

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 17th day of January 2002

Original Application no. 1290 of 2000.

Hon'ble Maj Gen K.K. Srivastava, Administrative Member

T.N. Malviya, S/o Sri B.R. Malviya,
R/o 497-D, Smith Road, Railway Colony,
Allahabad.

... Applicant

By Adv : Shri J Sahai

Versus

1. Union of India through Additional Divisional
Railway Manager,
Northern Railway,
ALLAHABAD.
2. Senior Divisional Operating Manager,
Northern Railway,
ALLAHABAD.

... Respondents

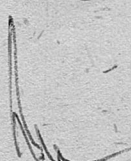
By Adv : Sri A.K. Gaur

ORDER

Hon'ble Maj Gen K.K. Srivastava, AM.

In the present OA, filed under section 19 of the A.T. Act, 1985, the applicant Shri T.N. Malviya, has challenged the punishment order dated 04.02.2000 (Ann 1) and the appellate order dated 24.10.2000 (Ann 2) and has prayed that the same be quashed.

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2. The facts in brief as per applicant ^{are} that the applicant is working as Guard grade A, Special at Allahabad. In 1992 one Shri K.N. Shukla, District Awas Prabhari of Bharat Scouts and Guides, Northern Railway, Allahabad was transferred to Kanpur and as ordered he assumed additional charge of District Awas Prabhari. There ^{are} were two keys of the store room where the items were kept, one key was with the applicant and another key was with the District Secretary, Bharat Scouts and Guides, Northern Railway, Allahabad. On 9.6.1992 he checked the items of the store and he found shortages in the list of handing and taking over certificate. He informed the District Secretary, Bharat Scouts and Guides, Northern Railway, Allahabad on the same day about the shortage. The District Secretary forwarded the letter of applicant to Assistant District Commissioner (Scouts) Allahabad, who called for the explanation of Shri K.N. Shukla on 22.1.1993 in regard to shortage of the store items. ADRM ^{in charge} District Commissioner also called for the explanation of Shri K.N. Shukla on 6.9.1993 regarding shortage of the store items. District Commissioner again sent a letter on 3.11.1993 to Shri K.N. Shukla seeking his explanation. within 15 days. In spite of the above, applicant received notice dated 28.11.1995 issued by District Commissioner (Scouts) Northern Railway, Allahabad about shortage of store items allegedly worked out as a result of enquiry conducted by Assistant District Commissioner. List of misplaced items was appended with the notice. Applicant sent his reply on 8.12.1995 to the notice dated 28.11.1995. The petitioner was served with a charge sheet dated 29.1.1998/6.12.1995. The applicant submitted his reply on 2.3.1998 ⁱⁿ denying all the charges.

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levelled against him and also demanded for an ^{an} impartial and through enquiry. The disciplinary authority, Senior Divisional Operating Superintendent (in short Sr DOM) without considering the reply of the applicant and without conducting enquiry passed the impugned order dated 4.2.2000 (Ann A-1) imposing the penalty of recovery of Rs. 14700/- and reduction of pay by two stages in the grade for a period of two years without cumulative effect. The applicant preferred an appeal against the order of District Authority to ADRM, Northern Railway Allahabad on 21.2.2000 which has been rejected by the impugned order dated 24.10.2000 (Ann A-2), hence this OA. This has been contested by the respondents and they have filed counter reply.

3. Heard Shri S. Ahmad learned counsel for the applicant and Shri A.K. Gaur, learned counsel for the respondents.

4. Shri S. Ahmad, learned counsel for the applicant submitted that the applicant took over charge of stores of Scouts Hut from Sri K.N. Shukla who was transferred to Kanpur ^{an} temporarily and ^{an} for a short period. He assumed only additional charge for a short period and he pointed out to Sri Shukla about the shortage in stores who promised to replenish the same within a week. When Sri Shukla did not comply with his promise he checked the stores on 9.6.1992 and immediately on the same day i.e. 9.6.1992 informed District Secretary about the shortage in stores of Scouts hut with copy to District Commissioner (Ann A-3), District Commissioner addressed Shri Shukla on 22.1.1993 with direction to make good the shortage failing which disciplinary

