

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

O.A.No. 67/93

Ahmedabad this the 26th day of April, 2000

**Hon'ble Mr. V. Ramakrishnan, Vice Chairman
Hon'ble Mr. A.S. Sanghavi, Judicial Member**

Govindbhai Ramjibhai Parmar
Senior Clerk in the office of
Shop Superintendent MW Shop (Stores)
Western Railway, Dahod, Dist: PMs.
Residing at 186/E/L/Bungalow
Free Land Gunj
Dahod, Dist:Panchmahal.

Applicant

By Advocate: Mr. D.F. Amin.

VERSUS

By Advocate: Mr. N.S. Shevde

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman

We have gone through the written submission made by Mr. Amin, learned counsel for the applicant and also have taken the assistance of Mr. Shevde and have gone through the materials on record.

2. The applicant, a Railway servant, was served with the charge sheet dated 27.12.88 where he was charged with violation of Rule 3(1)(ii) & 3(1)(iii) of the Railway Service (Conduct) Rules, In other words he was charged with lack of devotion of duty and conduct which was unbecoming of a Railway servant. The statement of imputation in support of the ~~Articles~~ of charges was that the applicant ~~is~~ a store clerk did not keep correct accountal receipt, issues, ground balance etc.etc. A number of documents were also relied upon in support of the charges which including ~~and~~ the following:-

“Upkeep of correct accountal is the sole responsibility of the Stores Clerk. During the Inspection of Dy.CME DHD on 18.3.88 Shri Govind.R.Parmar, Sr.Clerk of MW Shop (Stores) DHD, was advised to keep correct accountal of receipts, issues, ground balance along with details of the supplier and the details of the machines on which the material is issued and the last purchase details, all recorded on tally book. But it is observed that the above instructions are not followed meticulously. On 5.10.88, during the course of Inspection he was interrogated to give the explanation as to why he has failed to record the above details in the tally book. But he was not able to explain. The tally Book No.5 of Oil stock was checked and the following irregularities were noticed:

PAGE NO.1. The description of the material, tally card No. Unit minimum sanctioned imprest, description of article and price list cost, ward No. etc. was pasted by a blank slip only, indicating the description of the item. Similarly, there are other pages No.11,21,31,41,51,61,71 and so on. The pages are mutilated and torn. Entries are overwritten. Mutilation of the tally book reveal the doubtful integrity. He is therefore considered to be unbecoming Railway servant by violation of Rule 3(1)(ii) & (iii) of Railway Services (Conduct) Rules, 1966 for not following the instructions issued by his seniors.

After an enquiry where the applicant was associated, the enquiry officer came to the conclusion that the charges were proved. The disciplinary authority accepted the findings of the enquiry officer and imposed the penalty of reduction to the lower scale in the time scale of 1200-2040 at the minimum of pay i.e., at Rs. 1200/- per month for a period of three years affecting his future increments. An appeal was filed against this order which was rejected by the appellate authority by its order dated 8.6.92 as at Annexure A-6 where the appellate authority observed that the finding of the disciplinary authority was warranted and that prescribed procedure has been followed. However, it reduced the penalty of reduction to the lower scale in the time scale of 1200-2040 at the minimum of pay at Rs. 1200/- per month for a period of one year with future effect. This order of the disciplinary authority and appellate authority are challenged in the present OA.

3. In the written submissions, the learned counsel for the applicant has contended that the orders of the authorities are vitiated on number of considerations. These are, firstly that the charge framed against the applicant is that he had violated Rule 3(1)(ii) and 3(1) (iii) of the Railway Services (Conduct) Rules. However, the enquiry officer in his finding has held that carelessness of the applicant in not maintaining properly and in his general

working had talked of doubtful integrity. He had contended that the applicant has been held guilty of lack of integrity which was not one of the charges levelled against him. It is also submitted that the enquiry officer had relied ^{on} the inspection note dated 5.10.88 given by the Dy. CME who was not examined as prosecution witness. Similarly he had relied on the Inspection Note dated 5.10.88 without calling him as prosecution witness. It is contended that the Presenting Officer was not appointed and that the enquiry officer himself had asked leading questions to the prosecution witnesses and this has vitiated the enquiry and Enquiry Officer had functioned both as a prosecutor and as judge which is not permissible. It is submitted that the penalty imposed by the disciplinary authority does not conform ^{to} 15 the statutory rules particularly Rule 6.5 of the Railway Servants(D&A) Rules. There is also an averment that the appellate order is not a speaking order and it has not discussed the report and proceedings.

4. We have carefully considered the submissions made by the learned counsel for the applicant. It is well settled that it is not for the Court and the Tribunal to reappreciate the evidence or substitute its own finding to that of the authorities. All that we are concerned with are whether the principles of natural justice have been followed. The Court can interfere if the finding is not based on any evidence whatsoever or that on the basis of materials on record such a finding is perverse and no reasonable ~~facts~~ ^{person} could come to such a conclusion. In the present case it is not the stand of the applicant that there was no evidence at all against him or that the finding is perverse. His contention is that prescribed procedure was not followed and principles of natural justice were not adhered to.

