CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 286/2004

Wednesday, this the 25th day of October, 2006.

CORAM:

HON'BLE MR JUSTICE G SIVARAJAN, VICE CHAIRMAN

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

N.K.Gopinathan Chettiar,
Retired Office Superintendent,
Southern Railway,
Trivandrum
(Residing at: 'Lovedale
Nilakkamukku, Kadakkavur.P.O.
Trivaudrnm-695 306. - Applicant

By Advocate Mr MP Varkey

v.

1. The Union of India represented by
the General Manager,
Southern Railway,
Chennai-600 003.

2. The Principal Chief Engineer,
Southern Railway,
Chennai-600 003.

3. The Additional Divisional Railway Manager,
Southern Railway,
Trivandrum-695 014.

4. The Senior Divisional Engineer,
Southern Railway,
Trivandrum-695 014. - Respondents

By Advocate Mr Sunil Jose

The application having been heard on 12.9.2006, the Tribunal on 25.10.2006 delivered the following:

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. The applicant Shri NK Gopinathan Chettiar, retired Office Superintendent, Southern Railway, Thiruvananthapuram is aggrieved by the penalty advice, ordering a recovery of Rs.66,000/-, as confirmed by Appellate and Revision orders.

2. The applicant was working as Divisional Store Keeper, Trivandrum Central during 1989-94. His duties involved dispatch of Railway materials and stores by train to various depots. He had dispatched 20,287 Kgs in March and July 1991 to Golden Rock Stores,but the quantity accepted by the latter was only 9700 Kgs, resulting in a shortage of 10587 Kgs valued at Rs.66,000/-. This was audit- objected during October 1992 and October 1995. The matter was temporarily closed on the assurance of the then Executive Engineer that the same would be got regularized. The applicant made some efforts, under directions from the superiors to reconcile the deficit without success. After about eight years, he received a communication(A-1) dated 29.1.2001 from the Deputy Chief Engineer asking for his remarks on the short-receipt. To A-1 communication was attached, a photocopy of audit report during January 2001. The latter referred to the facts that the above issue had been taken up in audit twice through inspection dated 19.10.92 and 25.10.95, it was closed on assurance made by the Executive Engineer that the same would be regularised but, in a letter addressed to the Deputy Chief Engineer, it had been stated that the records pertaining to 1990 could not be traced. The said audit report recommended write-off of the above amount. The applicant submitted his explanation vide A-2 dated 19-7-2001. He was served with a charge memo(A-3) on 26.2.2002, two days prior to his retirement. The said charge memo referred to

non-acceptance of DS-8 in full as there was an alleged shortage of 10,587 Kgs valued at Rs.66,000/- and, by this act, he has violated Rule 3.1(i) and (ii) of Railway Services (Conduct Rules), 1966. The above rules are reproduced as below:

> *"3. General (1) Every railway servant shall at all times:*
> *(i) maintain absolute integrity;*
> *(ii)maintain devotion to duty; ....."*

3. Vide A-4 explanation dated 27.2.2002 he denied the charges. While the proceedings were on, he retired from service on 28.2.2002 as Office Superintendent. The proceedings of DAR enquiry are in A-5. On receipt of the same, vide A-6, a penalty advice No.V/W/349/DAR/NKG dated 3.12.2002 (A-7) was served on him. Accordingly, the amount of Rs.66,000/- being the loss to the railways on account of shortage of scrap was deducted from his retirement benefits due to him. He appealed against A-7 which was rejected vide A-8 order dated 11.2.2003. His revision against the appellate order was also turned down vide impugned order A-10 dated 12.11.2003. Challenging A-7, A-8 and A-10 impugned orders, he has approached the Tribunal through this application.

4. He seeks the following main reliefs :

i) a declaration of A-7, A8 and A-10 orders as unjust, illegal and violative of principles of natural justice, and

ii) refund of Rs.66,000/- recovered from his terminal benefits with 12% interest.

5. He rests his case on the following grounds:

i) The respondents have no case that he never dispatched all the 20,287 Kgs. The shortage as found in the receipt advice could be due to many reasons and hence the invoking the rules 3.1(i) and (ii) of the

Railway Services(Conduct) Rules dealing with integrity etc. are irrational.

Ii) The provisions of Chapter 19 of the Indian Railway Commercial Manual, which govern the relevant transaction were not followed.

Iii) There was no evidence of short receipt of the Railway materials and in any case, sub rules 19, 20 and 21 of the Railway Servants (Discipline & Appeal) Rules were not followed.

iv) No rules have been quoted by which the sender is responsible for the proper receipt of the goods at the destination.

v) The orders passed by the disciplinary authority, the appellate authority and the revisionary authority were mechanical and lacking in application of mind.

