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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.



OA No.1079/92

Date of decision: February 12, 1992

Shri Gunela Prashad ... Applicant

versus

Union of India through
the General Manager
Baroda House,
New Delhi & anr. ... Respondents

CORAM: THE HON'BLE SHRI P.C.JAIN, MEMBER(A)
HON'BLE SHRI J.P.SHARMA, MEMBER(J)

For the Applicant .. Sh.B.S.Mainee, Counsel.
For the Respondents .. Sh.R.L.Dhawan, Counsel.

JUDGEMENT

HON'BLE SHRI P.C.JAIN, MEMBER(A):-

The grievance of the applicant who is posted as Postal Clerk, Northern Railway, Delhi is against the order dated 9.1.89 (Annexure A 1) by which a recovery of Rs.10,000/- from his pay has been ordered by the disciplinary authority in pursuance of a Memorandum of chargesheet dated October, 1988 issued to him for minor penalty under Rule 11 of the Railway Servants(Discipline & Appeal) Rules, 1968. The charge levelled against him was that the enquiry has revealed that he has received seven packages from Shri Balwant Silngh but further disposal of these packages has not been shown as a result of which the Railway administration had to pay a claim of Rs.13,701. He has assailed the above punishment order dated 9.1.89 and has prayed for the following reliefs:-

- " (i) that this honourable Tribunal may be pleased to quash the impugned orders.
- (ii) that this honourable Tribunal may be further please to direct the respondents to refund the amount which has already been recovered from the salary of the applicant vide order dated 9.1.1989.

(iii) that any other or further relief which this honourable Tribunal may deem fit and proper under the facts and circumstances of the case.

(iv) that the cost of the proceedings may kindly be awarded by this honourable Tribunal."

By an order dated 21.4.92, the respondents were restrained, as an interim direction, from effecting any further recovery from the applicant, till the next date. This interim order has continued since then.

2. The respondents have contested the OA by filing a reply to which rejoinder has also been filed by the applicant. As the pleadings in this case are complete, the OA is being disposed of finally at^C the admission stage itself.

Accordingly, we have perused the material on record and heard the learned counsel for the parties.

3 The case of the applicant is that in his reply(Annexure A-3) to the Memorandum of chargesheet, he has pointed out that he was on duty from 1400 hours to 2200 hours ^{on} ~~from~~ 9.12.86 and he had given 45 packages to Shri Ranjit Singh who had relieved him. He had also stated that out of 45 packages, 38 packages were given ^{to} ~~to~~ by him to his reliever on platform No.6 and 7 packages at platform No.7 and that his reliever has counted all these packages and the applicant went off duty after making entry in the diary. Accordingly, he stated that the inquiries may be made from Shri Ranjit Singh in this regard and he is not guilty. It is contended that

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without considering the written statement of the applicant, the disciplinary authority passed an order debiting the amount of Rs.10,000/- against him. This order is said to be non-speaking one and nullity in the eyes of law. He is stated to have submitted an appeal to the appellate authority in which he reiterated his case and also adding that Shri Ranjit Singh later on passed remarks in the diary on the back of the applicant about non-availability of the said packages without getting the said remarks countersigned by the applicant. It is also his contention that Shri Ranjit Singh being a Union leader all the Inspectors are afraid of him and the applicant being a poor employee has been implicated. A copy of the appeal said to have been filed is at Annexure A-4. The appeal is said to have been rejected but no written intimation is said to have been given to the applicant through recovery from his pay is being made.

4. The respondents in their reply have taken the stand that no representation against the memorandum of chargesheet was received from the applicant. It is also stated that no appeal said to have been filed by the applicant was received ^{by} the applicant ^{and} as such the question of rejection of the same does not arise. They have asserted that the orders passed in the case are in accordance with the relevant rules and are legal. It is also stated that the disciplinary authority applied its mind, ^{and} it is clear from the fact that against the loss of Rupees over 13,000 suffered by the Railway, the recovery of only Rs.10,000/- has been ordered from the applicant. They have also taken preliminary

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objections that the OA is barred by limitation and that the applicant has not availed of all the departmental remedies inasmuch as he did not file any appeal against the impugned order.

5. We have given our careful consideration to the rival contentions of the parties. The reply to the Memorandum of chargesheet said to be given by the applicant as in Annexure-3 is, in fact, against the impugned order as it refers to the orders of recovery of Rs.10,000 from him. It is also undated. The appeal said to have been filed as Annexure A-4 is obviously against the impugned order of recovery dated 9.1.89 but the appeal is undated. The applicant has placed as Annexure A-5 a copy of the letter dated 15.3.90 from the Chief Parcel Clerk addressed to the C.P.S, New Delhi in the last para of which it is stated that 7 bundles were made over to Shri Ranjit Singh, Parcel Clerk, New Delhi for disposal vide dairy entry No.116/86 on 9.12.86 but there is no further trace and therefore, Shri Ranjit Singh, Parcel Clerk may be asked for further disposal. The stand of the respondents on this point is that the aforesaid letter did not forward the appeal of the applicant in the present case and that in any case this letter was sent about 14 months after the impugned order was passed by the disciplinary authority and the appeal, if any, filed by the applicant and forwarded by the Chief Parcel Clerk by the aforesaid letter, cannot be said to have been filed within the prescribed time of 45 days. In view of the basic difference in stand of the two parties about the reply to the chargesheet and the appeal having been filed or not filed, we requested

