

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 204/2007

Reserved on 24.2.2015

Pronounced on 05/3/15

**Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Mahi Lal aged about 51 years son of late Dhani Ram r/o L-1024, Sector -I, LDA Colony, Kanpur Road, Lucknow and presently posted as SSE (Permanent Way) Northern Railway, Safipur Unnao Division, Moradabad.

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through G.M. Northern Railway, Baroda House, New Delhi.
2. Additional Divisional Railway Manager, Northern Railway, Moradabad, U.P.
3. Sr. Divisional Engineer, Moradabad Division (Northern Railway, Moradabad), U.P..
4. Chief Engineer Northern Railway, Baroda House, New Delhi.

Respondents

By Advocate: Sri S.Verma

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- i) That the order dated 11.11.2006 and 06.06.2006 passed by the opposite party No. 2 and 3 respectively by rejecting the appeal preferred by the applicant and imposing penalty contained in Annexure No.1 and 2 to this original application be set aside.
- ii) issue any other or direction which this Hon'ble Tribunal deems fit, proper and just in the circumstances of the case.
- iii) This application of the applicant may kindly be allowed with cost.

2. The brief facts of the case are that the applicant while working with the respondents organization, vigilance Inspectors namely Sri M.C.Gupta, Sri Sunil Thakur and Sri R. Punhani of Northern Railway conducted a vigilance check of CST-9 plates at Muradabad Hapur

track and recorded the statement of the applicant at site and also seized 13 documents. Subsequently, in the year 2002, a charge sheet was issued to the applicant and applicant submitted the reply to the said charge sheet. Inquiry Officer submitted the report to the disciplinary authority and thereafter the disciplinary authority passed the final order.

3. Learned counsel for the applicant has indicated that during the course of enquiry, the applicant sought for certain documents through its letter dated 5.5.2003 and also given reminders to that but neither the inquiry officer has considered the request of the applicant nor applicant was supplied with the documents as such, the entire inquiry proceedings is bad in the eyes of law. Apart from this, it is also indicated by the learned counsel for the applicant that the copy of the inquiry report was though communicated to the applicant but the same has not been communicated by the disciplinary authority as the same has been provided under the signature of Divisional Engineer (III), N.R. Muradabad whereas the disciplinary authority in respect of the applicant is Sr. DEN (Coordination) who has imposed the punishment upon the applicant.

4. Not only this, it is also indicated by the learned counsel for the applicant that even the communication of the inquiry report does not indicate that the same has been issued with the approval of the competent authority or DEN (III) is authorized to provide the copy of the inquiry report to the applicant. Learned counsel for the applicant also argued that the fact regarding supply of relevant documents and also providing copy of the inquiry officer's report not by the competent authority was duly indicated by the applicant through his reply dated 27.8.2005 but despite that neither the disciplinary authority nor the appellate authority has taken cognizance of the same, as such there is a patent illegality in the impugned orders, as such it requires interference by the Tribunal.

5. On behalf of the respondents, detailed counter reply is filed and through reply, it is indicated by the respondents that the applicant has

not shown any relevancy of the documents and on account of vigilance check on 19.3.2002 and 20.3.2002 at Moradabad and Hapur, the ground balance of CST-9 plates at Moradabad and Hapur were found missing, as such charge sheet was given to the applicant which indicated that on account of slackness on the part of the applicant, certain relevant material is found missing, as such the Govt. exchequer has suffered a loss and a charge sheet was served upon the applicant. Sri S.Verma, learned counsel for respondents has also argued that there is no discrepancy in conducting the inquiry and since the applicant was responsible for misconduct, as such the punishment was awarded to the applicant. Learned counsel for the respondents raised a ground that judicial interference in the matters of disciplinary proceedings is hardly called for and the applicant has failed to make out his case, as such no interference is called for and the O.A. is liable to be dismissed.

6. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the contents of the original application are reiterated and denied the contents of the counter reply. Apart from this, with the permission of the bench, the applicant has also filed an Affidavit along with its enclosure and also prayed for summoning of records. Supple.Affidavit is taken on record and after hearing the learned counsel for the parties, it was not found necessary by the bench to call for the records, as such, the prayer sought by the applicant calling for records is rejected.

7. Heard the learned counsel for the parties and perused the records.

8. The applicant while working with the respondents organization was served with the major penalty charge sheet dated 2.7.2002 in which certain charges were leveled against the applicant which are as under:-

**Draft Statement of Article of Charges to be framed against
Shri Mahi Lal SSE (PWAY)/PQRS/MB**

Shri Mhi Lal while working as SSE(PWAY) PQRS/MB was subjected to a vigilance check on 19.3.2002, 20.3.2002, 23.3.2002 and 24.3.2002. He was held responsible for following serious lapses.

