CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A),

NEW DELHI, THIS 6th DAY OF JUNE 1997.

OA NO.680/92

SHRI GUNELA PERSHAD
S/o Sh. Jagan Nath
Parcel Clerk
Railway Station
Delhi ...APPLICANTS

(By Advocate - Shri B.S. Mainee)

VERSUS

1. Union of India through
The General Manager
Northern Railway
Baroda House
NEW DELHI

2. The Div. Railway Manager
Northern Railway
State Entry Road
NEW DELHI ..RESPONDENTS

(By Advocate - Shri R.L. Dhawan)

ORDER

R.K. AHOOJA, MEMBER (A)

The applicant, a Parcel Clerk with the Railways, is aggrieved by the order A-1 dated 21.2.1989 whereby an amount of Rs.13,583/- is being recovered from his salary in instalments evergy months.

2. The facts of the case in brief are that while the applicant was working as Parcel Clerk at the Railway Station, Delhi, a Memo Charge Sheet for minor penalty dated 1.11.88 was served upon him alleging that a consignment booked under PW Bill No.504648 dated 27.9.86 was unloaded from Train No. 121 DN of 28/29.9.1986. It was alleged that 11 bundles were delivered while one bundle disappeared, on account of which

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the Railways had to pass a claim for Rs.15092/-. The applicant submits that he was on duty from 2300 hours to 0700 hours and he had got the parcels unloaded at Platform No.8. In all, 289 bundles were unloaded when the shunting engine pulled th train in the yard even when some of the bundles were still in the brake van to be unloaded. The applicant states that he handed over all the 289 packages to his relief one Shri D.C. Chauhan, Parcel Clerk, who took over from him at 7 O'clock. The 12 bundles were included amongst these 289 bundles and a proper entry of the same was also made in the diary. Despite this, the A.T.S. New Delhi passed an order of recovery by a non-speaking order. The applicant also relies on the letter (A-7) by which the Area Manager called for the remarks of the Chief Parcel Superintendent, which were sent on 15.3.90 vide A-8. In this, the Chief Parcel Supdt. categorically clarified that the 12 bundles were made over to Shri Chauhan and no remark was made by Shri Chauhan about any shortage. The applicant further submits that his appeal is understood to have been rejected, though no intimation has been made to him. The applicant now seeks quashing of the impugned order imposing the recovery and a direction to the respondents to refund the amount which has already been recovered.

2. The respondents in reply take the preliminary objection that the O.A. is barred by limitation. The impugned order was passed on 21.2.89 and the present O.A. has ben filed in 1992, after a gap of more than three years. They also say that the applicant did not file any written defence to the memo of charges. They further state that the 289 packages including the 12 bundles were correctly unloaded by the applicant but he failed to take signatures in acknowledgement of handing over the same. The also say that since the impugned order is an ex parte order in the absence of written defence, there was no need to make it a speaking and detailed order. The appeal has also not been filed to the right authority since it was to be submitted to the Divisional Traffic Superintendent within 45 days. The applicant contends that he submitted his appeal addressed to the Area Manager, but ~~according to the~~

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according to the respondents no such appeal has been recieved. The remarks of the Chief Parcel Supdt. are in respect of 5 cases of shortages in which the applicant was involved and not in respect of consideration of the appeal in the present case.

3. In the rejoinder, the applicant controverts the respondent's defence that no reply was sent by him to the Memo of Charges.

4. We have heard the ld. counsel on both sides and gone through the pleadings on record also. Shri Mainee, ld. counsel for the applicant, submits that in case of minor penalty, where there is no oral inquiry, the rules prescribe that the penalty order must be a speaking order. He drew our attention to the order A-1 which merely states that with reference to the reply of the applicant, an amount of Rs.13583/- be debited. He further pointed out that the impugned order starts with the expression "with reference to your reply to this office Memo..." which clearly rebuts the submission of the respondents that no reply was ever received from the applicant. Shri Mainee also drew our attention to the extract of the unloading book at A-4 according to which 289 bundles were unloaded. A-5 shows the receipt of 376 packages by Shri Chauhan, out of which 289 packages from train No.121 DN are also noted. According to the ld. counsel, this clearly establishes that the packages including the 12 bundles in question were all duly handed over to Shri Chauhan when the applicant left on completion of his duty hours. He also referred to A-8 which is a report from the Senior Parcel Supdt., at S.No.IV wherein he has reported that 12 bundles were unloaded in the lot of 289 packages and the same were made over to Shri Chauhan; no report of shortage was made by Shri Chauhan. Shri Mainee submitted that in view of this overwhelming proof and the report of the Chief Parcel

