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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 158/ 1987
T.A. No. 141/
214/

DATE OF DECISION 25.4.90

Dalsukhbhai K. Parmer & others Petitioner

M. R. Anand & others Advocate for the Petitioner(s)

Versus

Union of India rep. Railway Ministry, Respondent
New Delhi and others

N. S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Judicial Member

Shri Dalsukhbhai K. Parmar
Chief Goods Supervisor,
under the Divisional Railway
Manager (W. Rly),
Pratapnagar, Baroda
(Advocate M. R. Anand)

133/8
Applicant in O.A. 158/87

Vs.

1. Union of India
Railway Ministry,
New Delhi
2. Western Railway
Churchgate, Bombay and
3. Divisional Railway Manager
(Western Railway) Pratapnagar,
Baroda (Gujarat)
(Advocate N.S. Shinde)

Respondents in O.A.
158/87

Shri Venket Rao Suryanaryana Musini
Sr. Goods Clerk, Kankariya
T. 250/B, Near Station Supdt.
Office, Kankaria, Ahmedabad-380022
(Advocate K.S. Jhaveri)

Applicant in
O.A. 141/87

Vs.

1. Union of India service to be
made through the General
Manager, Western Railway,
Church Gate, Bombay-400 020
2. Sr. Divisional Commercial
Supdt. (W.R.) having its
office at Pratapnagar,
Vadodara-390 005 and
3. Divisional Railway Manager,
Western Railway, Vadodara
Division, Pratapnagar,
Vadodara-390005

Respondents in O.A.
141/87

Shri Tulsiram D. Dhok
Sr. Goods Clerk, Nadiad
(Advocate : P.H. Pathak)
Vs.

Applicant in O.A. 214/87

1. Union of India through
the General Manager, Western Railway
Church Gate, Bombay-400 020
2. Sr. Divisional Commercial Supdt.
Western Railway, Pratapnagar,
Baroda-390 005 and
3. Divisional Railway Manager,
Western Railway, Baroda Division,
Pratapnagar, Baroda-390 005

Respondents in O.A.
214/87

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CORAM: Hon'ble Shri P. H. Trivedi, Vice Chairman
Hon'ble Shri N. Dharmadan, Judicial Member

O.A. 158/87

O.A. 141/87

O.A. 214/87

O R D E R .

Per : Hon'ble Shri N. Dharmadan, Judicial Member

The facts, issues, questions of law for consideration arising in all these three cases are the same. The applicants in all these cases are facing similar charges arising from same incident. Hence, these cases are heard and disposed of by a common judgment on consent of parties.

2. For convenience we are only referring the facts in O.A. 158/87. The brief facts are as follows:

3. The applicant, while working as Chief Goods Supervisor, Sabarmathi Division of Western Railway under the second respondent, was served with Annexure-A memorandum of charges with statement of allegations.

The charges read as follows:

" The said Shri Dalsukhbhai K. Parmar while functioning as Goods Supervisor, Kankaria, Western Railway, Ahmedabad during February, 1981 to April, 81 committed gross misconduct and failed to maintain absolute integrity and devotion to his duties in as much as;

He, in collusion with S/Shri Tulsiram D. Dhok, Goods Clerk, Kankaria, Western Railway, K.P.S. Rane, Sub Inspector, RPF, Kankaria, Jaibirshingh Yadav, ASI, RPF, Kankaria & Venkatrao, Senior Goods Clerk, Western Railway allowed the removal of the Coal Dust by Shri Babubhai A. Brahmabhatt & Shri Karandas A. Marfatia of M/s P. Das & Co. who made the highest bid in an auction held on 28.11.80 at Kankaria, belonging to Western Railway from 69 trucks valued for Rs. 2,98,662/- as per the details in List S enclosed in the annexure, after its weightment at Shrisakti Motor Weighing Bridge Company under their supervision without realising its cost and

caused pecuniary gain to themselves and corresponding loss to the Western Railway.

Thus Shri Dalsukbhai K. Parmar contravened Rule 3(1)(i)(ii) of Railway Service Conduct Rules, 1966."

