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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH ALLAHABAD
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Registration T. A. No. 809 of 1986
(Regular Suit No. 206 of 1985

Ram Tilak Tripathi & Ors. Plaintiffs,
vs,
Union of India & Others. Defendants.

Hon'ble Mr Justice K. Nath, V.C.
Hon'ble Mr K. Obayya, Member(A)

(By Hon. K. Obayya, A.M.)

Regular Suit No. 206 of 1985 instituted in the Court of Civil Judge, Lucknow has been received on transfer u/s '29' of the Administrative Tribunals Act, 1985 and registered as T.A. No. 809 of 1986. The plaintiffs who are three in number filed the above Suit for declaration that they are not liable for shortage of diesel oil as such no deduction should be made from their pay to cover the shortage.

2. The case of the plaintiffs is that they are employees of the North Eastern Rly. During the year 1979, they were working as Sr. Clerks (Coal Transhipment Clerks) in the loco-shed, Charbagh, Lucknow. On 08.03.1979, there was an inspection of the underground storage diesel tanks by the Chief Vigilance Inspector (C.V.I.). The inspection revealed a shortage of 9873.1 litres of diesel oil stock.
- Charge sheets dated 13.03.1981 were served on plaintiff 2 & 3, and later on plaintiff 1 for neglect of duty. The charges were held established and by an order dated 4.3.85,

recovery of Rs. 14,500/- being the cost of deficit stock of diesel oil was ordered. The plaintiffs preferred appeals, which were turned down by an order dated 17.6.85.

3. It is contended by the plaintiffs that they were only in additional charge of the work, in the absence of V.K. Srivastava, Senior Clerk, posted to look after maintenance of diesel oil stocks; that they were attending to clerical work, while handling of the stocks was done by others and the shortage could be due to leakage of underground pipes, since the earth dug up between two old tanks, to install a third tank, showed that it was soaked in diesel oil and reports on this were sent by Loco-Foreman on 16.03.1979 and 24.03.1979. No enquiry was held before issue of charge-sheet, and the documents asked for were not supplied, thereby denying them opportunity to explain their case. It is their further contention that measurement of the underground tanks was last taken on 28.01.1979 when the stock was found to be correct as per stock register, and measurement of the tanks was not taken when charge was made over to them, as such they are not responsible for the deficit.

4. The defendants contested the case by filing counters in which it is stated that when Shri V.K. Srivastava (D-7) proceeded on leave, he handed over charge of 53810.0 ltrs. of H.S.O. oil to plaintiff No. 1 on 21.01.79 under clear signature of plaintiff No. 1. It is further

stated that on 08.03.1979 when 'Surprise-check' was made by C.V.I., Gorakhpur, the ground balance of Diesel oil was found to be 55461.9 litres as against ledger balance of 65335 litres. Thus a shortage of 9873.1 litres was found. The shortage was noted in the ledger under the signature of C.V.I. According to them, plaintiffs 2 & 3 were served with a charge-sheet dated 13.03.1981 for minor penalty which was acknowledged by the plaintiff No. 2 on 14.04.81 and the plaintiff No. 3 on 30.03.1981. The charge-sheet was served on plaintiff no. 1 on 21.08.1984. The delay in serving the charge-sheet on plaintiff no. 1 was due to the fact that he was removed from service from 14.07.1980 to 10.06.1981 for involvement in some other vigilance case and, thereafter, he was posted at Laxmipur District. It is also stated that the plaintiffs did not offer any explanation nor made any representation. However, another opportunity was given to them on 14.09.1984 (Annexure A-1) and their replies dated 21.09.1984, 28.09.1984 & 10.11.1984 (as contained in Annexure A-2) were considered before passing recovery order dated 04.03.1985, and their appeal was rejected by order dated 14/17.06.85. It is denied by the defendants that defendant no. 5 had advised action as to the amount to be recovered. Defendants also denied that the shortage was due to any leakage. Penalty was imposed after giving due opportunity to the plaintiffs as per rules. Documents relied upon was ledger itself which was in the possession of plaintiffs. The statement of imputation was

