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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2073/1992

New Delhi, this 16th day of June, 1995

Hon'ble Shri P.T.Thiruvengadam, Member(A)
Hon'ble Dr. A. Vedavalli, Member(J)

Shri Babu Singh
s/o Shri Ram Swaroop
C-1/188, Gali No.22
Khajoori Khas, Delhi-110 094 .. Applicant

By Shri B.B. Raval, Advocate

versus

Union of India, through

1. Secretary
Ministry of Defence
South Block, New Delhi

2. The Director General of Ordnance Services
OS-8C (ii) Army Hqrs.
DHQ P.O., New Delhi-110 011

3. The Officer-in-charge
Army Ordnance Corps (Records)
Trimulgherry Post
Secunderabad-500 015 .. Respondents

Mrs. Meera Chhibber, Advocate

ORDER

Hon'ble Shri P.T.Thiruvengadam

The applicant was serving in Group I of COD, Agra as Stores Superintendent and was incharge of Sheds No.21, 318, 319 and 362. He was issued a charge sheet on 24.3.84 (vide Annexure A-2). The Articles of Charge and Statement of Imputation of misconduct or misbehaviour in support of the Articles of Charge are as under:

ARTICLE OF CHARGE-I: GROSS MISCONDUCT

That the said Stores Superintendent Shri Babu Singh while functioning as incharge of Shed No.21, NH-318, 319 and 362 of Group-I, COD Agra, during Feb 84 committed an act of criminal conspiracy in respect of theft of Government Stores in COD Agra on 09 Feb 84.

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ARTICLE OF CHARGE-II: GROSS MISCONDUCT

That the said Shri Babu Singh while functioning as Stores Superintendent incharge of Shed No.21, NH-318, 319 and 362 in Group-I COD Agra during the month of Feb 84 committed an act of criminal breach of trust in respect of Government property entrusted to him in his capacity of Stores Superintendent incharge on 09 Feb 84.

ARTICLE OF CHARGE-III: GROSS MISCONDUCT

That the said Shri Babu Singh while functioning as Stores Superintendent incharge of Shed No.21 NH 318, 319 and 362 of Group-I of COD Agra during Feb 84 committed an act of theft on 09 Feb 84.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI BABU SINGH, STORES SUPERINTENDENT

ARTICLE OF CHARGE-I

In that the said Shri Babu Singh had made a link with and was an active member of racket consisting of Civil Contractors, Military and Civilian Officer, Civilian employees of COD agra namely Lt Col Balwant Singh (Adm Officer) Major JS Brar (ISO), Major HC Pahwa (the Group Officer Gp-I) Shri Sanwal Singh CASO, Sub RN Pradhan (Security JCO), Hav Skt SR Kulshetra, SK Shri Narendra Singh Bhaduria (P.NMo.6962186) of DGD, Sepoy Puran Chand 9BSC) and contractors Shri Virendera Kumar Jain and Shri Radhey Lal of Agra and made a criminal conspiracy to steal the Government Stores from COD Agra and as a consequence thereof a theft of Government property stores took place on 09 Feb 84 from Shed No.21, NH-310 of Group-I of COD Agra.

Said Shri Babu Singh by his above act exhibited conduct unbecoming of a Government Servant in violation of Rule-3 (Conduct) Rules-1964.

ARTICLE OF CHARGE-II

That during the aforesaid period and while functioning in the aforementioned office, the said Shri Babu Singh had his legitimate and official duty as Stores Superintendent incharge to protect, secure and safeguard government property entrusted upon him from any kind of theft. An organised theft of Government stores of which he was the custodian, took place on 09 Feb 84 in Shed No.21 and NH No.319 of GP-I COD Agra with his connivance and malafide intention.

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In that he illegally and unauthorisedly permitted and allowed loading of government stores in two civil trucks No.RST-1286 and ADT-2431 hired by contractors Shri Radhey Lal and Shri Virendera Kumar Jain of Agra in his physical presence throughout the loading period and arranged to pass out the loaded civil trucks out of the main gate of COD Agra without check, thus he committed an act of criminal breach of trust.

