

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

THIS THE 19TH DAY OF May 2011

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

Original Application No. 27 OF 2003
(U/S 19, Administrative Tribunal Act, 1985)

Rakesh Kumar Mittal son of Sri Ram Krishan Mittal R/o 57
Shastri Nagar, Izatnagar, District Bareilly.

.....Applicant

V E R S U S

1. Union of India, through General Manager, North Eastern Railway, Gorakhpur.
2. Sr. Divisional Accounts Officer, North Eastern Railway, Izatnagar, District Bareilly.
3. The Finance Advisor and Chief Accounts Officer, North Eastern Railway, Gorakhpur.
4. Basdeo Prasad, house No. 139 Mohalla Narsinghpur, Post Sadar, Dental Doctor Parahal Key Bagal May, District Gorakhpur (U.P.)

.....Respondents

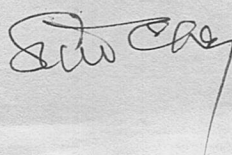
Present for the Applicant: Sri Rakesh Verma.
Sri R. C. Pathak.

Present for the Respondents: Sri K. P. Singh.

ORDER

Delivered By HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)

Under challenge in this O.A. are the orders dated
09th February, 1999, 11th November, 2002, 20th November,
1997, 02nd February, 1998 and 13th April, 1998 shown as
Annexure-A-1 to A-5 with this petition passed by

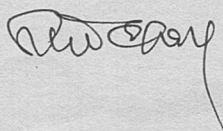


respondent Nos. 02 & 3, and the applicant be treated as Senior Cashier w.e.f. 01st March, 1999 and be paid salary and other consequential benefits pay and allowances including arrears 18% Penal Interest. The pleadings of the parties may be summarized as follows:-

2. The applicant was the Senior Cashier at Izatnagar, Bareilly in North Eastern Railway. The inquiry was instituted against the applicant by serving charge sheet on dated 28th November, 1997, annexure-A-3 is copy of the charge sheet. It is alleged in the Charge Sheet that the applicant was attempted to embezzle an amount of about ₹3Lacs. It is alleged that there was some shortage from 09th October, 1997. It came into the light on 12th October, 1997 that the deficiency was about ₹3Lacs. It is further alleged in the Charge Sheet that on 16th October, 1997 when the working become impossible due to shortage of funds then physical inventory of cash box belonging to each cashier was taken. The search work and work of distribution of funds continued simultaneously. That in the cash box of the applicant requisite excess cash was found. A reply was submitted that the theory of shortage was bad as from 09th October, 1997 to 16th October, 1997

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there had never been any mention in the book of account. On 09th October, 1997 to 13th October, 1997 no transaction took place in the office hence there was no question of knowing it on 09th October, 1997 or ascertaining the amount on 12th October, 1997. The strong room was closed at 08:05p.m., but the recovery has been shown at 08:30p.m., which is not possible. No search was conducted as alleged in the charge sheet entry in the cash register reveals that there was never any deficiency as alleged in the charge sheet and no such deficiency was signed by the applicant no prosecution witnesses were examined rather the applicant was asked to cross examine the witnesses and hence no examination was conducted nor any statement was recorded. That the inquiry officer after recording the statement asked the applicant to cross examine the witness under Rule 9(20) of Railway (Discipline & Appeal) rules, but the inquiry officer examined the applicant first the applicant refused to cross examine the prosecution witnesses and the Enquiry Officer started the inquiry. Several irregularities were committed by the Enquiry Officer in the inquiry and no procedure as provided in the law has been followed. Records shows that there was shortage of ₹21Lacs and add



cash with Assistant Divisional Cashier. In-fact on 13th October, 1997 there was shortage of ₹21Lacs and deficiency of ₹18Lacs was made good, for ₹3Lacs the applicant has been made scapegoat. The inquiry officer has not considered the law and fact in this connection even the disciplinary authority has passed the order of punishment on 09th February, 1999 illegally and the appellate authority has also not considered the case properly no, embezzlement was committed by the applicant as alleged, and the appellate authority overlooked the entire material available on record. In any manner the respondents wanted to hold the applicant guilty.

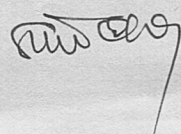
3. Respondents contested the case and filed Counter Reply and it has been further alleged that the correct facts are that payment arrangement on the Railways to the line staff is very sensitive matter high amount of Rs, Six Crores has to be physically distributed at different roadside stations through Motor Trolleys. Throughout the month in four trips, out of which almost 50% cash is distributed in the third trip beginning from 17th of every month. Divisional Cashier collects cash from banks

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against cheques and distribute it among the Line Cashier and Line Cashiers in turn carry this cash in boxes to wayside stations/gang. That the enormity of cash handling precludes daily physical counting of cash and matching of cash with books, physically only after the trip is over. After each trip 02 to 03 days are available for accountal and book handling. The mutual trust and fair play has a vital role in smooth functioning of the pay office. That the cash handling was compounded due to the fact that Annual productivity linked Bonus amounting to ₹5.5 crores was to be distributed just before the 3rd trip and it was planned that physical distribution of bonus cash will be completed by 9th/10th October, 1997 and accountal of bonus would be done on and after 12th October, 1997 and after a short report, third trip payment would be arranged. It became clear that shortage of almost ₹3,00,000/- was appearing. However, immediate action was not possible, as cash was lying, with different cashiers and it was decided that due to exigencies, if any, adjustment were done, they would come out on 16th October, 1997 when the Asst. Divisional Cashier and all the Line Cashiers were available and cash was to be distributed to them for arranging 3rd trip payment from

