

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : ALLAHABAD BENCH

ALLAHABAD

Dated: 15.11.97. on this

15 December Day of November, 97.

CORAM:

Hon'ble Mr Justice B C Saksena, V.C.
Hon'ble Mr S Das Gupta, A.M.

ORIGINAL APPLICATION No.1245 OF 1992

M C Bhatnagar aged about 58 years s/o
Late Shri Ram Chandra Jugunu(Bhatnagar)
C/o Sita Ram Retired Mechanical Charge Man
Subhash Nagar, Line Par Bareilly Junction,
Bareilly.

... Applicant.

C/A Shri G C Bhattacharya

vs.

(1) Union of India through
The Chairman
Delhi Board, Railway Bhawan
New Delhi.

(2) The General Manager
Northern Railway, Baroda House,
New Delhi.

(3) The Chief Electrical Engineer
Northern Railway, Baroda House,
New Delhi.

(4) The Divisional Railway Manager
Northern Railway
Moradabad

(5) The Divisional Electrical Engineer
Northern Railway
Moradabad.

... Respondents.

C/R Shri Govind sharan

ORDER

(By Hon'ble Mr S Das Gupta, A.M.)

The applicant in this O.A. is aggrieved by an order dated 27.03.1992 by which the disciplinary authority had imposed penalty of recovery of 50% of the cost of the materials which were found short on stock verification. He has sought quashing of this order and a direction to the respondents to pay him the commutation value of pension as well as gratuity and leave encashment.

2. The applicant was working as Head Clerk in the Electrical Department of Northern Railway at Moradabad. While he was on sick leave, a stock verification was made and certain irregularities and discrepancies was noticed by the Stock Verifier. The cost of the materials which were found to be short in the stock worked out to Rs.67,149.37. The applicant was served with a minor penalty charge memo dtd.22.01.92 in which it was alleged that shortages in the stock were the result of negligence & carelessness on the part of the applicant while dealing with the stores of SEFO(Diesel), Moradabad as Head Clerk. In response, the applicant by a letter dated 28.01.92, requested for supply of a modified list containing complete nomenclature of the materials found to be short. The applicant has alleged that he did not receive any reply to the letter. Later on he was surprised to receive the impugned order dtd. 27.03.92 by which penalty of recovery of Rs.33,574.69 representing 50% of the cost of the materials found to be short was imposed on him. He filed a representation against this order addressed to Addl. Divisional Rly. Manager, Northern Railway, Moradabad and he was informed by the Divisional Electrical Engineer that he should send the appeal to the next Higher authority i.e. Chief Electrical Engineer. The applicant claims that his disciplinary authority was the Chief Electrical Engineer and not Divisional Electrical Engineer who had issued the order of penalty and, therefore, the said order was wholly without jurisdiction. It has been alleged that the respondents had illegally withheld a sum of Rs.33,563.58 from his terminal benefits. This benefits had not been paid despite several representations although he had retired on 30.04.1992. Hence, this application.

3. In the Counter reply filed by the respondents, it has been submitted that the applicant was on long leave and the departmental work was suffering badly. Therefore, stores of Sr.Electrical Foreman(Diesel), Moradabad was opened by breaking seal & lock in the presence of a Gazetted Officer, one Senior Supervisor of the Electrical Department, one representative of RPF & the Stock Verifier.

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Inventories were prepared by the Stock Verifier and stock sheets containing 62 pages were submitted by him indicating net shortages of materials working out to Rs.67,149.37. The applicant was provided with the photocopies of the stock sheets duly verified by a Gazetted Officer and was also given full opportunity to defend himself. However, the Divisional Electrical Engineer, who was the disciplinary authority in respect of the applicant, being fully satisfied about the negligence and carelessness of the applicant, put the matter before Additional DRM, who approved the decision of the disciplinary authority for recovering 50% of the loss from the applicant, remaining 50% of the loss being recovered from one Shri K.C.Sharma, who was found equally responsible for causing loss to the Railway administration. It has further been stated that by a letter dtd.4.2.92, the applicant was supplied photostat copy of the stock sheet but when this letter was sent to the applicant through Shri S.K.Jaiswal, Head Train Examiner(Electrical), Bareilly, the applicant refused to accept the letter alongwith its enclosures and this refusal to accept the letter was witnessed by one Nagesh Chandra, Khalasi and one Chandra Babu Train lighting fitter.