Shri Babu Singh by his above act exhibited conduct unbecoming of a Government servant in violation of Rule 3 of CCS(Conduct) Rules 1964.

ARTICLE OF CHARGE-III

That at about 1040 hrs on 09 Feb 84 two civil trucks having No.RSJ-1286 and ADT-2421, duly hired by the contractors Shri Radhey Lal and Shri Virendera Kumar Jain of Agra alongwith about 10 civilian mazdoors arrived in general area of Group-I of COD Agra. One of them was parked in front of Shed No.21 and the other behind NH No.319. CASO Shri Sanwar Singh SK Shri Narendra Singh Bhaduria (Rep of DGD COD Agra) Hav SKT SR Kulshetra and Mazdoors of the contractors were there with the trucks. The loading was done only by the civil mazdoors of the contractors. The loading commenced after a few minutes on arrival of the trucks. The loading was done from Shed No.21 and from NH No.319 at the instance, concurrence and responsibilities of Stores Superintendent Shri Babu Singh and SK Shri Narendra Singh Bhaduria (Rep of DGD). Government stores loaded from Shed No.21 was Part No.,Z1/Misc-3E-4505-I Cord in 27 packages (Qty-673) and stores loaded from NH No.319 were retrieved/dekitted stores from OBE equipments belonging to Group-I and DGD such as Transformers large and small receivers, Copper Pipe and other accessories/fitment stores retrieved from shelters.

A further check carried out by the Cap RI Raghunathan revealed that Qty-531 of a different item to Part No.Z1-ZA-28363 Cable Assy was found filed in 2 boxes which were meant for item Part No.Z1-Misc-3E-4505-I Cord 12' 3' marking on these two boxes for quantity 25 was amended to read quantity 250 by a fresh stencil marking. Packing Note found in one of the boxes showed the original items (Z1-Misc-3E-4505-I Cord 12' 3' as quantity 25 only)

That the accused Shri Babu Singh instructed all the staff working under him not to disclose the facts of loading the government stores in civil trucks on 09 Feb 84 to any one.

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Shri Babu Singh by his above act exhibited (conduct) unbecoming of a government servant in violation of Rule 3 of CCS(Conduct) Rules 1964."

2. An enquiry was conducted and ultimately the applicant was removed from service by order dated 7.10.91 of the disciplinary authority (vide Annexure A). The applicant filed an appeal against the removal on 30.11.91 (Vide Annexure B). The appellate authority vide its order dated 29.8.92 confirmed the order of the disciplinary authority (Vide Annexure A-10). This OA has been filed challenging the above orders.

3. The learned counsel for the applicant advanced the following grounds in support of his case.

(a) Order of the disciplinary authority is a non-speaking order and does not show application of mind;

(b) Loading of the material had taken place because of the oral orders given by Major Pahwa and hence the applicant can not be held responsible for the alleged misconduct;

(c) This is a case of no evidence and findings of the enquiry officer are accordingly baseless;

(d) The Enquiry Officer was biased and the request for change in Enquiry Officer had not been acceded to;

(e) The documents asked for by the applicant were denied to him;

(f) One of the prosecution witnesses was declared hostile, which has prejudiced the case of the applicant;

(g) Copy of the preliminary report was not supplied to the applicant;

(h) The applicant being a civilian, defence personnel bore a grudge against him and the charges were foisted on him; and

(i) No FIR was lodged with regard to the alleged theft and this shows the weakness on the part of the respondents.

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(j) The appellate order is a non-speaking one and the appellate authority had no jurisdiction to pass this order subsequent to the filing of this OA.

4. We take up these grounds one by one.

5. Ground (a) relates to disciplinary order not being a speaking one. We note that the disciplinary authority had recorded that he agrees with the findings of the enquiry officer and held the applicant guilty of the charges. After recording such agreement, the disciplinary authority had also mentioned that the applicant had fabricated a false story to conceal the facts. There are further observations by the disciplinary authority. It is an accepted position that when the disciplinary authority agrees with the findings of the enquiry officer, detailed discussion may not be necessary. Hence, we do not have to engage ourselves with further discussion on this point.

