

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1072 OF 2002
Cuttack this the 19th day of April 2005

R.V.Rao

...

Applicant(s)

- VERSUS -

Union of India & Ors.

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Yes*

19.04.05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

19.04.05
(B.N. SOM)
VICE-CHAIRMAN

V
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1072 OF 2002
Cuttack this the 19th day of April 2005

CORAM:

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

Sri R.V.Rao, aged about 42 years, son of late
R.S.Challam, Ex-Parcel Clerk at Palasa of Khurda
Road Division of S.E.Railway under Sr.Divisional
Commercial Manager, Khurda Road - at present
residing at Narsipuram near Palasa P.S./PO-
Kasibugga, Dist-Srikakulam (AP) PIN 530 002

... Applicant

By the Advocates

Mr. A. Das

- VERSUS -

1. Union of India service through General Manager
S.E.Railway, Garden Reach, Kolkata, PIN-700043
2. Additional Divisional Railway Manager, S.E.Railway,
Khurda Road, PO-Jatni, Dist-Khurda, PIN-752050
3. Sr.Divisional Commercial Manager, S.E.Railway,
PO-Jatni, Dist-Khurda, PIN - 752 050
4. Divisional Commercial Manager, S.E.Railway,
Khurda Road, PO-Jatni, Dist-Khurda, PIN-752050
5. Commercial Movement Inspector, Bhubaneswar, S.E.Rly,
Railway Qr.No. B2/B, Ashoknagar Railway Colony,
PO-Ashoknagar, Bhubaneswar, PIN-751 009

... Respondents

By the Advocates

Mr.O.N.Ghosh, A.S.C.

- - - - -
O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Shri R.V.Rao (applicant)
has filed this Original Application being aggrieved by
the order~~s~~ dated nil under Annexure-A/6 passed by the
Disciplinary Authority (in short D.A.) removing him
from service as well as the order 2.8.2001 (Annexure-A/9)
passed by the Appellate Authority (in short A.A.)

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confirming the said order of punishment. He has also assailed the order dated 24.1.2002 (Annexure-A/11) passed by the Revisionary Authority (in short R.A.). He has therefore, prayed for the following reliefs:

"To quash and set aside the punishment notice dated 18.4.2001 issued by the DCM/KUR, the appellate order dated 2.8.2001 issued by the Sr.DCM/KUR and the order dated 24.1.2002 issued by the ADRM/KUR placed at Annexure Nos. A/5, A/9 & A/11 respectively; and to direct the Respondents to grant all consequential benefits to the applicant consequent upon setting aside the punishment notices issued by the DCM/KUR Sr.DCM/KUR and ADRM/KUR by reinstating him in service".

2. The facts of the case are that the applicant was issued with a major penalty charge-sheet for alleged "serious irregularity" containing two articles of charge, which are as under :

- i) That Sri R.V.Rao, while performing his duty as Parcel Clerk at PSA Rly. Station from 16.00 hrs. of 10.1.95 to 08.00 hrs. of 06.11.95 single handedly committed serious irregularity in as much as the Accounts and Guard foils of the PWB NO. 864236, Record, Receipt, Accounts and Guard foils of the PWB No. from 864237 to 41 and the record receipt and Account foils of the PWB No. 864242 were found missing from the PW Bill (L) paid Book No.85 during his duty hours and the missing of the above said foils from the PWB (L) paid Book No.85 was detected by him and Sri Rao failed to preserve the record while discharging his duty in the Parcel Office.
- ii) That Sri R.V.Rao while performing his duty as Parcel Clerk at PSARly. Station from 16.00 hrs. of 10.1.95 to 08.00 hrs of 11.1.95 single handedly committed serious irregularity in as much as the Accounts and Guard Foils of the PWB No.864236, Record, Receipt, Account and

Guard Foils of the PWB No.864237 to 41 and the Record Receipt and Accounts foils of PWB No.864242 were found missing from the PWB(L) paid Book No. 85 during his duty hours and Sri R.V. Rao being the Custodian of all the records and money value books failed to preserve the aforesaid PWB foils, though he took over the charges from Sri K.Appa Rao, CBS/PSA correctly.

3. After receipt of his explanation to the charge sheet, a departmental inquiry was conducted under the Railway Servants (Discipline and Appeal) Rules, 1960 (in short Rules) stretching for over a period of four years from 18.4.1996 to 26.4.2000. The I.O. in his report found the charges proved against the applicant. A copy of the inquiry report was supplied to the applicant by the D.A., to which he had submitted his defence pleading that he was not guilty of the charges. However, the D.A. did not agree with the defence/plea of the applicant and issued a punishment notice under Annexure-A/5 dated 18.4.2001 (enclosing thereto the reasoning vide Annexure-A/6) removing the applicant from service with immediate effect. The D.A. while assigning the reasons, amongst other things, held that "his past service records of 18 years revealed that he had been imposed punishment for fifteen times, of which three occasions on the charge of misappropriation of Rly.cash".

