

Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 3236/92

Decided on 6.1.99.

14

S.L.Khat ri.

.... Applicant

(By Advocate: Shri B.S.Maineo.)

Versus

Union of India & Ors.

.... Respondents

(By Advocate: Shri R.L.Dhawan)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR.A.VEDAVALLI, MEMBER(J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not ? No.

S.R. Adige

(S.R. Adige)
Vice Chairman (A)

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.3236/92 12

New Delhi: this the 6th day of January, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S.L. Khatri,
S/o Shri K.L. Khatri,
Depot Store Keeper under AOS,
Senior Divl. Electrical Engineer,
Electric Locoshed,
Tughlakabad

..... Applicant.

(By Advocate: Shri B. S. Mainee)

Versus

Union of India through

1. General Manager,
Western Railway,
Church Gate,
Bombay.

2. The Chief Administrative Officer,
Diesel Components Works,
Patiala.

3. The Controller of Stores,
Diesel Components Works,
Patiala.

..... Respondents.

(By Advocate: Shri R. L. Dhanan)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' order dated 4.6.91 imposing a penalty of recovery of Rs. 23,920/- from him and prays for its refund.

2. Applicant was proceeded against departmentally vide Memo dated 29.9.89 (Annexure-A2) on the minor penalty charge that while functioning as Dy. Store Keeper (Receipt) in 1987-88 during which his duty was to acknowledge materials supplied by firms against purchase orders placed on them, and to deliver the same to stocking DSK; after the materials had been placed and accepted by the competent authority

16

under their clear acknowledgement, he received 1150 numbers guide 'A' & 'H' Valves worth Rs.23,920/- supplied by M/s Raj Pattern Agra against P.O. No.40763 dated 31.7.85, but did not deliver the said consignment to the stocking DSK and released the Part II without allotting R.O., allowing the firm to claim payment, and thereby contravened Rule 3(1)(i) and (ii) Railway Servants(Conduct) Rules,1966.

3. The Enquiry Officer in his report held the charge proved. A copy of the Enquiry Officer's report was furnished to applicant for representation, if any vide letter dated 7.1.91 (Annexure-A7). Applicant represented on 18.1.91 (Annexure-A8). After considering applicant's defence statement dated 18.10.89 in reply to the charge Memo as well as his representation on the E.O's findings, the Disciplinary Authority imposed the punishment of recovery of Rs.23,920/- from applicant's salary in instalments by impugned order dated 4.6.91.

4. Applicant represented against that punishment by way of appeal, which was rejected by order dated 22.4.93 (Annexure-R1), which has not been impugned in the OA itself, although applicant in his rejoinder has contended that the same is violative of Section 19(4) A.T.Act.

5. We have heard applicant's counsel Shri Mainee and respondents' counsel Shri Dhawan. We have also perused the materials on record, including the departmental enquiry file.

6. It is not denied that applicant being a Railway servant is governed by the Railway Servant(Disciplinary

& Appeal) Rules, 1968, Rule 6(iii) of which lays down that recovery from pay of the whole or part of any pecuniary loss caused by a Railway servant to the Govt. or Railway administration by negligence or breach of orders constitutes a minor penalty.

7. Rule 11 Railway Servants (D & A) Rules prescribes the procedure for imposing a minor penalty. Charges have to be framed and communicated to the delinquent employee in the prescribed form together with the statement of allegations and list of documents on the basis of which the charge is sought to be proved. The delinquent must be given opportunity for inspection of documents and then to submit his written statement of defence. On receipt of such representation, the Disciplinary Authority, the Disc. Authority may record his findings on each imputation of misconduct/misbehaviour or decide to hold an oral inquiry under Rule 11(1)(b) read with Rule 11(2) Railway Servants (P & A) Rules. If the Disciplinary Authority decides that an oral enquiry is necessary, it is to be held in the manner laid down in Sub-Rules (6) to (25) of Rule 9 for major penalties.

8. In this background the first ground taken by Shri Mainee is that the E.O. did not hold the disciplinary enquiry in accordance with the law and the statutory rules. He states that applicant was called by the E.O. who recorded his statement on 25.8.60, a copy of which was supplied to him (Annexure-A5). Applicant was called again on 24.11.90 on which date the Enquiry Officer himself cross-examined

18

applicant and put a number of questions to him, including the leading one (Annexure-A6). Applicant states that no other witness was examined by Enquiry Officer in his (applicant's) presence, nor was any document exhibited during the inquiry, and upon receipt of a copy of enquiry report, he was surprised to note that the Enquiry Officer examined S/Shri K.N.Singh, S.S.CIV; Subhash Chander OS II; Sobaran Ram, Sr. Clerk; Gurnam Singh, Retd., AODS; Sukh Ram, OSK(LSM) Ward as SAs. Applicant submits that neither was he informed about the witnesses to be examined in support of the charges, nor was an opportunity given to him regarding the documents relied in support of the charges.

9. Although respondents in their reply have taken the stand that applicant was informed in advance about the witnesses who were to be examined in support of the charges against him and he was supplied the documents he had asked for against receipt dated 17.7.90, a perusal of the D.E. file shows that the provisions of Rule 9(6) to 9(25) were not adhered to in this case. Upon receipt of applicant's statement of defence dated 18.10.89 denying the charges and after furnishing to applicant the names of witnesses and the list of documents on the basis of which the charges were sought to be proved, the PWs should have been examined in the presence of the applicant and he should have been afforded an opportunity to cross-examine them. It is only thereafter that the applicant should have been called to enter upon his own defence. In the instant case, while applicant's statement in defence was recorded on 25.8.90, the statements of

19

the PWs were recorded subsequently and not in the presence of applicant, and hence applicant was given no opportunity to cross-examine the PWs. Thereafter applicant was again examined by the E.O. on 24.11.90 during which many questions were put to him. A perusal of the questions put by the Enquiry Officer to the applicant on 25.8.90 and again on 24.11.90 makes it clear that the E.O. acted more like a prosecutor than a fact finding authority.

10. Other grounds have also been taken by the applicant and Shri Mainee has cited various rulings including S.L.J 1995(1) SC 147; ATJ 1990(2)1; SLJ 1998(1) CAT 476 and SLJ 1989 (2) CAT 102 but the forgoing discussion is sufficient to establish that the procedure followed by respondents in the conduct of this D.E. is not in accordance with the relevant provisions of the Railway Servants (Disc. & Appeal) Rules, and neither the Hon'ble Supreme Court's rulings in UOI & Ors. Vs. Upendra Singh (1994) 27ATC 200 nor in State Bank of Patiala Vs. S.K.Sharma-JT 1996(3) SC 722 cited by Shri Thakur provide assistance to the respondents. Indeed by examining the applicant in his defence, before examining the PWs and giving applicant an opportunity to cross-examine them, the respondents have given a go by to the fundamental legal principle that it is for the prosecution to lead evidence in the first instance, which should be allowed to be tested in cross-examination before the defendant is called upon to enter into his own defence.

11. In the result, the OA succeeds and is allowed.

20

impugned orders dated 4.6.91 as well as the order dated 22.4.93 cannot be sustained in law and are quashed and set aside. Respondents are directed to refund the sum of Rs.23,920/- to applicant within 2 months from the date of receipt of a copy of this order. Prayer for costs is rejected as no good grounds have been made out to warrant granting the same. It will be open to respondents to proceed against applicant in accordance with law from the stage of receipt of his statement of defence.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

/ug/