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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 03.11.2000.

O.A. No. 29/1996

M.C. Gupta son of Shri Suraj Prakash aged 57 years, Inspector of Works (Land) under Assistant Engineer-I, Northern Railway, Hanumangarh Junction, resident of Quarter No. E-4/A and B, Engineering Colony, Hanumangarh Junction : 335512.

... Applicant.

v e r s u s

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
3. Additional Divisional Railway Manager, Northern Railway, Bikaner.
4. Divisional Engineer-I, Northern Railway, Bikaner Division, Bikaner.
5. Divisional Engineer-II, Northern Railway, Bikaner Division, Bikaner.
6. Divisional Superintending Engineer (C), Northern Railway, Bikaner Division, Bikaner.
7. Shri Amarjeet Gupta (Enquiry Officer), Executive Director (RS), Railway Board, Rail Bhawan, New Delhi.

... Respondents.

Mr. Y.K. Sharma, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Mr. Justice B.S. Raikote)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the order dated 11/27.06.91 passed by the disciplinary authority, imposing the penalty of reduction to a lower grade without postponing future increments in grade Rs.1400-2300 for 1½ years and also the order of appellate authority dated 10.11.94 vide Annexure A/2, by which the appeal of the applicant was

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dismissed.

2. The learned counsel appearing for the applicant submitted that the applicant has not been supplied with necessary documents during enquiry. He also submitted that the order of the appellate authority is a non-speaking order and contrary to Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968. He further submitted that on the basis of record, the charges framed against the applicant cannot be proved and hence, the impugned order is liable to be set aside. On the other hand, the learned counsel appearing for the respondents strenuously supported the impugned orders. It is submitted that this Tribunal does not sit as a second appellate Court to reappraise the entire evidence. He also stated that even otherwise vide Annexure A/7, it is clear that whatever documents the applicant wanted to inspect, were inspected and the documents relied upon during enquiry were also furnished to him. Therefore, there is no infirmity in the impugned orders. Accordingly, the application is liable to be dismissed. The counsel on both sides relied upon certain judgements in support of their arguments, which will be referred to later in this judgement/order.

3. The charges framed against the applicant are as follows :-

" Shri M.C. Gupta, while functioning as IOW/SPL/MKS and supervising the work of RE-building of 1x6 RSJ Girder Bridge No. 179 as 1x12.2 Mts. Girder Bridge at KM 363/2-3 on Kotkapura-FAKILKA Section during the year 1988 and 1989 showed utter lack of integrity, devotion to duty and acted in a manner unbecoming of a Railway servant.

1. He allowed the contractor, Sh. Maghi Ram Bansal to start earth work in filling temp. diversion forming part of the work and also released payments of two bills without preparing/plotting the X-Sections, computing quantity of earthwork and getting it technically checked and approved from the competent authority.

2. With a malafide intention, he concealed/destroyed the original level book in which the natural ground levels for the proposed diversion were recorded and fabricated a new level book with fictitious ground levels. He fabricated the new level book in association with Sh. S.S.L. Verma, ABR/SSA and Sh. Maghi Ram Bansal, the contractor, in a bid to cause undue benefit of about 1.62 lakhs to the contractor and a pecuniary loss of an equal amount to the Railway administration.

3. With a malafide intentions, he concealed/destroyed the Measurement Book No. 4451 in which two bills for the work had been entered and passed.

4. By the above noted acts of omissions and commissions, Shri M.C. Gupta, IOW has contravened Rule 3 I (i) to (iii) of Railway Service Conduct Rules, 1966."

4. With reference to above charges, witnesses were examined and



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ultimately, the enquiry officer submitted his report by holding that the charge No. 1 was proved partially in respect of non-plotting of cross sections and computation of earth work quantities on the basis of levels recorded on 13.07.88 and the approved plan. He also stated that the charges Nos. 2 and 3 were proved. We think it appropriate to extract the relevant paragraphs as under:-

"(ii) According to the statement of PW1 Shri SK Seth, the fabricated level book (57) had ground levels quite different from the levels indicated in S5 (L-Section) and would have resulted in undue benefit to the contractor. Shri SSL Verma (PW2) in his statement has mentioned that the levels taken on 13.07.88 were not recorded on a proper level book and the levels recorded in S7 have been copied by the C.O. from those papers. He had earlier in his statement at S1 stated that the levels entered in S7 were fabricated by the C.O. and were got signed by him in a hurry. Shri Dalbir Singh (PW3) has in his report stated that the C.O. Shri MC Gupta has fabricated a new level book in association with Shri SSL Verma (PW2) to benefit the contractor. According to him, he had noticed the original ground levels recorded on loose sheets and had instructed the AEN and IOW to transfer the same on a proper standard level book duly bound for proper record. Since the loose papers have not been produced and the levels in S7 are very much different from the levels indicated in S5, according to his calculations Railway Administration would have been defrauded to the tune of Rs. 1.62 lakhs if this was not detected in time. The C.O. in his brief has pointed out that after the joint check on 15.12.88, when it was found that the third bill was coming out as a minus bill, Shri SSL Verma, Assistant Engineer (PW2) took away the original level book, measurement book and cross sections and forced him to prepare a new level book. The levels recorded in the new level book according to C.O. were dictated by the AEN Shri SSL Verma and signed by all the three undated. The C.O. has accepted that the new level book was prepared by him according to the dictation of the Assistant Engineer with the intention to show it to the Sr. Officers and apprise them to the wrong intention of Shri Verma. Based on the statement of the prosecution witness as well as the C.O.'s own admission in the brief, the charge relating to fabrication of level book is proved. This statement that he did it under pressure and with the intention to show it to senior officers is considered beyond belief.