4. The grievance of the applicant is that ~~he was~~ ^{having been} in the charge-sheet, no whisper was made about his past conduct, the D.A. should not have inflicted capital punishment, like removal from service, on him without

affording him an opportunity to defend himself against those allegations. The applicant preferred an appeal before the A.A., i.e., Sr.Divisional Commercial Manager, who, however, upheld the punishment imposed on him, vide his order dated 2.8.2004 (Annexure-A/9). It is the case of the applicant that the A.A. did not perform his statutory duty as per Rule-22(2) of the Rules. The applicant, thereafter, submitted a revision petition within 45 days of disposal of the appeal, but the controlling authority, i.e., Addl. General Manager, Khurda Road, without forwarding the petition to the General Manager as per Rule-24(2) of the Rules dealt with the petition himself by upholding the punishment order, vide his order dated 24.1.2002 (Annexure-A/11). It is the grievance of the applicant that the R.A. also based his judgment on the order passed by the D.A. recalling his past service records, although the above allegation was not mentioned in the charge-sheet. He has, therefore, assailed the orders passed by all the concerned authorities, i.e., DA/AA/RA being bad in law as those have been passed in contravention of the provisions of the statutory rules governing the field.

5. The Respondents have filed their counter opposing the prayer of the application. They have reiterated in their reply that the irregularities committed by the applicant while on duty from 10.1.1995 to 11.1.1995 and that the punishment was imposed after following the due procedure laid down under the rules and affording

reasonable opportunity to the applicant to defend his case. They have stated that the charges levelled against the applicant were proved based on evidence on record and the evidence adduced during the course of inquiry and the findings of the I.O. The Respondents have also pointed out that the applicant had preferred his appeal to the Sr. Divisional Commercial Manager (Res.3) after 58 days from the date of service of the removal order against the stipulated period of 45 days. However, the appeal was considered and disposed of. They have submitted that the Additional Divisional Railway Manager was the revisionary authority, who had considered and passed a reasoned order on the petition filed by the applicant. The Respondents have also submitted that the applicant was found unfit to be retained in Govt. service in the interest of administration and it is on that ground, he was removed from railway service. The Respondents have also stated that as the missing counter foils were liable to be misused, which would entail financial loss to the Respondents-organisation, the applicant was found guilty on preponderance of probability. Relying on the case of Union of India vs. Sardar Bahadur, they have stated that the case against the applicant was proved on the standard of proof acceptable in the matter of disciplinary proceeding. The Respondents have pointed out that there were some relevant materials, which I.O. and other authorities had accepted and as those materials reasonably support the conclusion that the

applicant was guilty of the charges. They have also taken the stand that it is not the function of the Court/Tribunal to review the material and arrive at an independent finding.

6. We have heard the learned counsel for the parties and perused the records placed before us. The applicant has also filed rejoinder to the counter filed by Res.3. He has relied on the following case laws in support of his contention.

- i) Union of India & Ors. vs. J. Ahmed
AIR 1979 SC 1022
- ii) Nand Kishore Prasad vs. The State of Bihar and ors. (AIR 1978 SC 1277)
- iii) Union of India vs. T.R. Verma,
AIR 1957 SC 882)
- iv) S. Nanjundeswar vs. State of Mysore
AIR 1960 SC Mysore 159
- v) Rajaram vs. Union of India & Ors.
(1990) 13 A.T.C. 66
- vi) Ram Chander vs. Union of India & Ors.
AIR 1986 SC 1173
- vii) Sri Dinesh Kumar vs. Union of India & Ors. 2000(1) AISLJ 359

7. The applicant has raised a number of legal issues, which, if upheld, would materially affect the outcome of the disciplinary proceeding initiated against the applicant. The first issue raised by him is that the charge-sheet is based on surmises and exhibits pre-determined mind of the prosecution. It has been submitted by the applicant that in the articles of charge it has been mentioned that "while performing his duty as Parcel Clerk at PSA Rly. Stn. from 16.00 hrs. of 10.1.95 to 08.00 hrs. on 11.1.95 single-handedly committed serious irregularity in