6. Respondents oppose the application on the following grounds:

i) The loss was solely due to the negligence of the applicant-sender.

ii) By signing the enquiry report unconditionally, applicant cannot be heard to allege non-observance of the provisions of the RS(DA) Rules.

iii). The applicant was responsible for the non-regularization of the deficit

7. Heard both the parties and perused the documents.

8. The following issues, arising from the grounds, are framed for consideration.

i. Whether the charges framed were irrational, not founded on any rules on the subject and the reliance upon rules 3.1(i) and (ii) of the Conduct Rules was in order.

ii. Whether the Rules to be relied upon are to be found in Chapter 19 of the IRCM Vol.II

iii. Whether sufficient evidence was adduced for short receipt.

iv. Whether the Railway Servants (Discipline & Appeal) Rules were not complied with by the disciplinary, Appellate and the Revisional authorities.

9. The role of the Tribunal in the disciplinary cases has been well laid out by various rulings including those from the Hon. Apex court like (JT 1998(8) SC 603, UOI v. B.K.Srivastava [1998 SC SLJ 74; UOI Vs. Nagamaleswar Rao [1998 (1) SC SLJ 78]; Apparel Export Promotion Council v. A.K.Chopra [AIR 1999 SC 625], Union of India v. Upendra Singh [1994 SCC (3) 357] = JT 1994 (1) 658, (1) 2005 (1) SC SLJ 200 (Damoh Panna Sagar R.R.Bank v. Munnalal Jain). Accordingly, the proposition of the law is that the disciplinary authority is the sole judge of facts. The scope of judicial review is limited and the Tribunal cannot sit as an appellate authority over the findings of the inquiring authority. Such review is restricted only to the decision making process and not the decision itself. Again, as per the law laid down by the Apex Court, no re-appreciation of evidence is permissible in a proceedings like this. This has been made clear in 2006 AIR SCW 734 by the Hon'ble Apex Court that "*judicial review is not akin to adjudication on merit by re appreciating the evidence as an appellate authority.*" Their lordships in the same judgment had referred to an earlier decision in 1995 (6) SCC 749 by extracting the following portion "judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court." More specifically, the Hon'ble Apex Court has frowned upon re appreciation of evidence by C.A.T. as not permissible in 1998 SCC(L&S) 363.

10. In the backdrop of these pronouncements, we may commence the examination of the questions mentioned above. As regards the questions, whether the charges framed were irrational, not founded on any rules on the subject and the reliance upon rules 3.1(i) and (ii) of the Conduct Rules were irrational, and whether such rules are to be found in Chapter 19 of the IRCM Vol.II, the applicant has made certain specific averments relating to this aspect as follows:

> *"(b) Chapter XIX of Indian Railway Commercial Manual, Vol.II deals with booking, transport and delivery of Railway materials and stores. As per the rules therein, the transport of railway materials and stores is free; but, in all other respects railway materials are subject to the rules applicable to goods booked by public. Chapter XV to XVIII of the said Manual contain such rules. Under the said rules, the scrap railway materals booked in 5 wagons from Kochuveli to Golden Rock should have been weighed at Kochuveli or at the nearest station with a weighbridge. There are provisions in the said rules for reweighment of the materials at destination in case of suspected or actual shortage, for seeking "open delivery" and for lodging a claim for shortage. Therefore, the respondents ought to have verified the records at Kochuveli and Golden Rock railway stations and identified the place where shortage occurred, instead of relying on the entries made in the DS- (advice notes) by the sender and receiver of stores. For this reason also, the charges are not maintainable."*

During the hearing, the learned counsel for the applicant argued that the responsibility of the dispatcher of goods, the applicant in this case, ceases the moment the goods are loaded on the wagon, and, there after, it is the responsibility of the custodial officer of such wagons to ensure the safe custody and conveyance. It is normal to expect that when a consignment is sent, the stages involved are bringing the goods to the wagons, loading the same thereon, movement of the consignment from the point of dispatch to the point of destination, unloading at the other end, conveying the same to the storage point and keeping them in storage. For each one of these discreet activities, there

