

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

II/10

ORIGINAL APPLICATION NO. 208/2004

This the 11th day of March, 2005

Ashok Kumar Jain S/o Shri Hukam Chand Ji Jain
aged about 39 years, R/o 44, Section 7, New Power House Road,
Jodhpur. Applicant is presently holding the post of
Section Engineer P.Way (Const) North Western Railway,
Jodhpur.

.....Applicant.

(Mr. Kuldeep Mathur, Advocate, for the applicant)

Versus

1. The Union of India through the General Manager,
North West Railway, Jaipur.
2. The Chief Administrative Officer,
Northern Railway, Kashmiri Gate, New Delhi.
3. The Dy. Chief Engineer (Const.), Northern Railway,
Moradabad (UP)
4. The Dy. Chief Engineer (Const.), North Western Railway,
Jodhpur.

.....Respondents.

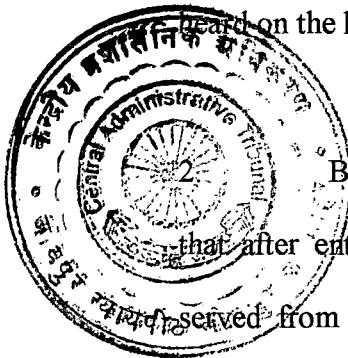
(Mr. Kamal Dave, Advocate, for the respondents).

Order
(By the Court)

O.A. 208 of 2004 has been filed by Ashok Kumar Jain, presently posted as Section Engiener, Northern Western Railway, Jodhpur, against four orders dated 10.4.2003, 14.4.2003, undated order of February, 2004 and order dated 22.7.2004 placed at Annexs. A/14, 16, 17 and A/1. There are four respondents led by General Manager, North Western Railway, Jaipur including the Chief Administrative Officer, Northern Railway, New Delhi , Dy. Chief Engineer (Construction), Northern Railway, Moradabad and the Dy. Chief Engineer (Construction), North Western Railway, Jodhpur. The O.A. was filed on 17.8.2004 and its reply on behalf of respondents on 14.12.2004. As the matter concerns recovery of damage caused to the Railways from the salary of the applicant, on 20.8.2004, the respondents were restrained from making any recovery on the plea of the applicant that

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recovery is being made as a measure of penalty for which no chargesheet was received as per the Railway Servants (Discipline and Appeal) Rules, 1968 (for short the Rules). No rejoinder has been filed and the matter has been



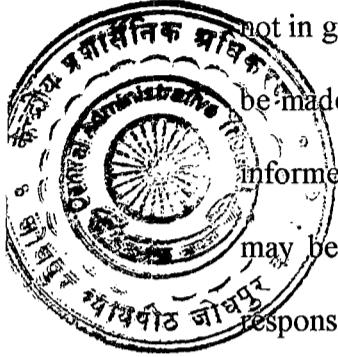
heard on the last date for final disposal at the stage of admission itself.

Briefly stated, the applicant would like the Tribunal to believe that after entering the service of the then Northern Railway in 1989, he served from June 1990 to December 1997 as Permanent Way Inspector (PWI) in the office of Dy. Chief Engineer, Bareilly in UP and in the year 1997, was transferred from Bareilly to Jodhpur and was ordered to handover the charge of the post to Shri R.B. Shankhwar, Senior Sectional Engineer, Rampur. Accordingly, the applicant says that he handed-over the charge of his post to Shri Shankhwar without the latter commenting on any deficiency in materials received by him. In December 1997, after joining at Jodhpur, the applicant received a letter from Shri Shankhwar regarding supply of I.P. Tent 80 Kgs – 10 Nos., where it was stated that the tents received by the applicant from M/s M.R. Udyog, were not handed over to him while handing over the charge and as the gangs are pressing hard for giving tents, the same should be handed over to him immediately (Annex.A/2). The applicant replied to Shri Shankhwar on 6.12.1997 vide Annex. A/3 that the charge of entire Store articles had already been handed over by him and it was not proper for Sh. Shankhwar, to say that the charge of the Stores has not been completely handed over. Thereafter, the FA&CAO (Construction), Northern Railway, submitted a report dated 3.7.1998 to the Senior Civil Engineer (Construction), Moradabad, in which he was directed to obtain remarks of the applicant on Over-hauling report regarding the circumstances in which the tents were found in rags within three months of purchase, vide order Annex. A/4. The applicant submitted a letter on 14.10.1998 (Annex. A/5), explaining that at the time of handing-over the tents, they were in good condition. Another letter followed from Moradabad to the Dy. Chief Engineer, Jodhpur on 30.12.1999 seeking further comments of the applicant vide Annexs. A/6 and A/7 respectively. The issue so far was, whether, the

