

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

Date: 17.8.07

O.A. 1520 of 1996

Present : Hon'ble Mr. B.V. Rao, Judicial Member
Hon'ble Dr. A.R. Basu, Administrative Member.

Shri Dilip Kumar Bose, son of Late
Manindra Nath Bose, aged about 59
years, residing at P.O. & Vill. Deulgram
Dist. Howrah, working as Clerk Gr.I
Under the Controller of Stores, Eastern
Railway, Belur Scrap Yard.

- Versus -

1. Union of India, service through
the General Manager, E. Railway,
17, Netaji Subhas Road,
Calcutta-700 001.
2. The Deputy Controller of Stores,
Eastern Railway, Liluah,
Dist. Howrah.
3. The District Controller of Stores,
Eastern Railway, Belur Scrap Yard,
Liluah, Dist. Howrah.

... Respondents

For the applicant : Mr. B. Mukherjee, counsel.

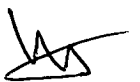
For the respondents : Mr. P.K. Arora, counsel.

O R D E R

B.V. Rao, Member (J)

Shri Dilip Kumar Bose, who was working as Clerk Gr.I under the Controller of Stores, Belur Scrap Yard, Eastern Railway, Howrah, has filed this O.A. being aggrieved by his removal from service vide order dt. 23.11.95, only a few days prior to his retirement in a disciplinary proceeding.

2. At the relevant time the applicant was working as Clerk Gr.I under the Controller of Stores. He was suspended by an order dated 27.12.94 in contemplation of a



departmental enquiry. On 27.2.1995 the District Controller of Stores, Eastern Railway, Belur Scrap Yard issued a charge memo against the applicant. The charge against the applicant was that while the applicant was working as Material Clerk in Belur Scrap Yard, during the period from 24.7.90 to 22.10.90, certain scrap materials were despatched by PW1 Bandel to the said Scrap Yard for disposal. He (the applicant) intercepted the trucks in the midway and disposed the materials for personal gain and signed the documents impersonating as some 'Ghosh' by using fake office seal of Asst. Controller of Stores Belur Scrap Yard and thus he defrauded the railways by about 9 lakhs of rupees. An enquiry was held in which the charge was proved. The Disciplinary Authority agreeing with the enquiry report held that the action of the applicant constituted lack of absolute integrity, devotion to duty and accordingly he was removed from service as a punishment for defrauding the railways vide order dated 23.11.95. According to the applicant, he was due for retirement on 30.11.95 and thus the punishment of removal was inflicted on him only seven days before his retirement. He preferred an appeal. But the Appellate Authority also did not accept his objections and upheld the punishment vide appellate order dated 30.5.96. Challenging the removal order, the punishment order and the appellate order the applicant has filed this O.A. praying for quashing of the same and for his re-instatement and all pensionary benefits treating him to have continued in service till the date of his superannuation. He has also prayed for quashing of the suspension order dated 27.12.94.

3. The respondents have contested the case by filing a case.
4. We have heard the Id. counsel for the parties at length. Both parties have submitted written notes of argument which we have perused. The Id. counsel for the respondents has also produced before us the relevant DA file for our perusal.
5. The Id. counsel for the applicant has contended that the alleged incident had occurred for the period from 24.7.90 to 22.10.90 whereas the applicant was suspended on 27.10.94 and the charge sheet was issued on 27.2.95. Thus there was about five years delay in initiating disciplinary proceeding against him. It is alleged by the applicant that