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the learned counsel for the applicant to place on record if the applicant has any other evidence in support of this contention that he did file reply to the Memorandum of chargesheet and that he did file an appeal within the prescribed time. The time was taken for this purpose but no other document has been placed on record. However, the learned counsel for the applicant urged that the impugned order passed by the disciplinary authority itself says that it is passed with reference to the reply given by the applicant to the Memorandum of chargesheet dated 4.10.88; that the respondents in para 5.8 of their reply have clearly stated that "the disciplinary authority while considering the written statement of defence of the applicant duly recorded reasons for holding that the defence of the applicant was not considered satisfactory"; and that it is clear from the letter dated 15.3.90 from the Chief Parcel Clerk that the appeal of the applicant was forwarded to the higher authorities by him with that letter. The learned counsel for the respondents, on the other hand, contended that neither any reply to the memorandum of chargesheet nor any appeal from the applicant had been received and the disciplinary authority applied its mind which is clear from the fact that the recovery ordered from the applicant is less than the loss suffered by the Railways. In this background, we requested the learned counsel for the respondents to make available for our perusal the relevant departmental file. File No.1C/174/HQ/NDL/87E was accordingly made available to us. We have perused this file but mostly the papers placed in this file are in connection with this OA. The file also does

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have a copy of the Memorandum of chargesheet served on the applicant as also the impugned order passed by the disciplinary authority. There is a copy of some inquiry report dated 31.5.88 according to which as per charge diary 20 UP Section No.116/86 Shri Balwant Singh ^{on} duty from 7 hours to 15 hours made over these packages to one Gunela Prashad in a lot of 7 packages for disposal but Gunela Prashad neither made any disposal nor made over the charge to anybody. There ^{is} another report dated 22.9.87 according to which Shri Balwant Singh was held responsible. But there is nothing on this file which might show any consideration by the disciplinary authority of any material available with it before it passed the impugned punishment order. The impugned punishment order itself does not state any reason whatsoever for arriving at the conclusion of ordering recovery of Rs.10,000 from the pay of the applicant. The impugned order dated 9.1.89 is reproduced below:-

"With reference to your reply to this Office Memorandum No. even No. Dated 4.10.88(following orders). Debit Rs.10,0003-(Only Ten thousand)".

The above order is signed by the ATS . This cannot be said to be any order in the eyes of law. Minor penalty proceedings were initiated against the applicant and as such no oral enquiry was held and thus the applicant had no opportunity to cross examine any witnesses or rebut any evidence which might have been produced against him. In these circumstances it was all the more necessary that the punishment order passed by the disciplinary authority should have been a speaking one giving relevant facts, citing material in support of C.

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the allegations and the reasons for arriving at the conclusion. The applicant has also stated in para 5.7 of the OA that the Railway Board in their letter No.E.D&A 86/RG dated 17.8.1986 had laid down that in case of imposition of minor penalty where no enquiry was held, the disciplinary authority while passing the order should communicate to the employee concerned the brief reasons for decision regarding the guilt of the employee, and therefore, it is contended that the impugned order is in violation of the above orders of the Railway Board. The charge levelled against the applicant was that he had received certain packages in his charge but did not account for further movement. The defence of the applicant is that he had handed over the same to one Shri Ranjit Singh and an entry to that effect was made in the diary. Any other entry thereafter, if any, required his countersignature and in the absence of his countersignature, he could not be held responsible. In such a situation, it was incumbent on the disciplinary authority to go into these aspects of the matter and then pass a speaking and reasoned order. This having not been done , the impugned order cannot be sustained.

5. As regards the preliminary objections of limitation and non-avilment of the departmental remedies as contended by the respondents in their reply, we are of the view that on the facts and in the circumstances of this case we are not in a position to give an overriding effect to these objections. The applicant says that he

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gave his reply to the Memorandum of chargesheet and also filed an appeal but the respondents denied both these contentions. On the other hand, the impugned order itself states that it has been passed after consideration of the reply given by the charged officer and the reply of the respondents in para 5.8 of their counter clearly states that the disciplinary authority considered the written statement of defence of the applicant.

6. In the light of the foregoing discussion, the OA is allowed and the impugned order dated 9.1.89 imposing punishment ^{to recovery of} of Rs.10,000 from the pay of the applicant in pursuance of the Memorandum of chargesheet dated 4.10.88 is quashed and set aside. The respondents are also directed to refund to the applicant the amount recovered from him in pursuance of the aforesaid order. However, we reserve liberty to the respondents to initiate fresh disciplinary proceedings with reference to the alleged misconduct and pass appropriate orders in accordance with law and the rules. No costs.

J.P. Sharma
(J.P.SHARMA)
MEMBER(J)

(Recd 12/2/93)
(P.C.JAIN)
MEMBER(A)

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