as much as the Accounts and Guard foils of P.W.B. No.864236, Record, Receipt, Accounts and Guard foils of PWB No.864327 to 41 and the record, receipt and Account foils of the P.W.Bill No.764242 were found missing from the P.W.Bill (L) Paid Book No.85 during his duty hours and the missing of the above said foils from the PWB(L) Paid Book 85 though was detected by him, he failed to preserve the records while discharging his duty in the Parcel Office. On this account, it was concluded that he had failed to maintain devotion to duty and also failed to maintain integrity. The case of the applicant is that the missing foils were detected by him only during his duty hours. It is he, who had reported the matter to the next higher authority/Station Manager. If he had done away with the counter foils with ulterior motive, he would not have reported the matter. It is also the case that although under the Rules accountable articles, like receipt books, accounts and guard files are to be handed over and taken over by actual counting of the receipts, it is the duty of the Station Manager, on receipt of the Accounts and Guard files, to thoroughly check each foil and record, the correctness of the foils by effecting signature at the top. But neither the Station Manager, nor he nor his colleagues had ever followed this procedure of physical counting of foils/receipt books. It was only when he had to book a consignment after he had issued foil No.864235, he found the next foil not in seriatem and

thereby he detected that as many as seven foils were missing, which he at once reported to the Station Manager. It is the further case of the applicant that in the imputation of misconduct, no specific allegation has been brought against him more than saying that when he was on duty, it was found that some of the foils in the Account and guard file book No.8364263 were found missing. What was not mentioned therein was that it was the applicant, who had found those to be missing. The learned counsel for the applicant raised the question that at least in the inquiry it should have been found out that who could be held responsible for those missing foils and the inquiry report clearly brings out that nobody could be pin-pointed for the actual loss. The fact is that the responsibility, if it was to be fixed, was to be shared by all concerned. In other words, it is the submission of the learned counsel for the applicant that the charges were not specific, but vague and that perusal of the inquiry report would reveal the correctness of his contention.

8. We have perused the inquiry report. During inquiry three witness were listed by the prosecution for examination. They were - S/Shri B.K.Sahoo, CCI/BAM, G.P.Naidu, CBS/PSA and K.A.Rao, CBS/PSA. It has only been stated by the IO in his report that the applicant being the custodian of such accountable document had admitted that he had not checked the books although he had given a certificate of correctness of the PWB(L) on the record *6*

foil of first page of the book, violating Rule 227(D) of Indian Railway Commerce Manual (in short Manual) (Vol.I). Shri B.K.Sahoo, CCI/BAM had not mentioned in any of his inspection reports about the missing of PWB receipts, as per Rule 227(d) of the Manual. In fact, Shri Sahoo had admitted to this effect when questioned by the defence counsel that he had never mentioned in his inspection reports about the counting of every book nor had he ever reported that the applicant had violated the procedure under Rule-227(d) of the Manual. The applicant has stated this in his defence brief, but the IO's report is silent on this aspect of the case. From the preceding discussion it is clear that the submission made by the applicant that nobody had actually even inspected the book foils by counting and examined the same to know whether the books and the receipt received from the store had contained all the foils or some foils were missing. In the circumstances, when the applicant had reported about the missing foils to the next higher authority, it is unreasonable to hold him responsible for missing of the foils. Any allegation to that effect would be surely one of surmise and conjecture.

9. If the charge-sheet is found to be vague and unspecific, based on surmises and conjecture, the Courts will be inclined to quash the same on the ground that it hurts the principles of natural justice. It is in this backdrop of the case, we would like to recall what the Hon'ble Supreme Court in the case of Nand Kishore Prasad vs. State of Bihar (AIR 1978 SC 1277) had observed. The Hon'ble Supreme Court had observed that the disciplinary proceedings before the

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domestic Tribunal are of quasi judicial character, and therefore, the minimum requirement of rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence, i.e., evidential material which with some degree of definiteness points to the guilt of the delinquent in support of the charge against him. Suspicion cannot be allowed to take the place of truth even in domestic inquiry. It has also been held by their Lordships in the case of Northern Railway Cooperative Society vs. Union of India & Ors. (1967 - SCR 467) and in the case of Swai Singh vs. State of Rajasthan (AIR 1986 SC 995) that if the charge suffers from vagueness or if it is non-specific or general in nature, the Court should intervene, because, if it is vague, it denies a proper and reasonable opportunity to the delinquent to defend himself.

10. In the instant case, the allegation as made out in the charge memo is that the applicant had committed serious irregularities inasmuch as some foils of the receipt and account book were found missing. But nowhere either in the imputation of misconduct or during the inquiry, the Respondents have been able to prove that it was the applicant, who had removed these foils and had thereafter, lodged a false complaint. It has also been admitted during inquiry by the State Witnesses that neither the Station Manager nor the Commercial Inspector had ever checked the foils in the book either at the time of issue from the stock or during its use. The I.O.