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17th October, 1997. During this very distribution of cash, the shortage of cash vis-à-vis book balance was confirmed and since no cashier pointed out excess cash balance, it was decided to examine each cash box. That in the whole matter the role of the applicant was different from other cashiers, as he was not a Line Cashier but a Counter Cashier, whose work involved collecting cash deposited at counter, dispatching cheques to payees and depositing cash received at counters to bank and he was not involved in distributing cash on line, either during bonus or during 3rd trip payment. He was given ₹1,04,16,296/- on 07/08th October, 1997 for payment of bonus to workshop (local payment) staff and ₹3,64,371/- on 14th October, 1997 (for local payment again of the remaining bonus bills). But the applicant was not aware that there was excess of approx. ₹3Lacs. Due to the extreme load of work (i.e. payment of PLB & Vth pay commission's arrears) the whole cash office were working as a team, so that all the payment could be made within the targeted/stipulated time. It is a matter of great surprise that excess amount has not been given to the charged employee as per the record. The applicant had taken the advantage of co-workers and sitting in the same room. In regard to the closing of the strong room at



08:05p.m., and recovery of amount at 08:30p.m. are concerned, the approximate time of finding the cash was given by the Divisional cashier. That the excess/shortage amount of ₹2,99,700/- was recovered from the cash box of the applicant in the presence of nine cashiers, who were witnesses in this case. The applicant was present in the office at the time of search. During the inquiry sufficient opportunities were provided to examine prosecution witnesses and produce the defence. But the witnesses were not examined by the inquiry officer in the presence of the applicant and defence counsel. And the inquiry was conducted perfectly in accordance with D&AR rules and the plea taken by the applicant against it is wrong. The excess amount was recovered from the cash box of the applicant and supported by nine witnesses therefore, the plea taken by the applicant is neither maintainable nor admitted. So far as the timings are concerned approximate time of finding the cash in the cash box was 08:30p.m., which was reported in the charge memorandum. That the charges against the applicant were proved and the order passed by the disciplinary authority is perfectly just and appropriate as well as the

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appellate order is also in accordance with law. That the O.A. lacks merits and liable to be dismissed.

4. We have heard Mr. Rakesh Verma, Advocate for the applicant and Mr. K. P. Singh, Advocate for the respondents and perused the entire facts of the case. Later on written arguments were also filed by the parties and the same were also considered. It has been argued by the learned counsel for the applicant that it is a fact that the applicant was posted as Senior Cashier at Izatnagar, Bareilly in North Eastern Railway. It has been argued by the respondents that while applicant was entrusted with heavy amount in order to distribute it amongst the employee then the applicant attempted to embezzle an amount of ₹3Lacs and that there was no shortage as on 09th October, 1997. It is a condition of the respondents that on 27th/28th November, 1997 the amount was to be distributed at the Railways to the line staff. It has also been alleged that 50% cash is distributed in the third trip beginning cash from 17th of every month. It has further been alleged that the enormity in cash handling was compounded due to the fact that annual productive linked bonus amounting to ₹5.5crores was to be distributed

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But it was surprising that the applicant was not aware that there was excess of approximate ₹ Three Lakhs in his cash box and that there was shortage of cash box of other persons. But it was a matter of great surprise that excess amount has not been given to the charged employee as per the report. The applicant had taken the advantage of co-workers and sitting in the same room. So far as the arguments had placed in regard to the closing of the strong room at 08:05p.m., and recovery of amount at 08:30p.m. are concerned, the approximate time of finding the cash was given by the Divisional cashier.

5. Thus, it is evident that the cash was not given to the applicant for distribution on the cash line of the Railway line and no excess amount was paid to him, but it is a surprising fact that a sum of Rs.03Lacs was found excess in the cash box of the applicant and it was not given to him hence the burden of proof lies on the applicant to prove that from where this excess amount has come. Whereas, the applicant has completely disputed all these facts. One surprising factor has also been alleged by the applicant that he left office on that date at 05:30p.m., and hence question does not arise of checking of his cash box

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at 08:05p.m.. But it is a fact that strong room was closed at 08:05p.m., and, thereafter, search was conducted of the cash box of the applicant at 08:30p.m. in the presence of other cashiers at that time a sum of Rs.03Lacs was found excess in the cash box of the applicant. It will not possible to deny or dispute the statement of all the nine cashiers. There is no such evidence on record to establish that the applicant left the office at 05:30p.m. on that date. Thus, entire facts as alleged by the applicant belies his story. There was no reason for any body to fabricate the false fact against the applicant.

