

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 116 OF 1996

Dated, the 4th September, 1998

BETWEEN :

W.7. Nageswara Rao

... Applicant

A N D

1. The Divisional Railway Manager,
Sanchalan Bhavan, Secunderabad.
2. The Additional Divisional Railway Manager,
South Central Railway,
Sanchalan Bhavan, Secunderabad.
3. The Senior Divisional Commercial
Manager,
South Central Railway,
Sanchalan Bhavan,
Secunderabad.

.... Respondents

COUNSELS :

For the Applicant

: Mr. J. Venugopal Rao

For the Respondents

: Mr. J. R. Gopal Rao

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN).

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL)

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O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. J. Venugopal Rao, Learned Counsel for the applicant and Mr. J.R. Gopal Rao, Learned Standing Counsel for the respondents.

2. This is an application under Section 19 of the Central Administrative Tribunals Act, 1985. The application was filed on 18.1.96.

3. The facts giving rise to this O.A. may, in brief, be stated thus :

a) The applicant was working as Chief Commercial Supervisor in South Central Railway. During the year 1992-1993, the applicant was working as Parcel Supervisor at Parli Vaidyanath Railway Station.

b) During the period from March, 1992 to July, 1992, the applicant appears to have committed certain acts of misconduct and dereliction of duties in the performance of his duties.

c) During the preventive check, by the Vigilance organisation of the South Central Railway, it was found that there were alterations in the record foils of the Parcel Way Bills and remittances were made as per the record foils. The corresponding receipt foils and delivery book at the destination Stations viz. Ajmir, Nanded, Parbani and Nizambad confirmed alterations on the record foils and misappropriation of Railway funds to the tune of Rs.6421/-.

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d) The respondent No.3 placed the applicant under suspension vide his proceedings dt. 8.2.93. He was placed under suspension from 5.2.93. The order of suspension is at Annexure-I. However, the respondent No.3 revoked the suspension of the applicant as per his order dt. 18.8.93 at Annexure-II.

e) The respondent No.3 by his proceedings No.CON/SC/C/45/93 dt. 18.8.93 served the major penalty charge memo on the applicant.

f) The charges levelled against the applicant read as follows :

"Article-i

The said W.V. Nageswara Rao while functioning as Parcel Supervisor, Parlivaianath during the months of March 92 and July, 1992 committed serious misconduct in that he with a malafide intention to misappropriate Railway dues altered the charges collected from the traders (consigners) in the record foils of Parcel Way Bills and thus misappropriated Rs.6,421/- (Rupees six thousand, four hundred twenty one only) to illegally benefit himself as detailed in the statement of imputations.

And thus Sri W.V. Nageswara Rao, PSR/PRLI failed to maintain absolute integrity, failed to maintain absolute devotion to duty and acted in a manner of unbecoming of a Rly. servant, violating rule No.3(1) (i) (ii) and (iii) of Rly. Services (Conduct) Rules, 1966.

Article-ii

That the said Sri W.V. Nageswara Rao while functioning as Parcel Supervisor, Parli Vaijyanath during the months of March, 92 and July, 92 committed serious misconduct in that he failed to collect the preserve Forwarding notes of the parcels booked by him in order to cancel the actual quantity of parcels booked and the charges collected thereon and to avoid detection of alterations of records of parcel way bills made by him.

Thus Sri W.V. Nateswara Rao, PSR/PRLI failed to maintain absolute integrity, failed to maintain absolute devotion to duty and acted in a manner of unbecoming of a Rly. servant, violating rule No.3(1) (i), (ii) (iii) of Railway Services (Conduct) Rules, 1966."

g) The applicant had denied the charges. A detailed

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enquiry, into the charges was conducted. The applicant participated in the enquiry. During the enquiry, lone witness by name M.A. Veerabhadra Rao was examined on behalf of the disciplinary authority. The applicant examined himself in part, without submitting for Cross Examination. He submitted his written brief. A copy of the written brief submitted by the applicant is at Annexure-IV (pages 25-33) to the O.A. The Enquiry Officer submitted his report dt. 19.12.94.

