

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A. NO:

443/891

T.A. NO:

DATE OF DECISION

10-1-92

SRI V. PADMANABHAN

Petitioner

Advocate for the Petitioners

Versus

UNION OF INDIA

Respondent

SRI J. G. SAWANT

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, VICE-CHAIRMAN,

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
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? *✓*

mbm*

U.C. SRIVASTAVA

V.C.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

(9)

Original Application No.443/91.

Shri V.Padmanabhan.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman,
Hon'ble Shri M.Y.Priolkar, Member(A).

JUDGMENT:-

Dated: 10.1.92

(Per Shri Justice U.C.Srivastava, Vice-Chairman)

This is a second inning by the applicant who was Assistant Personnel Officer in Central Railway to which post he rose from the position of a clerk on which he was appointed in the year 1957, before this Tribunal. He approached this Tribunal after exhausting departmental remedy against the order dated 15.10.1981 retiring him compulsorily from service by way of penalty after inquiry some seven years before attaining the age of superannuation. The matter came for hearing before a Bench of this Tribunal to which one of us [Shri M.Y.Priolkar, Member(A)] was a Member and the Bench after arriving at certain conclusion set aside the appellate order dated 8.2.1983 as it was a non-speaking order and directed the appellate authority to consider the appeal afresh in accordance with law and in the light of observations made in the body of the judgment. After hearing the applicant the Bench interalia made the following observations:

- (i) We do not find that the non-production of this document (copy of the department of personnel and administrative reforms OM No.134/1/81/AD-I dt. 13.7.1981) had prejudiced this applicant, in any way. The non-production of the other items of documents has been explained by the Senior Divisional Personnel Officer in his affidavit as they were not available. We do not accept the applicant's version that he had been prejudiced, in any way by non-inspection of those documents.

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10

- (ii) We find some substance in this argument. Under Sub-clause (c) of clause (ii) of Sub-rule (25) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968; the inquiring authority, where it is not itself the disciplinary authority shall forward to the disciplinary authority the records of inquiry which shall include the oral and documentary evidence produced in the course of the inquiry. The language of the clause shows that forwarding the same to the Disciplinary Authority by the inquiring authority is mandatory. We do not find that the same had been complied with by the Enquiry Officer. It is curious that although this ground was taken by the applicant this was not at all considered by the Disciplinary Authority in imposing the major penalty on the applicant as also by the Appellate Authority while affirming the decision taken by the disciplinary authority and rejecting the appeal preferred by the applicant.
- (iii) It was obligatory on it to record reasons for which he agreed with the findings of the Enquiry Officer and came to the conclusion that the articles of charges framed against the applicant had been proved. We must comment that this aspect of the matter should not have escaped the consideration by the Appellate Authority.
- (iv) The appellate authority had not given any hearing to the applicant though it was not expressly desired by him. That being the position we have no other alternative than to hold that the order passed by the appellate authority cannot be sustained and that it is liable to be set aside.

It was argued on behalf of the applicant that there was absolutely no evidence to sustain the charge and there are contradictions appearing in the statement of witnesses examined by the management. The question of supplying the copy of the vigilance report to the applicant was not at all important or relevant for the purpose of defending his case. It was thereafter personal hearing was given by the appellate authority which after hearing dismissed the appeal by giving its reason for the same. The revision application against the same too was dismissed whereafter the applicant has approached this Tribunal again.

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2. The disciplinary proceedings were initiated by the disciplinary authority viz. Senior Divisional Personnel Officer by serving a memorandum of charges on 26.2.1980 on the applicant. The charges against the applicant were mis-appropriation of a sum of Rs.200/- and temporary embezzlement of Rs.19,663.48 and the details of which ^{as} are hereunder:-

- (i) He did not pay the amount of Rs.200/- which was sanctioned as S.B.F. supplementary grant for the year 1975-76 to the authorities of the THK Railway institute.
- (ii) He did not pay the amount of Rs.400/- (Rs.200/- for Lonavala Railway Institute) which was sanctioned as S.B.F. grant for the year 1975-76. This amount of Rs.400/- was kept by the applicant from September, 1975 and was returned to the administration only on 23.9.1979 after repeated directions. Thus he misappropriated the amount of Rs.400/- for a period of 4 years.
- (iii) He did not pay Rs.1050 (Rs.450) to Kalyan Jr. Institute and Rs.600/- to Lonavala Institute which was an amount of S.B.F. grant sanctioned for the year 1975-76 in favour of these institutes.
- (iv) He did not pay the amounts of S.B.F. grant for the year 1976-77 which was sanctioned in favour of the following 7 institutes named therein. The total amount involved is Rs.3,982. The payment was drawn by the applicant on 8.4.1977 but it back to the Railway Administration after repeated directions only on 25.9.1979. Thus, he misappropriated the amount of Rs.3,982/- for a period of 2½ years.
- (v) He did not make the payment of SBF grants for the years 1973-74, 1975-76 and 1976-77 to the authorities of the institutes immediately after drawal of the amounts from the cash office but delayed the payment. An amount of Rs.15,000/- was sanctioned by S.B.F. for conducting children's camp during 1976-77. This amount was drawn by Shri Padmnabhan in December, 1976/January, 1977. Certain camps for children were held during the year 1977 for which an unaudited accounts Rs.10,880.77 has been submitted by the applicant in 1979. The balance amount of Rs.4,119.23 was returned to the administration by him after repeated directions on 26.10.79. Thus he temporarily misappropriated an amount of Rs.4,119.23 for nearly three years.