4. After the DAR enquiry Annexure 'C' enquiry report was submitted finding the applicant guilty of the charges. By Annexure-D order dated 1.11.1986 the applicant was removed from service by the Disciplinary Authority after accepting the enquiry report. The applicant filed Annexure-F, detail appeal memorandum, before the appellate authority which was disposed of by the DRM (BRC) as per Annexure-G, order which is extracted below for convenient reference:

"I have considered your appeal against the penalty of removal from service imposed by Sr. DCS BRC. I have also given you a personal hearing on 28.1.87 when you were accompanied by your defence counsel Shri J. G. Mahurkar, Divisional Secretary, WRMS.

The charges against you are very grave. You were in charge of the KKF Goods shed at that time and had supervised the removal of auctioned coal from KKF Yard either by yourself or deputing the Sr. Goods Clerks. The CBI have investigated the case thoroughly and have held you responsible and the EO CCG who has conducted the DAR enquiry has substantiated the charges. In the personal hearing you had no new points except to deny the charges. Your contention that the 69 trucks loaded with coal and unauthorisedly removed from the Yard without payment might have been weighed on the same weigh bridge by the bidder P. Das and Co. for re-sale to the consumers on the same day is not tenable due to the fact that the weights shown for these trucks in the Annexures I & II (List A & B) do not tally. Further you had not deposed so to the CBI authorities at the time of investigation. The unauthorised removal have been taken place on the same dates between 13.2.81 and 23.4.81 excepting on 13.2.81, 30.3.81 and 16.4.81.

There is no doubt that you as Goods Supervisor of KKF Shed have conspired with other Goods Shed Staff viz. Shri T. D. Shek and Shri V. Rao and the bidder of for removing the coaldust of 69 trucks unauthorisedly and put the railway to a great loss. No mercy can be shown to such staff indulge in such nefarious

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activities. The RPF staff (SIPF-II and ASIPF) have already been removed from service as they were also involved in this case. I do not therefore agree to reduce the penalty of removal from service already imposed on you. The appeal is rejected.

The requirements of DA Rules have been followed properly in this case."

5. The applicant is challenging the disciplinary proceedings and the orders of both the disciplinary authority and the appellate authority. He also seeks for reinstatement with all consequential benefits.

6. The gist of the charge against the applicant is that he allowed removal of 69 trucks of coal dust valued Rs. 2,98,662/- by Shri Babubhai A. Brahmabhatt and Shri Karsandas A. Marfatia of M/s. P. Das & Co. from the premises of the Railway Yard without realising its costs and thereby caused pecuniary gain to him and others colluded with him. Annexure-C enquiry report discloses that the statements of nine witnesses and some documents referred to therein have been relied on for establishing the case of the Railway.

7. Admittedly there is no direct evidence to connect the applicant with the offence charged against him. Hence the enquiry authority relying on circumstances and probability came to the following findings and conclusion:

"In view of the above discussion and taking into consideration documentary as well as oral evidence produced/record during the enquiry, there is a strong probability that 69 trucks in question weighed at M/s. Shakti Motore weighbridge Co. KKF were containing coal dust auctioned at KKF to the said party for which the cost was not recovered resulting in loss to the Railway revenue. Since the defendant was incharge of KKF Goods shed having supervised the removal of auctioned coal dust during the period in question there is a strong probability that these 69 trucks

had passed from KKF with his connivance. I have therefore no hesitation in coming to the conclusion that there is a preponderance of probability that Shri D. K. Parmar, G.S. KKF in connivance with Shri T. D. Dhok, Sr. GC, KKF K.P.S. Rama SIPF KKF and J.S. Yadav, ASI, KKF had allowed removal of coaldust in 69 trucks auctioned at KKF by Shri Karsandas A. Marfatia of M/s. P. Das & Co. ADI, during the period from 16.2.81 to 23.4.81 involving coal dust to the tune of 656.400 tonnes valued Rs. 2,98,662/- without recovery of the said amount towards the cost of the coal and thereby caused loss to Railway revenue.