h) The disciplinary authority served a copy of the report of the Enquiry Officer on the applicant. A copy of the Enquiry Report is at pages 37 to 49 of the O.A.

i) The applicant submitted his explanation dt. 13.1.95 at Annexure-III to the report of the Enquiry Officer. A copy of the explanation of the applicant is at pages 51 to 55 of the O.A.

j) The disciplinary authority (Respondent No.3) after considering the report of the Enquiry Officer, the explanation of the applicant and the enquiry records agreed with the findings recorded by the Enquiry Officer and vide his proceedings of even number dt. 29.5.95 imposed on the applicant, the penalty of removal from service. A copy of the order passed by the Respondent No.3 is at pages 34 to 35 of the O.A.

k) Against the said penalty order dt. 29.5.95 the applicant preferred an appeal dt. 12.7.95 to the Additional Divisional Railway Manager-II, Secunderabad Division, Secunderabad (Respondent No.2). A copy of the memorandum of appeal is at Annexure-II, pages 60 to 66 of O.A.

l) The Respondent No.2 vide his proceedings of even number dt. 19.12.95 at (Annexure-II) pages 66 and 67 of the



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O.A. considered the appeal of the applicant and modified the penalty of removal of the applicant from service to that of compulsory retirement.

4. The applicant has filed this O.A. challenging the order dt. 29.5.95 of the R-3 and the order dt. 19.12.95 of the Respondent No.2 as illegal, arbitrary, violative and of natural justice/for consequential direction to the respondents to reinstate him into service with consequential benefits.

5. The applicant has challenged the impugned orders on the following grounds :

a) The lone witness namely M.A. Veerabhadra Rao was examined in a biased manner. He was not given an opportunity to secure the services of a legal practitioner.

b) The Enquiry Officer failed to furnish the documents prayed for, by him.

c) Cancelled consignee receipts kept as part of permanent records were not relied upon during the enquiry.

d) Forwarding notes were not made available during the enquiry.

e) Neither the consignors nor the consignee were examined during the enquiry i.e. the material witnesses were not examined during the enquiry; and

f) True extracts of Parcel Way Bills were not produced. Check report of the Way Inspector was not produced.

6. The respondents have filed a counter, explaining the circumstances under which the charge memo. dt. 18.8.93 was served on the applicant. The respondents contend



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that sufficient opportunity was given to the applicant during the course of his statement during the preliminary investigation by Sri M.A. Veerabhadra Rao admitted that the record foils of the Parcel Way Bills were tampered. The applicant during the course of his statement during the preliminary investigation by Sri M.A. Veerabhadra Rao admitted that the record foils were prepared by him. It was submitted by the respondents that the applicant was required to preserve the forwarding notes of the consignors. He failed to preserve the forwarding notes. The disciplinary authority has gone through the connected documents and passed the order vide letter dt. 29.5.95. The applicant has not availed the opportunity to file a review petition against the orders of the appellate authority.

7. The applicant during his service, was in occupation of the Railway Quarters. By an interim order dt. 14.2.96, he was permitted to continue in the Railway Quarters pending disposal of the O.A. subject to the condition that he should pay the peanl rent during his saty. Liberty was given to the respondents to move for vacation of the interim order.

8. We have perused the enquiry file produced by the respondents. The gist of the charges levelled against the applicant is that -

a) The applicant had altered record foils and had credited to the Railway funds in accordance with the altered amount and weight of the parcels and thereby caused pecuniary loss to the Railway administration; and

b) the applicant failed to preserve the forwarding notes only with a view to destroy evidence.