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did not also take the pains to find out as to how if the PWB book No.85 in question was found to be containing all the foils by the predecessor of the applicant, how the applicant could find these missing. It has also not been made clear by the I.O that if the applicant would have removed the foils, what would have been his motive to report the matter no sooner did he find the foils missing. From the above facts of the case, it is clear that the Respondents had put the blame on the applicant without any evidence, and therefore, the findings of the I.O. being baseless and perverse are liable to be set aside.

11. The applicant has also assailed the order of the D.A. on the ground that the D.A. while making the order of punishment had taken into account his ~~previous~~ conduct. It is the settled position of law as decided in the case of S.Nanjundeswar vs. State of Mysore (AIR 1960 - Mysore 159) that principles of natural justice require that no material should be relied upon against the person charged without his being given an opportunity of explaining them. The D.A. in his order had observed as follows :

"Further, from his past service records of 18 years, it is revealed that he has been imposed punishment for 16 times, of which three occasions on the charge of misappropriation of railway cash".

The Appellate Authority also relied on the opinion of the Disciplinary Authority and disposed of the appeal filed by the applicant by observing as

under :

"Further it is seen from the past service records of Shri R.V.Rao that he has been punished 16 times during his service tenure of 18 years and it is most alarming that he did not care to bring any improvement in his working ..."

There is no doubt that the Disciplinary Authority by relying on the instances of past bad records of the applicant had decided the quantum of punishment and he had, thereby acted in violation of the instructions laid down by the Railway Board in their letter No.98/V-1/Meet/4/1 dated 19.6.2000, wherein the General Managers of the Railways were instructed as follows :

"Unless instances of past bad record figured in the charge-sheet, it would be incorrect to refer the same in the speaking orders of DA/AA/RA, but there is no harm in considering the past conduct of the employee while deliberating on the quantum of punishment, because, it is a natural thing to do".

^{also}
The Rly. Board had advised that the DA/AA/RA etc. should make an independent application of mind in deciding on the quantum of punishment in disciplinary matters. In this case as the D.A. took the decision to punish the applicant by ordering removal from service having regard to the past service records of the applicant, although no whisper of his past service was there in the charge memo, therefore, the allegation of the applicant that he was given capital punishment without an opportunity of being heard cannot be brushed aside.

12. The applicant has also assailed the decision of the Appellate Authority on the ground that the A.A. did not act according to the provisions of Rule-22(2) of D & A Rules. We have gone through the provisions of Rule-22(2) of D & A Rules. The said Rule mandates the Appellate Authority to consider an appeal on the following three aspects :

- a) Whether the procedure laid down in these Rules has been complied with;
- b) Whether the findings of the D.A. are warranted by the evidence on record; and
- c) whether the penalty imposed is adequate, inadequate or severe and then pass orders.

13. It is the allegation of the applicant that the A.A. had failed to see that the findings of the D.A. were not warranted by the evidence on record; and that he was not given opportunity to defend himself reasonably. The applicant has also alleged that the A.A. had failed to appreciate that the delay of four years in conclusion of the inquiry has caused prejudice to him. In fact the A.A. had taken the delay in conclusion of the inquiry lightly when he passed the remark " rather it has benefited him to continue in railway service for some more period ". Hence, the allegation of Shri R.V.Rao (applicant) on the point of delay of the case shows also no merits at all". Such a prejudicial and light hearted comment is hardly expected of an Appellate Authority. That apart his observation points to the fact that the authority had a pre-determined mind set bordering on

bias, to impose heavy penalty on the applicant on some pretext or the other.

14. We have carefully examined the said allegation of the applicant. We have already observed earlier that it is a clear case of no evidence and by considering the past service records of the applicant, the D.A. as well as the A.A. had grossly violated the principles of natural justice in this case. We are also not impressed by the approach of the A.A. in answering the allegation of delay causing prejudice to the interest of the applicant. In these facts and circumstances of this case, we are unable to disagree with the applicant that certain pre-determined mind set had acted against him and therefore, it is a fit case for intervention by the Tribunal. Accordingly, the impugned orders under Annexures-A/9 and A/11 dated 2.8.2001 and 24.1.2002 respectively being perverse and violative of the principles of natural justice are non est in the eye of law and, therefore, the same are set aside/quashed. Resultantly, the applicant shall be reinstated in service with effect from the date he was removed from service with all consequential benefits.

15. With the observations and directions as made above, the O.A. is disposed of. No costs.

Debalt
(M.R. MOHANTY) 19/04/05 -
MEMBER (JUDICIAL)

R.S.
(B.N. SOM)
VICE-CHAIRMAN

BJY