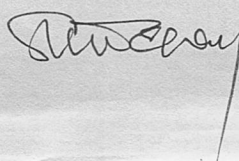
6. Much, has been argued on behalf of the applicant regarding not conducting the enquiry as per rules, and that the statement of witness were not recorded and instead of opening prosecution case applicant was directed to open the case, but it is not evident from the facts of the case. Moreover, there is also one very important fact which is required to be considered one O.A. No. 317 of 2000 was filed by the applicant before this Tribunal and in this O.A. the applicant challenged the order dated 09th February, 1999 by which the applicant was punished with reduction of lower post of cashier in pay scale of Rs.4,000-

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6,000/- at the stage of Rs.4,400/- for five years with cumulative effect. The applicant also challenged the order passed by the appellate authority dated 25th January, 2000 (Annexure-5) and the punishment order awarded by the disciplinary authority was challenged on 09th February, 2000. And in that O.A. all the allegations were made regarding not conducting the enquiry properly and for not supplying the copies of the documents, and whatever has been alleged in this O.A. regarding irregularities committed in the enquiry were also alleged in the earlier O.A., and the earlier O.A. was decided finally on 08th August, 2002 to the following effect:-

"In view of the facts and circumstances and our aforesaid discussions the appellate order dated 25th January, 2000 is quashed. The case is remitted to the appellate authority for deciding the appeal of the applicant dated 26th February, 1999 within two months from the date of communication of this order by a reasoned and speaking order. In order to avoid delay the applicant may furnish copy of appeal dated 26th February, 1999 along-with copy of this order."

7. Hence perusal of the operative portion of the order shows that the order of the disciplinary authority as well as the proceedings of the disciplinary inquiry was not quashed rather only appellate order was quashed. We have considered the order passed by the Tribunal and in



our opinion entire facts of the case were considered. Regarding inquiry proceedings Tribunal also observed that *"Learned counsel for the respondents submitted that the applicant has failed to show as to what prejudice has been caused to him due non supply of document. The arguments of learned counsel for the applicant can not be accepted that he did not cross-examine the witnesses as he was not supplied the copy of the preliminary enquiry report and other various documents. The preliminary enquiry report is not a relevant document and no prejudice is supposed to be caused due to non-supply of the same....."*

8. At length, the Tribunal has considered the enquiry proceedings and the Tribunal was of the opinion that the enquiry was properly conducted and only the Appellate Authority has not passed the order in proper manner and hence the Appellate Order was quashed and direction was given to pass a fresh order. Under these circumstances the judgment in O.A. No. 317 of 2000 shall operate as *res-judicata* as orders regarding other contentious points raised regarding not conducting the proper enquiry, and the order passed by the disciplinary authority. The order

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of the disciplinary authority was upheld and confirmed by the Tribunal as it operate as *res-judicata* hence we are not suppose go into that detail. We are only concerned that as to whether the respondents shall complied with the order passed by the Tribunal in this connection and Tribunal was directed the appellate authority to pass reasoned and speaking order.

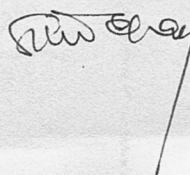
9. Annexure-A-10 is the copy of the appellate order passed on dated 11th November, 2002 by the Appellate Authority. And this order was passed by the Appellate Authority in a proper manner and it is a well discussed and well reasoned order and it can not be said that it is lacking in any manner. So far as, regards the enquiry proceedings are concern the matter has been finally decided and it cannot be reopened and we are only required to see that whether judgment passed by the Appellate Authority is in accordance with direction of the Tribunal and we are of the opinion that the order passed by appellate authority is perfectly in accordance with law and as per direction of the Tribunal and detailed reasoning have been given in the order and it has not been

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argued by the applicant that this judgment has suffered from any infirmity.

10. As we have decided that the entire matter has been decided by the Tribunal in earlier O.A. and we scrutinized the order passed by the Appellate Authority and we are of the opinion that it is perfectly valid order. From facts it is evident that a sum of Rs.03lacs was found excess in the cash box of the applicant and it may be possible that the applicant wanted to embezzle this amount otherwise there was no reason for fabricating a false case, although, charges against the applicant are very serious in nature but even then the applicant has not been removed from services and only he has been reverted for a specific period. There appears no reason to interfere in the order passed by the disciplinary authority as well as the appellate authority.

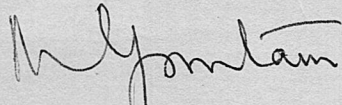
11. For the reasons mentioned above we are of the opinion that the O.A. lacks merits and the principle of *res-judicata* is also applied in this case because the matter was finally decided in the earlier O.A. and same matter is re-agitated in instant O.A. and the order passed by the



appellate authority is perfectly in accordance with law.

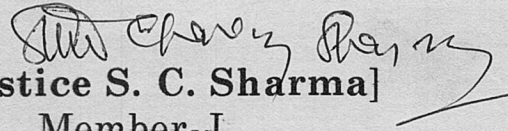
O.A. lacks merits and liable to be dismissed.

12. O.A. dismissed. No order as to costs.



[Manjulika Gautam]
Member-A

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[Justice S. C. Sharma]
Member-J