

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

THIS THE 4th DAY April OF 2011

Hon'ble Dr. K. B. S. Rajan, Member (J)
Hon'ble Mr. D. C. Lakha, Member (A)

Original Application No. 660 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

H. N. Rai, aged about 50 years, s/o late Shri V. Rai, Permanent Resident of Village- Bhanti, Post- Banehera, District-Ballia, presently Posted as Chief Goods Clerk at Vyas Nagar, Northern Railway, Lucknow Division, Varanasi and presently residing at-5-A, 8/34-1, Parashurampur, Sarnath, Varanasi

.....Applicant

VER S U S

1. Union of India, through the General Manger, Northern Railway, Baroda House, New Delhi.
2. The Additional Divisional Railway Manager (I), Northern Railway, Lucknow.
3. The Senior Divisional Commercial Manager, Northern Railway, Lucknow.
4. The Divisional Commercial Manager, Northern Railway, Lucknow.

.....Respondents

Present for the Applicant: Sri Rakesh Verma.

Present for the Respondents: Sri Anil Dwivedi.

O R D E R

(DELIVERED BY HON'BLE DR. K.B.S. Rajan, MEMBER (J))

The applicant, while functioning as the Chief Goods Clerk at Varanasi was slapped with a charge sheet which
reads as under:

"ANNEXURE-I

Article of charges on the basis of which action under major penalty is required to be taken against Sri H. N. Rai, CGC/BSB.

.....

Shri H. N. Rai, CGC/BSB was found responsible for undernoted serious irregularities/misconduct:-

He was found responsible for allowing the stocking of goods in advance in the goods shed without getting the permission of competent authority and even without collection of wharfage charges which has resulted a loss to Railway revenue amounting to `4,15,744/- as per detailed list.

That by the above act of omission and commission Shri H. N. Rai failed to maintain absolute integrity devotion to duty and acted in a manner unbecoming of a railway servant thereby contravening the rule 3.1(i), (ii) & (iii) of the R.S.C. rules 1966.

*Sd/-
Divl. Comml. Manager,
N. Rly, Lucknow."*

2. The charges having been denied, regular inquiry was conducted but the inquiry officer held that the charges were not proved. The Disciplinary authority, however, disagreeing with the report of the inquiry officer, imposed certain penalty, which at the revision level was upset as the point of disagreement was not spelt out beforehand and thus after the issue of show cause notice, the disciplinary authority had imposed the penalty of reduction to the lower stage in the pay scale of the applicant. This was unsuccessfully agitated before the appellate authority and

thereafter before the revisional authority, and hence this O.A. praying for quashing of the impugned penalty, appellate and revisional orders vide Annexure A-I, A-II and A-III.

3. Respondents have contested the O.A. According to them, the applicant was held responsible for not having first obtained permission for the stacking of the goods at the Railway Station and for not having collected the stacking charges. As such, they had justified the penalty.

4. The written arguments, preferred by the counsel for the applicant neatly and succinctly furnishes the full facts of the case and the legal issues raised by the applicant and the same is reproduced below:-

"1). The question of charging the stacking charge would arise only at the time when the goods are loaded in the wagons after the wagons are supplied by the Railway Administration. Before this event could have taken placeThe petitioner was held responsible for the above and charge sheeted and has been illegally punished.

2). The petitioner as per Chapter-II (Rules for the registration of indents, allotment and supply of wagons) sub-rule (1) read with rule (2) of rule 201 of the General rules for acceptance, carriage and delivery of goods (goods Tariff No.37) Part-I (vol.-I) registered the demands for wagons for dispatch of goods in the register maintained in the Office. The prescribed registration fee was also charged by the

petitioner from the concerned parties and the petitioner also got duly filled-in a forwarding note.

3). As per the enquiry report, none of the charge could be proved against the petitioner as per the Inquiry Office, Railway Administration is responsible for stacking of the goods by not supplying wagons for loading the goods due to the restrictions imposed by the Railway authorities themselves. The allegation against the petitioner in the charge sheet that he allowed the stacking of goods without obtaining the permission of the competent authority could also not be established as nowhere.....there is such provision..... The Inquiry Officer has further held that the wharfage/stacking charges are collected from the concerned parties, not at the time when the consignment is brought on the Railway premises but the same is done at the time loading up to the day the consignment is completed.