During check on 19.3.2002 and 20.3.2002 at MB & HPU, his ground balance of CST-9 plates at Moradabad & Hapur PQRS yards combining were found 22876 nos. Against ledger balance of 22473 nos (19798 nos in u/s account & 2675 nos in second hand/serviceable) i.e. excess by 409 nos (weighing approximately 16360 MT) than his ledger balance. For this he tried to manipulate the figure by transferring 409 nos CST-9 plates from Chandausi yard on 21.4.2002 i.e. after vigilane check, without any issue voucher while he was maintaining separate ledger for Chandausi yard.

During check on 23.3.2002 & 24.3.2002 at CH his ground balance of CST- 9 plates at Chandausi yard were found 28241 nos against ledger balance of 27783 nos(24211 nos in u/s account & 3572 nos in second hand/serviceable account i.e. excess by 458 nos. (weighing approximately 18240 MT). Thus, he has got large excess stocks at MB HPU & CH.

By the above act of omission and commission Sh. Mahi Lal while working as SSE (PWAY)/PQRS/MB failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner of unbecoming of a railway servant thereby contravened railway service conduct Rule31 (i) (ii) & (iii) of 1966.

Draft Statement of Article of Charges to be framed against Shri Mahi Lal SSE (PWAY)/PQRS/MB

Shri Mahi Lal while working as SSE(PWAY) PQRS/MB was subjected to a vigilance check on 19.3.2002, 20.3.2002, 23.3.2002 and 24.3.2002. He was held responsible for following serious lapses.

On the basis of a source of information N. Rly(Vig) conducted a check at PQRS yard Moradabad, Hapur & Chandausi. During check on 19.3.2002 and 20.3.2002 at HPU & MB PQRS years, his ground balance of CST-9 plates were taken in association with Sh. Mahi Lal CST-9 plates were found 22876 nos against ledger balance of 22473 nos (19798 nos in u/s account & 2675 nos in second hand/serviceable) i.e. excess by 409 nos(weighing approximately 16.360 MT) than his ledger balance. For this he tried to manipulate the figure by transferring 409 nos. CST-9 plates from Chandausi yard on 21.4.2002 i.e. after vigilance check without any issue voucher while he was maintaining separate ledger for Chandausi yard, Details of 22876 nos. Is as under:-

Station	Stack No/location	Lot no, if any	Qty. found
HPU	Near line no.11		965 nos
Do	In auxiliary track of line no. 11		145 nos
Do	In auxiliary track of line no. 10		154 nos
Do	Lying between Km 102/0- 103/0		445 nos
do	PQRS yard		268 nos
MB	1		721 nos
Do	2 and 3	Remaining part of lot no. 106340102	7660 nos
Do	4		3054 nos

Do	5		185 nos
Do	6	Remaining part of lot no.1054712011	1197nos
Do	7		5818 nos
Do	Near PQRS office		04nos

Subsequently check was conducted on 23.3.2002 and 24.3.2002 at CH yard, this ground balance of CST-9 plates at Chandausi yard were found 28241 nos. Against ledger balance of 27783 nos. (24211 nos in/s account & 3572 nos. In second hand/serviceable account) i.e. excess by 458 nos. (Weighing approximately 18.240MT)

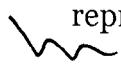
Details of 28239 nos. Were as under

Station	Stack No/location	Lot no, if any	Qty. found
	1	Remaining part of lot no. 106630202	3388nos
Do	2	106620202	2488nos.
Do	3	Do	577nos.
Do	4	do	1038nos.
MB	5	Do	722nos.
Do	6	do	757nos.
Do	7	Do	1018nos
Do	8	Do	277nos
Do	9	Do	797nos
Do	10 to 16		11436 nos
Do	PQRS		5743 nos

By the above act of omission and commission Sh.Mahi Lal while working as SSE (PWAY/PQRS/MB) failed to maintain absolute integrity exhibited lack of devotion to duty and acted in a manner of unbecoming of a railway servant thereby contravened railway service conduct Rule 3.1 (i) (ii) & (iii) of 1996.

9. Along with the charge sheet, relied upon documents, list of witnesses are also mentioned. Applicant, immediately requested the authorities through his representation/ request dated 5.5.2003 that he may be provided certain documents so that he can give reply to the charge sheet and also indicated through aforesaid letter that the applicant reserves the right requesting for any other documents which may be relevant during the proceedings in the interest of justice.

10. The applicant again reiterated the same through his subsequent representation. Same was not given cognizance and the inquiry officer



submitted his report on 25.7.2005 in which he has mentioned the evidence taken into consideration and also findings recorded by him. The bare reading of the inquiry report does not indicate that the inquiry officer has dealt with objections so raised by the applicant in regard to supply of documents through his letter dated 5.5.2003.

