

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 411 of 1996.

Allahabad this the 10th day of February 2004.

Hon'ble Mr. Justice S.R. Singh, V.C.
Hon'ble Mr. D.R. Tiwari, A.M.

C.L. Gupta
s/o Late Baij Nath Gupta,
Ex- Head Goods Clerk,
R/o Village Nai Basti, Manuari,
P.O. Manuari, District Allahabad.

.....Applicant.

(By Advocate : Sri K.K. Mishra)

Versus.

1. Union of India
through General Manager,
Northern Railway,
Bareda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad.
3. Sr. Divisional Commercial Manager,
Northern Railway, Allahabad.
4. Divisional Commercial Manager,
Northern Railway, Allahabad.
5. Sri Hem Raj
Station Superintendent, Bharthana,
C/o Sr. Divisional Operating Manager,
Divisional Railway Manager, Office
Northern Railway,
Allahabad.

.....Respondents.

(By Advocate :Sri G.P. Agrawal)

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(By Hon'ble Mr. Justice S.R. Singh, V.C.)

Heard Sri K.K. Mishra learned counsel for the
applicant, Sri G.P. Agrawal learned counsel for the respondents
and perused the pleadings.

2. While the applicant was working as Head Goods
Clerk at Bharthana Railway Station, he was served with the
charge memo dated 28.02.1990. The gravamen against the
applicant was that he delivered six wagons of oil

(Signature)

case of Bharthana Railway Station on 18.08.1987 to M/s Sunil Salwax India Ltd., Bharthana without receiving Railway Receipts or indemnity bonds. The Goods, according to the charge memo, were booked from Gandhi Dham Railway Station in favour of self and were to be delivered on production of Railway Receipts or indemnity bonds. The Railway Receipts were directly sent by the consigner to the Bank and it was for the depositor of the price of the Goods to obtain Railway Receipts with endorsement from the Bank or in the absence of Railway Receipts and receive delivery thereof from the Railway on production of Railway Receipts on furnishing indemnity bonds. The Goods were delivered, according to the charge memo, without obtaining Railway Receipts or Indemnity Bonds as a result of which the owner of the Goods filed claim against Railway Administration for recovery of Rs.1,18,990/- per wagon by way of compensation.

3. Enquiry was conducted by Sri Atiq Ahmad Siddiqui, C.M.I, Aligar Junction ex parte and on the basis of available material, the Enquiry Officer recorded following conclusions and findings in his report dated 01.11.1994:-

"Conclusion: Keeping in view the statement, cross-examination of PWs, C.O. and the documents on the file it is concluded as under:-

- 1) That the concern R.R were lying with the party which were return by the Bank to the consigner. M/s Bansilal Challa Lal Mander.
- 2) No.1 Bond was executed by the forwarding station M/s Sunil Salwax (HW) India/BN because no such remark was passed in the delivery book by Sh. C.L. Gupta for granting delivery on I/Bond.
- 3) That statement of C.O. confirm the facts that the I Bond of Forwarding Station were said to have been lying executed with the agent of the party without the signature of the SS of forwarding station.
- 4) S.S./BNT confirmed that No I Bond was signed by him at BNT and nor the same was brought to his notice.
- 5) The delivery was granted to the endorsed Agent was not under rule on while granting delivery on I Bond.

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6) The R.Rs were not collected from the party after 15 days is also against Rule.

7) No doubt he (The C.O.) realised the freight charges from the party at the rate of Rs. 6526/- per wagon and made over the SS/BOI and remitted along with, the station earning but realisation of freight charges were also without verification of the invoices.

FINDINGS:- After careful consideration of statements and Cross Examination of the P.W.S and C.O. and records on file I the under sign without being prejudice came to the term conclusion that said Sh. C.L. Gupta HGC/BNT made over the contents of 6 wagons oil cake Ex. GIME to BNT to a concerned party without obtaining and Railway Receipt or I. Bond, which caused a heavy loss to Railway Administration as such the charge levelled vide memorandum is proved without doubt.

Sh. C.L. Gupta HGC/BNT violated the Railway Service Conduct Rule 1966 3 (i) (ii) (iii)".

Copy of the enquiry report was furnished to the applicant who submitted his representation. The Disciplinary Authority agreeing with the findings of enquiry officer held the charge levelled against the applicant as 'proved' and imposed the penalty of dismissal from service vide order dated 29.11.1994, a copy of which has been annexed as Annexure 1. Aggrieved the applicant preferred an appeal which came to be dismissed vide order dated 29.03.1996 (Annexure A-2). These orders are the subject matter of impugnment in this original application.

4. Learned counsel for the applicant has submitted that the Goods were delivered to M/s Sunil Salvew India Ltd. against Indemnity Bonds furnished by the latter. Indemnity Bonds, it has been submitted by the counsel, were misplaced as a result of 'some conspiracy' in order to take undue advantage from the Railway Administration by making false claim of the huge amount and by misplacing or removing the bundle of Indemnity Bonds from the Railway Station Bharthana so that the responsibility may be fixed upon the applicant. Learned counsel for the applicant has further submitted that the Station Master, Bharthana was, in fact, responsible for the loss,

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if any, of the Indemnity Bonds, that relied upon documents were not furnished to the applicant along with the charge memo as a result whereof he could not get an effective opportunity to defend himself at the enquiry.

