

CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH  
NEW BOMBAY

No.O.A. 280/87

Shri J.B.Ramwani,  
Sr.Clerk  
Under Dy.Controller of  
Stores, Dahod,  
Western Railway.

Applicant

Vs

- 1) Union of India through  
General Manager,  
Western Railway, Churchgate,  
Bombay.
- 2) Controller of Stores,  
Western Railway  
Churchgate, Bombay-400-020
- 3) Additional Controller of  
Stores, Western Railway,  
Churchgate, Bombay-400-020
- 4) Dy.Controller of Stores(V)  
Western Railway, Churchgate,  
Bombay-400-020.

Appearances:

Mr.G.S.Walia for the applicant  
Mr.R.K.Shetty for the respondent.

Respondents

Coram: Hon'ble Mr. M.Y.Priolkar, Member(A)

Hon'ble Mr. T.S.Oberoi, Member(J)

Dated 9-8-1990.

Judgement

(Per: Mr.M.Y.Priolkar, Member(A))

The applicant while working as a Depot Store Keeper (III) in Western Railway in the scale Rs.425-640(R) was served with a charge sheet on 16-10-1982 for delivering one big battery weighing 171.5 Kg. in excess of the number and weight shown in the issue note, to a private party after an auction. After an enquiry, the disciplinary authority, accepting the report of the enquiry officer, imposed the penalty of removal from service by his order dated 22-2-1985. The applicant filed an appeal and the Appellate Authority by order dated 10-6-1985 reduced the penalty to reversion to the lower grade in the post of Senior Clerk in the scale


of Rs.330-560(R) for a period of three years having future effect. The applicant thereafter filed a revision petition against the appellate order but it was rejected on 16-2-1987. The applicant has since retired on superannuation on 28-2-1988 from this lower post of Senior Clerk.

2. Being aggrieved by the order of the Appellate Authority which has been confirmed by the order of the Revisional Authority, the applicant has approached this Tribunal on 20-4-1987 praying for quashing and setting aside both these orders with consequential benefits, on the ground that the penalty imposed upon the applicant is illegal mainly because the report of the enquiry officer is perverse and not based on any evidence, that the charge was very vague, that the disciplinary authority as well as the appellate authority and the enquiry officer have failed to pass speaking orders and the applicant was not given a copy of the enquiry report before passing the order of penalty.

3. We have to accept straightaway this last contention raised on behalf of the applicant that there has been violation of the principles of natural justice in so far as the copy of the report of the Enquiry Officer was not furnished by the Disciplinary Authority before passing the order of the penalty. In the full Bench decision of this Tribunal in the case of Premnath K.Sharma (1988)6 ATC 904, it has been held that furnishing of a copy of the report of the enquiry authority to the charged officer is obligatory and that any finding of the disciplinary authority on the basis of the report of Enquiry Officer which is not furnished to the charged officer would be without affording a reasonable opportunity to the charged officer. Though in Union of India Vs E. Bhashyam (1988 7 ATC 285), the Supreme Court has referred this question for an authoritative pronouncement by a

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larger Bench, The Bench of two Hon'ble Judges has held that the non-supply of the copy of the enquiry report would constitute violation of the principle of natural justice and accordingly will be tantamount to the denial of reasonable opportunity within the meaning of clause (2) of Article 311 of the Constitution. On a Special Leave Petition (SLP) filed by the Railway Administration against the above full Bench decision of the Tribunal, the Supreme Court has stayed the operation of that judgement, but in our view, the stay of operation can have reference only to the implementation of the final order in that case, and so far as the proposition of law, which has been approved by the Full Bench is concerned, we feel that we are bound by the same and cannot take a different view.