12

It is not necessary to enter into details and the application moved by the applicant and the successive appointment of more than one enquiry officer. The applicant denied the charges against him and stated that there was no embezzlement or no misappropriation of any amount so alleged. The amount of Rs.200/- had already been paid to the party concerned and amount for which he was charged with misappropriation was never with him but was kept and available in the office itself. Regarding the sum of Rs.200/- the defence of the applicant was that the said amount had actually been paid to Shri S.S.Sukthankar, the then subordinate Inspector and the witness was examined, and the S.W.I. was requested to verify the same from the records but the same was not done. Before the enquiry officer, he submitted a copy of the statement of account for the year ending 31.12.1973 to 31st December, 1974 and 31st December, 1975 issued by the Secretary of the said institute showing the amount as received by the Misc. cash receipts for all the three consecutive years, which according to the applicant included the said account of Rs.200/- also. According to the applicant his request for examining the Secretary and the treasurer of the said institute was not accepted which according to the applicant would have proved that under the Misc. cash receipts and donations this amount of Rs.200/- was included. This amount of Rs.200/- was out of total amount of Rs.4000/- which was sanctioned for the Railway Institutes of Bombay Division in the month of September, 1975 and was to be disbursed amongst 14 Railway Institutes. In the DPC's affidavit dt. 4.1.1989 it was mentioned that the certificate together with three years audited report were not traceable on record. If that was so the examination of the witnesses prayed for should have been permitted. The findings against the applicant was recorded by the enquiry officer on the ground

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that the receipt for payment was not available.

3. Regarding the other amounts for which the applicant was charged with temporary misappropriation, the applicant's defence was that he had no power to disburse the amount to the concerned institutes. He was working under the direction and control of A.P.O. Welfare.

4. The fact remains that the amount which was to be disbursed for certain reasons good or valid or otherwise the amount was under the reach and control of the applicant for about 4 to 5 years. It may have been safe with the office if it was there and may not have been appropriated even temporarily by the applicant yet it was not returned back to the Railway Administration. This action was positively against the instructions issued by the Government of India which clearly provide that by the end of the year all such amount which has not been disbursed and utilised shall be returned. The applicant did not return the said amount and has taken a plea that it could not be credited back to the Railway Administration since the grant could not be re-passed. The amount could ~~not~~ have been returned despite the same which could not be made a condition precedent. The applicant's assertion that the amount was in the office in the cup-board seems to have not been challenged or controverted in the enquiry proceedings. The defence of the applicant was that the amount in question was kept by him in the cup-board in the office in the knowledge and authorities, a fact which was stated by him in writing as well as in the oral statement. According to him he could not have disbursed the said amount to the institutes against specific direction and fear of non-utilisation for the purpose it was to be disbursed and there was every danger of its mis-utilisation.

(14)

4(a). According to the applicant he was entrusted with the responsibility of disbursing of S.B.F. grounds to authorities of the institutes and he had to take care to see that the grants were disbursed after satisfying with the instructions, were functioning efficiently and actively. According to him he was a trustee having responsibility in the matter of grant though it was not a part of duty as per duty list. But he was compelled to do these additional duty. He also stated that the childrens' Camp during 1976-77 were not held and as such there was no question of disbursing the grant for the said purpose.

5. The enquiry officer held the applicant to be guilty of the charges and relying on the enquiry officer's report, the disciplinary authority without discussing the findings and evidence agreeing with the report held the applicant to be guilty of the charges levelled against him and passed the punishment order viz. retiring him from service. The applicant has filed a departmental appeal against the order which was dismissed by a

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was dismissed by a non-speaking order. The said order was set aside by this Tribunal and the appellate authority was directed to hear the applicant and pass a speaking orders as referred to above.

6. The first ground for attacking all the orders by the applicant in the instant case which was urged before us was that the enquiry officer's report was not given to him before awarding punishment order and he was thereby deprived of reasonable opportunity to defend himself and to represent against proceedings, findings and the proposed punishment ^{in violation of} the principles of natural justice. This plea on the basis of the Full Bench decision in P.K.Sharma's case which view was later on affirmed by the Supreme Court in the case of Union of India v. Mohd. Ramzan Khan, AIR 1991 SC page 471 was taken in the earlier application. Before decision of the case ^{by} the Tribunal the applicant vide appeal in his Misc. application No.319 of 1989 dt. 7.4.89 gave up his right to rely on the said P.K.Sharma's case stating that the said case was not likely to be decided by the Supreme Court early and he cannot wait till then. It was after giving up this ground that his earlier case was decided by the Tribunal. It is no longer open to the applicant to raise this plea again and more so after the decision of his appeal second time which was decided after hearing him.