6). In the show cause notice (Annexure-A-10) no materials/cogent reasons were referred and the Disciplinary Authority completely ignored the fact that the stacking charges are levied at the time, the goods are loaded in the wagons and not at the time, the goods are brought on the goods platform for loading after the registration of the goods as per the rules. Further the Disciplinary Authority has completely ignored the fact that there is no provision for taking prior permission from the competent authority for booking/stacking the goods on the goods Platform.

7). That the Disciplinary Authority has failed to appreciate that when supply of the wagons were restricted by the Railway Administration, the petitioner, being a Goods Clerk, should have been instructed, in writing, not to register the case for loading on the wagons."

5. Arguments were heard and the written arguments and pleadings perused.

6. Rules regulating registration of indent, allotment and supply of wagons and stacking of the goods are contained as hereunder:-

(1). Registration of demands for wagons: -

All demands for dispatch of goods in wagon loads should be entered in the wagon Demands/Priority Register maintained in the stations or goods sheds open for booking of goods in wagon loads. The signature of the sender or his representative should be taken in the appropriate column provided in the register after duly filling in all the other columns. The prescribed registration fee will be paid by the sender or his representative at the time of registration of demands for wagons.

(2). A Forwarding Note duly filled in should be tendered by the sender at the time the goods are physically brought into the Railway premises."

(b) Stacking Charges:-

5A. That, the Ministry of Railway's, Railway Board issued a circular No. TC-I/91/201/7 dated 22.03.1995 circulated the Railway Fare and Freight committees recommendation No. 267 regarding free time for goods brought to stations for dispatch, but not loaded which circular is reproduced below:-

"For outward Traffic Stacking charge should be recovered instead of Wharfage. The rules for stacking including the stacking charges may be framed by the Railway Administration At Divisional level."



The above mentioned recommendation of RF PC has been accepted with slight modification as under:-

(i). The charges being leveled for detention of outward consignments in Railway Permits beyond the permissible free time will no more be termed as wharfage charges, but will hence forth be termed as STACKING CHARGES.

(ii). The stacking charges will be at the same rates as were leveled here-to-fore- as wharfage charges and the free time will also continue to be reckoned as is being presently done in respect of the outward consignments.

(iii). This has the sanction of the Central Government issue instructions to all concerned and acknowledge receipt of this letter."

7. The disagreement of the Disciplinary authority from the findings of the inquiry officer, is as under:-

"Sri H. N. Rai is stacking statement dt. 22.8.95 has recorded अगर वैगन की supply होती रहती तो माल स्टैक नहीं हो पाता, हमारे पास स्टैकिंग का कोई सरकुलन नहीं। DRM आफिस से पता किया जायेगा अगर कोई चार्जेज जो नियमानुसार है लगाया जायेगा। But Sri H. N. Rai take no initiative in this regard upto 20/10/95 as per his written statement dt. 20.10.95.

During D&AR, enquiry Shri H. N. Rai on 10.12.98 had admitted in reply of Q. No.3 that materials was placed in Goods Shed immediately after placement of Indents of 14 wagons on different dates and in reply to Q. No.4 he has stated

that question of permission for stacking the material is not required.

In the defence brief in Para 3 of analysis of RUDs has put forward that the contents of Railway Board Circular No. T/1/91/201/7 dt.22.3.95 is not applicable as the Rly administration failed to provide the wagons. The contention of CO is wrong there is no clause in the circular that stacking charges will not be collected if Rly. Administration is failed to supply wagon.

From the above I have come to the conclusion that charges leveled against CO are proved. Copy of the findings may be sent to CO for his comments."

8. The question for consideration is whether the charges remained proved. As regards seeking permission for stacking, there is no specific rule that permission should be obtained in advance, much less by a lower subordinate. Indeed, the very fact that registration of wagons has been made is an implied permission. As such, in the absence of the specific provisions for seeking permission, coupled with the fact that the customer had already registered for 14 wagons, permission is implied. Hence, from that point of view, the charge of not seeking permission has no leg to stand.

9. In all expectation, there may be some provisions for such stacking by regular/reputed consignors. If the case of the consignor in this case falls under that category, the question of permission does not arise in any event.

