

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 704/91

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DATE OF DECISION: 20.10.1994

N.K.Gupta Petitioner

Mr. G.S. Walia Advocate for the Petitioners

Versus

U.O.I. & Ors. Respondent

Mr. M.S.Ramamurthi Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, V.C.

The Hon'ble Shri P.P. Srivastava, Member(A)

1. To be referred to the Reporter or not ? *ND*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *ND*


Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A. NO.704/91

N.K. Gupta

..Applicant

V/s

Union of India & Ors.

..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri P.P.Srivastava, Member(A)

Appearance:

Mr. G.S.Walia

Counsel for the applicant

Mr. M.S.Ramamurthi

Counsel for the Respondents

ORAL JUDGEMENT:

DATED: 20.10.1994

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the order holding him guilty of a minor charge and imposing the punishment of withholding one increment for a period of one year.

2. The applicant joined the Indian Railway Service Engineer (I.R.E.S.) on 25.1.1972 and in course of time was raised to the position of Deputy Chief Engineer (Construction) and was in charge of Bhuj-Naliya construction work from 2.7.84




to 23.4.1988. He came to be transferred out of the project on 23.4.1988. On 18.7.1989 the applicant was served with a charge sheet which contained three heads of charges which, briefly, indicated that he was found responsible for lack of supervision during July 1987 to April 1988 and acceptance of oversized ballast and passing bills in violation of the contract conditions and specifications of tender nos. BVJ 105, 106 and 107. Out of 41 samples checked in a stretch of 25 kms discrepancy in measurements was observed in 37 samples. Overpayments were made to the contractors in the running bills without getting the measurements, in violation of standing instructions.

3. The applicant filed a reply on 4.8.89 Exhibit T which comprises two parts and each of these parts runs into six pages. The contention of the applicant was that one R. Balasubramanian who was the Chief Engineer during this period was biased against him because of a disagreement expressed by the applicant regarding the commendation publicly of a contractor Jadeja. He contended that even if some slackness or defects were to be detected in the working of some of the subordinates, who were primarily responsible, it was unfair to implicate the applicant when he had received appreciations and commendations in respect of work done by him. According to him the P.W.1 AEN & XEN were responsible, if at all, for the irregularities and the charge was silent as to the time, date and place and the particulars of the persons who had received the material and had measured the quantities. He submitted that he had issued instructions that the billing of ballast should not be done until an interval of 15 days expired. If his directions were not obeyed he could not be held responsible. After receiving his reply the disciplinary authority passed a cryptic order dated 28th

September 1989 to the effect that since the construction work was to be done within target time which itself implied that he had to ensure that his subordinate officers and staff worked properly and that the working of the contractors concerned was according to the standard required. The release of payment of bills to the contractors would have to be according to the work done and contractual conditions. The chargesheet refers to specific failures and overpayments, which have not been effectively answered. Shri Gupta has obviously failed in his supervision and to arrest irregularities. The applicant appealed and the President on receiving the advice of the Union Public Service Commission (UPSC) on 3.7.92 rejected the appeal. These two orders are being challenged by the applicant.

4. The Id. Counsel for the applicant took us in detail to the memorandum of the charges and the reply submitted by the applicant to the charge sheet. We have already pointed out that the reply ran into about 12 pages. We were taken through the order passed by the Disciplinary Authority. We find that the charges were deficient with regard to the date, time and place of each of the irregularities alleged to have been noticed and the particulars have not been furnished in the charge sheet regarding the persons who had received the ballast and had done the measurement and who were directly responsible for the lapses. It is true that the applicant had not by his reply specifically asked either for the inspection of the documents on which the charge was based or the particulars, but that was the theme repeated at several places in the reply.

5. We asked the Id. counsel for the respondents to let us have an indication of the material on which the charges



were based but what was brought before us was the document purporting to be an investigation report made in the year 1989 which had not even furnished any of the particulars to the applicant which according to the Ld. counsel for the applicant should have been mentioned in the charge. Mr. Bhatnagar, Under Secretary of UPSC, who tendered the advice, it appears turned down the points raised by the applicant in his reply to the charge sheet. Vide para 6 of the opinion dated 31.3.92 the UPSC observed that the second allegation as well as the first allegation regarding acceptance of oversized ballast were framed on the basis of sample checks carried out in respect of which 12 joint notes containing copious calculations/tabulations have been forwarded together with the records of the case. They also observed that Shri Gupta has repeated the argument given in the case of the first allegation, namely, that the charge is false at least for the period from 25.3.88 to April, 1988 and ~~hence~~^{thereby} accepted the allegation except for the short period from 25.3.88 to April 1988. They note that Shri Gupta has admitted that he had written to all subordinates vide office order dated 1.2.86 (Annexure XIII to his written brief) to the effect that it had been noticed during the preventive check that some quantity of ballast was used soon after measurement but without passing the bill; and that as per the extant instructions prior approval of XEN (C) should have been obtained. With this office order, he had enclosed Headquarters circular No.1108 dated 6.3.78, containing detailed instructions in this behalf. They, therefore, observe that though the lapse of a similar nature had come to his notice much earlier to the period of present imputation (viz. July, 1987 to April, 1988) he failed to ensure the required supervision.