7. It was next contended that the appellate authority which heard the appeal again in pursuance of the direction given by this Tribunal ignored the findings and even some of the directions given by the Tribunal. The findings recorded by the Tribunal which had become final and binding on the parties as well as the Tribunal were ignored and that too without assigning any reasons. In this connection it was contended that the Tribunal earlier recorded a clear finding that the provisions of Sub-clause (c) of Clause-II of Sub-rule (25) of Rule 9

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of the Railway Servants (D & S) Rules, 1968 were mandatory but the same were not followed as the enquiry authority as though required it did not forward the record to the disciplinary authority which included all the oral and documentary evidence. The appellate authority did not touch this ground at all. The violation of the above mandatory provision of the rule vitiates ~~xxx xxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ the order passed by the disciplinary authority which could be said to be not thus based on perusal of evidence on record according to applicant that is why there was no discussion in the order or reasons and the agreement was recorded on perusal of the report without perusal of evidence which even in the absence of representation of the applicant would have showed that the findings were not strictly based on evidence as relevant evidence was ignored and the applicant's prayers ~~stage~~ for examination of witnesses or production of documents were bypassed. This serious flaw in violation of the mandatory provisions of the rules vitiates the conclusion and findings so recorded by the disciplinary authority and the punishment order based on it. Because of this ground and the findings recorded by this Tribunal earlier referred ^{to} /above the appellate authority should have set aside the order passed by the disciplinary authority and send back the matter to the disciplinary authority for considering it in accordance with law, ~~and~~ but the same was not done, and the application deserves to be allowed on this ground itself.

8. Coming to the next contention regarding the finding that Rs.200/- were embezzled by the applicant the applicant who denied the allegation, prayed for an opportunity to examine the treasurer and secretary of the Thakurali Railway Institute to prove that there was no misappropriation of Rs.200/- ~~was~~ which in fact was paid to the institute ~~was with~~

him ^{his prayer} but was not accepted.

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9. It is true that the receipt was the best evidence but in the absence of the same it could have been proved from other evidence also. The applicant in his written reply and oral statement asserted that amount was paid and the accounts to which reference was made included it. In the absence of any other evidence to the contrary it could not have been stated on the receipt itself. If the applicant's version was not going to be accepted the witnesses prayed for by him should have been examined which was still more necessary when there was no report of any accountant and auditors thereof that the said amount of Rs.200/- is not included in the accounts referred to by the applicant. The applicant was thereby deprived of reasonable opportunity to defend himself.

10. Regarding the findings as to temporary misappropriation it was contended that in the affidavit of Senior D.P.O. dt. 26.6.1988 which is on the record it has been admitted that the charge against the applicant is that he retained the Government money for official work and not that he misused the amount for private works. This indicates, ~~that~~ if that be so even then in the memorandum of charges it was given the nomenclature and shape of temporary misappropriation for reasons best known to the framer of the charge. According to the case of the applicant the amount was not appropriated at all by him what to say of misappropriation and the payment was withheld under the direction of superior authority and further it was also his duty to see that amount should not be paid for the purpose of wasting it or appropriating it by one who has

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no right to do so. The conditions and working of payees and the ^{existed} condition as it/did not warrant any payment to these institutes. ~~_____~~

11. The finding on the point of misappropriation according to the applicant have been given ignoring the relevant facts, evidence and availability of money in office and never in actual possession of applicant who did not use it at all for any private purpose as was admitted in affidavit referred to above. The contention of the applicant is not without substance, however no opinion could be expressed as it is for the Departmental authority to consider.

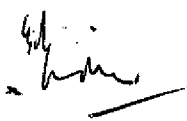
12. It is not necessary to consider the applicant's plea regarding failure to supply material document vitiating the enquiry as was reiterated in the case of Chandrma Tewari v. Union of India 1988 SCC (L & S) 288= (1987) 5 ATC 369 as it is for the departmental authorities to consider it, that too in the light whether the same has prejudiced the applicant or not.

13. In view of what has been said viz. not forwarding the ~~entire~~ entire evidence to disciplinary authority which recorded its findings ^{not} giving reasonable opportunity to defend viz. examination of witnesses in respect of charges regarding evidence, non-consideration of relevant evidence, the application deserves to be allowed and is accordingly allowed and the order of retirement dated 15.10.1981 and appellate order dt.8.2.83 revision order dated 16/12/81, are quashed. The applicant will be deemed to be continuing in service till the date of superannuation on which date the enquiry against him

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19

was pending. The disciplinary authority will decide the matter after going through the evidence in respect of charges and will find out whether the same stands proved from the evidence or have been inflated and twisted. It is for the disciplinary authority to decide case for any punishment has been established which decision is to be in commensurate with the charges proved. The decision to go ahead with enquiry will be taken within one month from the date of communication of this order and if it is so decided the enquiry shall be concluded within two months in accordance with law.


(M.Y. PRIOLKAR)
MEMBER(A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN.