IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 924/94

Date of Decision: 1.10.99

Shivmurat Koli .. Applicant

Shri R.Ramamurthy .. Advocate for Applicant

-versus-

Jt.Director (Inspection Cell) RDSO, Bombay & Ors. .. Respondent(s)

Shri V.S.Masurkar .. Advocate for Respondent(s)

CORAM:

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

The Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal ? ✗

(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH,MUMBAI

OA.NO.924/94

Dated this the 18th day of October 1999.

CORAM : Hon'ble Shri D.S.Baweja,Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Shivmurat Koli,
Chief Inspector(Signal)
in RDSO in the Office of
the Joint Director RDSO,
(Inspection Cell),
New Annexe Building,
1st Floor,Churchgate,
Western Railway,Bombay. ... Applicant

By Advocate Shri R.Ramamurthy

V/S.

1. Joint Director (Inspection Cell),
   RDSO, Churchgate Station Bldg.,
   Churchgate, Bombay.

2. Senior Signal & Telecommunication
   Engineer (HQ), Railway Electri-
   fication, Bhopal.

3. Dy.Chief Signal & Telecommunica-
   tion Engineer (HQ), Railway
   Electrification, Bhopal.

4. Chief Signal & Telecommunication
   Engineer (Project), Railway ... Respondents
   Electrification, Bhopal. ...

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

The applicant through this OA. has challenged the impugned order dated 27.10.1993 imposing punishment of recovery of cost of the released rail posts and order dated 15.6.1994 through which the appeal has been rejected and the penalty has been enhanced.

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2. While working as Signal Inspector Grade II in the Railway Electrification at Bhopal, the applicant was issued a minor penalty chargesheet dated 13.1.1993. The charge is that he committed misconduct/irregularities as he failed to take proper charge of released Signal and Telecommunication (S & T) materials including 93 railposts which resulted in missing of 23 rail posts from the site. The applicant submitted reply to this Chargesheet on 13.1.1993. However, without conducting any enquiry, the disciplinary authority as per order dated 27.10.1993 imposed punishment of recovery of the 50% of the cost of 23 released rail posts. The applicant made an appeal dated 7.2.1994 against the punishment order. The appellate authority while rejecting the appeal as per order dated 15.6.1994 and confirming the punishment order of the disciplinary authority imposed ( ) additional punishment of Censure without any prior notice. Feeling aggreived by this punishment, the applicant has sought legal remedy through this OA. filed on 17.8.1994.

3. The applicant has assailed the impugned orders advancing the following grounds :-

(a) Recovery of Rs.46,950/- as the 50% cost of the 23 rail posts has been made from the applicant but the said liability is no where mentioned in the chargesheet.

..3/-

(b) There is no admission of the misconduct/lapse on the part of the applicant and no evidence has been brought on the record to prove the charge.

(c) Even in proceedings under Rule 11 of Railway Servants (Discipline and Appeal Rules) 1968 for minor penalty, holding of the inquiry is must, to establish the charges.

(d) Orders dated 27.10.1993 and 15.6.1994 are non speaking orders and passed mechanically without application of mind.

(e) The appellate authority has not afforded a personal hearing before disposal of his appeal.

(f) The appellate order is bad in law as additional punishment of 'Censure' has been imposed without any show cause notice.

4. The respondents have filed written statement initially for opposing admission and grant of interim stay order but no detailed reply has been filed thereafter. The respondents contend that the disciplinary authority and appellate authority orders are in accordance with the provisions of Rule 23 of Railway Servants (Discipline and Appeal Rules) 1968 and the applicant's grounds are not tenable.

..4/-

5. Applicant in the rejoinder reply has controverted the submissions of the respondents and has reiterated that since the applicant had not admitted the charge, the enquiry should have been held to properly fix the responsibility for the alleged loss of the rail posts.

6. We have heard the arguments of Shri R.Ramesh and Shri V.S.Masurkar for the applicant and respondents respectively.

7. The grounds raised by the applicant in assailing the impugned orders of punishment have been detailed in para 3 above. The first ground taken by the applicant is that a recovery of Rs.46,950/- made from the applicant is not tenable as there is no mention about the said liability either in the Chargesheet or in the orders of the disciplinary authority and the appellate authority. We have carefully gone through the Chargesheet and the orders of disciplinary authority and the appellate authority and find that this ground has no substance. The charge in respect of loss of rail posts in the chargesheet is very specific wherein the number of rail posts as well as their weight had been indicated. It has been also indicated that the cost of missing rails will be recovered based on the codal provisions. In the order of the disciplinary authority, the punishment imposed is for recovery of cost of 23 rail posts as per the chargesheet and the same is confirmed by the Appellate authority. In view of these facts, we fail to understand as to how the applicant

contends that the chargesheet is not tenable as the amount to be recovered has not been specifically stated. Further, the applicant has not brought out that cost of the 23 missing rail posts is not in accordance with the codal provisions as indicated in the chargesheet. In this view of the matter, we do not find any substance in this ground.

