

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 418 of 1994

Allahabad this the 29th day of April 2002

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr.C.S. Chadha, Member 'A'

Mahi Lal, Permanent Way Inspector, Northern Railway,
Moradabad Division, Moradabad.

Applicant

By Advocate Shri A.B.L. Srivastava

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Financial Advisor & Chief Accounts Officer,
Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Rail-
way, Moradabad Division, Moradabad.
4. The Divisional Superintending Engineer, Northern
Railway, Moradabad.

Respondents

By Advocate Shri Lalji Sinha

O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

This O.A. has been filed under Section
19 of the Administrative Tribunals Act, 1985, seeking
to get the order of punishment passed against him
by respondent no.4, on 16.05.93(annexure A-1), ordering
a recovery of Rs.42,622/- from him, by making monthly

..pg.2/-

68 Castle

deductions of Rs.800/- from his pay, quashed.

2. The facts of the case are that the applicant worked as a Permanent Way Inspector, Chandausi from 08.07.83 to June, 1985, whereafter he was transferred out. Certain shortages were later noticed in the stocks/stores held under his charge and certain 'overhauling reports' drawn on 7/8-12-87 and 27.7.88, relating to the above mentioned period (annexures-3 and 4), alleged that these shortages were imputable to the applicant and his explanations were called and ultimately on 8.4.91 the applicant was prima facie found guilty of the shortages to the tune of the 18,940 kgs. of G.I. Scrap and the cost thereof, i.e., an amount of Rs.94,700/- was proposed to be recovered from the applicant(Annexure-7). After further explanations a part of the objections against the applicant were dropped and by the charge sheet issued on 17.11.92 (annexure.2) , worded quite sketchily without giving the details on which the allegations/imputations were based, he was charged of being guilty of shortages amounting to Rs.78,748/-. The charge sheet not only did not give the details, the documents and the witnesses to be relied upon by the prosecution, but also did not indicate any details how the sum of Rs.78,748/- was worked out, and especially how the department came about reducing the liability of the applicant from Rs.94,700/- to Rs.78,748/-. The imputation of charges reads:-

"You were asked to justify the position of overhauling report no. 87/ASV/17/12 Pt. I dated

8.12.87 of PWI/CH, while you were working as PWI/CH. The relevant records were jointly checked by ISW and theundersigned and para 4,5,10 & 11 were dropped. You also could not justify your position on the basis of relevant record. Thus there was shortage of Rs.78,748/- in your store as per evaluation by Dy.C.A.O. (R&N) advised vide his D.O.No.87/ASV/MB/17/12 dated 7.11.92 addressed to D.R.M./M.B.

1. It is revealed ^{that} you performed duty carelessly and could not explain parawise remarks of the aforesaid overhauling report.

2. By the fact of omission and commission you were failed (sic) to maintain devotion to duty and acted in a manner of unbecoming railway servant thereby contravening rule no.3-1(ii) & (iii) of Railway Service Conduct Rules - 1966."

3. Since no further details were furnished with the Imputation of Charges and since it relied on a D.O. letter neither addressed to the applicant nor endorsed to him, how could the applicant know exactly how he was absolved of certain charges and yet found guilty of some others, without any reasons therefor. What to speak of the applicant, even we are unable to fathom from the charge-sheet as to what were the alleged failings of the applicant. The charge-sheet does mention a certain 'overhauling report' about which he was asked to explain, but the same must necessarily accompany the charge-sheet, mentioning the reasons why he was held to be guilty of the accusations contained only in certain paras of the report. On the other hand the list of accusations simply(obviously referring to explanations rendered by the applicant) states, in very general terms,....pg.4/-

B.S. Gaurav

that the applicant could not "justify ~~your~~ ^{his} position on the basis of relevant record." The basis for the guilt of the applicant is considered to be a letter of the Dy.C.A.O., without furnishing a copy thereof to the applicant.

4. It is apparent from the affidavits filed before us that ~~the~~ ^{for no} departmental enquiry was held, but the applicant was punished merely after calling for the explanation of the applicant and considering the same to be unsatisfactory. What is shocking is that the Railways have a printed form for such punishment orders, wherein space barely good enough for writing two to three sentences is left to be filled up by the disciplinary authority. We suppose, that even if the disciplinary authority wished to pass a speaking order, such a pre-set printed form would obviate the possibility of such a speaking order. Annexure A-1, which is the impugned order merely mentions (in print):-

"I have carefully considered your representation dated (1-12-92) in reply to the memorandum of charge sheet No. (87/ASV/MB/17/12 12.11.92). I do not find your representation to be 17.11.92 satisfactory due to the following reasons"

All words in brackets in the above quote being filled up by hand in the spaces left blank, in the printed form. The reasons are mentioned in hand as:-

"You are not able to explain the shortage against item 13814 and ~~E.I.~~ ^{Ex} scrap as well the cost of the same comes out to be Rs. 42,622/- This is less suffered by Railways due your negligent working."

