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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.765/91

Date of Decision: 5.3.92

Shri Sukh bir Saran Aggarwal
Union of India

Applicant
Respondents

Shri B.S. Mainee
Shri B.N. Mani

Counsel for the applicant
Counsel for the respondents

CORAM:

The Hon'ble Shri. J.P. SHARMA

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?

JUDGEMENT (Oral)

(delivered by Hon'ble Member Shri J.P.SHARMA)

The applicant was posted as Permanent Way Inspector(PWI) (Maintenance) Bijnor from 1980 to 10.5.1989, when he was shifted for some time as P.W.I.(Special).The Senior Divisional Engineer(I) DPM Office, Northern Railway, issued a Memo dated 4.5.89, finding out short comings in case of several items of keys, coppers, Fish bolts alleged to have been issued against the theft and is also mentioned that no proper FIR has been lodged for that.

In the letter dated 4.5.89, the applicant was asked to submit his explanation for not lodging the FIR before 8.5.89. The applicant is said to have submitted his reply on 26.5.89, in which, he has stated that the report was sent through the Gangman

and as per the decisions taken in the meeting of DSE Moradabad that only on the report taken by the Gangman to the concerned police station and that be taken as FIR.

2. The applicant was served with SF-11, Standard Form of Memorandum of Charge for imposing minor penalties under Rule.11 of RS(D&A) Rules, 1968 along with a statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken, which reads as under:

1. 2216 Cotters were issued against W.I. Scraps and 34812 Keys, 9100 Cotters and 410 Fish Bolts against theft for which no proper FIR has been lodged. The issues are not justified.

2. Proper FIRs were not lodged with Police for the theft of fittings.

3. He was asked vide this office letter No.Misc./Conf./BJO dated 4.5.89 to submit detailed explanation regarding abnormal issues of P.Way fittings and not lodging proper FIR latest by 8.5.89. He was reminded vide this office letter No.Misc/Conf/BJO dated 22.5.89, but has failed to reply. This shows gross negligence on the part of Shri Sukhbir Saran Aggarwal. Soon thereafter, another memorandum was issued in March 1990 giving out the prices of the articles for which the applicant has not accounted either by way of issue through Gangman or by lodging FIR and that amount comes to Rs.81,537.40. The applicant submitted his reply to SF.11 on 22nd March 1989 that he should be given full particulars regarding the charges levelled against him. He has also enclosed to his reply, a statement showing various P.Way fittings issued (Annexure A-7). The applicant

was punished by Disciplinary Authority under Disciplinary and Appeal Rules 1968 vide impugned order dated 2.7.90, with a penalty of paying a sum of Rs.81,537.40. Against this, the applicant appealed on 15.8.90 and when the appeal was not disposed of, the applicant filed this application on 2.4.91. In this application, the applicant has prayed that the punishment passed by the Departmental Authority vide the impugned order be set aside and quashed and the respondents be restrained from realising the amount of Rs.81,537.40 imposed upon him.

4. The ground taken by the applicant to assail the impugned order that the charges are vague and that no proper opportunity to defend him has been afforded and that order passed by the Departmental Authority are unjust and illegal.

5. In the rejoinder, the applicant has filed a copy of the appellate order which shows that the appeal against the impugned order was dismissed by the order dated 16.8.91 by the appellate authority viz.ADRM.

6. The applicant is said to have since retired from the service.

7. The respondents contested the application and in the reply averred that several items of the P.Way fittings under his charge were missing. The appellate authority and disciplinary authority fully considered the matter on the basis of the record. Certain technical omissions in the application have also been pointed out.

8. The learned counsel for the applicant pointed out that earlier to the memo of charge sheet, the applicant has clearly written on 26.5.89(enclosure A-3), which reads as translated in English, "The articles were supplied to the gangman on their

report. For lodging of the FIR, the FIR is accepted by the concerned police officer only putting a seal on the report given by the gangman and the same statement has been treated as FIR. In view of the safety of the section, the articles have been issued and in future it will be kept in mind."

9. It is a fact that no reply to the memo of charges was given except stating the fact that the imputation of charges is vague. But the Disciplinary Authority should have considered the earlier explanation given by the applicant on 26.5.89. Failing to do so, amounts to throttling the defence in the case where the liability is being imposed in thousands of rupees. The definite proof of the issue of the articles whether the evidence area is theft prone had to be taken by the Disciplinary Authority. The Appellate Authority, Senior Divisional Engineer, asked certain information from Najibabad A.EN. In his report A.EN has shown sympathetic consideration for the applicant. It was mentioned in the report that the area is theft prone. The applicant in the memo of Appeal also gave good reasons, which have not been considered by the Appellate Authority at all, which shows non-application of mind.

10. In the counter affidavit besides taking various pleas, the respondents have admitted in the paras 2,3 and 4 the lodging of FIR but stated that the details of FIR lodged have not been submitted. They have only been submitted along with the appeal. The charge levelled against the applicant has been that he had not lodged the FIR. If before the Appellate Authority certain evidence has been furnished duly admitted by the respondents in the counter affidavit than in the order of the Appellate Authority has to consider the same.

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11. The Appellate Authority in the last para mentioned in the order dated 16.8.91 as follows:

In the absence of the FIRs followed by final reports of the police authorities.....PWI concerned is held fully responsible for the loss of any material....." In the counter the lodging of the FIR is admitted. As regards the Final Report, it is the duty of Police Investigating Officer acting on the FIR.

12. The learned counsel for the respondents argued that both Disciplinary Authority as well as the Appellate Authority has given speaking order. However, it is not so. There is no application of mind of the Appellate Authority while disposing of the Appeal. Various pleas taken in the memo of appeal have not been referred in the appellate order. It is an order only in one para of few sentences holding the applicant guilty. Further the learned counsel for the applicant has placed reliance on the case of Ram Chander reported in 1986 ATR Vol.1 Pg.452, wherein, Hon'ble Supreme Court has also felt that the appellate authority should fully apply its mind and may also give an opportunity of personal hearing. The hearing was also necessary in view of the Government of India order that the applicant has in his earlier application on 22.3.90 stated that the documents be given to him and clarification be made about the nature of charges served upon him by SF-11.

13. Since the merit is not ~~been~~ ^{being} considered, it would have been a fit case to be sent to the Disciplinary Authority. But it has been pointed out by the learned counsel for the applicant has since retired and the fact was not denied by the learned counsel for the respondents.

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14. The report of the A.EN Najibabad (Annex.A-10) also favours the applicant. The counter filed by respondents also shows that the FIR were lodged by the Gangman at the instance of the applicant. As such, it shall not be just to order ^{VO} enquiry from the stage of Disciplinary Authority. Rather it shall be against the principles of natural justice.

15. In view of the above discussion, the order of Disciplinary Authority as well as the Appellate Authority are set aside and quashed and the application is allowed, leaving the parties to bear their own cost. The deductions made from the applicant from the retirement benefits etc. in compliance with the impugned order on 2.7.90, shall be refunded to the applicant within a period of three months from the date of communication of this order.

J. Sharma
(J.P. SHARMA) 5/3/92
MEMBER(J)