

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No. 699 of 2005

Patna, this the 24th day of November, 2011

C O R A M

THE HON'BLE MR. JUSTICE SYED MOD. MAHFOOZ ALAM,M(J)
THE HON'BLE MR. NARESH GUPTA, M (A)

Suresh Paswan, son of Late Sone Lal Paswan, DMS-III, under AMM (D), JMP, resident of Village & PO-Muzaffarganj, PS-Haweli Kharagpur, District-Munger, Bihar

Applicant

By Advocate : Mr. M.P.Dixit

versus

1. The Union of India through the GM, Eastern Railway, 17, N.S. Road, Kolkata.
2. The Chief Works Manager, Eastern Railway, Jamalpur
3. The Deputy Chief Material Manager, Eastern Railway, Jamalpur
4. The Deputy Controller of Store, now Sr. Material Manager (D), Eastern Railway, Jamalpur.
5. The Assistant Material Manager (D), Eastern Railway, Jamalpur.

Respondents

By Advocate: None present.

O R D E R

JUSTICE SYED MD. MAHFOOZ ALAM, MEMBER (J):- Applicant-

Suresh Paswan has filed this OA claiming for grant of relief to quash and set aside the order dated 31.8.2004 (Annexure-9) and the order dated 27.09.2005 (Anexure-16) passed by the Disciplinary Authority as well as the Appellate Authority respectively. He has also prayed for issuance of direction to the respondents to refund the amount recovered from the applicant in compliance of the above-mentioned orders with interest at the rate of 15% per annum

2. In brief, the applicant's case is that the applicant, who was working as Depo Material Supdt. III (DMS-III) under administrative control of Respondent No.5, was served with charge-sheet dated 2.12.1998

for major penalty charge under Rule 9 of the Railway Servants (Discipline and appeal) Rules, 1968 (in short "RS(D&A) Rules, 1968") on the allegation that consequent upon receipt of some information, item of stores i.e. contact tips to P.L.No. 12452205 pertaining to Ward No.15 was jointly inspected and verified on 28.08.1998 by Store Accounts Verifier, Shri G.Poddar. SI, RPF, (Shri A.C. Sinha) and the Custodian DSK, Shri S. Paswan, and on verification, it was detected that items of stores were found short and instead of of 1857 nos. only 1400 nos. were found in the stock i.e. 457 nos. short, valued at Rs.81,291.16. It was alleged that this shortage had occurred due to carelessness and negligence of the applicant. Accordingly, a charge memo dated 2.12.1998 (Annexure-1) was issued and the applicant was asked to appear before the Inquiry Officer. Thereafter, the applicant asked the authorities to supply certain documents, but the documents were not supplied to him. Even then he appeared before the Inquiry Officer and faced the inquiry. The Inquiry officer, after completion of the inquiry, submitted inquiry report but the Disciplinary Authority neither forwarded the said inquiry report to the applicant nor asked any explanation from the applicant on the inquiry report as well as on proposed punishment, which is required under Rule 10 (2) (a) and (b) of the RS(D&A) Rules, 1968. It is stated that without applying mandatory provision of law, the Disciplinary Authority imposed the punishment. Thereafter, the applicant preferred appeal and drew attention of the Appellate Authority with regard to the alleged irregularly committed by the Disciplinary Authority. Then the Appellate Authority supplied him the copy of the inquiry report and asked the applicant to represent his case accordingly. The applicant represented his case before the Appellate Authority, but the Appellate Authority also, without applying its mind, confirmed the order of the Disciplinary Authority, and so his appeal was

Yours

dismissed.

3. On filing of the OA, notices were issued to the respondents and in compliance of the notices, the respondents appeared through the lawyer and filed reply.

4. As per the reply of the respondents, it has been contended that the inquiry was conducted as per rule and the applicant was given proper opportunity to place his case before the Inquiry Officer as well as the Appellate Authority. He submitted that the defects, which were pointed out by the applicant, in not following the rule by the Disciplinary Authority, as provided under sub-rule 2(a) and (b) of Rule 10 of RS(D&A) Rules, 1968, the Appellate Authority, by providing copy of the report of the Inquiry Officer and asking him to submit his representation, has cured the defect, and so there is no illegality in the impugned order. He has submitted that, on facts, the allegation was substantiated before the Inquiry Officer, and as such, no interference is required in the order of the Disciplinary Authority as well as the order of the Appellate Authority.

