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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2615/1991

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New Delhi, this the day of February, 1996.

Hon'ble Justice Shri B.C. Saksena, Vice-Chairman
Hon'ble Shri R.K. Ahooja, Member(A)

Shri Vinod Kumar Aggwal
s/o Shri B.S. Aggarwal
780, Viveka Nand Nagar
Ghaizabad

.. Applicants

By Shri B.S. Maine, Advocate

versus

Union of India, through

1. General Manager
Northern Railway, Baroda House
New Delhi

2. Divisional Railway Manager
Northern Railway, New Delhi

.. Respondents

By Shri R.L. Dhasan, Advocate

ORDER

Hon'ble Justice Shri B.C. Saksena

The applicant through this OA has challenged the order
dated 4.12.90 ~~imposing~~ ^{imposing} ~~imposing~~ ^{Rs.2} ~~Rs.2~~ ~~Rs.2~~ a recovery of a sum of Rs.5220 from
his salary. He further seeks a direction to be issued for
the refund of the amount recovered from him pursuant to the
said order.

2. The brief facts are that the applicant while working as
Parcel Clerk was served with charge sheet for minor penalty.
The gist of charge sheet is that the enquiry made has
revealed that consignment booked under PW Bill No.500541
dated 20.12.88 from Delhi to Chandosi was loaded in
F.S.L.R.No.10366 on 26.12.88 in a lot of 67 packages upon the
56 DN by the applicant as per Loading Book. It was alleged
that one package was found short at destination and due to

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irregular and careless work of the applicant, the Railways had to pay Rs.5220/- The applicant alleges that he submitted written statement of defence on 20.11.90. The ACS(CTG) vide order dated 4.12.90 ordered debiting of Rs.5220 against the applicant. He further alleges that the ACS(CTG) concerned did not apply his mind to the defence statement of the applicant and passed a non-speaking impugned order. The applicant submitted an appeal and the same was rejected.

3. The respondents have filed their counter reply in which it has been stated that the matter was enquired into and the applicant was held responsible for the shortage vide CCS(Claims) order dated 16.4.90 (Annexure R-1). A charge-sheet was issued and therefore minor penalty was accordingly imposed. The respondents have also stated that the so-called written statement of defence dated 20.11.90 has not been received in their office. They have further pleaded that even in the letter dated 27.7.90 the applicant had informed that on 26.12.88 he had made over to Shri Sant Lal, Parcel Clerk on duty two unmarked packages and had suggested that these unclaimed packages should be connected and it should be verified whether they were the lost packages so that the administration may not ^{have to} make payment of the claim. In the counter, it has been further stated that Shri Sant Lal in his reply indicated that two unmarked packages were different as the same contained electrical goods and ^{not} kirana goods. It has been further pleaded that the following orders

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were passed on the appeal of the applicant and communicated to him. "Pleas taken by you are not accepted. You must have taken action for the missing package and have to report to T/S or CPS but have failed to do so. Appeal rejected in view of the above."

4. The applicant has not filed any rejoinder.

5. We have heard the learned counsel for the parties. The learned counsel for the applicant urged that the order passed by the disciplinary authority indicates no reason much less any finding that the applicant was responsible for the loss. The order passed by the disciplinary is cryptic and it reads "Debit Rs.5220 only. Debit full amount as defence not (sic) (submitted) in suitable instalments". He submitted that the said order does not disclose any reason much less finding that the applicant was responsible for the loss.

6. A perusal of the impugned order dated 4.12.90 shows that a copy of the same was sent to CCO(Claims) Varanasi in reference to his letter dated 16.4.90 (copy of that letter is at Annexure R-1 to the reply). The Chief Claims Officer in the said letter has held the applicant responsible for the shortage of one package. This letter is on the prescribed proforma and in item No.10 which requires statement of staff to be recorded, it has been stated that "in spite of repeated request Shri Agarwal has not given his statement". Note submitted by the Claims Inspector has also been enclosed alongwith the counter reply.

