

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

This is an appeal against the judgment and decree dated 3.12.1983 passed by the Munsif, Gonda in Original Suit No.84 of 1981, Ayodhya Prasad v. Union of India & others, which has come on transfer from the court of District Judge, Gonda under Section 29 of the Administrative Tribunals Act XIII of 1985.

3. . The plaintiff's case is that he was working as an Asstt. Guard in the North-Eastern Railway at Gonda. According to him on 7.1.1975 he picked up 10 bales of cloth at Khalilabad Station, but he was made to sign the acknowledge receipt for 11 bales of cloth by the Parcel Clerk at that station. Since the train had stopped for a very short period he could not check³²~~ed~~ the actual number loaded and when the train reached Gorakhpur and he was in the process of giving charge to the relieving Guard, one bale of cloth

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was found short. An enquiry was held against this loss and the enquiry officer did not [✓]hold him responsible, but his explanation and the report of the enquiry officer was not considered and his pay was reduced from Rs.308/- to Rs.290/- for a period of two years. In 1979 a fresh charge-sheet was issued to him for a ^{recovery}~~deduction~~ of Rs.5,090/- for the loss of the bale of cloth. He represented against this notice for recovery, but recovery was started and his appeal against the order was also not decided. According to him he belongs to the Operating Department and, therefore, the punishment could not be imposed by the Assistant Commercial Superintendent (ACS) as he did not belong to the Commercial Department. He had, therefore, prayed that no deduction should be made from his salary and that he should not be held responsible for the loss of Rs.5,090/-. This plaint was opposed by the defendant-respondents (defendants). They have said in their written statement that 11 bales of cloth were loaded and this was clearly acknowledged by the plaintiff and after due enquiry his salary was reduced to Rs.290/- for two years. When his appeal was considered the appellate authority ordered the recovery of Rs.5,090/- and his salary was restored to Rs.308/- per month which he was drawing when he was reduced to Rs.290/- per month. According to the defendants the appellate authority was fully competent to impose this punishment.

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4. The trial court had framed 9 issues and on the issue whether the plaintiff was liable for the loss of one bale of cotton and whether the orders passed by the Assistant Commercial Superintendent are null and void, the learned trial court had held that the defendants had conducted a proper enquiry against the loss of one bale of cotton and the plaintiff was held responsible in this enquiry. Even the plaintiff had accepted that he had signed for 11 bales of cotton, so the trial court rejected the plea taken by the plaintiff that he had actually loaded only 10 bales of cotton and by mistake signed for 11 bales when the Parcel Clerk presented

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the papers to him. He also rejected the plea taken by the plaintiff that he was only working as an Assistant Guard and the actual Guard of the train under whose supervision he was working should also be held responsible, ^{3/ He alleges that and as} ~~on the ground that~~ the Guard of the train has not been held responsible for the loss and the Guard of the train had not accepted the responsibility and had clearly said that the loading of the goods was done under the supervision of the plaintiff. The trial court had also considered the evidence given by other defence witnesses and then came to a conclusion that the plaintiff's plea that he had actually loaded only 10 bales and by mistake signed for 11 bales was not acceptable. On the issue whether ACS could impose the punishment as the plaintiff belonged to the Operating Department, the learned trial court had held that no evidence was produced before him by which it could be said that ACS was not competent to pass the impugned orders. He also relied on Circular No. EP 7-51 of November, 1965 which proved that ACS was competent to impose the punishment on the plaintiff and, therefore, the trial court has dismissed his suit. It is against ~~this~~ these orders that the plaintiff has come up with this appeal.

5. We have heard the learned counsel for the parties. Sri Lalji Sahai, learned counsel for the plaintiff, contended that since the Guard and the Assistant Guard both are responsible for the loading and unloading of the train, though it is done by the Assistant Guard, ^{3/} ~~and~~ the Guard has not been taken up for the loss of the bale of cotton, the responsibility for the loss has been unjustly imposed on the plaintiff. He also contended that originally the charge-sheet was issued for imposing a major penalty but only a minor penalty was imposed, therefore, the period of suspension which the plaintiff underwent should have been treated as on full pay otherwise the plaintiff will be subjected to two punishments for the same offence which is against Article 20 of the Constitution. The learned counsel for the defendants, Sri G.P. Agarwal, opposed

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this contention with a submission that the plaintiff has not claimed any relief in the trial court against the suspension period and, therefore, this claim now is not valid and that the punishment given by ACS could not be challenged on the ground that the plaintiff belonged to the Operating Department and in any case the final order has been issued by the appellate authority and, therefore, on the principle of merger even if the competency is under challenge it does not matter any more. He also submitted that the principles of natural justice had been followed through out the process and, therefore, the plaintiff has no case.

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6. As far as competency of the disciplinary authority is concerned, Railway Board's letter No.E(D&A)72 RG-6-13, dated 19.4.1974 clearly lays down that the Station Masters/Assistant Station Masters belonged to the Traffic and Commercial Departments and not the Operating Department, but in the course of their day to day functioning they may violate instructions administered by the different wings of that Department such as Operating or Commercial. In these circumstances there would be no objection for the authorities in Commercial or Operating wing to initiate and finalise disciplinary action against the concerned Station Master/Assistant Station Master as the irregularity for which the action is initiated relates to Commercial or Operating wing and these instructions apply to other categories of staff also, who work^{3/} in one department but violate^{3/} instructions pertaining to the other wings of that department. In 1979 the Railway Board cancelled the letter of 1974 and reiterated their earlier instructions of 16.10.1973. In this case the appellant has been issued a fresh charge-sheet in 1979 for recovery of Rs.5090/- for the loss^{2/} of the bale of cotton and the punishment was imposed again by ACS^{3/}. By the time this charge-sheet was issued the Railway Board's order dated 10.1.1979 came into existence and were operative. Under these orders ACS was no more competent to issue a charge-sheet to a staff of the Operating Department.

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Since he is
The Guard, ~~belongs~~ to the Operating Department, the issue of punishment order by ACS would be illegal and, therefore, is liable to be quashed.

7. Under the circumstances of the case the application (Appeal No.301 of 1983) is allowed and the penalty of recovery of Rs.5090/- is quashed. The appellate order become non est. It was pleaded before us that for the suspension period also the appellant has not been paid and, therefore, it has amounted to imposition of two punishments. Once the penalty of reduction to Rs.290/- was imposed which was considered by the appellate authority and converted into a recovery of Rs.5090/-. The period of suspension should have been suitably decided to see that the appellant was not subjected to double jeopardy. He should not have been made to suffer twice for the same cause. It is another matter that ~~where~~ we are quashing the order of recovery of Rs.5090/- on the grounds that the authority, who belonged to the Commercial Department ^{but} was not competent to impose the punishment./ It does not mean that for the period the plaintiff was kept under suspension he should not be paid full wages. As a matter of fact the period of suspension should have been moderated in the appeal which was decided by DRM, but this was not done. We, therefore, order that the appellant will also be entitled to the payment of full salary and wages for the period of suspension according to his entitlement and the same should be paid to him within a period of three months from the date of issue of these orders. Parties will bear their own costs.

[Signature]
MEMBER (A).

[Signature]
VICE-CHAIRMAN.

Dated: May 3/5, 1988.

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