

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 21st day of Oct 2005.

Original Application No. 326 of 1998.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

J.P. Srivastava, S/o Shri C.L. Khare,
R/o 32, Maharajpura, Premnagar,
JHANSI.

.....Applicant

By Adv: Sri A.S. Diwakar
Sri R.J. Khare
Sri M.P. Gupta

V E R S U S

1. Union of India through
the General Manager,
Central Railway, C.S.T.
MUMBAI (Maharastra).
2. The Divisional Railway Manager,
Central Railway,
JHANSI.
3. Senior Divisional Engineer (CO),
Central Railway,
JHANSI.
4. Additional Divisional Railway Manager-II,
Central Railway,
JHANSI.
5. General Manager, North Central Railway Zone,
ALLAHABAD.

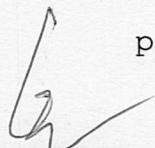
.....Respondents.

By Adv: Sri V.K. Goel

O R D E R

By K.B.S. Rajan, JM

When the evidence is strong and irrefutable,
single evidence would suffice to prove a case.
However, if the Inquiry Authority has relied upon a
particular evidence, and that evidence has been



found to be legally unsustainable, the entire edifice of the inquiry gets crumbled to the ground and as a logical corollary the orders passed in the wake of the report of the Inquiry Authority also get totally vitiated. In the instant case all that is to be seen is whether the evidence of one R.P. Agarwal, heavily relied upon by the I.O. could be legally sustained. If it is legally sustained the O.A. fails and if not, the impugned orders fail.

2. Briefly the facts of the case are as under:-

(a) The applicant inducted in the Railways in May, 1972 as Asstt. Inspector of Works was promoted as Inspector of Works and at the material point of time; he was posted in the said capacity at Jhansi in the Central Railway.

(b) In January, 1996, the applicant was served with a chargesheet alleging that he was guilty of having lost some pages in the inspection and testing register and on account of his carelessness; the work of the respondents got obstructed. The applicant had defended the chargesheet and denied the charges. Enquiry was conducted and the inquiry report was furnished. The same was communicated to the applicant and in response the applicant had made his representation. The disciplinary authority vide impugned order dated 22.10.97 imposed

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a penalty of reduction in rank for a period of 5 years. Appeal filed by the applicant was also rejected vide order dated 1.1.98. The applicant has filed this O.A. in 1998 and the same was allowed to be amended vide order dated 21.5.2001.

3. The I.O. has examined the witness as contained in the charge sheet. However, later on, without the knowledge of the applicant he had called another witness to complete the inquiry and the report of the I.O. was based on the evidence of this witness. Hence, the applicant contends that the inquiry is vitiated on account of the legal flaw on the part of the inquiry officer and if the deposition of the second witness is kept off the scene, the case of the respondent becomes a case of no evidence and the entire penalty proceedings becomes vitiated.

4. The respondents have contested the O.A. and necessary reply/Supplementary Reply were filed.

5. Documents were heard and documents perused. The contention of the applicant is that this is a case of no evidence and the only prosecution witness Sri A.S. Vyas did not support the prosecution case. On the other hand, the respondents contended that as per the applicant's own admission, there is a commitment to assist the authorities in locating the lost pages or making of the same. This has been



heavily relied upon by the respondents. However, as there is no corroborating evidences, the Inquiry Officer had called another witness, after the completion of the defence witness. This witness is one Shri R.P. Aggarwal, who had stated that in his presence the applicant and Shri Vyas, the Prosecution witness were talking about the subject matter and that an assurance was given by the applicant to Shri Vyas. This witness was, however, not been brought earlier to the calling of the defence witness and again, if the version of the applicant is true that he has not been given even the copy of the deposition of the said witness, then the entire drill of calling the second witness of the prosecution after the defence evidence is closed becomes a mockery of the inquiry proceedings.

6. Now a look at the inquiry Report. It is appropriate to reproduce the very report.

"ARTICLE-I

Shri J.P. Srivastava, while working as IOW Gr. II at KRO is charged with careless working which caused loss of two important pages of inspection register for batch No.1063, 1064 & 1065 created hinderance and Rly's records spoiled. He did not corporate with his IOW Incharge and tried to blackmail him.

In order to Q. No.1 (page-II) A.S. Vyas stated that correction were notices by him on the register he and Srivastava maintained it which he had pointed out Shri Srivastava IOW.

In answer to Q No.2 Shri Vyas stated that he had shown the record to him also.

Shri A.S. Vyas has written a letter No.RPS/ASV/KRO/95/Dt.29.10.95 to AE pointing out the loss of pages related to batch No.1063,

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1064 & 1065. Hence, inspection certificate could not be issued and requesting for inquiry. In answer to Q No.3 (page.2) Shri Vyas has stated that Shri Srivastava has given assurance for recasting lost pages and thus made noting on 10.11.95 at right hand corner of his letter dated 29.10.95 in the presence of CPWI (N) JHS Shri R.P. Agarwal. The office copy of letter dated 29.10.95 was kept by Shri J.P. Srivastava stating that he will sign the papers tomorrow but Shri J.P. Srivastava backed out from his assurance and thus the matter was brought to the notice of Sr, DEN © JHS on the very day.

