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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2943/2004

M.A. NO.620/2006

This the 21st day of July, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

P. L. Arora

... Applicant

(By Shri H. P. Chakravorty, Advocate)


Versus

Union of India & Others

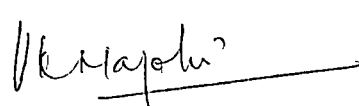
... Respondents

(By Shri R. L. Dhawan, Advocate)

- 1) Whether to be reported?
 - 2) Whether to be circulated to other Benches?
- yes
yes


(Meera Chhibber)
Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2943/2004
M.A. NO.620/2006

This the 2/8 day of July, 2006.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

P. L. Arora S/O R. S. Gambhir,
R/O 303 Kanoongo Apartment,
I.P. Extension, Near Parparganj Depot,
Delhi-91.

... Applicant

(By Shri H. P. Chakravorty, Advocate)

versus

1. Union of India through
Chairman, Railway Board,
Principal secretary to Govt. of India,
Ministry of Railways, Rail Bhawan,
New Delhi-01.
2. General Manager,
North Central Railway,
Allahabad.
3. Divisional Railway Manager,
North Central Railway,
Allahabad.

... Respondents

(By Shri R. L. Dhawan, Advocate)

ORDER

Hon'ble Shri V. K. Majotra, Vice-Chairman (A):

Through this OA applicant has challenged the following orders:

- (1) Annexure A-1 dated 13.11.2003 whereby in disciplinary proceedings against applicant entire DCRG has been "forfeited to make up for a part of the loss" caused by applicant to the Railways in addition to penalty of 15% cut in pension for a period of two years.
 - (2) Annexure A-2 dated 15.7.2004 whereby applicant's dues have been settled in regard to computation of his pension and leave encashment.
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2. Applicant was working as PWI/ALJN during the period 1989-1996. He was issued a chargesheet (Standard Form 5-SF-5) dated 27.9.1996 (Annexure A-6) alleging that he had not accounted for material released in the ledgers during the years, 1991-1994. Out of the six charges alleged against applicant, the following charges are stated to have been proved against him in the departmental enquiry:

"Article-1 That Shri P.L.Arora CPWI/ALJN has not accounted for the material released by dismantling Glaxo siding, in the ledgers during year 1992-93."

"Article-3 That Shri P.L.Arora, CPWI/ALJN has not accounted for 309.20 mts., rails of 90 R + allied material in ledger released from 'A' Power House 'A' siding Kasimpur/Harduaganj during year 1991-94."

It had been alleged in the chargesheet that by these acts of omission and commission, applicant had failed to maintain absolute integrity, devotion towards duty and acted in a manner unbecoming of a Railway servant thereby contravening Rule 3.1(i), (ii) & (iii) of the Railway Service Conduct Rules, 1966.

3. The learned counsel of applicant has made the following contentions in support of applicant's claim and against the impugned orders and penalty imposed upon applicant:

- (1) While in the impugned orders Annexure A-1 dated 13.11.2003 it has been held that applicant was found responsible for supervisory lapse on his part whereby he caused a heavy loss to the Railways which constituted grave misconduct on applicant's part, and as such, the aforesaid penalty has been imposed upon him, however, the chargesheet, the statement of imputations, the enquiry report and the show cause notice of the disciplinary authority upon consideration of the enquiry report, do not state anything about the allegation of loss caused to the Railway revenue

by the action of applicant; thus no grave misconduct has been committed by applicant.