CONCLUSION

The charges levelled against Shri D. K. Parmar GS KKF now working as CGSR SBI in this case are substantiated by preponderance of probability."

8. The points raised by the learned counsel for the applicant for attacking the impugned orders are as follows:

- (i) This being a case of no evidence to sustain the charges, the impugned orders are liable to be quashed.
- (ii) There is violation of principles of natural justice in not having furnished the documents containing 257 papers referred to in Annexure-B.
- (iii) The punishment has been imposed by the authority incompetent for passing such an order of removal from service.

9. The learned counsel for the applicant referred to us some of the questions and answers ~~the~~ of the witnesses examined in the enquiry to substantiate his first contention that there is no evidence about the involvement of the applicant. ^{in this offence. he} He also contended that there is no documentary evidence to ^{implicitly} ~~indicate~~ the applicant ^{and} to sustain the charges againsts him. This is not a novel argument on the facts and circumstances of this case to be appreciated at this stage by us firstly because the enquiry officer himself had admitted that there is no direct evidence from his

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conclusion. He sustained the charges on "preponderance of probability." Secondly this Tribunal is not a fact finding body to sit in appeal over the decisions of the lower authorities and appraise and appreciate the evidence so as to come to a different conclusion on the available materials on records. The scope of interference of this Tribunal in matters like this

is very much limited. ^{we see considerable force in it} So ~~there is no much credence~~ ^{to} the contention that this being a case of no direct evidence, the impugned orders should be struck down. ^{we may also} But ^{above that} of course there is considerable force in the submission of the learned counsel of the applicant that probabilities should not be relied on for implicating a delinquent employee unless they are so clinching and are of such a nature that they lead to the sole and only conclusion that the applicant is guilty. Such a finding prima facie appears to be lacking in this case.

10. On a careful examination of the enquiry report it can be seen that the enquiry officer mainly concentrated on the defence versions that the auctioned goods are not consumable by the bidder himself and hence he might have resold the auctioned coal dust and the carting agents for traders being the same ^{it} may not be possible to recover the costs of 69 trucks which were resold by the bidder to consumers and came to the following finding:

"The argument of the defendant as regards 69 trucks containing coal dust being resold coal dust sent to consumer's unit is not supported by any documentary evidence except the oral evidence of Shri Karsandas A. Marfatia the carting agent who is one of the involved parties. It was deposed by Shri Dube that his statement was recorded and books of accounts were checked in this case. Although these were not relied upon in the present case, the fact remains that he was one of the involved person and therefore his

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testimony as a defence witness cannot be taken at its face value without corroborating factors in this case. By the defendant's own arguments in his brief he has claimed that trucks of Shri U. N. Patel hired by Shri Karsandas A. Marfatia were used for transporting coal dust resold to a consumer from ADI to Adalaj. If this were so; the above analysis proves otherwise because 3 trips of GTE 2776 one trip of GTD 4440 and 3 trips of GTA 4896 were used only for transportation of authorised removal and it would have been from KKF to Gomtipur and not from ADI to Adalaj. Secondly the carting charges of Rs. 1089/- could not have been for transporting coal dust from KKF to Gomtipur which is in nearby area and not far away Adalaj. Moreover one truck No. GTA 3155 was used for 2 trips in 69 alleged unauthorised removal and was not at all used in any trips of authorised removal. Thus the arguments that this was resold coal dust transported to Adalaj put forward by the defendant is virtually baseless and has to go in for such baseless and concocted arguments itself show his desperation and deep involvement as well as guilt. Viewed in this context the deposition of Shri Karsandas A. Marfatia becomes totally unreliable. Moreover the trips of the same trucks used in the authorised and unauthorised removal as shown above also indicated a strong probability that these 69 trucks loaded with coal dust weighed at the weighbridge near KKF were from KKF coal yard only.