should be one or more custodial authorities responsible for the consignment. Apparently, the Indian Railway Commercial Manual referred to by the applicant's counsel or any other instructions issued in this regard should lay down the specified custodial authorities, the commencement and completion of their relative responsibilities and the remedial measures to be taken in case of non-discharge of such responsibilities. It is still conceivable that some losses could possibly occur *en route*, on account of pilferage, theft or sheer transport processes. The penalty advice charges the applicant for the entire loss without specifying as to the provisions under which he is so responsible for such loss. The applicant raised the point that he was not made responsible for short loading, to start with. This appears to be a fair proposition. On the other hand, he is made responsible for the short-receipt thereof. If there is a provision that the custodian of goods in a moving rolling stock should take the responsibility for the stock so carried, the question arises as to the share of such authority in the responsibility in case of losses en route. If, despite the presence of the custodial officer of the rolling stock, the responsibility for the safe conveyance still vests with the consignor, the applicant in this case, then it should have been specifically so stated in the charge sheet, quoting the underlying provisions of the manual or any other instructions. Another point raised is the evaluation of the stocks for Rs.66,000/- without specifying as to how this amount was arrived at. Such non-specification of responsibilities backed by the underlying provisions creates a vacuum in the charge sheet. The need for a focused charge has been highlighted in A.P.Saxena v. Union of India [988 Lab IC 1284 (Cal.)], wherein it has been held as follows:

> *"In order to bring home the charges levelled against an employee without any vagueness and/or ambiguity, charges are required to be stated specifically and in straight forward manner."*

11. On the question of correctness of charges, the Hon. Supreme Court has laid down the law very specifically. In 1995(1) SCC 332 (Transport Commissioner v. A Radha Krishna Moorthy) it has been laid down:

> *"7. So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into - more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into the truth of the allegations/charges except in a case where they are based on no evidence, i.e. where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision making process. For this reason, the order of the Tribunal in so far as it goes into or discusses the truth and correctness of the charges, is unsustainable in law."*

Again,

> *"9. In so far as the vagueness of the charges is concerned, we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned counsel for the respondent that except the memo of charges dated 4.6.1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly th \e precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularized."*((1995) 1 SCC 332)

12. In the light of the above observations, it is seen that the charge sheet makes a reference only to the fact that he sent a given quantity of some iron

materials, which were short receipted. Certain pertinent points like what is the realm of his custodial responsibility, the point of commencement and completion of such responsibility and the specific provisions under which such responsibility are vested on him and what are the material particulars based upon which the violation of such provisions has been sustained are missing from the charge sheet. Such absence makes the charge sheet vague, calling for, in our view, judicial intervention from this Tribunal. Though the audit report attached with charge sheet makes a reference to a direction to write off the said loss, this was not done. It surely is the prerogative of the executive to pursue the case of reported loss. Quite pertinently, the audit report attached to A-1 refers to the fact that the audit note was closed on the assurance of the executive Engineer relating to its regularisation, a letter was received after about 5 years wherein it has been stated that the records could not be traced. Under these circumstances, it shall be normal to presume that such records might not have been made available to the applicant. It is another thing whether he made a reference to the non-availability of records before the appropriate authorities during the different stages. The fact remains that the charge sheet does not contain enough materials to enable the applicant to make an effective defence. Hence we find that the charge sheet is vague and the ill effects of such vagueness has percolated down to the revisionary stage, and such vagueness has prevented the applicant to marshal his defence effectively and this vagueness calls for our intervention.

13. On the question of whether sufficient evidence was adduced for short receipt, it is true that the only evidence adduced relied upon by the Railways pertain to the short receipt of the materials. In view of the law laid down by the Hon. Apex Court on the question of re appreciation of evidence, we refrain from doing so. The applicant ought to have taken up this case appropriately at the

relevant stages. Hence we are not recording any finding on this score.

14. On the question of whether the Railway Servants (Discipline & Appeal) Rules were not complied with by the disciplinary, Appellate and the Revisional authorities, the applicant has not (brought out) specifically brought out the instances of such non-compliance. If there were any such non-compliance, he should have brought out in his appeal and revision petitions none of which form part of the materials papers. There is no specific reference to such non-compliance in the appeal and revision orders. We presume that the rules were properly complied with and find accordingly.

15. In sum, we find that

i) the charge sheet is vague and the ill effects of such vagueness has percolated down to the revisionary stage which has not enabled the applicant to put on an effective defence, meriting a judicial intervention.

ii) no interference need be made in respect of sufficiency of evidence

iii) Railway Servants (Discipline & Appeal) Rules must have been properly complied with as relating to the procedures laid down therein.

16. Based upon these findings, we order that the OA **succeeds**, that the impugned orders are set aside and the recovery from the applicant be made good to him within a period of two months from the date of receipt of a copy of this order, failing which the amount will earn interest of 5% from the day next to the date of completion of the two months period till the date of payment.

17. No costs.

Dated, the 25th October, 2006.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

JUSTICE G SIVARAJAN
VICE CHAIRMAN

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