

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD.

ORIGINAL APPLICATION NO.600 of 2001.

Allahabad this the 5th Day of March 2003.

HON'BLE MRS.MEERA CHHIBBER, MEMBER-J.

C.P.Srivastava,
Son of Kishun Lal Srivastava
resident of S.S.E. (P Way)
East Mau,
District Mau.

.....Applicant.

(By Advocate Shri Naveen Srivastava)

Versus.

1. Divisional Rail Manager (Engg.)
North Eastern Railway,
Varanasi.

2- The General Manager,
North-Eastern Railway,
Gorakhpur.Respondents.

(By Advocate : Sri Anil Kumar)

ORDER

This O.A. was filed by the applicant challenging the order dated 07.12.2000 passed by the disciplinary authority whereby the disciplinary authority after holding the applicant guilty had imposed the penalty on applicant to refund the amount of Rs.96,65,448/- from his salary in proper instalments (Page 13). Against the said order applicant had filed his appeal to the next higher authority which ^{is} still pending. ~~Therefore~~, the applicant had rushed to the court for seeking stay of the operation of impugned order dated 07.12.2000 and a direction to the respondents not to deduct any amount from the salary of the applicant. A perusal of the ordersheet shows that applicant was not given any interim order by the Tribunal. Now during the



pendency of the O.A., appeal filed by the applicant against the impugned order, has also been decided vide order dated 26.02.2002 wherein appellate authority has held as under :-

"In view of the above it is, therefore, observed that in his representation under consideration, no reason has been given for the loss occurred for a huge amount of more than Rs.96 lakhs and hence been found guilty of misconduct of not up keeping the railway stores properly thus lacked devotion to duty. He has thus violated Rule 3.1(ii) of Railway Service Conduct Rule 1966. However, it is observed that though the charged official has been found responsible for a very heavy loss of government property, a minor punishment of only the recovery of this huge amount from his salary has been imposed at the rate of Rs.2500/- per month. It is further observed that at this rate of deduction, it would not be possible to recover the whole amount of loss even from retirement dues also i.e. DCRG, leave salary etc. as the charged official is superannuating also in December 2002 itself.

I the undersigned as Appellate Authority in terms of Rule 22 of D&AR 1968 consider that the end of justice could not be met in this case as the earlier penalty is highly inadequate. Further since no enquiry has been held in this case earlier, it is therefore, directed that an enquiry be held under rule 9 of D&AR and the case be put thereafter accordingly ad recovery be continued without any prejudice".

2. The applicant has not challenged the order passed by the appellate authority and I am also informed that pursuant to the orders passed by the appellate authority, an enquiry has also been concluded against the applicant wherein the enquiry officer has held that applicant alone cannot be said to be responsible for the loss caused to the Railways, as other officers posted in the project namely PWI, Shri A.S. Asumani, P.R. Srivastava. and Shri Anil Kumar Srivastava are also equally responsible. It is also held that for not appointing the Store Keeper ^{which} ~~which~~ Shri C.P. Srivastava, Railway Administration is also equally responsible., accordingly for the loss of Rs.96,65,448/- Shri C.P. Srivastava cannot be held solely responsible. In fact, the enquiry officer had suggested that the entire matter should



be sent to the Accounts Department for verification of the stock sheets and instead of holding the departmental enquiry it would be better if the entire matter is placed before the court. This finding has been placed on record by the applicant by Civil Misc. Application No.874/03. It was submitted by the applicant's counsel that now the enquiry officer ~~has~~ also not held him guilty for the loss of entire amount, hence the recovery made from his salary should be refunded to him and the impugned orders may be quashed.

3. The respondent's counsel, on the other hand, submitted that since applicant had accepted the appellate authority's order and has not even challenged that, the present O.A., ~~has~~ become infructuous in as much as after the passing of the final orders in the enquiry. Now the disciplinary authority would have to pass a final order and in case any adverse order~~s~~ are passed against the applicant it would be open to him to challenge the said orders by filing a fresh O.A. but as far as this O.A. is concerned it does not survive any longer.

4. I have heard both the counsel and perused the pleadings available on record.

5. Admittedly the appeal filed by the applicant against the disciplinary authority's order was ~~disposed~~ ^{8 decided 8} during the pendency of the O.A. and the present O.A. has not been amended till date and pursuant to the orders passed by the appellate authority, now even the enquiry has been concluded with certain orders observing therein ^{8 above 8} that applicant ~~cannot~~ cannot be held responsible for the loss caused to the Government. Therefore, the position, that emerges now, is that the disciplinary authority would have to pass a fresh order on the basis of reports submitted by



the enquiry officer which is yet to be done and in case applicant is aggrieved by the orders passed by the disciplinary authorities, it would be open to the applicant to challenge the orders passed by the authorities at relevant time by taking all these submissions which have been raised in the present O.A. as none of the submissions have been adjudicated upon in the present O.A.

6. In view of the above discussions I find that due to the subsequent development which have ~~been~~ taken place, this O.A. would no longer survive. Accordingly, this O.A. is dismissed. However, liberty is granted to the applicant to challenge all the orders which are against him at appropriate stage by filing a fresh O.A. Since the appellate authority's order was communicated to the applicant only through the CA, question of limitation would not come in applicant's way. No costs.



Member-J

/Neelam/