5. Heard Shri M.P.Dixit, learned advocate for the applicant. None was present for the respondents.

6. During the course of hearing, the learned advocate appearing for the applicant raised legal point and submitted that the respondents have committed illegality by not following procedure as prescribed in sub-rule (2) (a) and (b) of Rule 10 of the RS (D&A) Rules, 1968, and on this ground alone, the order of the Disciplinary Authority as well as the order of the Appellate Authority should be quashed and set aside. The learned advocate further contended that even after supply of the copy of the inquiry report by the Appellate Authority, and asking the applicant to represent his case on the finding of the Inquiry Officer as well as on proposed punishment, the irregularity committed by the respondents could not be

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cured as the provision as laid down in sub-rule (2) (a) and (b) of Rule 10 of the above-mentioned Rules is mandatory

7. In order to appreciate the rival contention of the parties, we would like to incorporate sub-rule (2) (a) and (b) of Rule 10 of the RS(D&A) Rules, 1968:

“(2) The Disciplinary authority-

(a) shall forward or cause to be forwarded a copy of the report of inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any held under sub-rule (1)(a) together with its own tentative reasons for disagreement, if any, with finding of the inquiring authority on any article of charge to the Railway servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within 15 days, irrespective of whether the report is favourable to the Railway servant;

(b) shall consider the representation, if any submitted by the Railway servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5).”

8. From the wordings of sub-rule (2) (a) and (b) of Rule 10 of the RS (D&A) Rules, 1968, it is clear that the procedure as laid down in sub-rule (2) (a) and (b) is mandatory to be followed and the deviation in adopting the procedure, separate from the provision laid down under the rule, is not permissible as the provision is mandatory. The respondents in their reply have admitted that the defect in not following the rule by the Disciplinary Authority, as provided under sub-rule (2) (a) and (b) of the RS (D&A) Rules, 1968, has been cured by providing copy of the report of the Inquiry Officer by the Appellate Authority and by asking him to submit his representation. But we are of the view that as per the provision laid down under the above-mentioned rule, the Disciplinary Authority is the competent authority to forward a copy of the report of the inquiry, the finding of the Inquiry Officer with his own finding and ask the delinquent employee to submit his written representation and no other authority is authorized to act

under the said Rule. So, even if the Appellate Authority forwarded the inquiry report to the applicant at a later stage and asked the applicant to submit his representation on the report of the Inquiry Officer, the defect, which has occurred in not complying with the provision of sub-rule (2) (a) and (b) of the RS (D&A) Rules, 1968, cannot be said to be cured. Thus, we are of the view that due to non-compliance of the mandatory provision, as provided under sub-rule (2) (a) and (b) of the RS (D&A) Rules, 1968, the entire proceeding has vitiated and on this score alone, the OA should be allowed. Our view finds support from the decision of the Apex Court in the case of **R. K. Vashisht vs. Union of India & Others, report in (1993)**

23 Administrative Tribunal Cases Page 444 (II).

9. In the result, we find merit in this OA and accordingly the same is allowed and the order of the Disciplinary Authority dated 31.8.2004 (Annexure-9) and the order of the Appellate Authority dated 27.9.2005 (Annexure-16) are quashed and set aside. However, liberty is given to the respondents to proceed with the departmental proceeding from the stage of supplying copy of the inquiry report to the applicant as provided under sub-rule (2) (a) and (b) of the RS (D&A) Rules, 1968, and after considering the representation of the applicant, the Disciplinary Authority as well as the Appellate Authority (if occasion so arises) shall pass appropriate order. It is further observed that till the final decision by the Disciplinary Authority, no further recovery shall be made from the applicant. No order as to costs

Naresh Gupta
(NARESH GUPTA)
MEMBER (A)

Syed Alam
(SYED MOD. MAHFOOZ ALAM)
MEMBER (J)

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