- (2) Applicant had vide Annexure A-5 dated 30.9.1996 handing over complete charge of material and record in question to Mr. D.R.Gupta, PWI in the presence of stock verifier who was called upon to verify the material record during the period 17.9.1996 to 30.9.1996.
- (3) There has been violation of principles of natural justice inasmuch as advice of the UPSC dated 31.10.2003 was supplied to applicant along with the impugned penalty orders dated 13.11.2003. It ought to have been supplied to applicant before passing of final impugned orders to enable him to meet the points made in the UPSC's advice. In this connection, the learned counsel relied upon judgment of the Hon'ble Supreme Court dated 30.1.2004 in Civil Appeal No.642 of 2004 (arising SLP (C) 12188/2003) – *S. N. Narula v Union of India & Others*, contending that it was held therein that advisory opinion of the UPSC which was accepted by the disciplinary authority while imposing the punishment ought to have been communicated to him before final orders were passed by the disciplinary authority.
- (4) The impugned orders Annexure-1 are not reasoned and speaking orders as points raised in applicant's representation dated 31.1.2000 (Annexure A-11) against the proposed penalty have not been accorded detailed consideration before passing the impugned orders.

4. It is noted that no arguments were advanced on behalf of applicant in regard to challenge to Annexure-2.

5. The contentions raised on behalf of applicant have been stoutly refuted on behalf of respondents.

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6. The learned counsel of respondents contended that even though allegation of loss caused to the Railways on account of laxity in discharge of applicant's supervisory duties was not stated in the chargesheet and the enquiry report by the enquiry officer, non-statement of this aspect would not render the impugned orders Annexure A-1 as invalid. He stated that loss caused to the Railways on account of non-accounting of material alleged against applicant was computed at a later stage and the same had been stated in the UPSC's advice whereafter the impugned orders were passed by the disciplinary authority.

7. The learned counsel then stated that Annexure A-5 dated 30.9.1996 which is statement of handing over and taking over charge of CPWI/ALJN between applicant and Shri D. R. Gupta, does not specifically state about accounting for the materials stated in articles of charges 1 and 3. Applicant as a supervisory officer was aware of the material received by dismantling Glaxo siding existing inside Glaxo boundary in 1992 as also the materials related to A Power House, Kasimpur/Harduaganj, but the same had not been accounted for in the ledgers.

8. The learned counsel further contended that in *S. N. Narula* (supra) it has not been held that it is necessary to provide copy of UPSC's advice to the delinquent. In this behalf, the learned counsel relied on order dated 1.2.2006 in OA No.852/2004 – *Baleshwar Kumar Tyagi v Union of India & Others*, as also the Full Bench judgment of this Tribunal in the case of *Chiranjilal v Union of India* reported in Administrative Tribunal's Full Bench Judgments (1997-2001) p.53, contending that it is not obligatory to provide a copy of UPSC's advice before passing the final orders in disciplinary proceedings.

9. The learned counsel lastly submitted that the impugned orders Annexure A-1 dated 13.1.2003 are detailed and reasoned orders.

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10. We have considered the respective contentions of the parties as also the material available on record.

11. Close perusal of the chargesheet, statement of imputations and the enquiry report reveals that no allegation regarding loss caused to the Railway revenue by action of applicant has been stated in these documents. Disciplinary authority issued notice on proposed penalty to applicant vide Annexure A-9, dated 15.12.1998 stating that charges at Articles 1 and 3 have been proved and the total value of the Railway loss is Rs.4,60,084/-. It was for the first time and at this stage that loss was mentioned in the inquiry. It was of no use to bring in a new dimension to the allegations at that late stage when a charge on the aspect of "heavy loss to the Railways" has not been alleged against applicant in the chargesheet/statement of imputations and the enquiry report. The final orders of the disciplinary authority could not have concluded that lapse on the part of applicant in respect of supervisory duties had caused "heavy loss to the Railways". In the absence of any allegation/charge regarding causing heavy loss to the Railways, it could not have been taken into account for aggravating the charge of supervisory lapse compounding it to constitute grave misconduct, which led to imposition of the penalty in question. Therefore, holding that applicant had caused heavy loss to the Railways, when it was not a part of the charge at all, cannot be sustained in law.

