CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Friday the 19th day of September, 2003

Coram: Hon'ble Shri S.G.Deshmukh - Member (J)
Hon'ble Shri S.P.Arya - Member (A)

O.A.777 & 776 of 2000

J.M.Shah,
Ex.Sr.Cashier, Headquarters,
Mumbai, C.S.T.
R/o Kadu's House,
Chinchapadagam, Pen,
District Raigarh.
(By Advocate Shri K.B.Talreja) - Applicant

Versus

1. Union of India,
through the General Manager,
Central Railway, Mumbai, C.S.T.

2. The FA & CAO,
Central Railway,
Mumbai, CST.

3. The Chief Cashier,
Central Railway, Headquarters,
Mumbai, C.S.T.
(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

By Hon'ble Shri S.P.Arya - Member (A) -

The applicant and respondents being the same in both the OAs with the same cause of action, the OAs are being taken together.

2. We have heard the learned counsel for the applicant and learned counsel for the respondents in both these OAs and perused the pleadings.

3. The applicant was suspended on 4.8.1995 for contemplated disciplinary proceedings under Rule 5 (1) of the Railway Servants (Discipline & Appeal) Rules, 1968. The memorandum of charge for

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minor penalty under Rule 11 of the said rules was issued on 26.9.1995 for gross negligence and carelessness and for not having maintained integrity and devotion to duty by remaining absent. Punishment of reduction from the stage of Rs.1520 to Rs.1400/- in the scale of Rs.1400-2300/- for two years w.e.f. 4.12.1995 without having the effect of postponing future increments on expiry of such period, was imposed. His representation of 8.11.1995 for enhancing the subsistence allowance was not accepted in view of his involvement in serious offence. The same was communicated to him. The matter of suspension was reviewed again and it was communicated to the applicant vide letter dated 11.2.1997 that the competent authority has decided to enhance his subsistence allowance by 50% of the amount of his subsistence allowance initially granted to him w.e.f. February, 1997. He made further representations for the revocation of suspension and taking him on duty and made an appeal against the punishment order. In the meantime on 11.2.1997, the punishment order dated 4.12.1995 was amended and made effective from the date of revocation of the suspension. Vide letter of 30.8.1996 the suspension was reviewed and in view of the gravity of offence, neither the suspension was revoked nor the subsistence allowance was enhanced. On 19.12.1996, memorandum of charges was issued under the Railway Servants (Discipline & Appeal) Rules, 1968 to the applicant and the disciplinary authority on 12.5.1999 imposed the penalty of

removal from service under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. On appeal, personal hearing of applicant was not found necessary and on 9.8.1999, the Appellate Authority rejected the appeal by upholding the penalty. After giving the personal hearing on 24.1.2000 and taking into consideration the representations made by the applicant, the Revisional Authority i.e. the General Manager on 8.3.2000 confirmed the penalty.

4. A direction has been sought by this application to revoke the suspension order from the date the minor penalty was imposed with full wages for the suspension period and also to declare the second charge sheet being null and void and quash the orders of the disiciplinary authority, appellate authority and the revisional authority and Enquiry Officer's report.

5. Non-revocation of suspension of punishment order being discriminatory and violative of Articles 14 and 16, two charge sheets having been issued: one for minor penalty and the other for major penalty for the same matters, reasons for findings have not been given in the Enquiry Officer's report. Enquiry report being just a note submitted to the disciplinary authority and non-issue of show cause notice for enhancing penalty are the grounds on which the order has been assailed.

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6. It is well settled in law that jurisdiction of Tribunalis limited in disciplinary matters. Interference in disciplinary matters or punishment cannot be equated with an appellate jurisdiction. It therefore cannot interfere with the findings of the Enquiry Officer or competent authority unless these are arbitrary, being violative or specific statutory provisions and negate the rules of natural justice. The adequacy of penalty also cannot be gone into by the Tribunal unless it is a result of malafide action of the competent authority.

7. The brief facts are that the applicant while discharging the duties in the capacity of Cashier/HQ in the month of July, 1995 was entrusted with Government cash for disbursement of payment on 31.7.1995. He was supposed to hand over the charge to the relieving Cashier on 31.7.1995 on account of rotation of Districts after every three months. The applicant after reconciling his accounts handed over the cash to the other Cashier but did not resume his duties on 1.8.1995 and remained absent till 3.8.1995 on the ground of illness. He resumed duties only on 4.8.1995. A shortage of Rs.64,024/- was detected and he was also handed over to the Police. A criminal case is under trial under Section 409 of IPC in a competent court.

8. It was contended that departmental action cannot precede the prosecution in view of the Railway Board's letter dated 22.3.1982. It was considered and a reply to the applicant on 6.11.1997 was sent that there is no legal bar for taking up the

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disciplinary proceedings against the applicant in view of the letter of Railway Board dated 22.3.1984. We find that the disciplinary proceedings and criminal proceedings are different in nature and the scrutiny of the evidence in both the cases is not the same. The charges have been levelled against the applicant of negligence and carelessness and serious misconduct having been committed by failing to maintain absolute integrity and devotion to duty by violating the provisions of Railway Services (Conduct) Rules, 1966. It would thus be clear that the charges in the criminal court and the charges in the present departmental case are not on the same footing and cannot be equated.

9. The applicant has further contended that two charge sheets cannot be issued for the same matter. We find that the charge sheet issued on 26.9.1995 was for a minor punishment but after a fact finding enquiry the charge sheet for major penalty under Rule 9 of the said rules was issued keeping in view the gravity of the charge involving loss to the Government to the tune of Rs.62,024/-. The issue of charge sheet under Rule 9 was delayed because of the non-receipt of fact finding report which was necessary before issuing the charge sheet. Suspension and subsistence allowance was reviewed from time to time and it was on 23..8.1996 when it was decided and communicated to the applicant that the suspension has to be continued. The orders of punishment dated 4.12.1995 were ordered to be made effective from

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the date of revocation of suspension and thus no illegality or violation of any statutory rule by issue of the second charge sheet for major penalty was committed by the Administration.