5. As regards the first contention, we find that the enquiry officer has come to the conclusion that the applicant had not maintained ~~had~~ the tally books and that he is careless in his work and this would show that the applicant had not shown devotion to duty and was guilty of conduct unbecoming of Railway servant. The fact that the enquiry officer used the ~~term~~ "doubtful integrity itself would not vitiate its finding as he has come to the conclusion that on the basis of the materials on record and evidence adduced during the enquiry that the charges against the Railway servant were proved and this related to lack of devotion of duty and conduct unbecoming of Railway servant. We also note that the enquiry officer has come to the finding that the applicant was careless in his work and he has held the charges to be proved. We do not find any perversity in his findings.

6. We may mention that copies of the Inspection report were made available to the applicant and he was given ample opportunity to prepare his defence. The fact that the officers who had prepared the inspection note were not examined by itself will not vitiate the enquiry. We find that the copies of the Inspection report ~~had~~ been made available to the applicants. The inspection reports are factual. To illustrate, the report dated 19.3.88 states that the spare part received along with the machinery and plants are not accounted on separate basis. Some of the tally books were found to have not been offered to stock verifier to ascertain the ground balance with the book balance etc. etc. Similarly the Inspection Note dated 5.10.88 says that the Tally Book No.5 was checked and it was found mutilated and some of the pages are torn and the account is direct in Dy.CME's inspection note dated 19.3.88 was not at all followed and on being asked about the irregularities in the tally book No.5 the applicant was quite ignorant about the mutilation and

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he became violent and started raising his voice in undesired manner. In other words this inspection report relates to the maintenance of records as expected from the store keeper. It is not necessary in such a situation to call the person who prepared the inspection report and to examine him as a prosecution witness. If the applicant found that such reports were factually incorrect, he could have demonstrated the same by getting the copy of the tally book etc. bringing out that they were properly maintained. He has not chosen to do so. Even though there is a reference in inspection note dated 5.10.88 that the applicant become violent and started raising his voice in undesired manner, we find that the enquiry officer has not based his finding on this allegation. He had stated that the books were not properly maintained and the applicant is careless in his work. In the facts and circumstances, we hold that the failure to call the CME as a witness has not in any case prejudiced the applicant in the enquiry. There is a mention that he could have been called as defence witness. He had made no such request which would warrant calling the Dy.CME as witness. The authorities had relied upon the inspection report which is entirely factual and as such it was not necessary to explain the same. We therefore, reject this contention.

It has been submitted that there was no presenting officer and in absence of a presenting officer, the enquiry officer himself became the prosecutor and the judge. This also is without any merit as there is no requirement as per the statutory rules that a presenting officer has necessarily to be appointed. Even if the presenting officer is not appointed, it is for the enquiry officer to regulate the procedure before him. The applicant has not brought out as to what where the leading questions which were suppose~~to be~~ ^{hur} to the prosecution witness and what prejudice was

caused to him by the conduct of the enquiry officer. The allegation in this regard is vague and has remained unsubstantiated and we therefore reject this contention also.

7. There is also no merit in the contention that the penalty imposed by the disciplinary authority does not conform to the statutory rules. One of the penalties under Rule 6 is a reduction to the lower scale.

"6(v) Reduction to the lower stage in the time scale of pay for a specified period with further directions as to whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay."

From this it is clear that while the penalty of reduction to a lower scale of pay for a period should be specified and there can be a direction whether such reduction will or will not have the effect of postponing the future increments of his pay. In the present case, the disciplinary authority has reduced the applicant to the lower stage in time scale at the minimum for a period of three years and as also it will have in future effect. This has been modified by the appellate authority which reduced the period to one year instead of three years. The authorities had therefore conformed to the relevant statutory provisions in this regard.

The contention that the appellate authority has not discussed the finding of the enquiry officer alleging that he has not applied his mind is without basis. As the enquiry officer has given reasons in support of his findings it is not necessary for the appellate authority to reproduce in detail the reasons for agreeing with such findings in his order. He has accepted the

findings of the enquiry officer as warranted but he reduced the penalty to a period of one year instead of three years. We see no infirmity in the order of the appellate authority.

8. In the facts and circumstances, we hold that the applicant has been given due opportunity during the enquiry and the authorities had followed the prescribed procedure and based their findings of some evidence and there has been no violation of natural justice nor any prejudice has been caused ~~to~~ him in the proceedings. The OA is devoid of merit and is dismissed with no order as to costs.


(A.S. Sanghavi)
Member(J)


(V.Ramakrishnan)
Vice Chairman

Vtc.

FORM NO. 21

(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

OA/TA/RA/CP/Mn/P

67/93 of 2000

MR. G.R. PAGOMAYO APPLICANT(S)

VERSUS

21.G.I. 8 04. RESPONDENT(S)

I N D E X S H E E T

Certified that the file is complete in all respects.

Signature of S.O. (T)

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Signature of Deal Hand.