9. The fact that during the period from March, 1992 to

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July, 1992, the applicant was working as Parcel Supervisor at Parli Vaidyanath Railway Station is not in dispute. The fact that he was in-charge of accepting the forwarding notes and the preparation of Parcel Way Bills, guard foils, accounts foils, the consignee foils and the maintenance of record foils is also not in dispute. The record foils were altered and the funds were remitted to the Railway administration in accordance with the weight, or luggage charge of parcel. Thus the respondents submit that there was loss or misappropriation caused to the Railway administration to the tune of Rs.6,421/-.

10. The discrepancies and the altered record foils were noticed during the preventive check by Mr. M.A. Veerabhadra Rao, who was working as the Vigilance Inspector.

11. A charge memo dt. 18.8.93 was served on the applicant. The applicant vide his letter dt. 25.8.93 denied the charges and requested the disciplinary authority to furnish certain documents viz. the documents detailed in Annexure-III to the articles of charges. The Senior Divisional Railway Manager, Secunderabad vide his letter dt. 7.9.93 permitted the applicant to attend office with a view to peruse the documents cited in Annexure-III of the charge memo within 2 weeks from the date of receipt of the letter. A copy of the letter is at page 37 of the enquiry file. The applicant acknowledged the said letter dt. 3.10.93. When that is so, the applicant should have attended the office for inspection of the documents. The applicant may contend that the copies of the documents were required for his defence. Though the letter dt. 7.9.93 did not specifically permit the applicant to take copies of the documents detailed in Annexure-III to the charge memo^m, the notings prepared on the

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basis of the letter dt. 4.5.93 of the applicant clearly indicates that he was permitted to inspect and take extracts of the documents. This is clear from note at page 2 ante of the enquiry file. On 5.11.93, the Senior Dy. Commercial Manager permitted the applicant to take extracts of the documents also. No irregularity can be pointed out to the disciplinary authority taking the contention that the documents were not furnished to him during the course of enquiry.

12. The contention advanced by the applicant is that the Enquiry Officer failed to permit him to avail the services of a legal practitioner. The preliminary enquiry was conducted by the Enquiry Officer on 15.4.94, when the Enquiry Officer specifically asked the applicant whether he had perused all the records and documents quoted in the charge/^{memo}~~mem~~ and whether he had taken extracts of the listed documents, the applicant's answer was that he had not taken the extracts of the documents and requested the Enquiry Officer to furnish the same (page 91 of the Enquiry Report refers). This answer clearly indicates that he had perused the documents and he had failed to take extracts of the same. He was at liberty during the course of enquiry to take extracts of the documents and the Enquiry Officer has nowhere prohibited the applicant from taking the extracts of the documents listed in ^AAnnexure-III. In fact, the disciplinary authority earlier had permitted the applicant to take extracts of the documents. Therefore, the applicant cannot take a contention that the Enquiry Officer failed to furnish the copies of the documents. The rule provides for inspection of all the documents. However, for smooth conduct of the enquiry and to enable the applicant to prepare his defence, obtaining the extracts of the documents relied upon, by the disciplinary

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authority is permitted. Hence the contention of the applicant merits to be rejected.

13. During the enquiry the applicant was assisted by one Mr. C.V. Perumal. The applicant has not sought the services of a legal practitioner. Moreover, when the presenting officer is not having a legal background, then the delinquent employee cannot be permitted to have the services of a legal practitioner. In this case no Presenting Officer was appointed.

14. The applicant has complained that he was not permitted to avail the services of a legal practitioner. Nowhere during the course of enquiry neither the applicant pleaded inability to proceed with the enquiry nor expressed his dissatisfaction over the defence assistance lent by Mr. C.V. Perumal. When that is so, the applicant cannot complain that he was not given a legal assistance to defend the enquiry.