passed on stock sheet and the report of the C.V.I. and the contents of which was communicated to each one of the plaintiffs on 14.09.1984. It is also stated that when defendant No. 7 proceeded on leave, charge of ledger with physical balance of H.S.D. oil was made to plaintiff No. 1 under his clear signature, and the plaintiffs were in-charge of stores/materials. The Loco-Foreman is in full charge, with powers to distribute work to staff working under him, and the clerks working under him, are responsible for maintenance of day-to-day records and to issue and distribution of HSD oil correctly according to instructions of the General Manager dated 30.12.1971 (Annexure XI) and as such they are responsible for the shortage and the Foreman is not the custodian of stocks. It is also stated that when they dug up the surrounding area of the two tanks, they found spillage of HSD oil due to over-flow from the nozzles of the pump as noticed from IOC's letter (Annexure-IV). It is also stated that Vigilance Cell was created to combat corrupt practices with Hqrs. at Gorakhpur and a 'Surprise-check' was done by the vigilance staff on 08.03.1979. It is further stated that in response to the letters dated 16.03.89 and 24.03.89 which are in the handwriting of plaintiff No. 1, I.O.C. replied that there was no leakage (Annexures V & VI) and that no certificate was given by them to the effect that there was leakage. It is also stated that representation of the plaintiffs dated 26.08.84 was duly considered before passing the orders. Regarding

supply of the documents, it is stated that the charge was for minor penalty, and besides there was no other document which was relied upon. The ledger was in the custody of plaintiffs at the time of inspection and they were given full particulars of the stock sheet, showing a shortage of 9873.1 ltrs of HSD oil. Shortage was fixed not at current rates but at 1979 rates showing leniency to the plaintiffs. It is stated that the penalty was imposed by giving opportunity as required under the Discipline & Appeal Rules, and there is nothing irregular in the orders of the disciplinary authority.

5. In the Rejoinder, plaintiffs denied that there was any physical verification of the stocks at the time of taking-over, it was only taken over on paper. Shortage found on inspection on 08.03.1979 is not denied. It is stated that there was no fact finding enquiry and that oil leakage was noticed under the ground when the soil was excavated for digging up the third tank. The plaintiff No. 1 denied that the letters dated 16.03.1979 & 24.03.1979 were in his handwriting. The stock verification was done only in Feb., 1979 (Annexure-RA.4). It is also stated that the liabilities fixed on the plaintiffs and the reports dated 07.08.1979 and 27.01.1984 were not disclosed to the plaintiffs though they were relied upon by the disciplinary authority for imposition of the punishment.

6. In reply to this rejoinder, the defendants stated that the letters dated 16.03.1979 and 24.03.1979 were

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written by plaintiff No. 1 after vigilance raid. It is denied that there was any leakage and that no prejudice was caused to the plaintiffs for not supplying documents as the only document relied upon was stock verification sheet which was signed by the plaintiffs. The report dated 07.06.79 (Annexure-II) bears the signature on the back of the stock verification sheet of plaintiff No. 3. Plaintiff No. 1 was present at the site but he fled away from the site. The report on shortage of fuel is Annexure-III. No statement of documents is mentioned in the imputation of charges and that under the standing instructions of the General Manager, the plaintiffs are responsible for receipt, accountal of the supplies of the HSD oil received from time to time. It is also stated that though action under Discipline & Appeal Rules is not necessary this was done with a view to afford opportunity to the plaintiffs.

7. We have heard the counsel for the parties and perused the record. So far as responsibility of the plaintiffs is concerned for maintenance of accounts, receipts and posting of ledgers and day to day transaction, it is noticed that the procedure regarding supply, receipt, issue and accountal of HSD oil used as fuel for diesel, loco has been laid down in letter No. M/287/41/5 Dpt. of October, 1971 (Annexure-XI). Paragraph 5 of the said letter lays down various measures to be taken for receipt and accountal of tank wagons/lorries in the shed.

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"5.1 : The tank wagons/lorries containing HSD oil on arrival at destination will be taken delivery of by the official-in-charge of the fuelling installation.

5.2 : As soon as a tank wagon is placed in the siding of decanting line the suppliers' seals at the top and bottom should be checked. If they appear to be tampered with or missing an immediate joint inspection by representatives of Loco Traffic and Security Depts. should be conducted and the actual quantity assessed in their presence by measurement and form HSD/IB should be filled in and signed by the three representatives. The columns in the form are self-explanatory and the foot notes indicate the disposal of the forms.