4. After perusing the record we are also inclined to accept the applicant's contentions that the finding in the enquiry report is not based on any supporting evidence. The charge is very specific that the applicant had delivered 82+2 batteries against 81+2 auctioned on 25-3-1982 against issue note dated 16-4-1982, and thus failed to maintain absolute integrity and devotion to duty. The enquiry report (pages 51 to 69 of the application) appraises the evidence adduced in the case and also discusses the points raised by the applicant in his final written brief. According to the enquiry report, the main defence of the applicant was that three more officials, viz. DSK I, DSK II and Stock Verifier were also responsible to ensure that the correct material was delivered, loaded into the truck and removed by the party. No reasons are, however, given in the report as to why this responsibility was presumed to lie only on the applicant who has been singled out for action. The report also observes that no evidence has been brought on record either in cross examination of the witness examined or by way of defence evidence to indicate



that the battery found excess was loaded in the truck after completion of the issue of gate pass and issue note. Evidently, the burden of such proof should not have been shifted to the employee. The applicant's main submission in the enquiry that there was quite a distance and a long time lag from the time the truck moved from the place of loading to the gate and actual detection of the excess material in the truck at the gate has thus not been considered in the enquiry report. The guilt established in the enquiry report is that the accused functioned in a casual manner as he failed even to notice a glaring mistake in the issue note, which is different from the specific charge that he delivered one battery in excess for lack of integrity. The final conclusion in the enquiry report that the charge has been substantiated should therefore be held to be not based on any supporting evidence.

5. These aspects have also not been considered either in the disciplinary authority's order or in the impugned appellate order. While the disciplinary authority's order merely states that he is in agreement with the findings of the Enquiry Officer and proceeds to impose the penalty of removal from service, the appellate order discusses only what is stated to be a new point brought out in appeal and during the personal hearing, namely, that the scrap batteries were stocked in the Nissan hut far away from the non-ferrous scrap yard of which the accused was the custodian, the keys of the Nissan hut were kept by another storekeeper and the material of which three other storekeepers were custodians was also stored in the same Nissan hut under a single key. This point is dismissed as an after thought, though the appellate authority had referred it to the concerned officials who had

confirmed the position. The appellate authority has agreed with the findings of the disciplinary authority but reduced the penalty on "humanitarian grounds".

6. It is clear from the above that the conclusion reached by the appellate authority is not supported by reasons. The appellate authority has not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the case of Ramchander vs Union of India (AIR 1986 SC 117), the Supreme Court had observed that in terms of Rule 27 (2) of the Central Civil Services (C.C.A.) Rules, 1965 corresponding to Rule 22(2) of Railway Servants (Discipline and Appeal) Rules 1968, one of the essential points to be considered in the appellate order is whether the findings of the disciplinary authority are warranted by the evidence on record. As this essential requirement has not been met in this appellate order, we hold that there has been non-compliance with the requirement of Rule 22 (2) of Railway Servants (D & A) Rules, 1968 and therefore, the impugned order dated 10-6-1985 of the Appellate Authority is liable to be set aside.

7. Shri R.K.Shetty, learned counsel for the respondents, argued that the findings in the enquiry report cannot be considered to be perverse or based on no evidence at all. He cited the case of Union of India vs Parma Nanda (1989(1) SCALE 606) where the Supreme Court has held that the Tribunal cannot interfere with the penalty if the conclusion of the Enquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. We are, however, not commenting here on the adequacy of the penalty but we are of the view that since there has been an infraction of the principles of natural justice by non-furnishing of the Enquiry Report before the disciplinary authority had arrived at his findings

and there has also been non-compliance with the requirement of Rule 22 (2) of Railway Servants ( D & A ) Rules, 1968, the Appellate Authority's order dated 10-6-1985 deserves to be set aside.

8. On the basis of the foregoing discussion, the application is allowed and the order of punishment imposed on the applicant by the Appellate Authority by order dated 10.6.1985 and confirmed by the Revisional Authority's order dated 16.2.1987 is set aside. Normally, we should have remanded the case back to the department to continue the disciplinary proceedings in accordance with the law, but since the applicant has already retired on superannuation, we close the case by directing that till his superannuation, the applicant shall be treated as having been in continuous service as Depot Store Keeper (III) in the scale of applicable to *that post from time to time.* (Rs. 425-640(R)) with consequential benefits like increments and pay fixation in the corresponding revised scales but not of any promotion, and his retirement benefits also shall be fixed accordingly. There shall be no order as to costs.

*Bevi 9.8.80*  
(T.S.Oberoi)  
Member(J)

*hi 9.8.80*  
(M.Y.Priolkar)  
Member(A)

*Subs listed  
deleted  
Wd RP order  
dtd 22/5/92  
RP 25/92  
22/5/92  
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