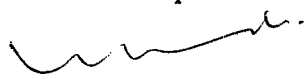
6. It is difficult to see how this statement could have been construed as an admission. When several points were raised in the reply it was the duty of the Disciplinary Authority to deal with all the material contentions raised by the applicant. The ~~superintendent~~ ^{appellate discipline} authority avoided that responsibility by passing a very vague order without trying to come to ~~the~~ grips with the contentions raised. The opinion of the UPSC on the basis of which the President passed the order rejecting the appeal ^{fares} ~~appears~~ no better. Rule 11(1) of Railway Servants (Discipline and Appeal) Rules, 1968 provide ^{that} subject to the provisions of sub-clause (iv) of clause (a) of sub-rule (7) of Rule 9 and sub-rule (4) of Rule 10, no order imposing on a Railway servant any of the penalties specified in clauses (i) to (iv) of Rule 6 shall be made except after -- (a) informing the Railway servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal. In B.D. GUPTA Vs. STATE OF HARYANA (SC), 1973 All India Services Law Journal p.23, it was observed in para 10 as under:

"We were told that since the appellant was aware of the charge and also aware of the reply he had given to the charges made against him, it was enough for Government to tell him that his answer, was unsatisfactory. It was argued that since the "Show Cause notice" really pointed this out and mentioned

that the very lenient sentence of censure upon the appellant's conduct was going to be imposed, there was nothing further that Government could be expected to do in this case. We have no hesitation of rejecting this contention made out on behalf of the State. It is manifestly clear that the "Show Cause notice" was too vague to permit the appellant to deal with it effectively and that consequently the order of censure passed on him is bad and liable to be struck down."

In STATE OF ORISSA Vs. DR. (MISS) BINAPANI DEI & ORS. AIR 1967 SC 1269 it was observed "The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences.

7. The Ld.Counsel for the respondents urged that since rule 11 in so far as it related to a minor penalty-enquiry did not require an elaborate oral hearing and if the applicant



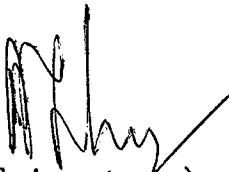
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wanted hearing he should have made such a prayer in the reply and asked for furnishing the documents or for inspection of those documents. It is difficult to accept this submission. What is required is that it should be clear from the charge sheet and the statement of imputations that material facts on which the charges are based must be brought to the notice of the delinquent. It is essential that he is not asked to ~~reopen~~ ^{grope in} the ~~dark~~ ^{dark} for finding what possibly is going to be the evidence against him. If such material were to have been made available to him it would have been possible for him to answer the charges properly. This really was the grievance of the applicant and the Disciplinary Authority should have considered it in a satisfactory manner. The Disciplinary Authority's order does not meet with any of the contentions raised by the applicant in his reply. ^{To say that -} The penalty of stopping one increment ^{was} a minor penalty which would not lead to consequences which would be permanently prejudicial to the applicant is to miss the entire purpose of the statutory provisions of rules which require a reasonable opportunity to be afforded to the delinquent for making his detailed representation.

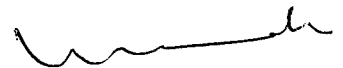
8. We find that in the circumstances the chargesheet which was framed against the applicant did not give sufficient notice of the facts which were sought to be established against him or were to be held against him and the disciplinary authority did not apply its mind to the contentions raised by the applicant while dealing with the defence of the applicant. The opinion rendered by the Under Secretary, UPSC, shows that the authority entirely missed the thrust of the contentions that the applicant was making.

The opinion was based on certain documents which were not at all named and since advice tendered by the UPSC was ~~passed~~^{based} on irrelevant considerations it is difficult to say that the appeal filed by the applicant had been properly considered.

9. In the result we allow the application and set aside the order passed by the disciplinary authority imposing the punishment on the applicant as well as the appellate order confirming the punishment. The respondents are directed to restore to the applicant the monetary benefits to which he would have been otherwise entitled had the penalty not been imposed upon him by the impugned order, within a period of three months from the communication of this order. No order as to costs.



(P.P.Srivastava)
Member(A)



(M.S.Deshpande)
Vice Chairman