

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 530 of 2007

Tuesday, this the 27th day of January, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

I.S. Mohandas,
S/o. I. Sankunni Master,
Retired Senior Engineer,
East Coast Railway,
Residing at Imbrangattayil House,
Puinnayoorkulam P.O., Trichur District ... Applicant.

(By Advocate Mr. U. Balagangadharan)

v e r s u s

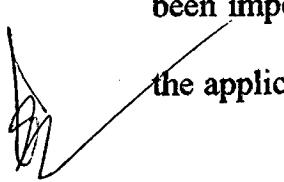
1. Union of India represented by
The Secretary, Government of India,
Ministry of Railways, Rail Bhavan,
New Delhi.
2. The General Manager,
East Coast Railway,
Office of the General Manager,
Bhuvaneswar.
3. Union Public Service Commission,
Shajahan Road, New Delhi,
Represented by its Secretary.
4. The Deputy Secretary,
Railway Board, Rail Bhavan,
New Delhi. ... Respondents.

(By Advocate Mr. Sunil Jose)

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Applicant, who retired w.e.f. 01st May 2004 was issued with a charge sheet memorandum dated 22nd September 2003, alleging that he had recorded a false certificate to the effect that 'no railway material was issued to the contractor' at the time of passing of the bills of Contractor and that he failed to ensure proper check on the sources of supply of cement and steel for the concerned work, which resulted in utilization of huge quantity of Railway materials to the tune of Rupees 21, 71,700/- . Annexure A-1 refers.

2. The charges having been denied by the applicant, vide Annexure A-2, the respondents had proceeded with the inquiry and the inquiry officer rendered his findings holding the applicant guilty, vide Annexure A-4. After the following the other formalities such as furnishing a copy of inquiry report and receipt of representation of the applicant against the same, and consultation with the UPSC as the applicant has already retired by that time, the proceedings culminated into a penalty of 10% cut in the pension of the applicant for a period of five years, vide Annexure A-8 and this has been issued after consulting the UPSC which had so recommended vide Annexure A-7. As the penalty had been imposed by order of the President of India, against which no appeal lies, the applicant has moved this Tribunal challenging the imposition of penalty.



3. Respondents have contested the O.A. According to them, there being no flaw in the decision making process and the penalty being reasonable, the OA is liable to be dismissed.

4. Counsel for the applicant submitted that the applicant has been made a victim of circumstances. In fact it is the applicant who had detected that supply of railway materials was made to the contractor, whereas, the work was such that materials were to be arranged by the contractor himself. And he is one of the two who had conducted the preliminary inquiry. He has also submitted that the applicant had not signed any requisition slip for collection of cement and steel against the contract in question. The applicant could be made liable only when he had signed the requisition slip. For the lapse on the part of any other person, subordinate to the applicant or otherwise, he cannot be held responsible. If his subordinates had requisitioned, the liability is fastened upon him and not upon the applicant. And the charge sheet does not talk of any supervisory lapse on the part of the applicant. The inquiry authority had held him guilty on two grounds – (a) The CO accepts the allegation as brought out in the Article I and Article II of the memorandum dt 22-09-2003 issued to him by the Disciplinary Authority; and (b) Plea of ignorance by the Charged Officer cannot be accepted. These do not stand judicial scrutiny.

[Signature]

5. Counsel for the respondents submitted that this is a clear case where the Articles against the applicant stood proved, the explanation offered by the applicant considered but rejected and the penalty imposed was justified.

6. Arguments were heard and documents perused. Article I and Article II are as under: -

“ARTICLE - I

As per condition of contract, cement and steel for the above work was to be supplied by M/s. B.B. Nanda, Contractor. In contravention to the contract condition, Railway cement and steel was issued to the Contractor by IOW. But Shri Mohan Das recorded false certificate that “no Railway material was issued to the Contractor” at the time of passing of on account of bills of Contractor based on which payments were made to the Contractor without any recovery for cement and steel issued, extending undue benefit to the contractor.

ARTICE – II

Shri I.S. Mohan Das failed to ensure proper check on the source of supply of cement and steel for the above work to the Contractor by IOW, which resulted in issue of huge quantity of Railway materials in excess of the actual requirement. For this act, unmerited benefits was extended to the Contractor and the Railway suffered a monetary loss of minimum Rs. 23,71,790/- (approx.) because of misappropriation of Railway cement and steel which had been issued to M/s. B.B. Nanda, Contractor.

By this above act, I.S. Mohan Das, the then AEN(APM)/ CON/BBS presently SEN(BR)/ECoR/BBS failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant by contravening Rule No. 3(I)(i), (ii) and (iii) of Railway Service Conduct Rule, 1966 as amended from time to time.”



7. It is the admitted fact that the contractor had utilized the Railway materials whereas the materials were to be arranged by him. When the certificate was issued by the applicant that 'no railway material was issued to the contractor', he is under an obligation to ensure that the railway materials were not issued to the contractor. May be that he would not have signed the requisition, but it is his responsibility to ensure that the Contractor was not issued any materials by the Railways in connection with the work concerned. After all, there must be only a few units, which issue materials on the basis of requisition from competent authorities, and reference would be available in the register as to the job for which such materials are issued. Before issuing the certificate that no railway material was issued to the contractor, the minimum required was to ensure from such issuing units that no material has been issued. Even if the procedure prescribed does not indicate this kind of cross checking, when huge quantity is involved, such a cross check would be essential before issue of the requisite certificate as given by the applicant. In his explanation dated 22-10-2003, the applicant has stated, "The facts are that the IOW Sri Roy and Sri Ghosh have certified in the M.B. that no Rly. materials were issued for the work in all MB entries for making the bills." Blindly signing the papers put forth to the applicant by the subordinate without proper verification, should be construed that the applicant undertakes the responsibility. Article II specifically allege that the applicant has failed to ensure proper check on the source of supply no cement and steel for the work concerned to the contractor by IOW

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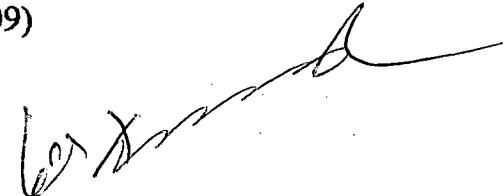
which resulted in issue of huge quantity of Railway Materials in excess of the actual requirement. The I.O. has dealt with the two articles and rightly arrived at the findings that the charges were proved. The UPSC also gave its opinion and the penalty imposed is only 10% cut in pension for five years, while the loss to the Railways is to the tune of over 21 lakhs. Thus, penalty is also not excessive.

8. Though grounds were raised to prove that there is legal lacuna in the decision making process, we do not find any such legal infirmity that would result in the reversal of the finding.

9. The applicant has thus not made out a case. Hence, the OA stands dismissed and under the circumstances, there shall be no orders as to costs.

(Dated, the 27th January, 2009)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.