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condition of the tents were new or in good condition and they were received by Sh. Shankhwar from the applicant. The applicant in reply to letter dated 30.12.1999 informed that he has already submitted his remarks whereupon the FA&CAO on 9.8.2000, Annex. A/9, informed the Dy. Chief Engineer (Construction) that the contention of Shri Shankhwar, was that the tents were



not in good condition, was not acceptable and a recovery of Rs. 67,758/- may be made from Shri Shankhwar. On 16.8.2001 (Annex.A/10) the FA&CAO, informed the Dy. Chief Engineer (Construction), Delhi, that this recovery may be affected. But despite this communication holding Shri Shankhwar responsible, the Senior Civil Engineer, Northern Railway, decided holding an inquiry in the matter of handing over the charge against the applicant as per the over-hauling report and the applicant was directed to appear before him at Moradabad in December 2001. Due to certain reasons these dates could not be adheared to and another date in March 2002 was fixed whereupon the applicant appeared before the Dy. Chief Engineer in his chamber where he was asked about twenty questions regarding the over-hauling report dated 3.7.1998 particularly with regard to the condition and charge delivery of tents. The applicant contended that the description of the inquiry shows that on the basis of questions posed to him during the discussions on Over-hauling report, no irregularity in handing over the charge to Shri Shankhwar was established. In particular, paragraphs 4.16, 4.17 and 4.19 of the O.A. describe the sequence and in the words of the respondents are as follows :-

"4.16. That a bare perusal of the description of the meeeting would clearly reveals that it cannot be established from the discussion, which took place between the applicant and senior civil engineer (const.), Moradabad that the applicant has committed any irregularity in handing over the charge of the tents of shri Shankhwar. It may be pointed out here that during the discussion with the Senior Civil Engineer (Const.), Moradabad, the Senior Civil engineer Moradabad, the Senior Civil Engineer (Const.), Moradabad could not give one date on which handing over and taking over the charge particularly in relation to the tents took place between the applicant and Shri Shankhwar. As started above, from the discussion, which took place in the chamber of the Senior Civil Engineer (Const.), Moradabad, it cannot be established that the applicant is guilty of handing over the charge of tents in the rags position to Shri Shankhwar.

4.17. That the Senior Civil Engineer (Const.), Moradabad on the basis of discussion took place between him and the applicant on 4.3.2002, held the applicant directly responsible for the irregularities, which took place in handing over and taking over the charge of the tents. Shri Shankhwar was also held responsible partially by the senior civil Engineer (Const.), Moradabad in the month of Feb., 2003 requested the Deputy Chief Engineer (Const.) Jodhpur to recover a sum of Rs. 40,655.20 from the applicant. A true and correct copy of the letter issued in the month of Feb. 2003 is filed herewith and marked as Annexure A/13.

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4.19 That the applicant on 12.04.2003 submitted a detailed reply to the show cause notice issued to him on 10.04.2003. In the reply to the show cause notice, it was clearly stated by the applicant that after his transfer from Bareilly to Jodhpur the complete charge of the store available with him along with IP tents were handed over to Shri R.B. Shankhwar under his signature. Moreover, the FA & CAO vide his letter dated 09.08.2000 and 18.6.2001 has found Shri Shankhwar guilty/defaulter. It was further stated that the order of recovery against him is arbitrary and illegal as he is not at all responsible for any lapse at any stage. A true and correct copy of the reply to the show cause notice is filed herewith and marked as Annexure-A/15.

