

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1287/93

Date of Decision: 28.6.1999

S.N.Kale

Applicant.

Shri J.R.Lalit

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C.Dhawan

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Bawej, Member (A)

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to *W* other Benches of the Tribunal?

*R.G.Vaidyanatha*  
(R.G.VAIDYANATHA)  
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA. NO. 1287/93

Monday this the 28th day of June, 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Bawej, Member (A)

Sadashiv Narayan Kale,  
R/o Madhuyog,  
Near Citric, Panchak,  
Nasik Road - 422 101.

... Applicant

By Advocate Shri J.R.Lalit

V/S.

1. Union of India  
through General Manager,  
Central Railway, Bombay V.T.
2. Chief Administrative Officer,  
Central Railway, Bombay V.T.
3. Chief Personal Officer,  
Industrial Relations,  
Central Railway, Bombay V.T.
4. Personal Officer,  
Engineering/Construction,  
Central Railway, Bombay V.T.
5. Chief Engineer (Construction)  
Head Quarters, Central Railway,  
Bombay V.T.
6. Deputy Chief Engineer (Construction),  
Central Railway, Panvel, Dist.Raigad.
7. Executive Engineer (Construction),  
Central Railway, Panvel, Dist.Raigad. ... Respondents

By Advocate Shri S.C.Dhawan



O R D E R (ORAL)

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application challenging the order of taking disciplinary action against the applicant. Respondents have filed reply. We have heard Shri J.R.Lalit, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents.

2. The applicant at the relevant time was working as Senior Depot Store Keeper at Panvel, Central Railway under the control of Deputy Chief Engineer(Construction), Panvel. Various construction materials were under the control of the applicant. It appears there was shortage of 4.235 M/ts. After some preliminary enquiry, a chargesheet was issued to the applicant for the said shortage. The applicant's defence appears to be that he did not have sufficient staff under his control and no proper facilities to keep a proper watch over the staff. After holding disciplinary enquiry, the enquiry officer submitted a report holding that the charge is proved. The disciplinary authority by order dated 2.3.1990 imposed minor penalty of reduction of scale of pay for two years from Rs.2540/- to Rs.2480/- and then recovery of loss of the materials, namely, Rs.21,492/-.

Being aggrieved by the order of the disciplinary authority, the applicant preferred an appeal before the appellate authority. The appellate authority by order dated 2.12.1991 dismissed the appeal. Being aggrieved by that order, the applicant preferred OA.NO. 711/91 before this Tribunal. This Tribunal by order dated 11.9.1992 disposed of the application with a direction to the appellate authority to give personal hearing to the applicant and then pass a fresh order according to law.

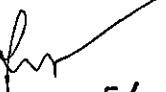
It appears that in pursuance of the order of the Tribunal, the appellate authority gave personal hearing to the applicant on 11.1.1993 and passed a fresh order dated 20.8.1993 again holding that the order of the disciplinary authority is fully justified and does not call for interference. Being aggrieved by that order, the applicant has preferred this OA.

3. The respondents have explained the facts and circumstances which led to the passing of the impugned order. It is stated that enquiry ~~as per rules and charges~~ was proved and had been conducted ~~especially due to shortage of~~ stock, the disciplinary authority had imposed the punishment and it has been confirmed by the appellate authority. It is clearly stated in the reply that verification of stock revealed shortage of 4.235 MTs and its cost was Rs.21,492/-.

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.. 4/-

4. At the time of arguments, the main submission of the applicant is that inspite of the order of this Tribunal, the appellate authority had not considered the grounds alleged by the applicant and he had<sup>not</sup> passed the speaking order meeting all the grounds taken by the applicant. On the other hand, the learned counsel for the respondents brought to our notice the note made by the appellate authority and operative portion of the order of the appellate authority which is at Exhibit 'R-1' to the written statement and contended that the order of the appellate authority does not suffer from any infirmity.

5. Straightaway we may say that the appellate authority had not dealt with all the grounds taken by the applicant in its order. But it is well settled that if the appellate authority is agreeing with the disciplinary authority, he need not write a lengthy speaking order. But he must leave on record something to show that he has applied his mind. The order at Exhibit 'R-1' clearly shows that the appellate authority had given personal hearing to the applicant on 11.1.1993. It also shows that the applicant had given memorandum of grounds, then the appellate authority mentioned that he had gone through all the documents, enquiry report and memorandum of grounds submitted by the

  
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applicant and then says that he has come to the conclusion that no new material is brought out by the applicant either in personal hearing or in his memorandum to pass a different order. He has also recorded that he has given full opportunity to the applicant to urge all his contentions. He has also further noted that the applicant in answer to Question No. 23 has admitted that the enquiry was done properly and has been satisfied with the same. Then the appellate authority passed the order wherein he has mentioned that the applicant himself has admitted the shortage of stock and it has been proved during stock verification for the year 1984-85. He has also recorded his findings that the applicant has failed to explain shortage and excess separately inspite of the direction by the Deputy Chief Engineer(Construction) Panvel.

In view of these reasons, the appellate authority did not find any merit in the same and dismissed the same.

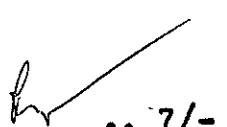
6. On going through the material on record, we do not find any infirmity or illegality in the order of the appellate authority. It may be he had not written detailed order meeting all the contentions of the applicant. But the order shows that he had applied his mind including the grounds taken by the applicant and the submissions made by him at the time

*RW*

of personal hearing. He had also acted upon the admission of the applicant himself where he had admitted shortage of materials. No useful purpose will be served in again remitting the matter to the appellate authority since after perusing the record he did not find any material to interfere with the order of the disciplinary authority.

7. On merits, the learned counsel for the applicant did not point out any infirmity or illegality in conducting the disciplinary enquiry. The scope of judicial review is very limited. This Tribunal cannot act as an appellate court and re-appreciate the material and take a different view, even if it is possible; the scope of Judicial review is only to find out any illegality in the decision making process and not in the actual decision. Suffice it to refer to the latest decision of the Supreme Court in the case of Apparel Export Promotion Council vs. A.K.Chopra, AIR 1999 SC 625, where the Supreme Court has clearly said that the Tribunal or Court cannot interfere with the findings of the Domestic Tribunal.

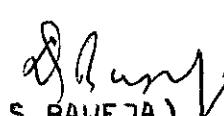
8. Another submission of the learned counsel for the applicant is that the punishment imposed is disproportionate to the misconduct. Even on this point, the scope of judicial review is limited.

  
.. 7/-

This Tribunal cannot interfere if it ~~comes~~ to the conclusion that another penalty or lesser penalty is justified. The Tribunal can interfere ~~only~~ if it comes to the conclusion that the penalty is so grossly disproportionate so as to shock the conscience of the Tribunal. This Tribunal does not find that a minor penalty of reduction of pay in one stage for two years with a non cumulative effect ~~is~~ so harsh or grave or disproportionate to the charge. Hence, we do not find any merit in the OA. and the same is liable to be dismissed.

We also note that the applicant retired from service some time in 1991 and he had already undergone the punishment imposed by the disciplinary authority and hence we find no merit in the OA.

9. In the result, the application is dismissed.  
No order as to costs.

  
(D.S. BAWEJA)

MEMBER (A)

  
(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.