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action would be initiated against Shri Shukla (Ann A-4). Again on 6.9.1993 District Commissioner called for Shri K.N. Shukla's explanation for not responding to the letter dated 22.1.1993. Another reminder was issued to Sri K.N. Shukla ^{by} ~~by~~ ^{by Distt} Commissioner i.e. ADRM on 3.11.1993. Instead of taking action against Shri K.N. Shukla for the shortages, applicant was given notice on 28.11.1995 to make good the shortage within a week, failing which disciplinary action would be initiated against him. Sri Ahmad ^{learned} counsel for the applicant submitted that the applicant sent reply to the said notice on 08.12.1995 and specifically requested for an impartial enquiry and also for personal ^{he respondent No 2 neither conducted any enquiry nor gave an opportunity of personal hearing} hearing, and issued charge sheet on 29.1.1998. He has been punished vide the impugned order dated 4.2.2000. Even in his appeal dated 21.2.2000 to ADRM, Northern Railway, Allahabad (Ann A-10) applicant requested for a thorough enquiry and personal hearing. The appellate authority did not consider the request made by the applicant. The applicant reminded the appellate authority on 14.3.2000, 8.5.2000, 26.5.2000, 30.5.2000 & 7.7.2000. ^{Only} then the appellate authority vide impugned order dated 24.10.2000 rejected the appeal. It is a clear cut case of violation of principles of natural justice. Shri Ahmad also contended that there were 2 keys of the store and so the applicant cannot be held solely responsible for the deficiency ^{in the store}.

5. Shri Ahmad learned counsel for the applicant further submitted that the impugned orders dated 4.2.2000 and 24.10.2000 are non speaking and cryptic. Sri Ahmad submitted

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that Rule 11 of Railway Servant Disciplinary and Appeal Rules 1968 provides that enquiry is to be held in the manner laid down in Sub Rule 6 to 25 of Rule 9 when asked for but this provision has not been complied with and the punishment order dated 4.2.2000 and appellate order dated 24.10.2000 have been given without application of mind, hence these require to be quashed.

6. Shri A.K. Gaur the learned counsel for the respondents ^{has} submitted that Sri K.N. Shukla clearly refuted the statement of the applicant and he produced the copy of the charge list in which the applicant has mentioned that he himself took charge of the Scout stores. Applicant was directed to send ledger/list etc for inquiry but inspite of repeated reminders ^{he} he did not comply with the same. So the store was got sealed on 4.5.1995. On 10.10.1995 the applicant himself broke open the seal and lock of the stores in presence of number ^{of} witnesses and handed over the charge of stores to Sri P.S. Rai. Sri Rai verified the stock available in stores with reference to stock register and ledger in presence of applicant, made a list of dificiency and, therefore, applicant is responsible for the dificiency.

7. Shri Gaur submitted that charge sheet dated 29.1.1998 was issued to the applicant. He was given 10 days time to submit his reply which the applicant failed to. The applicant was reminded on 22.6.1998 to submit his reply. Sr D.O.M. made enquiry from the applicant and applicant stated that he had submitted representation on 9.3.1998 which was never received by the respondents and a copy of the same was found in case file on 5.11.1998.

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The applicants defence was examined in detail and he was found guilty of charges framed against him. Therefore, the disciplinary authority's action is justified and legal.

8. Sri Gaur learned counsel also submitted that appeal dated 21.2.2000 was recieved alongwith letter dated 8.5.2000. The applicant kept the appeal with him till 8.5.2000 after making the endorsement on the same by Chief Controller of Stores. The applicant's allegation that the appellate authority decided his appeal after he sent several reminders is not correct. Since the applicant had taken complete charge of scout stores has signed the stock register and ledgers in token of having received the store items, he is responsible for its proper accounting and he cannot absolve himself from any dificiency.

