

OF 20
ALLAHABAD B
OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

(This the 25th day of May 2009)

Present

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.110 of 2000

(U/S 19, Administrative Tribunal Act, 1985)

Amarpal, S/o Sri Roop Chandra, R/o Quarter No. 299/A,
New Model Railway Colony, Izatnagar, NE Railway,
Bareilly. Presently posted as Depot Store Keeper
Grade-III (Ledger Section), In the Office of Distt.
Controller of Stores, NE Railway, Izatnagar, Bareilly.

. . .Applicant

By Advocate : Sri S. Narain,
Sri K. Agrawal
Sri S.K. Mishra

V E R S U S

1. Union of India, through General Manager, N.E.
Railway, HQ Office, Gorakhpur.
2. The General Manager, NE Railway, Gorakhpur.
3. The Dy. Controller (Stores) (C&W) NE Railway,
Gorakhpur.
4. The District Controller of Stores, NE Railway,
Izatnagar, Bareilly.

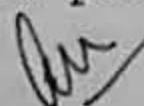
. . .Respondents

By Advocate: Shri Anil Kumar

O R D E R

(Delivered by : Justice A.K. Yog, Member-J)

Heard Sri Jashwant Singh, advocate (holding brief
of Sri S. Narain, learned counsel for the applicant)
and Sri Anil Kumar, learned counsel for the
respondents. Perused the pleadings on record.



2. The applicant, admittedly an employee of the Railway establishment, was initially appointed as Depot Store Keeper Grade III on being selected by Railway Recruitment Board. In February 1993, when he was posted in Scrape Ward - 98. Vigilance carried out 'stock verification'. According to the applicant - weighment of Scrape, (in very huge quantity) kept in store was not practicable nor it was normally done in the past verification of quantity by actual weighment was normally done at the time of delivery of 'scrape' to the 'auction-purchaser'. He further contend that handing over, of - 'charge' from one store keeper to another store keeper used to be on the basis of stock register (without carrying actual physical verification of the quantity entered in the stock during last two decades (i.e. prior to 28.03.1995). The applicant also pointed out that 'deficiency' in stock, if any, being within 2% permissible limit should be ignored.

3. Para 4.4. of the OA reads:

"4.4 That it is also stated that the Railways scrape which used to be in high quantity is neither practicable nor in practice used to be maintained by actual physical verification on account of volume involved therein and the stock normally used to be maintained by the gross assessed quantity which used to be physically used to be maintained by the gross assessed quantity which used to be physically verified at the time of delivery to the auction purchaser as they are supplied goods by actual weighing. Thus in the past as and when charge is taken over by the Store Keeper from his successor, it used to be on the basis of stock register etc. without any actual and physical weighing of the entire stock. To the best of knowledge of the applicant the actual physical verification of the stock prior to 28.3.1995 was never made in the preceding about two decades as per best of knowledge of the applicant."

Am.

4. It has come on record that under instruction/advise of vigilance, the applicant was placed under suspension vide order dated 06.04.1995. The applicant was served with 'charge-sheet' dated 19.05.1995 (Annexure A-5/Compilation No. 2). Statements/Supplementary statement of the concerned officers/persons were recorded as referred to in para 4.11 and 4.12 of the OA. Inquiry Officer submitted his report dated 10.02.1999. The Disciplinary Authority/ respondents No. 4, passed impugned order dated 26.05.1999 (Annexure A-1/Coopilation No.1). While exonerating the applicant in respect of charge No. 1 and 3, he found that charge No. 2, 5 and 6 against the applicant stood proved and imposed punishment of reverting him on the post of DSK-III for a period of 02 years (with cumulative effect) and also recovery of Rs. 3,12,584/- in instalment of Rs. 2500/- per month. Being aggrieved the applicant filed appeal but rejected vide order dated 13.07.1999 (Annexure A-2/Compliation No. 1).

5. Sri Anil Kumar, learned counsel for the respondents, raises a preliminary objection that the applicant has filed the OA without exhausting statutory - 'departmental-remedies' under Railway Servants (Discipline and Appeal) Rules, 1968.

Am.

6. We find that this OA was filed in the year 2000. Parties have exchanged the pleadings in the hope that matter shall be adjudicated and decided by the Tribunal. One may appreciate that 'Bar' of 'Alternative-remedy' is neither sacrosanct not absolute. 'Expediency' and 'pragmatic-approach' - in absence of a legal bar and that the case can be decided on the basis of the pleadings on record, - demand that the OA is decided on merit to end long pending litigation - which is not in the interest of Public-services.

7. Learned counsel for the Applicant, on the other hand, points out that mere recording, of charge shows that it is 'perverse', 'misconceived' and therefore, not sustainable in law. It is submitted that the Disciplinary Authority has exonerated the applicant of charge No. 3 and recorded finding that 'cutting/over writing' in record were not out of 'dishonest-intention' (rather genuine and bonafide). On the other hand Disciplinary Authority has observed that as per practice no 'physical verification' of huge quantity of Scrape could be done when charge is handed over/taken over. The Disciplinary Authority, thus failed to give any cogent reason/basis to draw inference from the fact of 'punching' vouchers in the computer-during vigilance. We find no nexus - directly or indirectly - between the alleged charge (shortage of Quantity of Scrape) and late feeding in the computer (provided

Ans.

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they were duly supported by valid vouchers). Mere lapse in keeping entry updated 'in the computer' cannot be equated as such serious, misappropriate or proof of as shortage in stock.

8. Further, Disciplinary Authority has itself observed that role of 'Store-Verifier' was not 'beyond doubt'. We find that no action has been taken against the said Store Verifier. On the other hand we find that there is no finding that store-verifier and the Applicant/Store-in charge entry were hand-in glove to misappropriation of 'Scrape' for the store. The Disciplinary Authority has also ignored to refer ~~to~~ account to the pleas of the Applicant viz. shortage was within prescribed limit of 2% of the stock. We find that the 'finding' recorded by Disciplinary Authority do not justify the conclusion - of charge being 'proved'.

9. Taking into account the totality of the circumstances of the case, we have no hesitation in holding that action/punishment awarded by the Disciplinary Authority cannot be sustained being without basis.

10. Order of the Disciplinary Authority dated 26.05.1999 and that of Appellate Authority dated

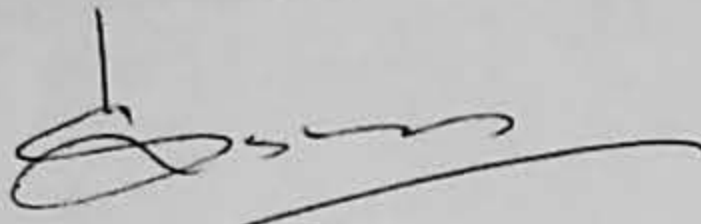
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15-07-1999 (Annexure A-1 and Annexure A-2/Compilation
By

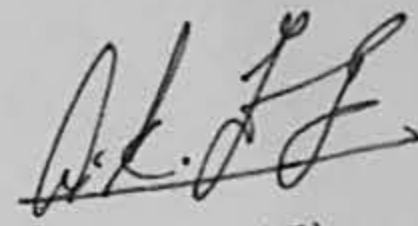
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II) are therefore, liable to be set aside and the Appellate Authority also cannot be sustained.

11. In the result, we set aside orders dated
 An. 26-05-1999 An. X: (Annexure A-1/Compilation No. 1) and
~~26.05.1999~~ / 15.12.1999 (Annexure A-2/Compilation No. 1) with
 direction to extend all consequential benefits.

12. The OA is allowed. No cost.


 Member (A)


 Member (J)

/pc/