Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 5th June of 1997.
ORIGINAL APPLICATION NO . 1364 OF 1995.
CORAM : Hon'ble Dr. R.K. Saxena, Member-J

Hon'ble Mr. D.S. Baweja, Member-A

Bhoosan Mohan Tiwari,

S/o Girdhari Lal Tiwari,

R/o 41-A, panki Kalan, District-Kanpur Nagar.

..... Applicant.

(By Advocate Shri B.N. Singh)

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.

2. Senior Divisional Opting Manager,
Northern Railway, Allahabad.

3. Divisional Opting Superintendent
Allahabad Division, Allahabad.

..... Respondents.

(By Advocate Shri S.K. Jaiswal)

O R D E R

(By Hon'ble Mr. D.S. Baweja, A.M.)

1. This application has been filed with a prayer to quash an order dated 27.9.1995 of the Disciplinary Authority imposing punishment of stoppage of three sets

of privilege passes and recovery of Rs 28,629.30/- and order dated 5.12.1995 of the Appellate authority rejecting the appeal.

2. The applicant while working as Assistant Station Master, Panki, Kanpur, Allahabad Division, Northern Railway, was issued charge-sheet dated 11.3.1992 for minor penalty. The applicant submitted reply on 14.3.1992 to the chargesheet. The Disciplinary Authority vide impugned order dated 27.5.1995 imposed punishment of stoppage of three sets of privilege passes and recovery of 30% of the alleged embazelment of coaching earnings of Rs 85,431.00/-. The applicant made an appeal against the same and the appeal was also rejected vide order dated 5.12.1995. Being aggreived, this application has been filed on 21.12.1995.

3. The applicant has challenged the impugned order pointing out the following infirmities :-

a) The charges are vague and not sustainable in law.

b) The applicant was not responsibile for supervising the earnings of Goods or Coaching at Panki Station and its remittance as per the extant instructions it was the duty of the Chief Goods Supervisor.

c) Imposing Punishment of recovery of 30% of the alleged embazelment amount could not be a minor penalty.

d) The copy of the Inquiry Report conducted by a Committee of Officers was not supplied.

e) No regular enquiry was conducted to give

an opportunity to the applicant of being heard before imposing punishment.

(f) The order passed by the Disciplinary authority and the Appellate authority are vague, misconceived and non speaking order.

g) The alleged incident had occured in 1988, chargesheet was issued in 1992 and punishment was imposed in 1995. The action taken , therefore, is very delayed.

4. The respondents have contested the application through the counter reply . The respondents submit that a fact finding enquiry had been conducted by a Committee of three Officers and the applicant was found responsible for embazzlement. Accordingly, he was issued a chargesheet for minor penalty. The Disciplinary authority has passed a punishment order after considering the defence of the applicant. The Appellate authority has also rejected the appeal after careful examination of the entire facts and circumstances. The punishment imposed is in accordance with the Disciplinary/Appeal Rules by the Competent authority. It is further clarified that the Assistant Station Master is not only required to look-after the operation work but also has to supervise the Commercial work as per the duty list laid down (CA-1).

In view of these submissions, the respondents contend that the application is devoid of merit and deserves to be quashed.

5. The applicant has confered the reply of the respondents by filing rejoinder reply. While refuting the submissions of the respondents, the averments made in the original application have been reiterated.

6. We heard Shri L.M. Singh proxy to Shri B.N. Singh learned counsel for the applicant. None was present on behalf of the respondents. None was present on the earlier date of listing also on behalf of the respondents. No adjournment had been also sought by the counsel of the respondents. The applicant's counsel had filed written arguments and a copy of the same had been served on the counsel of the respondents but no reply to the same had been filed. Since the stay was operating and also keeping the above back ground in view, we proceeded to hear the matter in the absence of the counsel for the respondents.

7. Vide order dated 8.1.1996, operation of the impugned order dated 27.9.1995 and 5.12.1995 was stayed till the next date. This stay order was extended from time to time and continued by the last order dated 23.4.1997 till the delivery of the judgement.

8. The grounds assailing the impugned orders advanced by the applicant had highlighted during the arguments are detailed in para 3 above. Before we go into the merits of the case grounds, we will first exa-

mine the perepheral infirmities. The first ground is that the recovery of the alleged embezzled amount is not a minor penalty. This ground is untenable if we refer to the Railway Servants (Discipline and Appeal) Rules, 1968. Such recoveries are covered as a minor penalty under Rule 6(iii). The second ground is that the copy of the preliminary inquiry report was not been supplied to the applicant. On going through the chargesheet, we find that there is no reference to the preliminary inquiry report in framing the charges. Preliminary Inquiry is fact finding inquiry conducted by the Department to satisfy itself that there exists a prima facie case of misconduct and negligence. Therefore, supply of such a report ot the deliquent employee is not necessary recorded during the preliminary inquiry are stated as relied upon documents or facts based on such a report are referred to in the statement of allegations, then the deliquent employee is entitled for such details of the preliminary enquiry report . This is not the case in the present application. We, therefore, do not find any infirmity in non supply of the report and thereby denying opportunity to the applicant to defend his case. The third ground is that no regular inquiry was conducted before imposing punishment. The respondents have countered this stating that chargesheet was issued for minor penalty and as per the rules, inquiry is not required to be conducted Referring to Rule 11 of Railway Servants (D & A) Rules 1968, we note that under Rule 11 (1) (b) holding of the oral inquiry is at the discretion of the disciplinary authority after considering the representation made against the chargesheet. In view these provisions