Thereafter, the Dy. Chief Engineer, issued a Show Cause Notice to the applicant to explain as to why recovery may not be initiated against him, vide Annex. A/14 and applicant was held guilty of violating the rules 3.1 (i) (ii), (iii) & 3.2 (i) and (ii) of the Conduct Rules and para 131 of the Indian Railway Establishment Manual. A reply to show cause, was sent by the applicant on 12.4.2003 (Annex.A/15) the main points of which have already been described above. The respondents served letter dated 29.4.2003 on the applicant insisting for recovery of Rs. 40655.20. On 22.8.2003 applicant submitted that the Senior Civil Engineer, Moradabad, in its inquiry report, has wrongly held him guilty. The relevant para of O.A. is as follows :-

"4.22. That the applicant submitted letter dated 22.8.2003 to the Dy. Chief Engineer (c) Shivaji Bridge, New Delhi. In the letter dated 22.8.2003, it was clearly stated by him that the Sr. Civil Engineer(Constituted), Moradabad has wrongly held him guilty in its enquiry report and the FA&CAO has already closed the enquiry on the Overhauling report and Shri Shankhwar has already been held guilty. Moreover, in the Senior Civil Engineer (C) Moradabad's report, the date pertaining to handing over and

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taking over the charge between the applicant and Shri Shankhwar are incorrect and different from the actual date, therefore, the said report cannot be relied upon. The certain other discrepancies in the report of the Sr. Civil Engineer (Const) Moradabad were pointed out by the applicant. It was emphatically submitted by the applicant that the tents were handed over to Shri Shankhwar in good condition and the same were received by Shri Shankhwar without any protest. The applicant requested that the enquiry ordered against him may be set aside."



However, the Dy. Chief Engineer, Moradabad, in February, 2004 again requested his counter part at Jodhpur to initiate an inquiry against the applicant in which a mention was made of response to earlier notice (Annex.A/17). However, a copy of the undated letter placed at Annex. A/17 discloses that it was a communication to Dy. Chief Engineer Jodhpur to affect recovery of Rs. 40665.20 from the applicant and informing that recovery of part of the amount from Mr. Shankhwar at the rate of Rs. 2000/- per month has already been started. The applicant submitted a further reply expressing his innocence on 18.6.2004 vide Annex. A/18, on which a final communication dated 22.7.2004 followed from the Dy. Chief Engineer, Moradabad to Dy. Chief Engineer, Jodhpur, explaining the case, rebuttal of arguments of applicant and commenting whether the inquiry should be handed over to vigilance as the applicant was not agreeing with the in house inquiry.

3. Following is the prayer :-

"(i) That the O.A. may kindly be allowed and record of the case may kindly be called for.

(ii) The impugned orders issued in Feb. 2003 (Annex.A/13), order dated 10.04.2003 (Annex.A/14), order dated 14.4.2003 (Annex. A/16), order issued in the month of Feb., 2004 (Annex. A/17) and order dated 22.7.2004 (Annex. A/1) may be quashed and set aside."

(iii) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant may be granted. The O.A. may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.

(iv) Costs of this application may kindly be ordered to be awarded in favour of the applicant."

4.

Following grounds have been taken in support of the prayer :-

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(a) That the impugned order of recovery amounts to penalty under the Railway servant (Disciplinary and Appeal) Rules, 1968. A penalty cannot be imposed without following the procedure prescribed under the Rules of 1968. It is submitted that a Government servant is entitled for an adequate opportunity of defence before recovery from his pay. In the present case, the respondents before issuing the order of recovery have not followed the Rules of 1968, therefore, the impugned order of recovery deserves to be quashed and set aside by this Hon'ble Tribunal.

(b) That the FA & CAO, Northern Railway after obtaining reply from the applicant on the remarks pertaining to tents in the Over Hauling Report has already reached the conclusion that the applicant has handed over the tents in a good condition to Shri Shankhwar and Shri Shankhwar is fully responsible for the irregularities, therefore, the recovery is required to be made from Shri Shankwar. A bare perusal of the orders dated 9.8.2000 and 18.6.2001 of the FA & CAO makes it crystal clear that after objective assessment of the case, the order of recovery has been issued against Shri Shankhwar by the FA and CAO. Once a decision has already been taken by the FA and CAO in the matter of the Over Hauling Report, then there is no reason available with other authorities of the department (which are lower in the rank) to take a different view in the matter. The Senior Civil engineer (Const.), Moradabad with mala fide intentions, initiated enquiry into the matter and held the applicant guilty. The orders passed by the respondents are full of contradiction and on the basis of these orders, the applicant cannot be held guilty of causing pecuniary loss to the Railways. A bare perusal of the description of the meeting, which took place in the chamber of the Senior Civil Engineer (Const.), Moradabad, will show that the applicant has not caused any pecuniary loss to the Railways. In fact, in the said