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15. As already observed, only one witness Mr. M.A. Veerabhadra Rao was examined during the enquiry. He was examined on 21.9.94. Cross-examination of this witness commenced on 21.9.94, held on 3.10.94 and concluded on 4.10.94. The applicant availed 3 days i.e. on 21.9.94, 3.10.94 and 4.10.94, solely for the purpose of cross examining the said witness. When that is so, the contention advanced by the Learned Counsel for the applicant that the applicant was not permitted to cross examine the witness has no substance. In fact, during the course of the cross examination, the applicant and his defence assistant attempted to obtain the copies of the preliminary enquiry report and/or the statements of the persons recorded by the witness. As already stated the witness had not recorded the statement of any of the persons, but had collected the documents viz. R.R. foils, guard foils, account foils, etc.

16. They were bent upon obtain^{ing}/the repliminary enquiry report prepared by the ~~witnesses~~. In view of the decision of the Hon'ble Supreme Court, when once a fullfledged enquiry is held then the preliminary enquiry report has no significance. The enquiry officer rightly turned down the request of the applicant and defence assistant in not furnishing the preliminaryenquiry report. Thus the Inquiry ^{treated as} Officer ~~closed~~ the cross examination of the witness.

17. The applicant had ~~availed~~ sufficient opportunity to cross examine the witness Mr. M.A. Veerabhadra Rao--Therefore, his contention that he was not given sufficient opportunity to cross examine the witnesses cannot be accepted.

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18. The disciplinary proceedings are neither a civil trial nor a criminal trial. Strict rules of evidence are not applicable to the disciplinary proceedings. The only rule by which the disciplinary proceedings is guided is adherence to the principles of natural justice, that means, every opportunity must be given to the delinquent employee to prove his innocence of the charge. What is not admissible under the provisions of the Indian Evidence Act may be taken into consideration during the disciplinary proceedings. Confessional statements, statement of accomplice or the documents which according to the provisions of the Indian Evidence Act are not admissible in Trials, such statements and documents can be made use of, in the disciplinary proceedings, for, the disciplinary inquiry is only a fact finding body appointed to ascertain the conduct of the employee. Disciplinary proceedings are intended to consider whether an employee is suitable to continue in service or not or whether his conduct is befitting of a responsible employee.

19. As regards the burden of proof, the Hon'ble Supreme Court has observed in the case of Orissa Mining Corporation and Anr. Vs. A.C. Prusty (reported in 1997 (1) SLR 286 para 5 (p. 287) as follows :

"5. In a disciplinary or a departmental enquiry, the question of burden of proof depends upon the nature of charges and the nature of explanation put forward by the delinquent officer. In this sense, the learned counsel for the appellant may be justified in complaining that the standard of proof stipulated by the High Court in this case sounds inappropriate to a disciplinary enquiry. At the same time we must say that certain observations made by the inquiry officer in his report do lend themselves to the criticism offered by the High Court.



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6. On a consideration of the totality of the facts and circumstances of the case including the nature of charges we are not inclined to interfere in the matter. The position with respect to burden of proof is as clarified by us hereinabove viz. that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation. For example take the first charge in this case. The charge was that he made certain false notings on account of which loans were disbursed to certain ineligible persons. The respondent's case was that those notings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made by the respondent."

In the present case, the applicant admits to have discharged the duties as Parcel Supervisor. He was incharge of preparation of record foils etc. when the vigilance Inspector noticed certain alterations in the record foils and amount credited to the Railway funds in accordance with the altered weight and amount noted in the record foils, he naturally came to the conclusion that the applicant had committed misconduct. When that is so, it was for the applicant to explain the alterations occurred only in record foils. In fact, the applicant during the preliminary investigations, had admitted his misconduct and undertook to deposit the amount to Railway funds. His statement is at Ex.P1(P-15 to 4) in the enquiry file.

20. Further, he has failed to preserve the forwarding

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notes. Had the applicant been diligent in collecting and preserving the forwarding notes, then the discrepancies would have been noticed in the Parcel Office itself. It is the contention of the disciplinary authority that the applicant deliberately failed to collect and preserve forwarding notes only with an intention of suppressing ~~the~~ alterations in the record foils.