10. As regards failure to collect stacking charge, the Inquiry Officer has held that the same being the charge to be collected at the time of loading, the applicant cannot be held responsible. The disciplinary authority has not dealt with this particular aspect in his point of disagreement. Stacking charges are for having made use of the Railway Premises, pending the availability of wagons for loading. The same could be precisely worked out only when the wagons are available and not before. There are, as is understood, provisions to the effect that the goods are to be loaded in the wagons within the prescribed time and it is for this reason that the goods are permitted to be staked in the Railway premises and certain free time is available for stacking such consignments. It is only when the period exceeds free time that stacking charges are levied from the time of expiry of the free time till the consignment is loaded. There cannot be any provision to charge stacking charge in between. In any event, the following observations of the Senior Divisional Commercial Manager in his order dated 05-12-2003 is worth cited here:

"In this case the CGS/BSB, Sri Chandan was also issued major penalty charge sheet for the same charges as was issued to Sri H. N. Rai, GC. The DAR enquiry against Sri Chandan is still to be finalized. In this case party after depositing the fees for registration of 14 wagons brought their goods for stacking on 15/5, 20/5, 29/5 and 16/8/95 on the goods PF to be loaded on availability of wagons. But wagons could not be made available by the Railways for loading due to restriction imposed at that time which was the main reason or

stacking of Goods on the PF. The stacking of goods is being allowed to the party so that they may load their goods on the availability of wagons applied for. This facility is given to the merchants only for capturing goods traffic as the wharfage is not a source of earning for the Rlys. In view of above discussion I feel that the major responsibility lies on CGS/BSB in this case as a Goods Clerk works under the clear instruction of CGS."

11. Though the authority has used the term, "major responsibility" leaving a latitude to construe that some minor responsibility lies with subordinates, the Chief Goods Clerk or subordinate to him are all under the direct control of the Goods Supervisor and information as to the probable availability of Wagons for loading would be available only with the Station Master or the Goods Supervisor and not to the lower rung.

12. Taking into account the following facts, we are of the considered view that no fault could be fastened upon the applicant for the alleged omission:-

(a) No specific permission is required for stacking the consignment in anticipation of availability of the wagons for which registration fees had already been paid. The very fact of payment of registration fees for wagons provides for implied permission for stacking the consignments.

(b) The stacking charges could be accurately worked out and collected only at the time of loading since precise

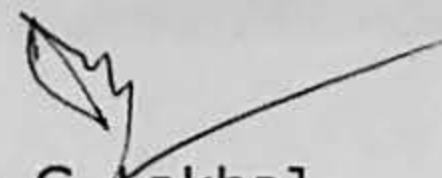
calculation depends upon the exact period for which the consignment was lying in the Railway premises beyond the free time provided for.

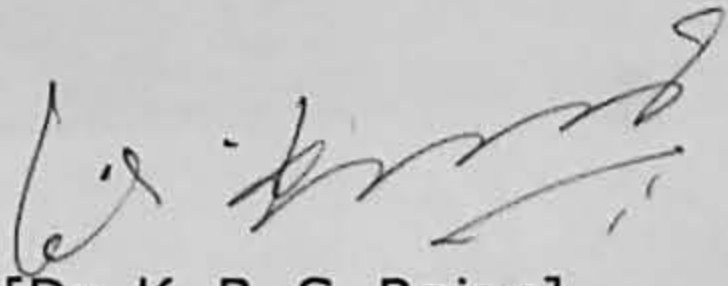
(c) The responsibility lies upon the Chief Goods Supervisor and other officials and not the lower subordinates, who are practically helpless under such contingencies.

13. In view of the above, the OA succeeds. The impugned order of penalty, the appellate order and the revisional order are all quashed and set aside. The respondents shall restore the pay of the applicant to the original stage from the date of imposition of penalty as if no penalty had been imposed and work out the arrears due with all attendant increments and other benefits. The benefit of the sixth Pay commission recommendations shall also correspondingly be available to the applicant.

14. Time calendared for passing of necessary orders and payment of arrears to the applicant is three months from the date of receipt of copy of this order.

No cost.


[D. C. Lakha]
Member-A


[Dr. K. B. S. Rajan]
Member-J

/Dev/