

*Thrust* (2) (10)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1051/1991

New Delhi, this 19th day of July, 1995

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)  
Hon'ble Shri R.K. Ahooja, Member(A)

Shri R.P. Singh  
r/o 456, Rajput Mohalla  
Gonda, Delhi-110 053 .. Applicant

By Shri B.B. Raval, Advocate

versus

Union of India, through

1. The General Manager  
Northern Railway, Baroda House  
New Delhi
2. The Controller of Stores  
Northern Railway  
Baroda House, New Delhi .. Respondents

By Shri P.S. Mehandru, Advocate

ORDER(oral)

Shri A.V. Haridasan

The orders which are challenged in this application filed under Section 19 of the Administrative Tribunals Act, 1985 are the order dated 21.3.90 of the Deputy Controller of Stores removing the applicant from service with immediate effect and the appellate order dated 21.3.90 of the Chief Marketing Manager(M), Baroda House conveyed by the Dy. Controller of Stores. The applicant was served with a memorandum of charge dated 1-9/10/86 alleging that he was guilty of misappropriation of railway materials. The applicant having denied the charge, an inquiry was held and the enquiry officer submitted his report holding the applicant guilty of the charge. Pursuant to that, the impugned order removing the applicant from service was issued by the Dy. Controller of Stores. Aggrieved by

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the above orders on the ground that the enquiry was not held in conformity with the service rules and that the findings of the disciplinary authority was perverse, the applicant filed an appeal, to which he was given the extracts of the order of the appellate authority rejecting his appeal. Therefore, the applicant has approached this Tribunal praying to quash the impugned orders on the ground that the same are perverse, vitiated, for non-application of mind and non-observance of rules and principles of natural justice.

2. The respondents have contested the application and filed detailed reply. We have perused the pleadings and other material on record and have heard at length the arguments of Shri Raval, learned counsel for the applicant and Shri Mehandru, learned counsel for the respondents.

3. Shri Raval drew our attention to the order passed by the disciplinary authority on 21.3.90 and argued that this order is a cryptic one without reference to either the enquiry report or any evidence on record but merely based on the memorandum of charge and the explanation submitted by the applicant and therefore the orders being perverse, vitiated for non-application of mind, is liable to be set aside. Referring to the extracts of the appellate order communicated to the applicant, Shri Raval argued that in accordance with the rules, the appellate authority should convey his decision under his own signature and giving reasons for the decision and stated that a mere reading of the order would show that

the appellate authority has neither considered the grounds raised by the applicant in the memorandum of appeal nor has he communicated the said order containing the reasons for his findings. Before we consider this argument, it is worthwhile to extract the order of the disciplinary authority which reads as follows:

"I have carefully considered your representation dated nil in reply to the memorandum of charge sheet SF-6 No.728-E/19/1866 dated 1.10.86. I do not find your representation to be satisfactory due to the following reasons:-

"All the contents are baseless, irrelevant and the same do not prove your innocence visavis charges levelled against you."

I, therefore, hold you guilty of the charges viz:- "deliberate misappropriation of railway material (MS Angles) at Signal Depot GZB on 5.12.85 and 6.12.85 with malafide intention" levelled against you and have decided to impose upon you the penalty of removal from service with effect from the date of issue of this letter.

2. Under Rule 18 of the Railway Servant (Discipline and Appeal) Rules, 1968 an appeal against these orders lies to CMM(M), N.Railway, New Delhi provided:-

(i) the appeal is submitted within 45 days from the date you receive the orders and (ii) the appeal does not contain improper or disrespectful language.

3. Please acknowledge receipt of this letter.

4. Copy of the report of the inquiry authority."

4. It is evident from the wordings extracted above that the disciplinary authority while imposing the penalty of removal from service on the applicant has not considered the report of the inquiry officer or the evidence recorded at the enquiry and based his findings

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solely on the allegations on the charge sheet and the representations made by the applicant pursuant to the charge sheet. The learned counsel for the respondents submitted that in the file kept by the officials of the respondents in regard to the disciplinary proceedings there is an order by the disciplinary authority to the effect that on going through the Inquiry Officer's report he was satisfied that the guilt is established and an order of removal for service was to be issued. But the order passed by the disciplinary authority which is impugned in this case does not show that the disciplinary authority has considered the report of the Inquiry Officer, and the evidence and has come to conclusion that the applicant was guilty and the order of removal was passed on the basis of that finding. The applicant can challenge the order which is communicated to him. The impugned order as stated by us supra does not disclose that the conclusion that the applicant was guilty <sup>was</sup> on an assessment of the evidence and after going through the Inquiry Officer's report. Therefore, we are of the view that the impugned order of the disciplinary authority is vitiated for non-application of mind and is therefore, liable to be struck down.

5. As argued by the learned counsel for the applicant, the appellate authority should have considered the grounds raised by the applicant in his appeal of memorandum and passed a speaking order on his appeal. The original order of the appellate authority under his own signature has not been furnished to the applicant.

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The Deputy Controller of Stores has communicated the extracts of the order of the appellate authority containing his conclusion which reads as follows:

"Firstly, he has not given any fresh arguments secondly he has also not indicated the reasons why the set up as a whole should have conspired to implicate him in the case. He has tried to do the hair-splitting for the purpose of gaining the benefit of doubt. The fact remains that the enquiry officer has held him guilty of the charge after considering the evidence. Witnesses have indicated that the part of the consignment was unloaded from the truck on its way from booking office to Signalling Stores Depot, Ghaziabad and this was done under his instructions. Based on the above the disciplinary authority has imposed punishment of removal from service. I, as an appellate ~~authority~~ do not consider it a fit case for reducing the punishment already imposed by the disciplinary authority."

*Authority,*

*or*

6. This extract also does not show application of mind to the ground raised by the applicant in his memorandum of appeal. The observations of the appellate authority that the disciplinary authority has based his finding on the evidence which is not correct as the impugned order of the disciplinary authority does not even contain a passing reference to the evidence or even to the enquiry report. Therefore, the order of the appellate authority also suffered from lack of application of mind.

7. In the conspectus of facts and circumstances, we set aside the impugned orders dated 21.3.90 and 21.2.91. However, we are of the considered view that the disciplinary authority should be given an opportunity to issue a speaking order on the basis of the enquiry report in accordance with the law. Therefore, we grant liberty to the respondents to recommence the disciplinary proceedings from the stage of receipt of enquiry officer's report and to pass an appropriate

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order in accordance with the law. If the respondents decide to do so, the final order on the disciplinary proceedings against the applicant should be passed within a period of 3 months from the date of communication of a copy of this order. Since the impugned order of removal of service of the applicant is set-aside, for the purpose of recommencing and completing the disciplinary proceedings, the applicant shall be deemed to have been placed under suspension from the date of his removal from service as provided under Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968. There shall be no order as to costs.

R.K. Ahoja  
(R.K. Ahoja)  
Member(A)  
19.7.95

A.V. Haridasan  
(A.V. Haridasan)  
Vice-Chairman(J)  
19.7.95

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