It further says in Print " I therefore hold you guilty of the charge, viz." and adds in handwriting again" for the loss suffered by Railways" and goes on state in print again:-

"levelled against you and impose upon you the penalty of recovery from pay of the whole or part of the pecuniary loss amounting to (Rs. 42,622/-) caused to the government by negligence or breach....."

The figures in brackets above being added by hand.

5. The above quoted order can, by no stretch of imagination, be called a speaking order. As mentioned earlier the charge sheet itself was equally vague and both the charge sheet and the punishment order are only based on the fact that the applicant failed to explain his conduct satisfactorily. We wonder when will the disciplinary authorities realise that it is they, as prosecuting agencies, who have to prove any allegation against a delinquent official beyond doubt and it is not the responsibility of such a charged officer to prove himself innocent. If his explanation is not found satisfactory, the disciplinary authority must clearly bring out in the punishment order what was the charge, what was the explanation offered by by the delinquent on each charge and the detailed reasons and grounds on which each explanation was found unsatisfactory. We are quite grieved to observe

that the disciplinary authority has not discharged its responsibility and therefore the cryptic order of punishment cannot be sustained.

6. It will not be out of place to mention here that the Railways by even having a printed form for such punishment orders, leaving space of two to three lines to record the "speaking order" have left no room or opportunity for such an order. We are constrained to observe that the Railways have ~~or not~~ ~~neither~~ trained their disciplinary authorities in ~~or~~ ~~or~~ the process of disciplinary proceedings ~~and~~ have also further compounded the 'Sin' by making a short printed form for such final punishment orders. It is high time that the Railways took a serious view of such matters which deal with the careers of their employees, and begin to deal with such matters not only in accordance with the law as enacted but ~~in~~ ~~also~~ in the light of rulings of not only this Tribunal, the various High Courts and the Honourable Supreme Court from time to time in matters relating to service laws. It is highly repugnant to see authorities treating such matters in such a routine and casual fashion. In this case the so called "overhauling reports" were running into several pages and many paras but the ultimate charge sheet is very brief without mentioning the reasons for retaining only some of the original paras (details missing of course).

7. What is even more shocking is that

:: 7 ::

after the punishment order, the applicant filed an appeal on 15.6.93 (annexure A-16) and the same was disposed of on 27.10.93 (annexure A-18) by even a more cryptic order, 'conveyed' by Divisional Engineer III, N.Rly.- which states:-

"It is inform you that your application has been considered by A.D.R.M. and have passed the following order.

Penalty of recovery of Rs. 49,622/- stand" (Sic).

8. The applicant has raised the issue of the appellate order being a non-speaking order, apart from the non-issue of the A.D.R.M. not being empowered to decide the appeal in para 4.5(6)(a) of his O.A. In their counter-affidavit, in the relevant para, the respondents merely state:-

"That in reply to paragraph 4.5(6)a of the petition it is stated that the powers of DRM/MB have been delegated to ADRM/MB to decide the case."

In effect the respondents have merely defended the fact that A.D.R.M. was empowered to decide the appeal (contrary to the applicants conjecture that he was not empowered), but have said nothing whatsoever about the appellate order being a non-speaking order. They, therefore, by implication, admit that the appellate order was defective.

9. In the circumstances mentioned above we are unable to appreciate the legality of the non-speaking punishment order dated 16.5.93 and the similarly non-speaking

C. S. Gopal

...pg.8/-

similarly non-speaking appellate order dated 27.10.93. In effect both the orders are quashed.

10. Much has been said by both sides on the merits of the charges and the explanations offered by the applicant/delinquent. We feel that in view of the serious shortcomings mentioned above in the charge-sheet, the punishment order and the appellate order, no discussion on the merits/demerits of those charges is called for in this order.

11. We therefore allow this O.A., quash the punishment and appellate orders against the applicant with the grave observations given above. It is however clarified that it will be open for the respondents to initiate any disciplinary proceeding

*against the applicant in accordance with law, if they be
think it justified, though more than eighteen years have passed.*

12. No order as to costs.

Member (AT)

/M.M./

R
Vice Chairman