meeting the respondents themselves were not sure about the dates of completion, of handing over and taking over the charge between the applicant and Shri Shankhwar. The reply/explanation/remarks submitted by the applicant in the letters have not been considered objectively. Therefore, order of the recovery against the applicant is liable to be quashed and set aside by this Tribunal. The Senior Civil engineer (Const.), Moradabad is neither appointing authority nor disciplinary authority of the applicant, therefore, proceedings taken up by him are without any authority of law and the order of recovery has been issued illegally.



(c) That he handed over the tents pointed out in the Over Hauling Report to Shri Shankhwar in good condition and Shri Shankhwar accepted those tents during the charge without any remark or dispute. Once the formalities of charge are complete as per the procedure prescribed, the applicant cannot be held responsible for negligence or causing pecuniary loss to the Railways.

(d) That the applicant has been held guilty of violating the Rules 3(i), (ii), (iii) and 3.2(i) and (iii) of the Rules of 1968 and Para 135 of the IRPWM. It is thus clear that the order of penalty is stigmatic in nature and also effect civil rights of the applicant. No order which is stigmatic and effect civil rights of the applicant. No order which is stigmatic and effect civil right of an employee can be passed without conducting regular enquiry against him as per the Rules of 1968.

5. A detailed reply has been filed on behalf of the respondents by Shri G.B.Singh, Dy. Chief Engineer (C) Northern Railway, Moradabad and contains four Annexures which are as follows : Annex. R/1 copy of Charge Note dated 24.9.1997, Annex. R/2 copy of Charge Note dated 6.12.1997 and

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dated letter from the Executive Engineer (Construction), Northern Railway, Moradabad to the applicant explaining that after handing over the charge of Stores he should not have taken new material in the account and copy of the Note handing over the material dated 3.10.1997.



Learned counsels for both the parties have been heard and the Headings gone through. The learned counsel for the applicant has highlighted a letter dated 9.8.2000 (Annex. A/9) of the FA&CAO (Construction), addressed to Dy. Chief Engineer, Northern Railway, Lucknow mentioning that Shri Shankhwar should be made to refund Rs. 67758/67. It is submitted by him that a Senior Officer like the FA & CAO will not write anything without first convincing himself about the guilt of the applicant. Moreover, the learned counsel submits that even if FA and CAO was wrong in writing the same, it was only his or his superior who could have over ruled him and issued another communication holding the applicant responsible and ordering recovery. On the other hand, the learned counsel for respondents highlighted lack of transparency on the part of applicant by citing the following :

(a) The applicant has carefully avoided to mention the date on which he received the transfer order, the date on which he handed over the charge in entirety, the date on which he received the consignment of tents from the supplier and whether it was included in the charge that he handed over.

(b) Whether the applicant through his conduct handed over some other the tents besides this consignment of tents which is under scrutiny ?

(c) As per their records handing-over of the charge to Shri Shankhwar, who joined the post vice the applicant, was complete on 24.9.1997 and a copy of note to this effect was sent to the FA&CAO and the Dy. Chief Engineer, Lucknow / Moradabad and the applicant was transferred to the office of Dy. Chief Engineer (C), Minto Bridge, New Delhi, vide letter dated 3.10.1997. The applicant failed to carry out this transfer order and on 8.12.1997 he was transferred to the office of Dy. Chief Engineer (Construction), Jodhpur. The applicant after handing over the charge as described above – received the consignment of tents on 1.10.1997 knowing fully well that the delivery period for these tents had already expired on

20.9.1997. The applicant has failed to explain how he received such tents as neither the R.R. nor any other mode of transport of the material is shown- no truck number is indicated while receiving the material.



(d) After handing over the charge on 24.9.1997, the applicant was not authorised even to receive the consignment. Annex. R/1 and R/2, amply make it clear that on 24.9.1997 the applicant and Sh. Shankhwar had met and taken over the complete charge. Thereafter, it is beyond comprehension how the tents received on 1.10.1997 could become part of the charge handed over in the previous month.