8. The second ground is that even in proceedings under Rule 11 of Railway Servants (Discipline and Appeal Rules) 1968 for imposing minor penalty, holding of the enquiry is must to establish the charges. We have gone through Rule 11 and do not find that the contention of the applicant is supported by the provisions in Rule 11. We note that Rule 11 (b) provides that enquiry in respect of minor penalty may be held if the disciplinary authority is of the opinion that such an enquiry is necessary. Therefore, non-holding of enquiry does not vitiate the punishment order as per the provisions of Rule 11. Further, it is not the case of the applicant that he had made a request to the disciplinary authority while submitting his defence against the chargesheet that enquiry should be held. There is also no averment in the OA. to this effect. We have gone through the reply given by the applicant for the chargesheet and find that no such request had been made. If such a request had been made, the disciplinary authority could have considered whether the holding of the enquiry was necessary keeping in view the defence submitted by the applicant and the reasons advanced by him as to

why the enquiry is necessary. In the absence of any such request and keeping in view the provisions of Rule 11 (b), this ground of the applicant is without any merit.

9. The third ground is that the appellate authority has not afforded a personal hearing to the applicant before disposing of the appeal. The applicant has not brought out the relevant rules under which it was obligatory for the appellate authority to give personal hearing before disposing of the appeal. We have gone through Rule 22 (Consideartion of Appeal) of Railway Servants (Discipline & Appeal) Rules and do not find any provision with regard to grant of personal hearing before disposal of appeal. Further, the applicant has not made any averment in the OA. that he had asked for the personal hearing and the same was not allowed. Also on going throughthe appeal submitted by the applicant, we find that there was no such request made. In the light of these facts, this ground of attack is not sustainable.

10. The fourth ground is that there is no evidence brought on record to prove the charges and there was no admission of misconduct or lapse on the part of the applicant. On going through the chargesheet, we find that the statement of imputation of misconduct clearly brings out the evidence relied upon along with the statement of applicant recorded in the preliminary enquiry. Since normally inquiry is not laid down in case of chargesheet for imposing minor penalty, the evidence which is

relied upon in case of minor penalty is to be brought on record in the chargesheet which can be contested by the deliquent employee while submitting his defence against the chargesheet. The applicant in the present case has submitted his defence and he was aware of the evidence against him which he has to meet. The disciplinary authority has considered the defence of the applicant vis-a-vis the evidence relied upon in the chargesheet and has passed the impugned punishment order. We also find that the disciplinary authority has given the reasons based on which he has come to the conclusion that the charges against the applicant are proved. With these facts, we are unable to accept the contention of the applicant that there is no evidence on the record to prove the charge. Further, we find that the disciplinary authority has nowhere mentioned in his order that the applicant had made an admission of misconduct and on this admission , the disciplinary authority has come to the conclusion that the charges are proved. In this background, we are unable to find any merit in this ground of the applicant.

11. The fifth ground is that the orders of the disciplinary authority and the appellate authority are non-speaking and have been passed mechanically without application of mind. We have carefully gone through these orders and do not subscribe to the stand of the applicant. Both the orders indicate application of mind and we do find that they are speaking orders.

..8/-

12. The sixth and the last ground is that the appellate order is bad in law as the additional punishment of 'Censure' has been imposed without any show cause notice. We have gone through the appellate order dated 15.6.1994 and inclined to find merit in the contention of the applicant. It is noted that the appellate authority has imposed the punsihment of 'Censure' in addition confirming the recovery of the loss as imposed by the disciplinary authority. It is no where stated in the order that any show cause notice was given. There is no averment to this effect in the written reply also. On going through the Railway Servants (Discipline and Appeal) Rules,1968, under Rule 22 we note that a show cause notice is required to be issued to the delinquent employee to give a reasonable opportunity before imposing any enhanced punishment. In the present case, this has not been done. In view of this fact situation, the additional penalty of 'Censure' imposed by the appellate authority without giving show cause notice is not sustainable. Therefore the order of the appellate authority to this extent deserves to be set aside.

13. In the light of the above deliberations, we do not find merit in any of the grounds raised by the applicant in assailing the impugned punishment orders except the appellate order dated 15.6.1994 with regard to imposing of the additional punishment of 'Censure' without show cause notice.

..9/-

14. In the result of the above, the OA. is partly allowed. The additional penalty of 'Censure' imposed through the appellate order dated 15.6.1994 is set aside. No order as to costs.

(S.L.JAIN)
MEMBER (J)

(D.S.BAWEJA)
MEMBER (A)

mrj.