6.1 Regarding ground (b), the main defence of the applicant is that he had to carry out the instructions of Major Pahwa who gave oral orders to load all the material in two lorries. The statements of some of the prosecution witnesses that the applicant had initially protested against the loading on verbal instructions from Major Pahwa who assured necessary documents for regularisation would be sent to him separately were relied upon. It was also argued that the defence witness Shri R.K.Chaturvedi who was functioning as UDC in the office of Major Pahwa had deposed that he received a letter dated 10.3.84 from the applicant (Copy of this letter is at Annexure A/1-page 56 of the paper book). In this letter of 10.2.84, addressed to Group

Officer, Group I (Major Pahwa), the applicant had stated that necessary vouchers had not been received and expeditious action in making available the vouchers was requested. Shri Chaturvedi during the enquiry mentioned that the application given by the applicant was acknowledged in the personal copy of the applicant and later the original was put up in the office of Major Pahwa.

6.2 It is the case of the respondents that the applicant had deliberately and intentionally avoided to bring the matter to the notice of senior officers. The applicant can not disown his responsibility by writing to Major Pahwa, who was himself involved in the entire transaction. The enquiry officer has remarked that the statement of Shri Chaturvedi can not be sustained. No record of the receipt of applicant's letter dated 10.2.94 is available in the office. The enquiry officer had even stated that the applicant might have signed after a lapse of one year and back-dated in order to prove that the accused was innocent.

6.3 There is considerable force in the argument of the respondents. Even granting that the applicant was acting on the oral instructions of Major Pahwa with no other motive, he should have lodged his complaint with other senior officers. The material which was loaded was considerable in quantity and in money value and thus the action of the applicant, who was the Stores Superintendent-incharge of the Unit, is suspect.

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6.4 As regards the plea that the applicant was merely carrying out the instructions of his superior, we note that the applicant had put in considerable service, having joined as Store Keeper in 1961. It is not disputed that he was incharge of the Stores and he has failed in keeping safe custody of the material in his charge.

7. In ground (c) it was stated that there is "no evidence". In brief, the articles of charge relate to criminal conspiracy, criminal breach of trust in respect of government property entrusted and committing the act of theft. During the enquiry, 10 PWs were examined and the applicant had produced one DW. It has been fully established that considerable material entrusted to the care of the applicant had been loaded in lorries and allowed to move out. The enquiry officer has held that the applicant was in conspiracy with others. Without going into this aspect, we are convinced that there was breach of trust in respect of the property entrusted to the applicant. At no stage, the applicant had advanced the plea that there was no loss of material. The plea that the applicant was only acting at the behest of Major Pahwa is difficult to accept since there was no convincing follow up action by way of lodging a complaint with the superior officers. We are unable to accept the plea of "no evidence" in this case.

8.1 Regarding ground (d) on the aspect of request for a change in enquiry officer, it is the case of the respondents that no such request for a change was made (reply to para 5(h) and 5(i)).

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8.2 The learned counsel for the applicant referred to pages 37 and 43 of the enquiry proceedings involving PW-5 and PW-6, respectively. The enquiry officer had told the witnesses that if the latter were making wrong statements they were liable for action. It was argued that this illustrates the partisan attitude of the enquiry officer. We are unable to agree with this submission.

9. In Ground (e), it was argued that the applicant had asked for production of a number of documents (Annexure A/3, page 62 of the paper book). These documents relate to handing over/taking over certificates of the stores, bincards, copies of documents listed in Annexure A/3 to the charge-sheet, reports of preliminary enquiry, FIR lodged with local police and the register showing in/out of ISO for the month of February, 1984 and the visitor pass. The respondents have produced a copy of the letter dated 8.5.84 wherein the applicant had acknowledged receipt of copies of the documents mentioned in Annexure A/3. As regards FIR, it was mentioned by the learned counsel for the respondents that no FIR had been lodged and hence providing a copy of the FIR did not arise. The remaining documents were not considered relevant for the purpose of the enquiry and were rightly denied to the applicant as these documents were not relied upon in the findings. In the circumstances, we can not fault the action taken by the respondents.