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7. In the same context, it would be relevant to indicate that alongwith the charge-sheet statement of allegation was also enclosed. "An enquiry made in this case revealed that subject noted consignment ~~was~~ loaded in FSLR No.10366 II on 26.12.88 in lot of 67 packages by 56 DN by Shri V.K.Agarwal but one package was found short at destination and DDPC was issued. In view of the DDPC Shri V.K.Agarwal is held responsible for loss due to his careless and irregular working."

8. We have also noted that the respondents have denied receipt of letter dated 27.11.90 and the applicant had not disputed the loss or shortage but he only indicated that he had given two unmarked packages to Shri Sant Lal and the lost ~~of~~ package in question may be one of them. The position therefore ^{which} emerged is that the applicant did not submit his defence or explanation to the charge-sheet. Even if the letter claimed to have been his defence statement is taken into consideration, the applicant does not deny the shortage. From material on record it is further proved that on account of the said shortage, the railways had to pay claim of Rs.5220. No doubt it would have been proper if the punishing authority has spelt out the reasons for imposing the penalty of recovery. But the question is does this infirmity call for quashing of the order of punishment. Learned counsel for the applicant has cited a decision rendered on 12.10.95 in OA 2590/91 - Ram Dhan Vs. UOI. On first impression the facts of the said case would appear to be similar and identical with the facts of the present case. Therein ~~is also~~ ^{the} impugned order indicated "Debit Rs.5664 only. Defence not received. Debit full in suitable instalments". It was held that the order is not speaking and cryptic and deserves to be

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quashed and was quashed alongwith appellate order. The said decision ~~proceeded on the particular & proved for~~ ~~had the same distinct feature in the facts~~ of the said case. It lays down no binding rule of law of ~~for~~ general application. ~~for~~

9. The learned counsel for the respondents has cited two decisions to support his submission that the Tribunal would ~~not be a~~ ^{sit as a} court of appeal and analyse evidence and interfere with the finding of the disciplinary authority. There is no doubt that the Tribunal can not interfere with the ^{appraisal of} ~~for~~ evidence ~~by~~ the disciplinary authority and his conclusions. In the present case, the disciplinary authority has not recorded any conclusion. In the case of Ram Dhan cited supra, the order passed by the disciplinary authority was taken into consideration but here in this case as noted herein above, the order of punishment referred to the conclusion of the Chief Claims Officer holding the applicant responsible for shortage of one package resulting in loss of Rs.5220. The charge sheet also contains the same allegation. Thus the question for our consideration is whether in these circumstances, even if the disciplinary authority has not recorded any reason imposing penalty does ^{it} call for any interference at all. We have already noted that even the written statement or explanation which the applicant claims to have filed does not contain any denial of shortage of one package.

11. ~~in the order of~~ ^{in a case} ~~for~~ The Hon'ble Supreme Court reported in 1977-SCC(L&S) p 226 - Chairman, Board of Examination and Chief Inspector of Mines Vs. Ramjee ~~it~~ has been ^{pleased to} observed as follows:

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"Natural justice is no unruly horse, no lurking land-mine nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of each essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man should be hit below the belt - that is the conscience of the matter.

"We can not look at law in the abstract or natural justice as the mere artifact. Nor can we fit into a rigid mould the concept of reasonable opportunity. Every minuscule violation does not spell illegality. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."

12. Keeping in view the above said observation and totality of the circumstances indicated herein above, we are not satisfied that the applicant by the ~~reasonable~~ ^{order} impugned order has suffered any denial of reasonable opportunity and therefore we ~~can~~ decline to interfere.

13. In view of the above position, there is no merit in the OA and the same is dismissed leaving the parties to bear their own costs.

R.K. Ahooja
(R.K. Ahooja)
Member(A)

B.C. Saksena
(B.C. Saksena)
Vice-Chairman

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