4. The applicant has filed remainder affidavit in which apart from reiterating contentions in the D.A. he has taken a plea that he had nothing to do with the alleged shortage of materials, it was not being his duty either to maintain his stock or to issue the material and that it was the duty of the Electrical Foreman. He has further stated that as no enquiry was held into the charges, he got no opportunity to submit his defence.

5. We heard learned counsel for both the parties and were taken through pleadings on record.

6. During the course of arguments, the pleas which were urged by the learned counsel for the applicant before us were that the order of penalty was without jurisdiction as the Divisional Electrical Engineer was not the disciplinary authority in respect of the applicant and also that the applicant being a Head Clerk had nothing to do with the shortage of stock and in any case, no enquiry having been held, the applicant did not get adequate opportunity to defend himself.

7. As far as the question of jurisdiction of the Divisional Electrical Engineer in imposing penalty on the applicant is concerned, we have seen from the Schedule to the Railway Employees Disciplinary and Appeal rules that Divisional Electrical Engineer is competent to impose penalty of recovery of pecuniary loss caused to the Railways. The plea of the applicant in this regard is, therefore, rejected. We have, however, seen that the applicant in his letter dt. 28.01.92, which was in response to charge memo, had specifically stated that he was not responsible for the shortage of materials in stock. He had also stated that the Sr. Electrical Foreman Shri K.C. Sharma was the custodian of stores as per stores code and, therefore, Shri Sharma was responsible for the shortage of materials. From the order of penalty, it appears that the point raised by the applicant was not at all taken into consideration as this matter is not mentioned at all in the reason why his explanation was not accepted, as indicated in an annexure to the order of penalty. This reads as follows:-

"As the employee refuse to accept the document asked by him, it clearly shows that he want to linger on the case & unnecessarily waste the time of the administration but does not want to give anything in his defence and accept the charged and Sri MC Chatnadar, Head Clerk/stores/DSL is fully responsible for the shortage noticed during stock verification for which punishment of recovery of cost of the material i.e. 50% as approved by ADRM on P.R.-II is imposed."

b. The respondents in the counter reply also have not indicated in what manner the applicant was considered responsible for the shortage in stock. It has nowhere been stated that he was the custodian of the stock or the person responsible for the issue of the materials from the stock. No reasoning has been indicated either in the order of the penalty or in the counter reply of the respondents as to how the applicant was found responsible for 50% of the pecuniary loss to the Railways, nor the learned counsel for the respondents indicated during the course of arguments as to how a Head Clerk could be held responsible for the shortage of materials in stock. We are of view that the least that should have been done was to hold an enquiry into the charges levelled against the applicant so that he would have got an opportunity

to defend himself adequately. No doubt, the procedure laid down for the imposition of minor penalty does not make it mandatory to hold an enquiry into the charges but in the given circumstances of the case, the disciplinary authority should have ordered an enquiry in order to establish that the applicant was partly responsible for the pecuniary loss to the Railways. In the absence of any indication of reasons for holding the applicant responsible, we cannot but hold that impugned order of penalty is without proper application of mind and, therefore, wholly arbitrary.

9. In view of the foregoing, the impugned order dtd. 27.03.92 is quashed. The respondents are directed to release the withheld amount of commutation of pension, gratuity and other terminal benefits to the applicant within a period of two months from the date of communication of this order. Any delay in payment beyond this period, shall attract interest @ 15% per annum. We, however, grant liberty to the respondents to proceed afresh against the applicant, if considered advisable, from the stage of charge memo already served on him. If they decide to proceed against the applicant, an enquiry shall be held in the manner prescribed in the Railway Servants Disciplinary & Appeal Rules and, thereafter, they may pass appropriate orders in the manner prescribed in Rule 9 of the CCS(Pensions)Rules. For this purpose, such proceedings shall be deemed to be the proceedings under the aforesaid rules.

10. Parties shall bear their own costs.

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MUMBLR (A)

B.C.
V.C.

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