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Supdt., there was no basis for the conclusion of the disciplinary authority that the shortage of one bundle was on account of the laxity on the part of the applicant. Shri Mainee argued that the impugned order A-1 is the result of total non-application of mind and is therefore liable to be quashed being arbitrary and whimsical.

5. The ld. counsel for the respondents, Shri Dhawan, submits that no written defence was received to the Memo of Charges. The wording "with reference to your reply....." is a printed matter and does not denote that a reply was actually received. In view of the fact that no defence was given, it was not necessary, according to the respondents, that a detailed and speaking order should be passed, since non-submission of defence amounted to admission of guilt. He also argued that the report of the Chief Parcel Supdt. is not relevant as no proper appeal was preferred and hence there was no question of examining the veracity of the report of the Chief Parcel Supdt. which in any case related to a mercy petition by the applicant and covered not only the present case but many other instances of shortages for which the applicant was liable.

6. We have given careful thought to the submissions of the ld. counsel and have also gone through the pleadings on record. The impugned order of penalty is a totally non-speaking order. The ld. counsel for the respondents submits that it does not mean that the matter was not examined by the disciplinary authority on file. He offered to submit for our perusal the relevant record on which the disciplinary authority had passed the final order. In our view, it is not sufficient that the matter is examined on departmental file if the order which is communicated to the charged officer does not reflect the reasons and grounds forming the basis of the penalty imposed. In the absence of such reasons and grounds, the charged officer is deprived of a proper opportunity to present

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his case before the appellate authroity. The ld. counsel for the applicant has pointed out that the instructions of the Railway Ministry (Rule 21 of the IREM) also enjoins that the disciplinary authority in the case of minor penalty proceedings should record a detailed order as unlike in a major penalty proceedings there is no oral inquiry and the charged officer does not have opportunity to know what has been said against him. Be that as it may, the real test is whether any prejudice has been caused to the applicant in the facts and circumstances of the case. Shri Dhawan relies on the judgement of this Tribunal in O.A. No.2615/91 wherein the plea of the applicant that the penalty order was cryptic and did not disclose any reason for the finding was rejected. We find however that the facts of the present case are different. In that O.A. the Tribunal had found that the applicant had not disputed the loss or shortage. In the present case, however, the applicant has denied the shortage and has produced at least some proof to show that the items received by him had been handed over formally to the person who took over the duty from him. There is thus a material difference in the facts of the two cases. As laid down by the Supreme Court in S.N. MUKERJEE JT 1990 (3) SC 630, an administrative authority while exercising quasi judicial functions must record reasons for his decision except where the requirement has been dispensed with expressely or by necessary implications. This has not been done in the present case. The applicant says that he sent his defence statement. The respondents deny this, yet in the impugned order itself a reference has been made to the reply of the applicant. We are not able to appreciate the respondents' contention that this is a typed proforma and it is merely a clerical error that the inapplicable portion was not struck off. The charged

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officer has to, ~~and~~ as we have to, read the impugned order as it comes. It is no defence that behind the impugned order there is on the files of the respondents a proper discussion and appreciation of the rules and that certain statements have been made in the impugned order regarding receipt of the reply which are clerical mistakes.

7. In the light of the above disussion and facts and circumstances of the case, we are convinced that the impugned order is bad in law and is thus liable to be set aside. Accordingly, the impugned order of recovery is quashed. The respondents will refund any recoveries made from the applicant within a period of three months from the date of receipt of a copy of this order. The O.A. is disposed of accordingly. No costs.

(R.K. AHOOJA)
MEMBER (A)

(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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