directed to bear their own costs.

  
(B.K. SINGH)  
MEMBER (A)

  
(J.P. SHARMA)  
MEMBER (J)

sss