

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 82/89.
T.A. No.

198

DATE OF DECISION 30.8.90.

Shri P.V.Bhatia,

Petitioner

Shri S.R.Atre,

Advocate for the Petitioner(s)

Versus

The General Manager, Respondent
Western Railway, Churchgate,
and another

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. M.Y.Priolkar, Member(Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Sh
(G.Sreedharan Nair)
Vice Chairman.

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY BENCH
NEW BOMBAY.

O.A.82/89.

Shri P.V.Bhatia ... Applicant.

versus

The General Manager,
Western Railway, Churchgate
and another ... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member(Admn).

For the applicant- Shri S.R.Atre, Advocate

For the respondents. Shri N.K.Srinivasan, Advocate.

Date of hearing- 27.8.90.

Date of Order - 30.8.90.

JUDGMENT & ORDER.

G.Sreedharan Nair, Vice Chairman :-

The applicant was functioning as Supply Order Clerk in the Stores Department under the 2nd respondent, when a Memorandum of Charges was issued against him on 3.9.1984 under Rule 9 of the Railway Servants(Discipline & Appeal) Rules, 1968, for not maintaining absolute integrity and devotion to duty and for conduct unbecoming of a Railway Servant. There were three items of charges as below :-

" 1. He tampered with the records himself or through his accomplice with deliberate intention of fraudulent manipulation of the indented quantities shown on the Requisition by the consumers and orders were placed for increased quantities on Rate Contract holder, thereby giving pecuniary benefit to the suppliers M/s Imeco(P) Ltd/Calcutta with a corresponding loss to the Railway.

2. He failed to check the quantity indented on the requisition and the quantity for which the supply order was prepared by him. In 2 supply orders, the quantities ordered were much more in excess than the indented quantities shown in the Requisition for the enhanced quantity.

3. He took special interest deliberately in placement of certain orders on the suppliers in haste and without observing the laid down procedure for despatch of supply orders in normal course; instead he handed over the supply orders to the respondents of the supplier without proper authority."

The applicant denied the charges. An enquiry was conducted. The Inquiry Officer reported that all the articles of charges are proved. The Disciplinary Authority accepting the report of the Inquiry Officer, by the order dated 6.5.1988, imposed upon the applicant the penalty of reduction to the lower scale of pay that he would have drawn, had he not been promoted, for two years, with future effect. The appeal preferred by the applicant was rejected by the order dated 25.8.1989.

2. The applicant assails the order imposing the penalty. The main ground urged is that the conclusion arrived at by the Disciplinary Authority does not warrant the finding that the charges are established. The order of the Appellate Authority is also attacked on the same ground.

3. In the reply filed on behalf of the respondents, the attack against the order is resisted and it is contended that the order imposing the penalty does not require interference.

4. On a perusal of the first item of charge it is clear that it consists of four elements: (a) tampering with the records; (b) intention of fraudulent manipulation of the indented quantities shown on the Requisition by the consumers; (c) giving pecuniary benefit to the suppliers; and (d) causing loss to the railways.

3.

5. The conclusion of the Discipline Authority with respect to this charge is as follows :-

" i) As regards charge in article 1.1, the author for tampering of quantities has not been precisely pinpointed nor has it been established at what stage the tampering has been done in the whole process of supply order placement, even though the fact that tampering has been done has been substantiated."

There is nothing in the aforesaid conclusion to warrant a finding that any of the four elements referred to above has been established. It is to be remembered in this context that the applicant has only a very limited role in handling the requisition indents received from the indentors and that they are dealt with by several others also before they are put up before the Chief Clerk.

6. In respect of the 2nd and 3rd items of charge, the applicant has specifically stated that he handed over copies of the supply orders to the representative of the indentors on the instruction of the Chief Clerk. That the practice of ^{the} directing the representatives of indentors by Chief Clerk to collect copy of the supply orders is in vogue, is not in dispute, and has been pointedly adverted to by the Disciplinary Authority. He has further observed that " a major part of the proceeding have relied on circumstantial evidence rather than on any concrete facts", obviously referring to the proceedings of the Inquiry Officer. It is needless to underline that on the said conclusion a finding that the charges 2 and 3 are established against the applicant cannot reasonably be arrived at. Yet, the Disciplinary Authority has proceeded to hold that the charges " have been substantiated beyond doubt" and on that premise has imposed the penalty on the applicant.

4.

6. In view of the foregoing, we have to accept the plea of the applicant that the finding of the Disciplinary Authority that the charges are established, cannot be sustained in law.

7. Though the applicant had highlighted this aspect in the appeal, the Appellate Authority without considering this aspect, rejected the appeal by a cryptic order to the effect that the applicant had not prepared the indent in a proper manner, and it would have caused loss to the Railways. There is nothing in the order of the Appellate Authority to indicate that he has arrived at the conclusion that the charges are established.

8. In the result, the order of the Disciplinary Authority dated 6.5.1988 imposing upon the applicant the penalty of reduction to the lower scale of pay, as confirmed by the order of the Appellate Authority dated 25.8.1989, is hereby quashed. The applicant shall be allowed consequential benefits within a period of two months from the date of receipt of the copy of this order.

9. In the result, the application is allowed as above.

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M.Y. Priolkar
(M.Y. Priolkar)
Member(Admn)

L
G.Sreedharan Nair
(G.Sreedharan Nair)
Vice Chairman.

S.P.Singh/
28.8.90.

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