

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 98 OF 2008

Dated the 5th December, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

T.D. Prasannan,
Son of Damodaran,
Working as Depot Material Superintendent,
Railway Electrification, Ernakulam Goods,
Residing at Thoppil House,
Pannayar Colony, Chittar. P.O.
Pathanamthitta.

.. Applicant

[By Advocate: Mr MP Varkey]


-Versus-

1. Union of India, represented by General Manager,
Central Organisation for Railway
Electrification (CORE),
Civil Lines, Nawab Yusuf Road,
Allahabad- 211 001.
2. Chief Project Manager,
Railway Electrification,
Egmore, Chennai-600 008.
3. Senior Materials Manager,
Railway Electrification, Egmore,
Chennai-600 008.

...Respondents

[By Advocates: Mr Thomas Mathew Nellimmottil]

This application having been heard on 7th November, 2008 the
Tribunal delivered the following -



ORDER

[Hon'ble Dr. KS Sugathan, A. M.]

The applicant is presently working as Depot Material Superintendent, Railway Electrification, at Ernakulam. While he was working as Depot Store Keeper Railway Electrification at Palghat, he was issued a charge sheet on 7.10.2004. The charge memo contained three articles of charge. The charges related to the alleged shortage of 1.051 tonne of scrap copper cadmium mixed. On denial of charges, an enquiry officer was appointed. The enquiry officer submitted his report on 29.7.2006 holding that all the three charges are not proved. The applicant was given a copy of the enquiry report along with certain observations of the Disciplinary authority on 28.8.2006 (A/6). The applicant submitted his representation against the observations of the disciplinary authority on 11.9.2006 and also stated that the said observations constitute fresh charges and therefore violate the Railway Servants (Discipline & Appeal) Rules 1968. After considering the representation of the applicant the disciplinary authority passed the penalty order dated 30.7.2007 (A/8) imposing the penalty of reduction of pay by two stages from Rs.8100 to Rs.7700 for a period of two years without cumulative effect. The applicant appealed against the said order of penalty. By its order dated 25.10.2007 (A/10) the appellate authority modified the penalty as withdrawal of the next increment (i.e. one increment) for a period of two years without cumulative effect. The applicant has challenged the penalty orders at A/8 and A/10 and sought the following relief:

(a) Declare that the disciplinary action taken against the applicant is unjust, illegal, arbitrary and unconstitutional and quash Annexure-A8 and Annexure-A10 orders.


(b) Declare that the applicant is entitled to draw his pay and allowances as if A8 and A10 were not imposed and direct the respondents accordingly.

© Award cost of and incidental to this Original Application.

(d) Pass such other orders or directions as deemed fit just and necessary in the facts and circumstances of the case."

[2] It is contended by the applicant that there was no real shortage of the scrap, but only an accounting shortage due to a clerical mistake of double counting. This mistake was reported to higher authorities by the applicant on 30.9.2002 (A/1). Permission was also sought to correct the records by letter dated 23.10.2002. (A/3). If the shortage is worth more than Rs.25000 the matter has to be reported to the General Manager. The disciplinary authority knew very well that there was no real shortage. However he issued a charge sheet due to past personal animosity. The charges are not proved by the enquiry officer. The observation conveyed by the disciplinary authority is not a disagreement memo. The disciplinary authority's action on the enquiry report is not in accordance with Rule 10 of the Railway Servants (D&A) Rules read with railway board's letter dated 4.4.96 (A/11). The disciplinary authority has to specifically disagree with the findings of the enquiry officer and take a contrary view, giving reasons for such disagreement. The observations contained in A/6 do not meet the requirements specified in the Rule 10(3). The penalty is therefore not in conformity with law. The penalty order does not say that the charges are held as proved. The mention of failure to maintain correct receipt and issuance of material is actually a new charge. The penalty is for the new charge mentioned in the penalty order itself.


[3] The respondents have opposed the prayer in the OA. It is stated in the reply filed by them that as the accounts stock verification done on 5.2.2003 revealed a shortage of 1.051 tonne of cadmium mixed copper scrap in the custody of the applicant, a charge sheet for major penalty was issued. Immediate investigation is required only in cases where the loss of materials is on account of theft, natural calamities, etc. There is no personal animosity towards the applicant. The disciplinary authority joined the Railway Electrification during May 2002. The shortage relates to May/June 2001. It



is the responsibility of the Depot Store Keeper to receive the materials correctly, preserve them and issue correctly. The applicant had himself admitted that there was double counting of 1.22 tonne of copper scrap received vide challan dated 16.5.2001. Therefore there was failure on the part of the applicant in maintaining correct accounts of receipts and issue. The disciplinary authority was not fully in agreement with the findings of the Enquiry officer. The applicant was given another opportunity to explain his position through the observations dated 28.8.2006. On receipt of the reply from the applicant, the disciplinary authority was convinced that nothing more will come out from another enquiry and imposed the penalty. All the required procedures have been followed. Every possible opportunity has been given to the applicant to defend himself.

[4] We have heard the learned counsel for the applicant Shri M.P.Varkey and the learned counsel for the respondents Shri Thomas Mathew Nellimoottil. We have also carefully perused the records.

[5] Following the judgments of the Hon'ble Supreme Court in the matter of *BC Chaturvedi -v- Union of India as well as High Court of Bombay -v- Shasikant Patil*, the grounds for judicial review in disciplinary proceedings has to be limited to the examination of (a) whether there has been a violation of the principles of natural justice, (b) whether the decision is vitiated by considerations extraneous to the evidence and merits of the case, and (c) whether the conclusions are *ex facie* arbitrary or capricious that no reasonable person could have arrived at such a conclusion.



[6] Keeping the above dictum laid down by the Hon'ble Supreme Court we have examined the facts and pleadings of this case. It is not disputed that there was actually no physical shortage, but only a shortage in the account books. The discrepancy in accounting arose on account of double counting of a particular consignment. It is also on record that the applicant himself

reported the discrepancy and sought permission to correct the record. But instead of giving permission, he was given a charge sheet. The Charge sheet dated 7.10.2004 contains the following articles of charge:

"1. Articles of charges framed against Sri T.D.Presannan, DMS/II/RE/ERG."

Sri T.D.Presannan while working as DSK/RE/PGT has committed serious misconduct and negligence of duty inasmuch as :

1] He caused a shortage of 1.051 metric tonnes of scrap copper cadmium mixed, costing Rupees 96,587.00.

2] He did not observe the rules of involving accounts stock verifier while receiving non-ferrous scrap.

3] He failed to maintain weighment register.

The above acts on the part of Sri TD Presannan, tantamount to serious misconduct and negligence of duty violating Rules 3(1)(i)(ii) and (iii) of the Railway Services (Conduct) Rules, 1966."

[7] The enquiry officer examined four witnesses and relied on 13 documents. There is no plea that adequate opportunity was not given to the applicant during the enquiry. All the three charges were held as not proved by the enquiry officer. The bone of contention in the OA is the validity of the "observations" issued by the disciplinary authority after the enquiry report was received. According to the applicant, the "observations" do not constitute "Disagreement" contemplated in Rule 10 of Railway Servants (Discipline & Appeal) Rules. The applicant has also relied on the letter dated 4.4.1996 issued by the Railway Board. Rule 10(3) reads as follows:

10. Action on the Inquiry Report.

"(1) xxx

(2) xxx

(3) *The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."*

[8] The relevant portion of the letter dated 4.4.1996 from the Railway Board (A/11) reads as:

" 5. It has also been decided that where the Inquiring Authority holds a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement must be communicated, in brief, to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. This procedure would require the disciplinary authority to first examine the report as per the laid down procedure and formulate its tentative views before forwarding the Report of Inquiry to the Charged Officer. "

[9] The aforesaid rule clearly states that if the disciplinary authority disagrees with the findings of the inquiry authority on any articles of charge, it has to record its reasons for such disagreement and record its own finding on such charge. This provision is similar to CCS (CCA) Rule 15(2). The observations on the enquiry report communicated by the disciplinary cannot be accepted as a "disagreement" memo contemplated in the Rule cited above. The disciplinary authority has not stated in the said "Observations" that he disagrees with the findings of the enquiry officer and for such and such reasons he is holding a particular charge as proved. Failure to issue a proper disagreement memo is a clear violation of the rules. It is stated in the reply statement that the disciplinary authority did not fully agree with the findings of the enquiry officer and therefore one more opportunity was given to the applicant to explain his position. Such a course of action is not in accordance with the rules. If further enquiry was required to be done, the Disciplinary Authority could have remitted the matter to the Enquiry Officer in accordance with Rule 10(2) of the Railway Servants (D&A) Rules. It cannot be done by way of conveying "observations". It is stated in the final order of penalty issued by the Disciplinary Authority that:

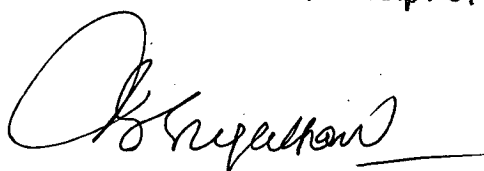
" 9.0. Conclusion: I accept the enquiry report to the extent that railway property is not lost. Misappropriation of copper scrap by you is not suspected. However, you have failed in your duties of correct receipt and issues of materials, which resulted in lot of heartburns to you and much hardship to the administration. In essence you failed to

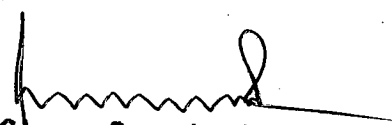
maintain devotion to duty, thereby contravening rule 3(1) (ii) of the Railway Service (Conduct) Rules, 1966."

[10] The above extract shows that the applicant is punished for failure to maintain "correct receipt and issue of materials" which is not a charge in the original charge sheet. While modifying the penalty, the Appellate Authority has merely reproduced the same points from original penalty order, without looking into the legality of the basis on which the penalty is imposed.

[11] To sum up the above discussion, this is a case where the respondents have miserably failed to observe the rules regarding action to be taken on the enquiry report. Therefore, the penalty orders cannot be sustained in the eye of the law.

[12] For the reasons stated above, the OA is allowed. The penalty orders at Annexures- A/8 and A/10 are quashed and set aside. The respondents are directed to release the increment that was withheld and extend all consequential benefits arising therefrom to the applicant within a period of two months from the date of receipt of a copy of this order.


(Dr. K.S. Sugathan)
Member (Administrative)


(George Paracken)
Member (Judicial)