Shri Shrivastava in answer to question No.20 (page 33) has denied having given any assurance to Shri Vyas for signing the photocopy of record available in factory for relevant batches whereas Shrivastava has admitted having received letter in presence of Shri K.P. Agarwal, in answer to Qn. No.21 (page 33). In answer to Q. No. (page 42) Shri R.P. Agarwal, CPWI (N) JHS has deposed that Shri Shrivastava assured Shri Vyas in his presence, to sign the photocopy of the record available with IHP factory.

In answer to Qn. No.50 (page 40) whether D.E. was called by Sr. DEN for any enquiry or instructions, D.E. replied "I do not want to say any thing about it".

In answer to Q. No.25 (page 34) Shri Shrivastava has denied any correction relating to contents of the letter dated 29.10.1995 before CPWI (N) JHS where as CPWI (N) JHS has deposed in answer to Qn. No.5 (page 42) that both (Shri Vyas and Shrivastava) have talked about signing of photo copy of records available with I.H.P. Factory.

From the deposition of Shri R.P. Agarwal, the statement of Shri A.S. Vyas is sustained there Shri J.P. Shrivastava statements can not be relied upon that he did not gave any assurance. It is evident that D.E. did not co-operate with his incharge IOW in recasting the lost pages and tried to create hindrance in Rly's work.

In answer to Q. NO.13 (page 32) Shri J.P. Shrivastava (DE) deposed that he had noted the duties assigned to him in file. On perusal of old (closed) file NO.IUM/STF/. It was found that his answer is wrong as there is no such letters.

 In answer to Q. NO.44 (page 39) D.E. stated that I do not mention the file of AIE of

CIOW. I cannot say where they kept the duty list.

In answer to Q. NO.34 (page 37) DE has stated that he is recording the details on a place of paper. In answer to Q. No.36 as to why he is not maintaining the diary of the work/observation being recorded, D.E replied", I am not maintaining as per convention".

In answer to Q. No.54, that D.E. in recording observation in the inspection register after details are taken down or a place of paper, there should be no correction in that event. D.E. was pointed out corrections in the inspection register in respect of Batch NO.1003. D.E. replied mistakes are bound to happen in every body work".

In answer to Q. No.14 (page 32) Shri Shrivastava deposed that he was only checking the visual and dimensional test of sleeper wherever Shri Vyas was on leave on line he was obliged to do Vyas work. But on examination of inspection register in respect of batch No. 1052 is noticed that Shri Shrivastava conducted static load test in presence of Shri Vyas.

In answer to Q. NO.16 (page 8) and Q. NO.18 (page 9) Shri Vyas deposed that test cube strength of batch NO.1064 was 43.6 KN which was corrected by DE as 48.0 KN to misguide the test report of 2 sleepers instead 5 sleepers (clause 10.3A of agreement) and to show higher authorities for wrong issue of inspection certificate.

In answer to Q. NO.19 (page 33) D.E. Shri Shrivastava has denied having made any correction.

On perusal of Inspection register relating to static load test of 2nd sleeper of batch No.1065, it is tested by Shri Shrivastava on 3.9.95 and no one was present during the test.

It is therefore, evident that the work of "Inspection" at KRQ factory is done on verbal orders of CIOW /AIE, as there existing no written orders. But in the present case DE has got endorsement on 10.11.1995 on the office copy for "withdrawal of letter on his assurance" and then kept the letter with him with motives best known to D.E.

At the close of the examination of D.E. on 19.1.1997 it was recorded that the evidence of secondary witness (Shri R.P. Agarwal) will be taken on 20.1.1997. D.E. and his ARE did not attend on 20.1.1997 and the evidence of Shri



R.P. Agarwal. CPWI (N) JHE was recorded on page NO.42 and 43.

In answer to Q. NO.48 (page 4) D.E. deposed that inspection register is kept by CIOW under lock and key out when he was asked to re-examine Shri Vyas relating to the presence of CIOW to denied in answer to Q. No.49 (page 49) OM P.W cannot be defence witness".

It is, therefore, inferred that faring the detection of hand writing (over writing) on the value of cube test of batch No.1064 the pages might have been secreted out of the register and put the blame back on CIOW for the loss of documents as there is no additional evidence to sustain of contradict it.

Therefore, Shri J.P. Shrivastava IOW Gr. II is guilty of "Breach of Trust" careless working, non cooperation with supervisors and thus violated Rule 3 (i), (ii) & (iii) of Rly. Service Conduct Rules.

(DILIP SINGH)
AEN (MD) JHS.
(ENQUIRY OFFICER)"

7. A perusal of the report would show that the findings arrived at by the I.O. suffer from the fact that as regards finding relating to the assurance, it has been proved on the basis of the evidence of Aggarwal, which is invalid in the eyes of law. Thus, charge of breach of trust cannot be said to be proved.

8. As a result of the above, the entire inquiry proceedings get vitiated. Consequently, OA is allowed the impugned orders i.e. order of the Disciplinary authority dated 22.10.97 and of the Appellate authority dated 1.1.98 are quashed and set aside. The applicant shall be restored to his original grade and pay

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scale and all the consequential benefits, i.e. arrears of pay and allowances are to be paid to the applicant. The applicant should also be considered for promotion to the higher post as if no penalty order was passed for which, necessary Review DPC should be conducted.

9. The above order should be complied with, within a period of six months from the date of communication of this order.

No cost.

Handwritten signatures of two members, Member (A) and Member (J), are shown. Member (A) is on the left and Member (J) is on the right. Both signatures are in cursive and appear to be identical.

Girish/-