

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 20th day of February, 2002

Coram: Hon'ble Mr.Justice Ashok Agarwal - Chairman
Hon'ble Mrs.Shanta Shastry - Member (A)

O.A.719 OF 2001

S.Y.Kulkarni,
Head Booking Clerk,
Ghatkopar Station,
Central Railway,
r/o 2/1, Sant DhyaneShwar Colony,
Near Sriram Theatre,
Post Katemaneli
Taluka,Kalyan
(By Advocate Shri G.S.Walia) - Applicant

Versus

1. Union of India,
through the General Manager,
Central Railways,
Headquarters office,
Mumbai CST, Mumbai.
2. Divisional Railway Manager,
Mumbai Division,
Central Railway,
DRM's Office, Mumbai CST,
Mumbai.
3. Chief Commercial Manager (PC)
Central Railway,
Headquarters Office,
Mumbai, CST,
Mumbai.
(By Advocate Shri R.R.Shetty) - Respondents

ORAL ORDER

By Hon'ble Mrs.Shanta Shastry, Member (A) -

Disciplinary proceedings were initiated against the applicant by issuing a charge sheet on 19.11.1998. The Articles of Charge reads as follows:-

Articles of charges framed against Shri S.Y.Kulkarni, while posted at C.S.T., Mumbai and working as Head Parcel Clerk on 1.4.1998 in Parcel Office was detected to have committed serious irregularities in as much as.

He is held responsible for Booking the consignments and issuing Railway Receipt to the consignor's without realising due railway freight. Railway receipts were handed over to the parties and at

the time of check neither cash nor railway receipt was with Shri S.Y.Kulkarni, HPC. His action therefore amounted to temporary misappropriation of railway freight. Thus he favoured the consignment with ulterior motive at the cost of railway revenue.

By the above act of omission and commission Shri S.Y.Kulkarni has shown lack of integrity, devotion to duty and has acted in a manner unbecoming of rule 3 (i) (ii) (iii) of Railway Servants (Conduct) Rules, 1966."

2. On his pleading not guilty a regular enquiry was conducted against the applicant. The Enquiry Officer gave his report along with findings on 29.10.1999. A Copy of the enquiry report was given to the applicant to enable him to make a representation, if any. The applicant gave his representation on 22.12.1999. Thereafter the impugned order of major penalty was passed by the disciplinary authority on 1.2.2000 (Annexure-A-6) imposing the punishment of reversion to the lower scale and fixing his pay at the basic of the lower scale for a period of two years with cummulative effect. The applicant preferred an appeal against the aforesaid order of punishment. The said appeal was rejected on 5.6.2000. Thereafter the applicant filed Revision Petition to the Chief Commercial Manager, CST, Mumbai and after considering the same, the Revising Authority passed orders on 15.3.2001 modifying the penalty to that of reduction from the scale of Rs.5500-9000 (RSRP) to Rs.5000-8000 (RSRP), fixing pay at Rs.5000/-, for three years without cummulative effect. Aggrieved by the aforesaid penalty order, the applicant had approached this Tribunal seeking to quash and set aside the order of punishment dated 15.3.2001 with all consequential benefits.

3. The contention of the applicant is that the impugned orders have been passed ignoring the principles of natural

justice. The report of the Enquiry Officer is perverse and is not based on any cogent evidence. No charge of misappropriation has been proved against the applicant nor any ulterior motive proved. Even the Revising authority came to the conclusion that the gravity of the charge was not such as to require imposition of heavy penalty and therefore reduced the penalty but this conclusion has been arrived at without discussing any evidence. Further the learned counsel for the applicant points out that there was no Presenting Officer. He conducted the examination in chief himself. The Enquiry Officer acted in both capacities as Enquiry Officer and Presenting Officer. The applicant was not given an opportunity as prescribed under sub rule 21 of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 according to which after the Railway servant closes his case, the Enquiry Officer shall if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him. Since the applicant had not examined himself, according to the learned counsel, the Enquiry Officer should have questioned him on the circumstances appearing against him in the evidence. Since this has not been done, the enquiry is vitiated. The learned counsel tried to point out that the Enquiry Officer had asked leading questions by way of clarification which is also not permissible. He has taken us

witnesses. For example Question 10 on page 28 of the Paper Book and Question 18 of Prosecution Witness No.2 - Shri D.L.Gumgaonkar on page 31 of the Paper Book. These are leading questions. Further, according to the applicant, the Enquiry Officer has not assessed the evidence properly.

4. We have heard the learned counsel on both sides. It is not for this Tribunal to reassess the evidence. We find that the Enquiry Officer has examined the prosecution witnesses as listed in the Annexure to the charge sheet. He has given enough opportunity to the applicant to cross-examine the witnesses through his ARE. He has also, after the evidence was closed, given an opportunity to the applicant to produce any material/documents and asked if he wished to examine himself as a witness in his own case and whether he wanted to say anything more. This goes to show that the Enquiry officer has not failed to comply with sub rule 21 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The learned counsel for the applicant argues that this is not the manner in which the Enquiry Officer should have examined the applicant but we find that the very first question that was asked of the applicant was as follows:-

"Q.9 Now you have heard the evidences of PWs and please state if you plead guilty to the charges framed against you?"

The second question was -

"Q.10 Please state whether you wish to produce any documents/witnesses in your defence?"

He was also asked whether he was satisfied with the enquiry proceedings and the applicant had expressed his satisfaction. He did not at that time raise the point that the Enquiry Officer had not asked him any specific question or had not sought his clarification in regard to the evidence against the applicant. This being so we do not agree that the applicant was not given proper opportunity as per sub rule 21 of Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968. The applicant has raised the point regarding the Enquiry Officer acting as Enquiry Officer as well as Presenting Officer. There is nothing wrong in this. The applicant did not raise the point before the enquiry commenced. The applicant has also alleged that the Enquiry Officer had not assessed the evidence properly before giving the findings. We see from the report of the Enquiry Officer that he has given reasons and remarks and his assessment of evidence (Please see page 21 of the Paper Book). He has discussed entire evidence including the defence brief given by the applicant. It is only after analysing the evidence that the Enquiry Officer came to the conclusion that the charge is proved. The

disciplinary authority has agreed with the findings of the Enquiry Officer and accordingly imposed the penalty. The Revising Authority in his order dated 15.3.2001 also has referred to the issues raised by the applicant in his Revision Petition namely denial to make good the shortage through M/s Goodwill Company that he was falsely implicated in the case ; that certain cross-examination by the Enquiry Officer indicated bias against him; that enough documentary evidence was ^{not} _{not} produced to prove the charges and that he had referred to the system of defence. This goes to show that the Revising Authority has fully applied his mind to the issues raised in the Revision Petition and has then arrived at the conclusion. The Revising Authority only took a lenient view as he felt that harsh penalty had been imposed by the disciplinary authority was not called for. However, he did not say that no penalty was called for. He, however, reduced the penalty. We thus find that both the Disciplinary Authority and the Revising Authority have decided upon the penalty after careful consideration of the enquiry report as well as the evidence in the enquiry report. We do not find any infirmity therefore in the orders passed. The order of the Revising authority is also a reasoned speaking order. In the facts and circumstances of the case, we do not consider this a fit case for interference. Accordingly the OA is dismissed. No costs.

Shanta S-
(Smt. Shanta Shastray)
Member (A)

Ashok Agarwal
(Ashok Agarwal)
Chairman

mb

dt: 20.7.2002.
Order/Judgement despatched
to Applicant/Personent (s)
on 7.3.2002

AB
1413