of the rules, we agree with the contention of the respondents. Further from the averments made in the application, we do not find that any request for holding inquiry was made. Referring to the reply submitted to the chargesheet at Annexure-A-2 by the applicant, we note that no such request has been made. In the light of these facts, the applicant cannotadvance this ground to assail the impugned orders. The fourth ground is that the chargesheet refers to the occurence is 1988 but issued in 1992 and the penalty has been imposed only is 1995. We note the delay in taking the disciplinary action. The delay in itself cannot make the punishment order illegal until and unless a case is made out that this has caused prejudice to the applicant in defending his case. Except making a statement, the applicant has not made any averment to show that any prejudice has been caused. We, therefore, find no merit in this ground also.

9. Now we come to the grounds that the charges are vague and the orders passed by the disciplinary and appellate authority are misconceived and non-speaking. We have carefully gone through the chargesheet. The applicant has asserted that Assistant Station Master was not responsible for the remittance of the station earnings. On the other hand, the respondent's stand is that Assistant Station Master in addition to his duties concerning operation is also required to look after the commercial work and to support this contention duty list at C.A-1 to the Counter reply has been brought on record. On

going through the duty list at CA-1, we note that Chief Yard Master is responsible for the remittance of the earnings and it is no where mentioned in the duty list of the Assistant Station Master. He is to assist Chief Yard Master when required. Further from the statement of change, we do not gather any reference to the applicant's responsibility for remittance of the station earnings. In view of these observations, the submission made by the respondents is not valid. Now we look at the order of the disciplinary authority. The order states that in addition to the punishment of stoppage of three sets of privilege passes, recovery of 30% of the total embezzlement of Rs 85431.00 which comes to Rs 25629.30 will be also recovered. Now referring to the charge, we note that there is no reference to the embezelement and the total amount involved. It does not indicate as to who are the other employees involved. In fact the change only refers to irregularities and does not indicate embezzlement. The order of the disciplinary authority shows that there were some details with him which influenced him in passing the order without referring to the statement of the charges and the defence submitted by the applicant. The respondents have averred that the inquiry was conducted by the Committee of the 3 Officers and as per the report of this Committee, the applicant was found responsible for the embezzlement. Keeping in view the punishment order, we form the impression that charge is framed in a manner as if the applicant is aware of the inquiry report and all the details of the occurance. In consideration of the above detailed facts, we have no hesitation to

hold the view that the change in the chargesheet in the context of the punishment imposed does not have any co-relation and is vague and not sustainable in law.

10. Coming to the order of the disciplinary authority, we find that this is a cryptic order and does not show the application of mind. It simply says that the defence is not accepted. The applicant in his defence reply to the chargesheet has raised number of issues but the order does not reveal whether all the aspects were considered. The disciplinary authority is expected to record reasons for its findings as the order being appealable must be a speaking order. It is all the more imperative in case of the minor penalty where no inquiry is held that only opportunity to the deliquent employee to defend himself is through the representation against the chargesheet . As brought out earlier the penalty of recovery of the alleged embezzlement amount is not re-releated with the charge. This itself shows that the disciplinary authority did not consider the defence of the applicant. In the light of the observations made above, the order of the disciplinary authority cannot be held legally sustainable.

11. The order of the appellate authority also suffers from the same vice. No doubt the appellate authority may not embark upon the detailed inquiry and write a judgement like a decision of Court. None the less, it must appear that the contentions raised in the appeal were considered and it must explicitly record the

reasons. It is one of the rules of the Natural Justice. Further we find that Rule 22(2) clearly lays down the manner in which the appeal is to be dealt with by the appellate authority. A mere look at the appellate order will give the impression that it is an order passed with no application of the mind. It is not a speaking order and does not show the reasons rejecting the points raised in the appeal. In fact the order gives an impression that what weighed with the appellate authority was the available facts on the record and not the points made in the appeal. There also perhaps the contents of the inquiry report of the Committee of the Officers influenced the consideration of the appeal in the same way as in the case of disciplinary authority as recorded by us above. The appellate order in view of these consideration also deserves to be quashed.

12. In the light of the deliberations above, we come to the conclusion that the charge is vague and the orders of the disciplinary and appellate authority are non speaking and legally not sustainable.

13. In the result of the above, we find merit in the application and the impugned orders dated 27.9.1995 and 5.12.1995 are quashed. No order as to costs.

MEMBER (A) MEMBER (J)

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