It must be borne in mind that the dates of incident in this case is during 1981 and the investigations had taken place during 1982 when the matter were comparatively fresh and records must have been then available even with carting agents. If the arguments of the defendant that these 69 trucks contained coal dust resold to consumers by the bidder or for that matter pertained to some outside agencies were true, there was no reason why the defendant who was seized of the matter then had not established it before the CBI officials during investigation on the basis of records to establish bonafides of the dealings. It is evident that this was not done by the defendant then apparently because there was no such case as argued now this lends further support to the probability that the 69 trucks of coal dust during the period in question were removed from KKF; and the cost of it was not paid for."

11. This is really a wrong approach made by the enquiry authority. The Railways case of default and negligence ought to have been sustained on the

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evidence, circumstances and probabilities to be put-forth by the Railway and not the case that is set up by way of defence by the delinquent officers. The flaws of the defences cannot be the basis for sustaining the charges. This is a matter which ought to have been considered by both the disciplinary authority and appellate authority while passing the impugned orders. Since there is no direct evidence and there is no definite finding that the only possibility, other than the probabilities to which reference was made by the enquiry officer in the report for arriving at a conclusion that the applicant has committed the offence alleged against him, for the movement of the coal dust involved in this case from the Railway Yard to the outside ^{agency is} to the detriment of the revenue of the Railway is due to the negligence and default of the applicant. So we find it difficult to sustain the decision of the enquiry officer. This aspect ought to have been independently evaluated by the disciplinary authority and ^{he should have} arrived at the right conclusion before passing the order of punishment which has not been done by the disciplinary authority. In fact he had not gone into the evidence at all. The order passed by him reads as follows:

"I have gone through the chargesheet and all other case papers including the proceedings and findings of the enquiry under D & A Rules. In the enquiry under D & A Rules, the charges against Shri D. K. Parmar, GS SBI have been substantiated. The penalty of removal from service is imposed upon Shri D. K. Parmar."

12. It is a laconic order and it has been issued in the printed form, the practices of which has been criticised by the courts time and again. Hence

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we can only come to the conclusion that there is no application of mind by the disciplinary authority on the relevant issue raised in this application and this is a very important aspect which the appellate authority ought to have considered on the facts and circumstances of the case while disposing of the appeal.

13. In fact the applicant filed a detailed appeal memorandum, Annexure-F. But it was not considered with reference to his contentions by the appellate authority. Hence, the order of the appellate authority is also equally unsatisfactory and non-speaking with regard to the relevant issues highlighted by the applicant in the appeal.

14. From the very beginning it is felt that both the disciplinary authority and the appellate authority have dealt with this serious matter involving a loss of very huge revenue of the Railway in a very callous and indifferent manner. The impugned orders Annexure-B and G are thoroughly unsatisfactory and have been issued without real application of mind as enjoined upon the authorities under the rules. The persuasive arguments advanced by the learned counsel for the applicant in this behalf make us feel that this a very unsatisfactory disposal of a serious matter by the statutory authorities. We are left with the only alternative of interfering ^{with} in this matter and quashing both the orders at this stage. We feel that it would be proper in the interest of justice to quash both the impugned orders.

15. In the view that we are taking in this case it is unnecessary for us to go into the other two grounds raised ~~in~~ by the learned counsel for the applicant.

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16. Under these circumstances, we quash the impugned orders Annexures B and G in O.A. 158/87 and direct the reinstatement of the applicant forthwith but without any back wages. The question of payment of backwages and grant of all other consequential benefits would depend upon the decision of the respondents to conduct a fresh enquiry against the applicants and the result thereof. If the respondents do not wish to conduct a fresh enquiry within a period of six months they may pass orders for payment of backwages and all consequential benefits. If on the other hand they decide to conduct a fresh enquiry within the period mentioned above in accordance with law the question of payment of back wages and all consequential benefits would depend upon the final outcome of such further enquiry and consequential decision that may be taken by the concerned authority.

17. In the result we allow the application. The same observations, decisions and directions would apply to the other two connected cases. ^{as well as} They are also accordingly allowed on the above lines.

18. There will be no order as to costs.

Sd/-
(N Dharmadan)
Judicial Member

Sd/-
(P H Trivedi)
Vice Chairman

TRUE COPY

Section Officer
Central Administrative Tribunal
Ahmedabad Bench.