5.4.: The shortages or excesses recorded both in the forms HSD/IA and HSD/IB should not, however, be accounted for in the receipt statement or stock ledger shown in form No. HSD/3. These should, however, be entered under column 12 and 18 of the form HSD/3 for explaining shortage/excess as the case may be.

Para 6 lays down the steps to be taken for the duties of the Officer-in-charge and leakages to be immediately informed under para 6.2. The procedure also lays down for daily stock report and also security arrangements and about stock verification. This together with Annexure-X clearly establishes that clerks assisting the LF/CTXR are responsible for maintaining of stores, correct receipt and issue and accountal and safe custody of stores and for any lapse in discharging the above function or loss due to the shortage of material, they would be held responsible and liable for action. So far as the shortage is concerned, the

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stock statement which is Annexure-I of the Counter filed by defendants shows that the charge was received by Shri R.S. Tripathi (Plaintiff No. 1) on 21.02.79. On 08.03.79 when there was inspection by the C.V.I. against the ledger balance of 65335 litres of HSD oil, physical stock was 55461.9 litres, and there is an entry of shortage of 9873.1 litres. This entry is authenticated by the plaintiff No. 3, who was on duty. These facts are not denied by the plaintiff no. 1. Copy of the stock verification sheet dated 08.03.1979 is at Annexure II to the Counter. The same is also annexed as Annexure I to the Rejoinder. It is evident from this that the duties of plaintiffs involved not merely maintenance of ledgers etc. but also responsibility for the stocks and their contention that they were only doing clerical work and not responsible for the stocks is, therefore, not tenable. It is also noticed that the plaintiffs have not complained about short receipt of stocks or any other irregularity at any time before the CVI inspection. According to the instructions, they are required to report immediately any irregularity or shortage in receipt of stocks. In the absence of any such report, it can be considered that they cannot evade responsibility for correct maintenance of stocks.

8. The learned counsel for the plaintiffs urged that no opportunity was provided to the plaintiffs to explain their case. We have considered this contention.

The charge-sheet dated 14.03.1981 was for imposition of minor penalty. The plaintiffs acknowledged receipt of this charge-sheet together with the statement of imputation. In para 2, of the charge-memo, there is clear direction to the plaintiffs to submit representations against the charge-memo. Admittedly no representation against the charge-memo was made by the plaintiffs. Further by letter dated 14.09.84 (Annexure VIIIA) the plaintiffs were again asked to offer their explanation. In para '2' of this letter, it is clearly stated (Annexure VIII-A) that:

"2. You may be aware that the onus of disproving the shortage lies on the staff who had been maintaining the accounts etc. This stock-sheet is pending since then. It is, therefore, in your own interest to rebut the shortage by explaining the circumstances and the action taken by you to cover up the shortage/make good the shortage.

3. You are, therefore, advised to submit your defence to the memorandum within 7 days of the receipt of this letter. It may be noted that there is no other document on which the statement of imputation is based except for the stock-sheet under reference.

Sd/-....."

As the charge was for a minor penalty, no inquiry is called for and the disciplinary authority can impose penalty on consideration of representation, if any received. In the circumstances, we are of the view that the contention of want of opportunity is not established.

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9. It was submitted by the learned counsel for the plaintiff, that the enquiry in this case should have been held under rule 9 of the Railway Servants(Discipline & Appeal) Rules, 1968, as laid down in Railway Board's instructions dated 23.5.75. But the instructions were not followed, therefore, it was contended that the enquiry is vitiated. We have seen the instructions referred to, a copy of which has been annexed to Supplementary Rejoinder (A-1) filed by the plaintiffs. The relevant paras are extracted as below:

"Sub: Procedure to be followed when deductions are made from a railway employee on account of public claim for payment of compensation exceeding Rs 150/- for value of goods not delivered.