21. The applicant further contended that none of the consignor or consignee was examined during the enquiry. No such person has been mentioned as a witness in the Annexure-IV to the charge memo. If the applicant felt it necessary to examine any of the consignor or consignee nothing prevented him to examine them. In the enquiry nothing has been disclosed to show that the applicant had made such an attempt.

22. The applicant wanted the accounts foils and guard foils which were preserved at the destination stations. That means to say to suggest that those foils also contained the altered figures. If the applicant was fully confident and certain that the guard foils and the account foils also contained the alterations as made in the record foils then nothing prevented him to summon them, in the enquiry. He did not do so. The very fact, that the applicant adopted non-cooperative attitude clearly indicated that he was not willing to face the enquiry.

23. On 14.11.94 before the examination of the applicant, the enquiry officer put questions to him and ascertained from the applicant whether he was willing to examine himself and to examine any of the witnesses on his behalf. It is to be noted that the applicant had not at all furnished the list of witnesses proposed to be examined by him during the

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enquiry. This list must have been produced by him on 15.4.94 itself. On that day the applicant reserved his right to furnish the list of witnesses.

24. The examination of the applicant, after the closure of the evidence on behalf of the disciplinary authority, is at page 66 of the enquiry file. To questions No. 207 and 208, the applicant specifically stated that since the charge levelled against him was not proved during the enquiry proceedings by oral and documentary evidence, he was not willing to submit his written statement at that stage and then he expressed his willingness to examine himself.

25. Accordingly, the applicant was examined on 14.11.94. After his examination-in-chief portion of the evidence was over, both the applicant and the defence assistant took untenable contention that the enquiry officer could not examine the applicant. Thus the applicant did not submit himself to cross examination. Hence, his evidence on 14.11.94 is no evidence at all in the eye of law.

26. No doubt a delinquent employee may not be compelled to give evidence but when once he expresses his willingness to give evidence he is bound to submit himself for cross examination. We fail to understand, how the defence assistant and the applicant avoided the cross examination of the applicant by raising all sorts of irrelevant contentions and constitutional provisions. It is in this background, we observed that the applicant was not cooperative with the enquiry officer.

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27. The disciplinary authority had imposed the penalty of removal from service on the applicant. However, the appellate authority considered the facts, and records, took a lenient view and modified the same to compulsory retirement.

28. The powers of the Tribunal in disciplinary proceedings are very much limited. Further, this Tribunal has no power to interfere with the punishment awarded by the authorities.

29. In view of the above, we find no merits in this O.A. and the impugned orders are in no way irregular or illegal.

30. The appellate authority has taken a lenient view of the matter and we leave it at that.

31. For the reasons stated above, the O.A. is liable to be dismissed and the same is accordingly dismissed, leaving the parties to bear their own costs.

32. Enquiry file produced by the respondents is perused and returned.


(B.S. JAI PARAMESHWAR)
MEMBER (J)


(R. RANGARAJAN)
MEMBER (A)

Dated, the 4th September, 1998.

DA.116/96

Copy to:-

1. The Divisional Railway Manager, Sanchalan Bhavan, Secunderabad.
2. The Additional Divisional Railway Manager, South Central Railway, Sanchalan Bhavan, Secunderabad.
3. The Senior Divisional Commercial Manager, South Central Railway, Sanchalan Bhavan, Secunderabad.
4. One copy to Mr. J. Venugopal Rao, Advocate, CAT., Hyd.
5. One copy to Mr. J. R. Gopal Rao, SC for Rlys, CAT., Hyd.
6. One copy to BBSJP M(J), CAT., Hyd.
7. One copy to D.R.(A), CAT., Hyd.
8. One duplicate copy.

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17/9/98

II COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED:

4/9/98

~~ORDER~~/JUDGMENT

M.A/R.A/C.P.NO.

C.A.NO.

in

116/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अपिलेशन
Central Administrative Tribunal
दस्तावेज / DESPATCH

11 SEP 1998

हैदराबाद ब्याचपीठ
HYDERABAD BENCH