5. Learned counsel appearing on behalf of respondents, on the other hand, has submitted that the averments made in para 17 of the counter affidavit to the effect that Indemnity Bonds being in the custody of C.B.I Lucknow could not be made available to the applicant was not correct and in fact the statement had been made by the D.C.M., Sri D.P. Singh, on the apprehension that Indemnity Bonds might be in the documents that were seized by the C.B.I. Learned counsel has placed ~~.....~~ reliance on the supplementary affidavit filed today by Smt. Anumani Tripathi, the present D.C.M, and submitted, on the basis of documents receipt from the Court of Special Judge, C.B.I Lucknow vide Annexure R-1 to the supplementary Affidavit that Indemnity Bonds were not among the documents that were seized by the C.B.I.

6. We have given our thoughtful consideration to the submission made across the bar. It is not in dispute that in case it is established that Goods were delivered after obtaining Indemnity Bonds the charge levelled against the applicant would fall flat. The Enquiry Officer has categorically held that Goods were delivered without obtaining Indemnity Bonds. ~~.....~~ Railway Receipts, it is not disputed, were returned to the Consigner by the Bank and the Enquiry Officer has held that the concerned Railway Receipts were lying with the party as these were returned by the Bank to the consigner, M/s Bansilal Chellan Lal Mander and no Indemnity Bond was executed by M/s Sunil Salvex Ltd. India, Bharthana to whom goods were delivered. No remarks about execution of Indemnity Bonds were made in the delivery book for granting delivery to M/s Sunil Salvex

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Ltd. India. The finding, in our opinion, being finding of fact based on assessment of evidence on record is not open for interference by the Tribunal in view of settled legal position that the Tribunal exercises the secondary role while the primary role is exercised by the Disciplinary Authorities and in the absence of patent illegality or procedural impropriety, the Tribunal ought not to interfere with the conclusions and findings arrived at by the Disciplinary Authority:

- (1) Chairman and Managing Director, United Commercial Bank and others Vs. P.C. Kakkar, A.I.R. 2003 Supreme Court, 1571.
- (2) B.C. Chaturvedi Vs. Union of India, A.I.R. 1996, Supreme Court, 484.

7. Learned counsel for the applicant has then contended, relying upon the decision of the Hon'ble Supreme Court in Ram Chander Vs. Union of India and others, 1986 (1) A.T.C. 47 that the order passed by the Appellate Authority is vitiated due to the reason of the Appellate order being cryptic one. We are not impressed with the submission made by the learned counsel appearing for the applicant. A perusal of the appellate order annexed as Annexure A-2 would indicate that the Appellate Authority has adverted itself to the question raised before it as also to the material on record that no Indemnity Bond was handed over by the applicant to C.B.I Lucknow. In the circumstances the Appellate Authority has recorded the finding that question of allowing inspection of Indemnity Bond did not arise. The Appellate Authority has also adverted itself to the absence of any remarks by the applicant in the delivery book while granting delivery of Goods in question to the effect that the delivery was granted on Indemnity Bond. The plea that the Goods were delivered on Indemnity Bond was not accepted by the Appellate Authority.

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8. Learned counsel for the applicant then submits that the punishment of dismissal from service has been inflicted by the Authority other than the Appointing Authority. The submission cannot be countenanced. The applicant was initially appointed as Class IV employee by Assistant Personnel Officer. He was subsequently promoted to the post of Assistant Goods Clerk by Divisional Commercial Manager vide order dated 08.05.1970. The punishment has been inflicted by Divisional Personnel Manager as stated in the supplementary counter affidavit.

9. Learned counsel for the applicant then contended that the punishment of dismissal from service imposed by the Departmental Authorities is disproportionate to the alleged misconduct. The legal position is well settled that the Tribunal cannot interfere with the punishment except where it is shockingly disproportionate to the misconduct in the sense that it was in defiance of logic or moral standards. The Appellate Authority in the instant case dismissed the appeal and maintained the order of punishment without adverting itself to proportionately of quantum of punishment, nor did it advert itself to the allegation of conspiracy levelled by the applicant against the Station Master. Having regard to the fact that it may not have been possible for a Goods Clerk to misappropriate six wagons of oil cake without connivance of the Superior Officer as also the fact that the order of punishment was passed on or about the date of superannuation of the applicant, we are of the view that the punishment of dismissal from service should be reduced to punishment of compulsory retirement from service.

10. In view of the above discussion, the O.A. is allowed in part. The punishment of dismissal from service is

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converted to compulsory retirement from service. with
no order as to costs.

Dhawal

Member-A.

Paranjape

Vice-Chairman.

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