

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 6TH DAY OF JUNE, 2002

Original Application No. 71 of 1997

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.C.S.CHADHA, MEMBER(A)

R.P.Srivastava, a/a 49 years,
 Son of Sri Jagannath Prasad
 Srivastava, R/o C.K.60/62, Karanghanta
 Nichibagh, Varanasi.

... Applicant

(By Adv: Shri A.P.Singh)

Versus

1. Union of India through the Secretary, Ministry of Railways New Delhi.
2. The Chief Electrical Engineer, Diesel Locomotive Works, Manduadih Varanasi.
3. The Dy. Chief Electrical Engineer(M) Diesel Locomotive Works, Manduadih Varanasi.
4. The General Manager, Diesel Locomotive Works, Manduadih, Varanasi.
5. Chief Personnel Officer, Diesel Locomotive Works, Manduadih, Varanasi.

... Respondents

(By Adv: shri Prashant Mathur)

O R D E R(Oral)

HON.MR.C.S.CHADHA, MEMBER(A)

The applicant has filed this OA u/s 19 of A.T.Act 1985 challenging the illegality of the order passed by the respondent no.3 on 11.6.1996 dismissing the applicant from service as Head telephone Operator, telephone Exchange Diesel Locomotive Works, manduadih, Varanasi. The said dismissal order was challenged by

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the applicant in appeal and the appeal was also rejected by the Appellate Authority on 11.3.1997.

The applicant was charged by a charge sheet dated 11.8.1995 (Annexure A-7). The main charge against the applicant was that during his tenure as Head Telephone Operator he either himself ^{or} permitted ISD calls ^{to} be made without registering them in the Call Booking Register or permitted the same by other operators under his control. It was alleged that 72 ISD calls were made in accordance with the bills, details of which were furnished in the document mentioned in the chargesheet which was a copy of the bills of ISD calls between 16.2.1995 and 15.4.1995. During the inquiry it was found that the applicant was not directly responsible for all the 72 calls but only of 39 calls. Several other Operators were found responsible for different numbers of calls. After the completion of departmental inquiry in which the Inquiry officer found the charges to be proved, the Disciplinary Authority awarded the punishment of dismissal from service on the ground that the applicant had committed gross misconduct and caused pecuniary loss to the Railways. In the appellate order also the Appellate Authority upheld the punishment order on the same grounds i.e. the applicant was guilty of gross misconduct and ^{or} having caused pecuniary loss to the Railways.

The learned counsel for the applicant has made the following arguments against the punishment order:

- i) that the copies of DOT bills of the said calls were not furnished to him and therefore serious prejudice was caused to his defence,
- ii) that the six complainants who were also Telephone Operators and were also guilty of being involved in the racket of making ISD calls without proper registration were not examined in the departmental inquiry and their report dated 24.7.1995 was

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used against the applicant as a prosecution document without affording any opportunity to the applicant to cross-examine them;

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- iii) that the applicant could not be law held directly responsible for the said calls because he was not on duty for all the 39 calls for which he was found guilty;
- iv) that the Disciplinary Authority who passed the punishment order was the Deputy Chief Mechanical Engineer and he was not competent to pass such an order as his appointment order was issued by Higher Authority;
- v) that even if it is considered that the applicant was rightly found guilty the punishment awarded to him is not commensurate with his proven law misconduct specially in view of the fact that he had never been earlier punished in his long years of service.

As regards the first objection of not having been given copies of the DOT bills we find from the report of the Inquiry officer that this allegation is incorrect. *On* It has been abundantly clarified in the report of the Inquiry officer that all the DOT bills required to prove the misdemeanour of the applicant were furnished to him. In fact details of these bills are mentioned in the inquiry report on internal page 7 thereof. We, therefore, find this argument baseless because the department adequately proved that the said ISD calls were made from the exchange under his control and the same were never entered in the International Trunk Booking Register and as it was the duty of the Supervisor to ensure that all ISD calls are entered in the Call Register. He was *therefore rightly* *On* found guilty.

The argument that the 6 telephone Operators who had complained against the applicant had not been examined would have been relevant only if the report submitted by them had been relied upon by the Inquiry officer to prove the charges against the applicant. We find from the inquiry report that the Inquiry officer did not rely upon the said report of the six Operators for proving

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the charge against the applicant. This is evident from the report of the Inquiry officer at the bottom of internal page 6 and top of internal page 7 of the said report.

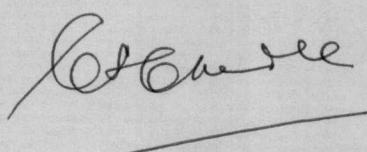
The argument that the applicant could not be held responsible for all the 72 calls is also not valid because the Inquiry officer very judiciously *has* has only considered the applicant guilty of 39 calls made during the time when the applicant was on duty. As mentioned earlier, the fact that the applicant was a Head Telephone Operator and Supervisor he cannot be absolved of lack of supervision which resulted in these calls being made and not entered in the call-booking register. Therefore, we do not agree with this argument.

As regards the lack of authority of the Disciplinary Authority who has imposed the punishment vide (Annexure CA-6) attached with the supplementary counter affidavit submitted by the respondents it has been made abundantly clear that a senior scale officer could punish class III and class IV employees drawing pay not more than Rs380/- (RSD Rs 1400-23000) per month. The applicant who was in the scale of Rs 1400-2300 could therefore certainly be punished by an officer higher in rank than a senior scale officer. In this case the Deputy Chief Mechanical Engineer was in the junior administrative grade and was therefore duly authorised to pass such an order.

Lastly, we have carefully considered the question of quantum of punishment and whether it is commensurate with the proven misdemeanour. Under normal circumstances

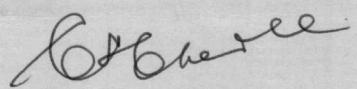
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the Disciplinary Authority or the Appellate Authority while approving the said punishment should have clearly recorded that the applicant does not deserve to be retained in service. We find that no such finding has been recorded either by the Disciplinary Authority or by the Appellate Authority. The only criterion mentioned for awarding the highest punishment is that pecuniary loss has been caused to the Railways. We are not even sure as to the quantum of pecuniary loss caused, as the same has never been mentioned in the charge sheet. Further, the applicant has only partial liability as others are also been involved in this illegal racket of making ISD calls without proper payment. It is also observed that the applicant joined as Safaiwala and by the dint of his hard work he rose to the rank of Head Telephone Operator and now after dismissal he will have no means of livelihood and therefore we consider it fit that the respondents may sympathetically consider the quantum of punishment. The punishment awarded by the Disciplinary Authority and confirmed by the Appellate Authority is, therefore, quashed. In view of the earlier long service during which the applicant had never been punished, it would be proper for the respondents to consider sympathetically the punishment awarded to the applicant and to consider if the same can be modified/changed into compulsory retirement. The question of quantum of punishment shall therefore be reopened and considered and decided by the Appellate Authority within a period of three months from the date



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a copy of this order is filed after hearing the applicant. There will be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: 6th of June, 2002

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