he has been made a scapegoat in the matter by vested interests. He was merely a Clerk Gr.I in the said Scrap Yard and was bit capable of doing such a malpractice for such a period of time. The PW1, Bandel i.e. Shri M.K. Pal was the person who sent those scrap materials to Belur Scrap Yard for disposal. The lorries were escorted by one Shri Ranjit Dey, Gangman of Bandel and the driver of the lorry was also conversant with such type of duties as they had earlier delivered such scraps to the Yard. Therefore, it was quite unnatural that they would deliver the materials to the applicant outside the Belur Scrap Yard as alleged. It is further contended that PW1, Bandel though fully aware of the whereabouts of the materials sent by him, he was never proceeded against had the said incident of defrauding the railways actually occurred. On the other hand, he was allowed to retire and to get the full pensionary benefits. It was only thereafter that the steps were taken to start a disciplinary proceeding against the applicant. The applicant has denied that he never signed the NS vouchers for his personal gains. He has also complained that although such huge fraud was committed on the railways, the matter was never reported to the police nor any CBI enquiry was conducted to nab the culprits. On the other hand, he was asked by his superior authority i.e. Deputy Controller of Stores by a communication dated 20.10.93 (Annexure-A/3) to meet Shri Subrata Mitra, Vigilance Inspector at 12.10 hrs. at SS's office, Serampore on 21.10.93. According to the applicant, when he went by train to Serampore on the appointed day, he was accosted by Sri Mitra along with some other unknown persons on the railway platform itself and he was taken to the retiring room and the said room was vacated from other passengers and in the said room he was forced to sign some documents and also a sum of Rs. 50,000/- was demanded from him. He made a complaint in writing to the Deputy Controller of Stores on 31.10.93 narrating the incident, but nothing was done.

6. The respondents have clarified about the delay by stating that the matter came to light only when Shri Mitra, Vigilance Inspector got information about the incident from his source and started inquiry. So far as the allegation of the applicant regarding Shri Mitra is concerned, it is stated by them that the applicant met Shri Mitra on 21.10.93

whereas he made a complaint against him on 31.10.93. Thus there was a delay of ten days which clearly shows that it was an afterthought and on that ground nothing was done regarding the allegation of the applicant against Shri Mitra.

7. We have considered the matter carefully. It is now well settled that in a disciplinary matter the scope of judicial review is very limited. The court or Tribunal does not act as appellate authority of the decision taken by the disciplinary authority or statutory appellate authority. The Court can interfere only when there is allegation of infraction of any statutory rules or there is violation of principles of natural justice or if it is a case of 'no evidence'.

8. Keeping in view the aforesaid principles in mind we may now examine the rival contentions.

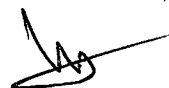
9. The main ground of challenge of the applicant is that the disciplinary proceeding against him was initiated after long delay which has prejudiced him. According to the applicant, the alleged incident took place in the year 1990 for about three months from 24.7.90 to 27.10.90 when about 20 lorries full of scrap materials sent by the PW1 Bandel to the Belur Scrap Yard for disposal. These trucks were allegedly intercepted by the applicant in the midway before they reached the Yard and the same were disposed of by him to private parties and thereby he gained about 9 lakhs of rupees causing pecuniary loss to the railways. His contention is that the person i.e. the Gangman of Bandel who accompanied the lorries including the lorry driver reported the incident to the said PW1 Bandel, but when the Vigilance Inspector questioned him he denied any knowledge of the incident. The specific complaint of the applicant is that it was only to save this particular PW1 that the matter was delayed for about 5 years so that he could retire and get full pensionary benefits whereas in his case proceeding was started only seven months before his retirement and the punishment order was issued only seven days before his date of superannuation.

10. His further contention is that the entire proceeding was started against him in order to make him scapegoat of the huge fraud done on the railways by some vested

interests. He has submitted that the charge sheet was issued on 27.2.95 and the Inquiry Officer as also the Presenting Officer were also appointed on the same day i.e. on 27.2.95. Thus the disciplinary Authority had closed mind and was pre-determined to punish him. It is submitted that even before he could submit his statement of defence to the charge memo, the Inquiry Officer and the Presenting Officer were appointed which is against the statutory rules and, therefore, the entire proceeding was vitiated.

11. Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968 prescribes the procedure for imposing major penalty. Rule 9 (a)(1) contemplates that after submission of the charge sheet, the DA shall consider the statement of defence of the delinquent and decide whether the enquiry should be proceeded with under this rule or not. On such consideration he may either drop the matter or proceed further by appointing Inquiring Authority if he himself does not enquire to the matter. If, however, the written statement was not submitted within a reasonable time, the DA can appoint the Enquiry Officer after the relevant time limit. In the instant case the charge memo was issued on 27.2.95 and both the Enquiry Officer and the Presenting Officer were appointed on the same day. Therefore, we agree with the contention of the applicant that this was against the Rules. In this context, we may also refer to a decision of the Calcutta Bench in the case of **Anil Baran Chowdhury Vs. Union of India and Ors.**, reported in 1992(1) ATJ 25. In that case also similar point was considered and Tribunal quashed the charge memo on that ground. In the case of **K.E.B Vs. T.S Venkatarangaiah**, reported in 1992 (1) SLR 769 the Hon'ble Karnataka High Court in similar situation has held that if Inquiry Officer is appointed immediately on framing charge or earlier it vitiates the enquiry as the relevant rule is infringed. However, if in spite of that the delinquent submits his defence statement and enquiry is proceeded, it has to be seen whether any prejudice has been caused or not. In the instant case, the applicant has taken this specific point and therefore, we have to consider the same.


12. On this ground alone we may quash the charge memo as the applicant was prejudiced by the action of the respondents which was clearly against the statutory Rules.



13. However, we have also gone through the departmental file produced by Mr. P.K. Arora. As we have already indicated above, the PW1 Bandel was the sender of the scrap materials to Belur Scrap Yard. The materials were sent for about three months by lorries and it is unbelievable that the said PW1 was totally unaware of the fact that those materials did not reach the destination and were hijacked midway by the applicant or others. On the other hand, we find that the matter was reported to him by the Gangman who was escorted the materials vide question No.4 put by Shri Subrata Mitra, VI to Shri Ranjit Dey, Gangman at page 127 of the file. But no action was taken against him. It is only the applicant who was a Senior Clerk and the Gangman concerned, were proceeded against and were removed from service whereas such an incident could not have happened without the active involvement of higher officials of the railways whereby a large amount of railway revenue was drained out by such illegal activities. It is very strange that even knowing all these things the authorities did not report the matter to the Police or CBI who had the requisite infrastructure to investigate such kind of malpractices. At the same time, the behaviour of the Vigilance Inspector is also not above board. It is not understood as to why he accosted the applicant at the railway platform at Srerampore railway station and took him to the waiting room when he was specifically asked to meet him at the office.

14. Ld counsel for the applicant has raised some other points that the applicant was not supplied additional documents nor the finger print expert was not allowed to be cross examined. Thus there was violation of principle of natural justice. We, however, do not consider it necessary to go into all these details.

15. We have already held that there was procedural lapse on the part of the respondent authorities. We have, therefore, no other alternative but to quash the punishment order as also the appellate order. Since the applicant has attained the age of superannuation in the year 1995 and since the alleged incident took place in the year 1990 it will be futile to give liberty to the respondents to start the proceeding afresh by following the rules at this distant date.

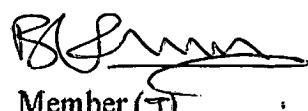


16. In view of the above, we quash the charge memo, the punishment order as also the appellate order. The suspension order will also stand quashed. Consequently the applicant shall be treated as on duty till his date of retirement and will also be entitled to all retirement benefits as per rules.

17. Before parting with the case we would like to observe that the matter has been handled by the higher authorities as also the vigilance in a manner which is highly doubtful. The story of defrauding the railways by hijacking so many number of lorries full of scrap materials from outside the Yard premises by the applicant, who was only a Sr. Clerk or a Gangman is far-fetched. There must be a very strong gang which must also include some senior railway officials. In such circumstances, the matter should have been reported to the police or CBI. It is not known whether anything can be done at this distant date by referring the matter to the appropriate investigating agencies. It will, however, open to the respondent authorities to take appropriate action so that such clandestine activities causing revenue loss to the railways is stopped and the culprits are brought to book.



Member (A)



Member (J)