[RESERVED]

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Dated this the 27th day of January, 2011.

CORAM:

HON'BLE SHRI S.N. SHUKLA, MEMBER (A)
HON'BLE SHRI SANJEEV KAUSHIK, MEMBER (J)

ORIGINAL APPLICATION NO.578/06

Shri Hari Prakash Tripathi S/o
Sri Maha Deo Tripathi,
Resident of Jafara Bazar (Sadar)
Dist. Gorakhpur. ... Applicant
(By Advocate B. Tiwari)

Versus

1. Union of India through its, General Manager, N.E.Railway, Gorakhpur.

2. The Assistant Divisional Mechanical Engineer (Power), North Eastern Railway Gorakhpur.

3. The Senior Divisional Mechaical Engineer (Power), N.E. Railway Lucknow.

(~~By Notice~~) D.P. Singh ... Respondents

O R D E R

PER: SHRI SANJEEV KAUSHIK, MEMBER (J):

The Applicant has approached this Tribunal under Sec. 19 of the Central Administrative Tribunal Act 1985 seeking quashing the order dated 24.11.2005 passed by the Assistant Divisional Mechanical Engineer (Electric), North Eastern Railway, Lucknow by which he has been held guilty of charge and for loss of revenue a penalty of Rs.12,600/- has been inflicted upon the Applicant.

2. Brief facts of the case are that the Applicant was appointed on 19th January, 1974 as a Khalasi in the scale of Rs. 196-232 in LOCO SHED, North Eastern Railway, Gorakhpur. Subsequently, he was granted upgradation under the A.C.P. to the scale of Rs.3050-4590 as a Helper (Khalasi). It is averred by the Applicant that while he was on

night duty on 12.9.2005 about 500 Liters of diesel has been blown up due to mischief committed by unauthorised persons by breaking the locks. He immediately reported the matter to the concerned authority on 13.9.2005. On 14.9.2005 the Applicant was served with a charge-sheet under Rule 19 of the Railway Servant's (Disciplinary and Appeal) Rules 1968 and it is alleged in the chargesheet that due to his negligence, 500 liters of High Speed Diesel oil has been blown and therefore the Respondent Department viz. Railways has suffered losses to the tune of Rs. 12600/- . It is further alleged by the Applicant that on 17.9.2005, 31 persons including the Applicant submitted a representation to the Respondent No.2 highlighting the reasons of theft and also requested the authority to lodge an F.I.R. Respondent No.2 passed order on 14.11.2005, whereby proved charge of negligence. For the loss suffered by the respondents for carelessness penalty of recovery of Rs. 12600/- was imposed and the same was ordered to be made good from the salary of the Applicant. Against this order the Applicant preferred an Appeal before the Respondent No.3 on 31.12.2005. It is further stated that no order has been passed by the Appellate Authority upon the aforesaid Appeal preferred by the Applicant. Aggrieved by the action of the Respondents, the Applicant has approached this Tribunal challenging the order holding guilty, imposing the penalty of Rs.12600/- and subsequent recovery order dated 15.8.2005.

3. Notice on the present O.A. was issued to the Respondents who after putting appearance filed their Counter Affidavit. In the Counter Affidavit it is categorically stated by the Respondents that due to the negligence of the Applicant on 12.9.2005 while he was on night duty about 500 Ltrs. Of High Speed Diesel oil has been blown up. Accordingly, the Applicant was served with charge-sheet by the Respondent No.2. After having his reply and after complying with the principles of natural justice the Disciplinary Authority has passed the

order dated 24.11.2005 whereby holding the Applicant guilty of the charge i.e. negligence. For the loss of respondent penalty was imposed upon him. Accordingly it was ordered to recovered an amount of Rs. 12600/- which is equivalent to the cost of 500 Ltrs of H.S.D. oil which was blown up due the negligence and carelessness of the Applicant. It is further submitted on behalf of the Respondents that no Appeal as alleged by the Applicant in the O.A. has been received in office filed against the penalty order dated 24.11.2005.

4. We have heard the Ld. Counsel for the Applicant Shri B.Tiwari and nobody appeared on behalf of the Respondents.

5. It is the admitted case between the party that on 12.9.2005 while the Applicant was on night duty about 500 Liters of H.S.D. oil has been blown up for which the Applicant was charegesheeted. After complying with the principles of natural justice by affording an opportunity of being heard, the Competent Authority inflicted the punishment vide order dated 24.11.2005 in terms of Railway Servants (Disciplinary & Appeals) Rules 1968. It is nowhere stated by the Applicant that while conducting the inquiry he was not afforded an opportunity or any Rule has been violated. . It is alleged by the Applicant that since he has to perform two different duties at the same time, the unfortunate incident had been occurred. Regarding the appeal, it is denied by the respondents that any appeal has been received against the impugned order. Neither rejoinder contradicting this argument of Respondents nor any documentary proof of filing appeal has been produced before us by the applicant. So it is presumed that what has been stated by the respondent in Counter Affidavit in this regard is admitted by the applicant.

6. We find support from the judgement of Hon'ble Punjab & Haryana High Court in Civil Writ Petition No.15658/10 decided on 7.10.2010 in the case of *Rajpal vs. Central Administrative Tribunal, Chandigarh and Ors.* wherein the Hon'ble Division Bench has

considered the question regarding the interference by the Courts in departmental proceedings. The relevant paragraphs 9 and 10 are reproduced hereunder:

> *"9. It has accordingly been held that the admission is best form of evidence as it is self-incriminating, therefore, it is per se admissible. The aforesaid admission made by the petitioner is fully corroborated by the official record produced before the Enquiry Officer. Therefore, we do not find any justifiable ground to record a conclusion that the petitioner is not guilty of the charges.*
> *10. It is well settled that in the absence of any violation of mandatory provision of the Rules concerning holding of enquiry it is not possible for the Courts to interfere in the quantum of punishment chosen by the employer. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court rendered in the case of* ***Union of India v. Parma Nanda****, **(1989) 2 SCC 177**. It has been observed therein that ordinarily the Courts or the Tribunal has no power to interfere with the punishment awarded by the competent authority in departmental proceedings on the ground of the penalty being excessive or disproportionate of the misconduct proved, provided the punishment is based on evidence and is not arbitrary, mala fide or perverse. The aforesaid view has been followed in the case of* ***State of Karnataka v. H. Nagaraja, (1998) 9 SCC 671****."*

7. In the light of the foregoing, we are not convinced by the arguments raised by the Applicant and hence we find no reason to interfere with the punishment order passed by the Respondent on 24.11.2005 for recovery of Rs.12,600/- from the salary of the Applicant which is equivalent to the cost of H.S.D. oil blown up due to carelessness of the Applicant.

8. For the reasons stated above ands since no other point has been raised by the Applicant, the O.A. is dismissed being devoid of merits. No order as to costs.

MEMBER (J)

MEMBER (A)

Sj*