

Original Application No.030/1996

Dated: 06.02.2001

Chandu Budhaji Nanhet

Applicant.

Shri K.B.Talreja

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty

Advocate for
Respondent(s)

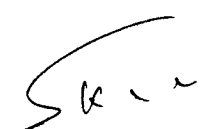
CORAM :

Hon'ble Shri S.K.I. Naqvi, Member (j)

Hon'ble Smt. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not? / X

(2) Whether it needs to be circulated to
other Benches of the Tribunal?


(S.K.I.NAQVI)
MEMBER (J)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.030/1996.

Tuesday, this the 6th day of February, 2001.

Coram: Hon'ble Shri S.K.I.Naqvi, Member (J),
Hon'ble Smt. Shanta Shastry, Member (A).

Chandu Budhaji Nanhet,
Sr. Cashier - Now working
as Sr. Clerk, under Chief Cashier,
Central Railway,
Bombay V.T.
(By Advocate K.B.Talreja)

...Applicant.

Vs.

1. The General Manager,
Central Railway,
Bombay V.T.
2. The FA & CAO (WSI),
Central Railway,
Bombay V.T.
3. The Chief Cashier,
Central Railway,
Bombay V.T.
(By Advocate Shri R.R.Shetty)

...Respondents.

: O R D E R (ORAL) :

{Per Shri S.K.I.Naqvi, Member (J)}

Shri Madhukar Hanuk applied for an advance of Rs.10,000/- from his G.P.F. which was sanctioned and payment was to be made through Shri C.B.Nanhet the applicant of this OA. As per allegations against applicant, the amount was mis-appropriated by the applicant and not paid to Shri Madhukar Hanuk for which there was complaint and the same was enquired into and as per the Enquiry Report, the applicant was found guilty, which was followed by impugned punishment order dt. 13.6.1994 (Annexure - 15 to the OA), according to which the applicant has been imposed with penalty of reduction to lower time scale of post/grade/service and reduced from the post of

Senior Cashier Grade Rs.1400-2300 (RPS) to the post of Sr. Clerk in the Grade Rs. 1200-2040 (RPS) with immediate effect for a period of three years. The applicant preferred an appeal against this punishment order which has been turned down vide order dt. 16.8.1994 and the punishment was confirmed. Without going up in revision, the applicant has come before the Tribunal through this OA seeking the following reliefs:

- (1) This Hon'ble Tribunal may kindly direct the Respondents to set aside the penalty of reduction to the clerical cadre of the applicant, and give all consequential benefits.
- (2) The Hon'ble Tribunal may kindly direct the Respondents to set aside the findings drawn by the E.O., which are vitiated due to nonfollow up of Rules under RS (DA) Rules, 1968 and violative of principle of natural justice and fair play.
- (3) The Hon'ble Tribunal may kindly direct the Respondents to penalise the 'person' behind this fictitious enquiry, which has been given irreparable mental torture and fiscal losses to the applicant.
- (4) The Hon'ble Tribunal is also prayed to make good the fiscal losses, by refunding a sum of Rs. 10,000/- deposited by the applicant along with 18% interest from the date of deposit till the date of actual payment.
- (5) To grant appropriate and equitable reliefs as this Hon'ble Tribunal may deem fit and justified in the circumstances and facts of the case.
- (6) It is also prayed that the cost of this petition be saddled on the Respondents.

Mainly, on the ground that the orders are in gross violation to Rules and principles of natural justice and a false oral complaint has been invited to frame the charge sheet for the alleged temporary mis-appropriation of government money and also on the ground that Enquiry Officer violated the Rule while examining the statement of witnesses. The Enquiry Officer closed the enquiry with a finding of guilt against applicant without applying his mind. The applicant has also taken a plea that the copies of the findings were not furnished to him and he was put

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off from legitimate duties as Cashier and assigned clerical work and thereby there was monetary loss. He has also taken a plea that he has been awarded harsh punishment for slight carelessness.

2. The Respondents have contested the case and have filed a reply through which the impugned orders have been supported and it has been brought to light that the copy of the enquiry report was furnished to the applicant on 18.5.1994. It has also been pleaded that the handwriting of Assistant Station Master could not be compared, for which there was a direction from the side of Disciplinary Authority, because the original could not be produced by the Applicant, when he was called for, and he submitted his application dated 26.4.1994 through which he informed that the original statement and some other documents have either been lost or subjected to theft.

3. Heard the Learned Counsels for the contestants and perused the records.

4. The learned Counsel for the Applicant took us through the evidence as has come up during the Enquiry and submitted that this is a case where there is no sufficient evidence to bring home the allegations against the applicant and the Enquiry Officer has acted erroneously in holding the Applicant guilty in a case where there is no evidence. It has also been submitted that not only the Enquiry Report but also the Order passed by the Disciplinary Authority becomes bad in law for not appreciating the evidence in right perspective. Keeping in view these submissions, we perused the Enquiry Report and the connected documents and find that it is not a case which can be termed to be a case of no evidence. The Counsel for Respondents asserts that if there is some evidence to reasonably support the conclusion of the Enquiring Authority it is not the function of

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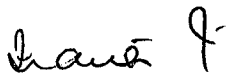
the Court to review the evidence and arrive at its own independent finding. Because the Enquiring Authority is the sole judge of the facts so long as there is some legal evidence to substantiate the finding. Adequacy or reliability of evidence is not a matter which can be permitted to be canvassed before the Court. He has also emphasised that in such matters judicial interference is not warranted where there is some evidence to prove the charges. In support of this contention the learned Counsel for Respondents took us through the settled law laid down in the case of *R.S. Saini vs. State of Punjab & Ors* [1999 (2) SC SLJ 212] and also in the case of *Dr. Anil Kapoor vs. Union of India and Anr.* [1991 (1) SLJ 162]. Keeping in view the facts and circumstances of the matter and also the law cited, we find that it is not a case of no evidence and we are not here to assess whether the evidence has been assessed in right perspective or not. We also take into consideration the statement of the Applicant through application dated 9.1.1992 (Annexure R.7) wherein he has almost admitted the guilt.

5. The learned Counsel for the Applicant has also assailed the appellate order mainly on the ground of its being cryptic and without mention of reasons in support of the conclusion through which the appeal has been dismissed. We perused the impugned order and find that necessary details have been furnished as are required under rules and law in this regard in such matters, where the order appealed against is upheld in the appellate order.

6. The learned Counsel for Respondents also pointed out that after the Appellate Order, the applicant could go in review, but he did not prefer to avail this opportunity and came straight before the Tribunal without exhausting that relief which was available to him by way of review before departmental authority.

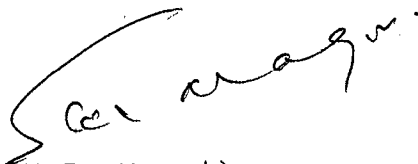
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7. With the position as above, we find no relief sought for through this O.A. can be provided to the Applicant and the O.A. is dismissed accordingly. No orders as to costs.



(Smt. Shanta Shastry)

Member (A)



(S.K.I. Naqvi)

Member (J)

B/sj*