

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

Reserved on: 26.7.2012
Pronounced on: 29.8.2012

Original Application No. 91 of 2011

Hon'ble Dr. K.B.S. Rajan , Member-J
Hon'ble Mr. S.P. Singh, Member-A

Aditya Kumar Srivastava, aged about 58 years, S/o late Sri Raj Narain Srivastava, R/o 134/87 Bashiratganj, Lucknow.

.....Applicant

By Advocate: Sri R.C. Saxena

Versus.

1. Union of India through the General Manager, Northern railway, Baroda House, New Delhi.
2. Deputy Chief Materials Manager, Northern Railway, Alambagh, Lucknow.
3. Chief Materials Manager, Northern Railway, Baroda House, New Delhi.
4. Controller of Stores, Northern Railway, Baroda House, New Delhi.

.....Respondents.

By Advocate: Sri Rajendra Singh

ORDER

By Dr. K.B.S. Rajan, Member-J

The applicant has sought the following relief(s):

"It is most humbly prayed that this Hon'ble Tribunal may graciously be pleased to quash the impugned punishment order dated 19.1.2003 passed by respondent no.2 contained in Annexure no.1 and also the order passed by Respondent no.3 rejecting the appeal contained in communication letter dated 29.4.2010 forming part as Annexure no.2 to the O.A. and allow the O.A. with the direction that the respondents may allow all consequential service benefits to the applicant."



2. Briefly stated, a chargesheet was issued to the applicant on 13 December, 1985, containing two charges:

- (i) that he did not club all the requisitions received before issuing tender enquiry and in this manner eliminated wider competition and availability of the economical rates for purchases made by the Controllers of Stores;
- (ii) that he issued two tender enquiries on the same day against one requisition resulting in placement of two purchase orders for the same item at two different rates on two different firms and no action was taken by him to rectify this type of mistake in as many as six cases.

3. An enquiry was held and after a lapse of long period and change of many enquiry officers, an enquiry report was submitted by the enquiry officer on 16 October 2000 in which the applicant was exonerated from all charges. The Appellate Authority, after a delay of more than 1 $\frac{1}{2}$ years communicated his disagreement note. After affording an opportunity to the applicant to make a representation against the enquiry report under disagreement note, the Appellate Authority held the applicant guilty of misconduct in respect of the second charge and passed the penalty order dated 19th of January 2003 in which penalty of reduction of pay for one year from the stage of Rs. 6200 to Rs. 6050 in the time-scale coupled with postponement of his future increment was imposed. Appeal and a revision petition filed by the applicant having failed the applicant moved OA No. 444 of 2004 which was decided on 28th January 2010 wherein it was held that the appellate and revisional orders were not sustainable. Consequently the said two orders were set aside and the matter remanded back to the appellate authority with a direction to give personal

hearing to the applicant and pass a speaking order dealing with all the issues raised by the applicant in his appeal within a time calendared in the said order of the Tribunal.

4. The Appellate Authority, in pursuance of the order of the Tribunal, after giving the applicant opportunity of hearing upheld the order of the ~~Disciplinary~~ Appellate Authority (vide impugned order dated 29th of April 2010. Thus the applicant has come up before the Tribunal again seeking the reliefs as extracted above.

5. Respondents have contested the OA.

6. The applicant had filed his rejoinder reiterating his contentions as contained in the original application.

7. Counsel for the applicant referred to various documents filed by him and contended that when the enquiry authority had held the applicant not guilty of misconduct alleged, the Disciplinary Authority, while in respect of the first article of charge gave the benefit of doubt and accepted the finding, in respect of charge 2, on the ground that the applicant did not follow the procedure as per the pink book, held the applicant guilty of article No. 2. The applicant contended that the said pink book which relates to rules for entering into supply contracts, which formed the basis of disagreement was neither included in the list of relied upon documents in Annexure III to the charge memorandum nor does it find a mention in the Statement of imputation of misconduct. The

applicant, referring to paragraph 4.7 as well as Annexure A-11, stated that in any event the rules of procedure contained in the pink book, especially there are 5.1.1 (A) deals with stock items whereas the charge against the applicant pertains to non-stock items.

8. Counsel for the respondents on the other hand submitted that the book is a rule and it applies to both Stocker non-stock items and it sets the procedure of stores materials by different heads. Since the time of investigation, by the vigilance department, the applicant was working in local purchase section, he should've followed the procedure for procuring material by local purchase as laid down in the pink book.

9. Arguments were heard and documents perused. Judicial review of disciplinary proceedings, as is well known, is confined only to procedural lapses if any in conducting the proceedings. In **H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312**, it has been held by the Apex Court as under:-

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

BN

10. In the instant case the claim of the applicant is that the Disciplinary Authority heavily relied upon the procedure contained in the pink book and that the same has not been followed. The contention of the applicant has been that it is for the first time when the Disciplinary Authority recorded his note of disagreement that the applicant could find that the Disciplinary Authority's view is that the procedure as per pink book has not been followed. When the applicant demanded a copy of the same, it was not made available to him. Be that as it may, he did have the opportunity to peruse the same as he himself stated in Annexure A-

11. His contention has been that the said the book reflected the procedure for 'stock items' and the articles dealt with by the applicant related to 'non-stock' items. According to the respondents the pink book is meant for both stock as well as non-stock items as the same sets of procedure for stores materials, under the local purchase procedure and that since the applicant was engaged in local purchase at the time when investigation was made, the procedure which the applicant was to follow was only that contained in the pink book. This argument of the respondents cannot be brushed aside. The contention of the applicant that the charges related to something and the Disciplinary Authority referred to some other thing cannot be accepted.

11. The Appellate Authority has considered the appeal as directed by this Tribunal. In paragraph 10 of the appellate order, the authority has clearly stated that the grounds of appeal have been considered and disposed of as under: -

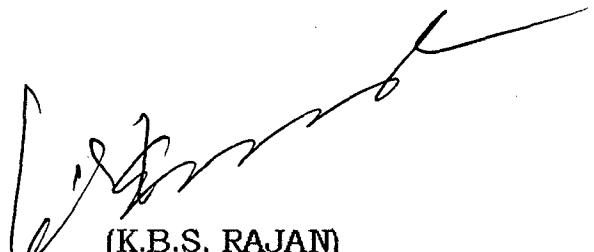
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"I have also considered his the representation dated 04-10-2002 against the memo of disagreement dated 23-9-2002, but he has not indicated any ground to the effect that disagreement note was not as per procedure. He has failed to point out that he had followed the correct procedure as provided for local purchase. Regarding charge No. 2, it has been seen that the same item of the same quantity has been included in the two tenders both tender enquiries were prepared on the same date and the requisition for the same item mentioned in the article 2 of the Chargesheet are available in one case and these requisition Nos. have been mentioned in the tender register against that case. However, no requisition of these items are available in the other case and no requisition number of these items is mentioned in the tender registered against that case. Shri Aditya Kumar Srivastava has failed to make any efforts to check and point out the irregularities. Moreover, it was the specific charge against him that he did not take any action to rectify this in as many as six cases. Hence, it was his prime duty to point out the irregularities to the superior officers and should manage to cure these defects in tender enquiries. His version that he had been transferred from local purchase section is not acceptable as after his transfer he was not relieved from local purchase section and worked continuously on that seat."

12. The above order of the appellate authority does not suffer from any procedural irregularity or legal lacuna. As such, the tribunal does not find any illegality in the decision of the authorities in the disciplinary proceedings against the applicant.

13. Thus, the original application lacks in merits and hence is **dismissed**. No costs.


(S.P.Singh)
Member (A)


(K.B.S. RAJAN)
Member (J)