12. The learned counsel of applicant has relied on *S. N. Narula* (supra) contending that respondents have not discharged the obligation of supplying advisory opinion of the UPSC to applicant before passing final orders in the disciplinary proceedings against applicant. We have gone through this judgment carefully. It is found that the Court has merely noted, "the advisory opinion of the Union Public Service Commission was not communicated to the appellant before he was heard by the disciplinary authority. The same was communicated to the appellant along with final order passed in the matter by the disciplinary

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authority.” The appellant in that case had filed OA No.1154/2002 before the Tribunal and the Tribunal held that there was violation of the principles of natural justice and the following direction was issued:

“We are of the considered opinion that this order is a non-speaking one and as such we are of the view that the same cannot be sustained and is liable to be quashed. Accordingly, we quash the impugned order and remand the case back to the disciplinary authority to pass a detailed reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order in accordance with instructions and law on the subject.”

This order was challenged by the Union of India by way of a Writ Petition before the High Court of Delhi which interfered with that order partly allowing the Writ Petition and directing that the matter be again considered by the Tribunal. Thus, applicant had come up in appeal before the Hon'ble Supreme Court. The orders of the Tribunal were upheld and the judgment of the Division Bench of the High Court was set aside. It is nowhere held in this judgment that non-communication of advice of the UPSC before passing final orders would vitiate the disciplinary proceedings against the delinquent. Therefore, the judgment in the case of *S. N. Narula* (supra) does not advance the case of applicant. On the contrary, in the case of *Chiranjilal* (supra) the Full Bench held that consultation with UPSC is a part of second stage and by that time the disciplinary authority makes up its mind what penalty is to be imposed, therefore, it is not necessary to communicate UPSC's advice as it would negate the effect of the 42nd Amendment in the Constitution. This view was followed in the case of *Baleshwar Kumar Tyagi* (supra). Therefore, this contention has to be rejected.

13. Applicant has taken exception to the impugned orders Annexure A-1 dated 13.11.2003 alleging that these are not reasoned and speaking orders, particularly when contentions raised by him in his representation dated 31.1.2000 against respondents' notice dated 19.1.2000 have not been taken into

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consideration at all. Applicant's representation is at Annexure A-11. Among others applicant has raised following contentions:

"7. That also there is no findings by the I.O. or evidence regarding any loss by me nor the I.O. while providing charge (i) and (iii) in his findings/inquiry report has given any indication for any loss caused by me nor I was given any reasonable opportunity to represent against the alleged loss. This is a flagrant violation of NATURAL JUSTICE on the part of DSE-II/Allahabad."

"13. That the proceedings were commenced by DSE-IV, N.R./ALD but continued illegally by DSE-II, N.R./ALD. This has violated sub-rule 2 (a) of Rule 9 of Railway Service (Pension) Rules, 1993."

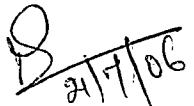
14. In conclusion, we find that while charges alleged against applicant did not state any financial loss having been caused to the Railways on account of lapse of supervisory responsibility of applicant, it could not have been made the basis for constituting a grave misconduct on his part and for imposing punishment. Obviously, applicant has been punished for lapse of supervisory duties as also for having caused heavy loss to the Railways. Penalty imposed upon applicant has certainly taken into the account the aspect of the so-called "heavy loss to the Railways". This allegation is neither stated in the articles of charge nor in the statement of imputations. It has not been dwelled upon by the enquiry officer in his report nor this point has been dealt with in orders Annexure A-1. It is, therefore, not a reasoned and speaking order inasmuch as pointed out above points taken by applicant in his representation against respondents' notice dated 19.1.2000 have not been dealt with at all.

15. Having regard to the facts and circumstances of the case as also the above discussion, Annexure A-1 dated 13.11.2003 is quashed and set aside with a direction to respondents to pass fresh detailed and speaking orders by taking into consideration applicant's representation dated 31.1.2000 made against respondents' notice dated 19.1.2000 and also keeping in view the observations made above. It is further directed that respondents shall implement the above


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directions expeditiously and preferably within a period of four months from the date of communication of these orders.

16. OA is disposed of as above. MA No.620/2006 also stands disposed of.


(Meera Chhibber)
Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A)