In.pursuance.....
it is proposed, after considering the representation, if any made by Railway servant to recover from him more than Rs 150/- as the whole or part of the pecuniary loss caused by him to the Railway Administration, a departmental enquiry on the lines of sub-rules (3) to (19) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 should be held before passing any order to make such recovery. It should be noted that the intention of the Discipline & Appeal Rules as such, but it is to afford reasonable facilities to the Railway Servant concerned to defend his case before enforcing the recovery from him without attracting the Discipline & Appeal Rules. "

It would appear that the above instructions are in respect of cases of public claims for compensation for value of goods not delivered and are not applicable to cases of loss of Railway property. Even if it is conceded that these instructions are applicable to cases of loss of Railway property, the question is whether an enquiry held in accordance with rules and not executive instructions is vitiated. The memo of charge

was issued under rule 11 of Railway Servants (D.A.) Rules, 1968 for imposition of minor penalty. Under rule 6 recovery of loss to Railway property is mentioned in sub-rule iii. Rule 9 is for imposition of major penalty; As the charge was for levy of minor punishment, we consider that the disciplinary proceedings were taken under the relevant rule, and the action of the disciplinary authority cannot be assailed on the ground that proceedings were not initiated under a different rule namely rule 9^b.

10. It is a settled proposition that where there is a rule, which lays down the procedure and there are also instructions on the very same subject; to the extent the instructions are not consistent or contrary to the rules, the instructions need not be followed and non compliance with such instructions will not vitiate the proceedings. Rules being statutory prevail over executive instructions which are of administrative nature. In this view of the matter, we hold that the contention of the learned counsel for the plaintiffs that the proceedings suffer from infirmity, has no force.

11. It was also urged by the learned counsel for the plaintiffs that the documents asked for were not supplied and this was prejudicial to the interests of the plaintiffs and against the principles of natural justice. In para 8 of the Plaint it is mentioned that the plaintiffs' sought the material relied upon for framing charges, and also after receiving the memo of charges, a request was made for supply of certain documents like diesel voucher file, diesel accountal register, office order register, duty list etc

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It is well settled that it is not necessary to provide all the documents asked for by a charged officer but those which are "relied upon" to establish the charge should be supplied. Non supply of such documents would amount to violation of principles of natural justice. The learned counsel for the defendants contended that request of the plaintiffs was considered and the disciplinary authority felt that there was no need to supply documents in as much as, the charge-memo, and the statement of imputation contained the particulars, on the basis of which the charge was framed. The stock statement, which was signed by the plaintiffs, was the material on which charge was held established. Further by letter dated 14.9.1984 (Annexure VIII A to the reply) the material facts on which the charge is based was communicated to the plaintiffs.

12. In Chandrama Tewari v. Union of India (1987(5) A.T.C. P 369) the Supreme Court held that non supply of documents mentioned in memo of charge neither relevant nor referred to, nor relied upon by the authorities is not violative of principles of natural justice and not vitiative of the proceedings. The Supreme Court observed "that obligation to supply copies of documents is confined only to material and relevant documents and enquiry would be vitiated only if the non supply of the material and relevant documents demanded may have caused prejudice to the delinquent officer." It was also further observed that "If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charge or if such document or material was not necessary for the cross-examination

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of witnesses during the enquiry, the officer cannot insist upon supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer". In this background we do not see any reason to hold that the enquiry was vitiated. The documents not supplied were not relied upon either for framing the charge or for imposition of penalty that followed.

13. The memo of charge was for minor penalty. Where elaborate enquiry is not called for and disciplinary authority can take a decision on going through the representation of the delinquent officer, the basis of charge in this case is stock verification sheet which contains signature of the plaintiff. The fact that the shortage was noticed during vigilance inspection is ^{not denied} by the plaintiff. They were held responsible for shortage of diesel oil stock, as their duties involved not merely maintenance of accounts but also responsibility for the stocks. The disciplinary authority held that the charge is established on the basis of entries of stock statement. The plaintiff No. 1 continued to work in the same seat even after inspection and the letters dated 16.3.89 and 24.3.89 (Annexures 5 and 6) regarding the shortage of diesel oil to IOC are admittedly at his instance) and this clearly established that he had access to all the records relating to receipt and maintaining diesel oil stocks.

14. Taking the facts and circumstances of the case, we are of the view that no irregularity is


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established in the conduct of the enquiry or
award of penalty. The suit is devoid of merit and
accordingly, it is dismissed with no orders as to
costs.


Adm. Member.


Vice Chairman.

Shakeel/

Allahabad Dt. 19 Dec., 1990.