9. I have given due consideration to the submissions of counsel for the parties and examined records. The applicant has been punished by the disciplinary authority vide impugned order dated 4.2.2000 imposing the penalty of recovery of Rs. 14700/- and also reduction of pay by two stages for two years without cumulative effect which has been confirmed by the appellate authority. The applicant has assailed the punishment order dated 4.2.2000 and the appellate order dated 24.2.2000 mainly on the following grounds :-

i. The applicant was ordered to take over the charge of District Awas Prabhari temporarily for a short period and he reported about the dificiency in Stores when he checked the stores on 9.6.1992 once he found that he had to continue holding the charge of District Awas Prabhari.

There were two keys of the store and he cannot be the only

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person held responsible for the shortage of items.

ii. He requested for an enquiry for fixing the responsibility for dificiency and also requested for personal hearing. Respondents did not accede to the request of the applicant and thereby violated the principles of natural justice.

iii. The disciplinary authority and the appellate authority did not apply mind while deciding the case. Aslso the orders of the disciplinary authority and appellate authority are cryptic.

10. I do not agree with the arguments advanced by the learned counsel for the applicant. The applicant took the charge of District Awas Prabhari from Sri KN Shukla on 30.1.1992. It was the duty of the applicant to have thorough checked the store items at the time of handing and taking over charge and should have got the dificiency note prepared if any. The submission of the applicantⁱⁿ that he informed the respondents on 9.6.1992 itself when he checked the stores and found certain items short. I am not convinced with this submission. Why did the applicant wait for more than 4 months to check the stores items. As per rules store items have to be checked by the official at the time of taking over and obviously the applicant must have checked the store items on 30.1.1992 at the time he took over charge from Sri KN Shukla. Since he did not report about any ⁱⁿ deficiency at that time, he cannot shift the responsibility of shortage of store subsequently on Sri K.N. Shukla.

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11. The applicant vide his letter dated 9.6.1992 addressed to District Secretary has mentioned about the deficiency of 10 items only. The respondents received the reply of Shri K.N. Shukla refuting the statement of applicant and furnished the photo copy of charge list of scoutⁱⁿ stores taken over by the applicant. When the applicant did not co-operate for holding of an enquiry as he did not respond to the direction of the respondents to produce the ledger/ list etc, respondents got the store sealed which was opened by applicant on 19.10.1995 in presence of 6 officials and the charge of stores was handed over to Sri P.N. Rai. On 19.10.1995 on verification of store items with reference to Ledger and Stock register, the deficiency worked out was much more i.e. 30 items as against 10 reported by the applicant on 9.6.1992 for which the applicant has been proceeded against under Rule 11 of Railway Servants (Discipline and Appeal) Rules 1968. Since the applicant has signed the stock register and ledger in token of having taken over the items, he cannot absolve himself ^{in from} ~~for~~ the responsibility for deficiency in store items. As regards availability of another key of store with District Secretary it does not shift the responsibility ^{in from applicant in} who was the incharge of store items.

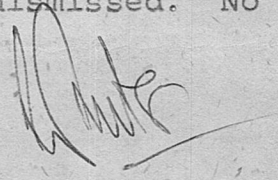
12. The applicant's plea in para 4.18 of the OA that no show cause notice for the proposed punishment was given has ⁱⁿ no force as in cases of minor penalty charges, there is no such requirement. Besides in the present case the applicant is responsible for the deficiency in store items in view of documentary evidence. The items were counted on ⁱⁿ 19.10.1995.

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in presence of the applicant and only after proper counting the deficiency list was prepared for which the applicant has been charged with. It appears from the perusal of Ann R-2 submitted with counter affidavit that the applicant was given an opportunity to present his own case. This is fully corroborated with Ann R-1. I do not find that principles of natural justice have been in any way violated by the respondents. The applicant is fully responsible for the shortages in Scouts Store items and actions of the Disciplinary authority and the appellate authority are justified and legal.

13. Finally I would like to observe that I find no illegality either in punishment order dated 4.2.2000 or the appellate order dated 24.10.2000.

14. In the facts and circumstances and the aforesaid discussions there is no ground for interference. The O.A. is devoid of merits and, therefore, dismissed. No costs.



Member-A

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