(iii) According to statement of Shri SSL Verma (PW2) the measurement book was handed over to the C.O. on 12.09.88 and was not received by him either in person or through his office thereafter. The C.O. has, however, stated that the measurement book was taken away by the Asstt. Engineer Shri SSL Verma after the joint check at site on 5.12.88 and was not returned to him despite his letter dated 16.1.89. The C.O. produced three defence witnesses to support his statement in this regard. 2 of the defence witnesses Shri Har Prasad, Stenographer and Sant Lal did not support this statement. Only Shri Satish Prakash (DW4) who appeared in office on 28/12 did support this statement. The deposition of these three witnesses does not prove beyond doubt that the measurement book was taken away by Shri SSL Verma, AEN. The preponderance of evidence in this case points to the possibility of both the AEN and the C.O. to have destroyed the measurement book. The charge in respect to concealing/destroying the measurement book therefore, stand proved. There is a strong possibility of this witness (DW4) after other defence witnesses had failed to substantiate the version of the C.O."

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5. From the reading of the above report, it is clear that the enquiry officer held that the applicant had destroyed the original level book in which the natural ground levels had been recorded and fabricated a new level book with fictitious ground level in association with Shri SSL Verma and Maghi Ram Bansal, Contractor, in order to enable the contractor undue benefit of an amount of Rs. 1,62,000/- and thereby causing loss of equal amount to the Railway Administration. From the evidence on record, it is clear that the applicant accepted creation of new measurement book before the enquiry officer, but the defence was that the same was done on the direction of Shri SSL Verma, Assistant Engineer. He also admitted that a new level book has been created by recording some measurements, which according to the department, was a fabricated one and that has been done only to the benefit of the contractor. In view of these circumstances and having held that the charges have been proved, the disciplinary authority imposed the punishment of reduction to a lower grade without postponing future increments in the grade of Rs. 1400-2300 for 1½ years vide Annexure A/1. The appellate authority vide order Annexure A/2 considered the facts of the case after hearing the applicant and accordingly, confirmed the finding of the disciplinary authority. He also noted that the measurement of old level book was destroyed by the applicant and a new level book was prepared on the instructions of the contractor and the applicant accepted fabrication of new measurement book. On the basis of this evidence of the case, the appellate authority confirmed the order of disciplinary authority. Regarding the quantum of punishment, he held that the disciplinary authority has already taken a lenient view and absolutely there is no reason to reduce the punishment awarded to the applicant. Thus, we find that concurrent findings recorded by both the authorities do not call for our interference. The contention of the applicant's counsel that no sufficient opportunity was given to the applicant by the appellate authority, is not correct. From the reading of the appellate order, we find that the appellate authority offered personal hearing to the applicant and the appellate authority has considered all the ingredients of the Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968. As already held by Hon'ble the Supreme Court in 1996 (4) SLR 603 (State of Tamil Nadu vs. Thiru K.V. Perumal and Ors.), this Tribunal is not sitting as an appellate authority over the orders of the departmental authorities and it is not the province of the Tribunal to go into the truth or otherwise of the charges, which are held proved by the authorities concerned.

6. Learned counsel for the applicant submitted that certain documents were not supplied to the applicant. He did not specifically aver that which documents were not supplied to the applicant. But the respondents' counsel brought to our notice Annexure A/7 dated 19.08.92, stating that the charged officer wanted to inspect the documents in original alongwith



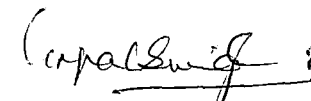
his D.A. even though photo copies of all documents have been received by him and such inspection of documents were arranged on 24.08.92. It was also stated that after inspection of these documents, the list of additional documents required by P.O. was submitted on the same day. From these facts, it is clear that reasonable opportunity has been given to the applicant and necessary documents relied upon have been furnished to him. It is not demonstrated before us with reference to non-supply of any documents and the prejudice suffered by the applicant. In the above judgement, Hon'ble Supreme Court has pointed out that it is the duty of the delinquent officer to point out as to which documents were relevant to the charges how their non-supply has prejudiced his case. As we have already stated above, the applicant has not demonstrated how his case was prejudiced due to non-supply of any particular documents relied upon. Moreover, before both the disciplinary authority and the appellate authority, the applicant admitted destroying of original level book, but his defence was that that was done with the instruction of Mr. SSL Verma, Assistant Engineer. But the applicant has not proved such instruction of Mr. Verma and he also admitted that new level book has been created. In the light of these admissions, taking into account other evidence, both oral and documentary, the authorities concluded that the charges levelled against the applicant were proved. We do not find any reason to interfere ^{with} those findings.




7. The appellate authority, though in a short order, ~~was~~ thus considered all aspects of the case. It is also an established principle that an order confirming the order of lower authority need not be lengthy. Therefore, the judgement of Hon'ble the Supreme Court cited by the applicant, i.e., (1986) 01 ATC page 47 [Ram Chander vs. Union of India & Ors.], does not apply to the facts of the case.

7. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances, without costs."


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

OKay
10/11/2K

Received copy
8/11/2K

Part II and III destroyed
in my presence on 25-1-87
under the supervision of
section officer () as per
order dated 2/11/86

Section officer (Hector)