(e) It is incorrect to say that the applicant came to know about the disputed tents only after he came to Jodhpur. Rather it was in December 1997 itself while he was serving at Bareilly that the Senior Section Engineer informed him about the missing tents that they were not handed over when the Stores charge was given on 24.9.1997.

(f) The fact finding inquiry held on 4.3.2002 gave ample opportunity to the applicant put through his case and also explain if he was still keeping any registers.

(g) It is maintained that the applicant failed to produce any register but during the fact finding inquiry the applicant admitted that the tents were received after the expiry of the date of supply and that the validity period was extended only after he received them.

7. From a perusal of the pleadings and the arguments following inference can be drawn :

(a) The applicant has not come to the Tribunal with clean hands. He does not disclose actual dates as discussed above in his application.

(b) The applicant has not contradicted the sequence of events described in the reply.

(c) The reply reveals that even Mr. Shankhwar has been held responsible partly and recovery ordered against him also.

8. The applicant has alluded to defective procedure of determining his guilt and consequent order of recovery. Rule 6 of the Rules, indicates recovery from pay of the whole or part on any pecuniary loss caused by the

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Railway servant to be a case of minor penalty. Procedure for imposing any of the penalties in Rule (6) including the one described above, has been further clarified in rule 7, 8, 9, 10, 11 and 12. Rule 11 deals with procedure for imposing minor penalties. It directs that subject to the provisions of rule 9 (which relates to major penalties) an order imposing a penalty of recovery of sum pay can be passed after informing the Railway servant in writing of the proposal to take action against him and give him a reasonable opportunity of making representation as he may wish and holding an inquiry in the manner laid down in sub rules 6 to 25 of Rule 9 of the Rules, and recording a finding on each imputation of misconduct or misbehaviour and consulting the commission where consultation has become necessary.

Through the pleadings, it becomes obvious that these provisions have not been adhered to by the respondents. Though the findings arrived at by the respondents appear to be based on the documents that they have before them, the statutory requirements of rules have not been fulfilled in their entirety.

9. The applicant has prayed that communication contained in Annexs. A/1, A/13, A/14, A/16 and A/17 be quashed. Annex. A/1 is a letter from Dy. Chief Engineer (Construction), Moradabad, to Dy. Chief Engineer (Construction) Jodhpur and offers reply to comments of the applicant. It also raises a question if the applicant would like the matter to be entrusted to vigilance. Obviously it cannot be quashed because these are views of the Dy. Chief Engineer and he is entitled to have these events if not liked by the applicant- because he has not said if he is prepared for a Vigilance enquiry. Annex. A/13 is a communication from Superintending Engineer (construction) Moradabad to Dy. Chief Engineer, Jodhpur asking him to recover certain amounts from the applicant and Shri Shankhwar. This is relevant and needs to be set aside in so far as applicant is concerned. Annex. A/14 is a show cause notice giving some details of alleged acts resulting in loss of Railways. However, this does not disclose the dates on

which tents were received, the validity period of supply, date of handing over of charge etc., which are relevant for deciding the role of the applicant.

It also does not have the copies of documents relied upon by respondents.

Therefore, this also is set aside. Annexure A/16 is a communication again

from Superintending Engineer Moradabad to Dy. Chief Engineer, Jodhpur to
get recovery from applicant. This also is set aside. Annexure A/17 of Feb.

start recovery from applicant. This also is set aside. Annexure A/17 of Feb.

2004 from Dy. Chief Engineer, New Delhi to Dy. Cheif Engineer, Jodhpur,

similar to Annexure A/1; comments on reply of applicant and cannot be

quashed for the reasons cited above.

10. In view of the foregoing the respondents are directed to proceed

on the matter afresh strictly as per Railway Servants (Discipline and Appeal)

Rules, 1968, complete the entire proceedings and pass final orders, within a

period of 120 days after giving a reasonable opportunity to the applicant who

shall cooperate with the respondents so that the proceedings are finalised

within the time frame. It appears from the pleadings that Mr. Shankhwar

has also been proceeded against and recovery ordered. As he appears to be

an essential party in the proceeding, it is also ordered that the applicant be

given opportunity to cross examine him so that the proceedings reach a

Finally.

11. No orders as to costs.

(G.R.Patwardhan)
Administrative Member

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