10. It is contended that on 4.8.1995, the shortage of Rs.62,024/- in the Government cash and making good of the same amount by 7.8.1995 was got written from the applicant under duress and therefore this cannot be treated as confession or admission of guilt. The plea would have appeared reasonable, had the applicant moved to the authorities immediately, say within a week or so, that such a confession was got written under threat and duress. However, there is nothing on record to show such a communication or a complaint made to higher authorities stating the letter accepting the shortage and making good the amount of shortage by 7.8.1995 was written by him under threat or duress.

11. The contention that the enquiry report of the Enquiry Officer was a note on the file and therefore it cannot be treated as an Enquiry Report, does not hold ground as the report consists of charges, evidence of the witnesses for cross-examination by ARE (Assistant Railway Employee) and findings on all articles of charges separately. The plea therefore is not acceptable. It was further contended by the applicant that the orders imposing penalty and disposing of the appeal and revision are sketchy. This is also not tenable because they are all speaking orders

containing all the relevant points in issue and findings thereon. Absence of Roznama i.e. daily proceedings does not vitiate the enquiry as such.

12. Relying upon the decision of Five Judge Bench of the Central Administrative Tribunal in OA 560 of 1996, J.S. Kharat Vs. Union of India, (2002 (3) ATJ 276), it was contended that the applicant was entitled to the subsistence allowance on the basis of revised pay from 1.1.1996.

13. The learned counsel for respondents has drawn our attention to the GSR No.584 dated 8.10.1997 notifying the Railway Servants (Revised Pay) Rules, 1997, Rule 7 - 1 (D) Note -3 reading -

> ".....In case of Railway Servant under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings."

We find that the matter is substantially similar to the matter involved in J.S.Kharat (supra) case with regard to subsistence allowance in the revised pay scale. This was also discussed in detail in OA No.1098 of 2002 K.Venkatesh Prasad Vs. Union of India and others by the Bangalore Bench of the Central Administrative Tribunal, (2003 (2) ATJ 542). It held that the suspended employee is entitled to subsistence allowance which is payable month to month and it has to be paid on the basis of

revised pay scale. We have no reason to disagree with the ratio given in these judgments and are bound by the rulings given with regard to the subsistence allowance. We accordingly hold that the applicant was entitled to subsistence allowance as would have been admissible to him in the revised pay scale. However, it is made clear that non-payment of subsistence allowance to the applicant during the period of suspension would not vitiate the enquiry as such. This benefit would be admissible to him because of the rulings of the Tribunal and not under the statutory rules.

14. The applicant himself has given in writing about the shortages and the reasons advanced by him for such shortages have been enquired into by the authorities. Receipt of the copy of the enquiry report is not denied. It can, therefore not be contended that the applicant's case has been dealt with arbitrarily.

15. It was contended that the procedures prescribed for the enquiry were not followed. However, what procedure was violated has not been specified in the arguments. The contention therefore is not acceptable.

16. It was also contended that fact finding report was not made available to the applicant. It is clear from the memorandum of charge dated 19.12.1996 that the fact finding report has not been cited in the list of documentary evidence which is relied upon. The non-supply of the fact-finding report, therefore,

neither prejudices the applicant nor it vitiates the enquiry. All documents cited in evidence in Annexure-III of the charge memo have been made available to the applicant on 7.2.1997. The fact finding enquiry was conducted by senior officers in compliance of the executive instructions with a view to ascertain the exact shortage and to ensure that the delinquent employee is not unnecessarily put to hardship in departmental action. Since it is not the basis on which the delinquent employee has been punished, therefore it does not prejudice the applicant.

17. It was also contended that the provisions of Chapter XIX of the Indian Railway Financial Code Volume -I for Cash & Pay Department has not been complied with. It would be clear that the shortage was enquired into by the fact finding committee of senior officers and the Committee found established that there is no failure of checks and verifications by the supervisors. So we find that this plea has no force.

18. The arguments has been advanced by the learned counsel for the applicant that with the punishment order dated 4.12.1995 the suspension would be deemed to have been revoked as has been done in the case of Shri M.N.Nair Vs. Union of India & others, in OA 252 of 1994. The facts and circumstances of M.N.Nair's case being different cannot be applied to the present case because in this case the applicant was handed over to police

custody for more than 48 hours. Under Rule 5 (2) of the Railway Servants (Discipline & Appeal Rules, 1968 the applicant would be deemed to be suspended by the appellate authority. However, in the present case he is suspended by the competent authority and this was reviewed from time to time and the decision was taken to continue the suspension. The criminal proceedings are already going on against the applicant in the trial court. Therefore the revocation of deemed suspension is not acceptable.

19. It was also contended that there was undue delay in the finalisation of disciplinary proceedings. We find that the delay was caused by non-finalisation of fact finding report which was necessary for framing the charge sheet under the executive instructions. Therefore the delay in finalisation does not vitiate the proceedings.

20. In view of the findings herein above, we find no merit in the OAs. This deserves to be rejected except for the payment of subsistence allowance in the revised pay scale for the period of suspension. Respondents are directed to make the payment of enhanced subsistence allowance in the revised pay scale w.e.f. 1.1.1996 till the date of removal from service within a period of one month of the receipt of a certified copy of the order.

21. No order as to costs.

(S.P.Arya)
Member (A)

(S.G.Deshmukh)
Member (J)

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