11. Copy of the inquiry report was communicated to the applicant through covering letter dated 17.8.2005 and the applicant has categorically indicated in his reply dated 27.8.2005 that the said notice was served upon him under the signature of Div. Engineer (III) who is not the competent authority to issue the same. The said objections were supposed to be decided by the authorities but the disciplinary authority has passed the orders on 6.2.2006. The disciplinary authority observed that the first part of the charge regarding excess material at Hapur and Moradabad itself shows serious irregularity on the part of the applicant and he failed to take into account total material released from the track renewal works in the ledgers with the intention of misappropriating the material. Therefore, the punishment of reduction to lower stage in the same time scale of pay i.e. grade Rs. 7450-11500 and his basic pay is reduced from Rs. 9925/- to Rs. 9475/- with immediate effect for a period of 3 years with cumulative effect.

12. The applicant submitted the appeal and through appeal, again the applicant raised all those grounds which were raised earlier and the appellate authority though indicated that the applicant has asked for certain additional documents at the start of the inquiry and the same could not be supplied to him since they were not available but this issue was not raised during the entire inquiry as well the in the defence note submitted to the inquiry officer and considering all the material available on record, the appellate authority rejected the appeal of the applicant.

13. Only issue which requires determination is whether the inquiry officer has discussed in regard to documents so asked by the applicant and whether the officer who has communicated the inquiry report to

the applicant was competent authority or not and the entire enquiry is not against the principles of natural justice and fair play.

14. As regards the first issue is concerned, the applicant has categorically indicated through his representation / request dated 5.5.2003 additional documents were asked and submitted that for fair and proper inquiry, he would be requiring these documents and has also shown relevancy of the same. The respondents were under obligation to give reply to the same but they have failed to do so. Not only this, the applicant has also repeated his earlier request for supply of documents by subsequent dates as well. The bare reading of the inquiry officer's report does not show that the inquiry officer dealt with the request of the applicant for supply of documents and finally submitted the report with his findings. Not only this, the inquiry officer has also not discussed the statements recorded by the witnesses and examination of documents. As such, objections raised by the applicant are tenable in the eyes of law and is liable to be accepted.

15. As regards the supply of inquiry officer's report to the applicant is concerned, it is undisputed that the same has been served under the signature of Div. Engineer (III) N.R. Moradabad whereas the orders passed by the disciplinary authority on 6.2.2006 is Sr. DEN(Coordination). As such, it is clear that the inquiry officer has not submitted the report to the disciplinary authority rather he has submitted the report to the authority lower than him. Even the disciplinary authority has not discussed about the documents so asked by the applicant and has also not indicated the reasons for not accepting the request about non-supply of documents. As such, grounds raised by the applicant are again tenable in the eyes of law and is liable to be accepted.

16. As regards, the appellate authority is concerned, the appellate authority has indicated this fact that the applicant has asked for certain additional documents at the start of the inquiry and same could not be supplied on account of their non-availability but it was incumbent upon the inquiry officer as well as by the disciplinary

authority to indicate the same in their inquiry report as well as order passed by the disciplinary authority. Not only this, the Appellate authority has passed the order in a very casual manner without discussing the material available on record.

17. As observed by the Hon'ble Apex Court in the case of **State of U.P. Vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772** that **“Employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him.”**

18. In the case of **O.K. Bhardwaj Vs. Union of India and others reported in (2002) SCC (L&S) 188** the Hon'ble Apex Court has been pleased to observe that **“Even in the case of minor penalty, an opportunity has to be given.”**

19. In the case of **A. Padmanabham Vs. Union of India and others reported in 2002 2 CHN, 31**, it is observed by the Hon'ble Apex Court that the **“Principle of Natural Justice are violated if the relevant documents are not supplied and also not allowed for inspection.”**

20. In the case of **Union of India and others Vs. Prakash Kumar Tandon reported in (2009) 1 SCC (L&S) 2794**, the Hon'ble Apex Court observed that **“if disciplinary proceedings has not been conducted fairly, presumption can be drawn that this caused prejudice to the charged employee.”**

21. Since the applicant was not provided the copies of the relevant documents as asked for and even the inquiry report has not indicated any reason for not supplying the same and the copy of the inquiry report was also not served through the disciplinary authority as such it is clear that the disciplinary proceedings has not been conducted fairly in respect of the applicant. Even the appellate authority has not passed the reasoned and speaking order

22. As per the observations of the Hon'ble Apex Court and pleadings on record, we are inclined to interfere in the present O.A. Accordingly, the impugned orders 11.11.2006 and 6.2.2006 as contained in

Annexure No. 1 and 2 are liable to be quashed. Accordingly they are quashed. No order as to costs.

J. Chandra

(JAYATI CHANDRA)
MEMBER (A)

Navneet Kumar

(NAVNEET KUMAR)
MEMBER(J)

HLS/-