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10.1 Ground (f) as to prejudice caused by one of the PWs namely Jagdish Chander (PW-6) being declared as hostile witness, the enquiry officer in his assessment of the evidence has mentioned that this witness had given a statement earlier confirming that he was used for restacking the material on 11.2.84. This restacking had taken place where 27 boxes were loaded in the trucks so as to hide the evidence of theft. Later on during the enquiry this witness withheld his portion of his earlier statement and was accordingly declared hostile.

10.2 We note that the aspect of restacking was not the main issue in the Articles of Charge and the enquiry held does not get vitiated by the declaration of PW 6 as a hostile witness.

11. In ground (g), it is alleged that some report of Captain Raghunathan was not made available to the delinquent and therefore he was not in a position to cross-examine. It has however not been explained as to what aspect of this report was relied upon in the enquiry and whether the findings have taken this into account.

12. The allegation in ground (h) that the applicant being a civilian employee has been proceeded against by defence personnel as an act of vendetta is not proved. Normally, disciplinary proceedings are presumed to be conducted with necessary safe-guards, following principles of natural justice and in accordance with law. Nothing contrary to the above has been established in the present case by the applicant.

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13. Regarding ground (i) as to the FIR not having been lodged, it can not be a case for exemption and/or exoneration from departmental proceeding.

14.1 In ground (j), the appellate order is alleged to be non-speaking. A copy of the order is available at Annexure A-10 (page 237) of the paper book. The appellate authority had recorded that correct procedure had been followed and that the findings of the disciplinary authority are warranted by the evidence on record. The main plea in the appeal that the applicant had acted as per the orders of the Group Officer has been dealt with. We note that the other grounds raised in the appeal had already been raised before the enquiry officer/disciplinary officer, who had earlier dealt with these grounds. Hence, we do not find it necessary to interfere with the appellate order on the alleged ground of this order being non-speaking.

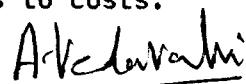
14.2 There is no force in the argument that the appellate authority should not have passed its order on 29.8.82 when the applicant filed the OA on 10.8.92 and notice had been issued to the respondents on 12.8.92. Section 19(4) of the Administrative Tribunals Act provides that the relevant procedure shall abate when the OA has been admitted by the Tribunal. In this case, the OA was admitted only on 27.7.93, whereas the appellate order was passed on 29.8.82.

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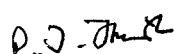
15. A number of citations were relied upon by both the sides. The learned counsel for the applicant relied on citations to support his case that in case of no evidence or in case of bias of the enquiry officer, or where the documents relied upon were not furnished to the charged official or when there is non-application of mind etc., the disciplinary proceedings have to be quashed. The respondents referred to the citations laying down that even some evidence is enough to justify punishment, there is no need for detailed orders in case the disciplinary and appellate authority agree with the enquiry report/disciplinary order, the enquiry officer is entitled to put questions to elicit information to come to a conclusion, etc.

16. There is no need to go into these citations in view of our discussion on each ground separately, keeping in mind the relevant legal position.

17. To sum up, we note that the applicant had failed to discharge his duty as a custodian of stores under his charge. The plea taken that he merely carried out the oral instructions of his superior can not absolve him of his primary responsibility. Such a plea is untenable. Added to this, no action had been taken by him to bring the matter to the notice of the higher authority at once. These are very serious lapses. Hence, we see no reason for interfering with the punishment awarded. Accordingly, the OA is dismissed. There shall be no order as to costs.



(Dr. A. Vedvalli)
Member(J)



(P.T. Thiruvengadam)
Member(A)

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