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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 743 OF 1996

Dated, the 18th September, '98.

BETWEEN :

G. Prabhakara Rao

... Applicant

A N D

1. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.

2. The Deputy Chief Mechanical
Engineer,
South Central Railway,
Wagon Workshop,
Guntupalli,
Krishna District.

... Respondents

COUNSELS:

For the Applicant : Mr. P. Krishna Reddy

For the Respondents : Mr. N.R. Devaraj

CORAM:

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

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

ORDER

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

1. None for the applicant. The applicant was also absent when the O.A. was taken up for hearing. Since the O.A. was filed in the year 1996, we decided to consider the O.A. on merits in accordance with Rule 15(1) of the Central Administrative Tribunals procedures and Rules, 1985. Heard Mr. N.R. Devaraj, Learned Standing Counsel for the respondents.

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2. This is an application filed under Section 19 of the Central Administrative Tribunals Act, 1985. This application was filed on 17.6.96.

3. During the year 1989-90, the applicant was working as the Dy. Shop Superintendent/PCO/Wagon Workshop, Guntupalli. During his tenure as such, he was alleged to have committed certain irregularities resulting in pecuniary loss to the tune of Rs.13,77,235/- to the Railway Administration.

4. Hence, the Dy. Chief Mechanical Engineer, Wagon Workshop, Guntupalli i.e. R-2 herein served a major **penalty charge** memo by his proceedings No.CR/P.227/BTS/GPR/93/26 dt. 14.7.93. The charges levelled against the applicant are as follows :-

"That the said Sri G. Prabhakara Rao, while functioning as Dy.SS/Scrap/PCO/WWS/Guntupalli during the period from Dec. 1988 to April, 1990 has committed the following serious irregularities resulting in the issuance of Stock Sheet Number ASV/WWS/MB/1/RC/1, dt. 14.6.1990 as mentioned below with a shortage of Rs.13,77,235/- :

- 1) Draw Bar Hooks and Screw Couplings were stated to ~~have~~ be missing on the Stock Sheet which work out to Rs.6,07,809/-. As a custodian of the RC fittings, he failed to lodge a theft report on the missing items.
- 2) He failed to establish either drawal items like Laminated Bearing Springs, Buffer Casing, Buffer Plungers, Draft Casting and Doors with Hingers by Shops or disposal to Scrap Depot at RYP on DS-8 which resulted in a net shortage of Rs.7,69,426/-
- 3) Though a Survey Committee was appointed by Dy.DME on 15.9.90 to go into the details of the discrepancies, he failed to initiate action and exhibited gross negligence of his duties.

Thus he failed to maintain absolute devotion to duty and violated the provisions under Rule 3(1)(ii) of Railway Services (Conduct) Rules, 1966."

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5. The applicant submitted his explanation on 20.10.93 at Annexure IX denying the charges.

6. A detailed enquiry was conducted into the charge. The applicant participated in the disciplinary proceedings. He submitted his defence brief. A copy of the defence brief submitted by the applicant is at pages 47 to 50 of the O.A.

7. The Enquiry Officer submitted his report on 26.10.94. The Enquiry Officer held that the charges levelled against the applicant were proved. A copy of the report of the Enquiry Officer is at pages at 42 to 46 of the O.A. (Annexure VII). A copy of the report of the Enquiry Officer was furnished to the applicant. The applicant submitted his explanation dt. 10.11.94 against the findings recorded by the Enquiry Officer. A copy of his explanation is at pages 35 to 38 of the O.A. (Annexure-V).

8. The respondent No.2 after considering the report of the Enquiry Officer, Explanation of the applicant and the records of the enquiry, agreed with the findings recorded by the Enquiry Officer and passed the proceedings No.P/90/D&A/GTPL/GPR dt. 10.5.95 imposing penalty of removal of the applicant from service. The copy of the order passed by R-2 is at pages 30 to 34 of the O.A. (Annexure-IV).

9. Against the said penalty order dt. 10.5.95, the applicant preferred an appeal to the Additional General Manager, South Central Railway, Secunderabad i.e. R-1. A copy of the memo of appeal dt. 1.6.95, is at pages 14 to 29 of the O.A. (Annexure-III). The R-1 considered the appeal and vide proceedings No.P.90/D&A/GTPL/GPR/1550 absolved the applicant of the Item No.3 of the Articles of Charges (2)

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and modified the punishment of removal from service to that of reduction to the lower grade i.e. from Rs.2000-3200 (RSRP) to Rs.1600-2660 (RSRP) on a pay of Rs.2480/- for a period (recurring) of 2 years and ordered to treat the period from 10.5.95 to 13.10.95 as leave due to the applicant. The copy of the order passed by R-1 is at pages 12 to 13 of the O.A. (Annex.II). 10. The applicant has filed this O.A. challenging the order dt. 10.5.95 passed by R-2 and the order dt. 13.10.95 passed by R-1, / so far as reducing the applicant to lower grade for a period of 2 years and further directing to treat the period from the date of removal from service to the date of reinstatement as leave due to him, as illegal and to set aside the same and consequently to direct the respondents to restore the applicant to his original grade of Rs.200-3200 (RSRP) with all consequential benefits including promotion with retrospective effect.

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

a) In view of the finding recorded by the Appellate Authority on item No.3 of the article of charges, the items 1 & 2 of the article of charges are to be held as not proved.

b) The items 1 & 2 of the charges are not based on any evidence;

c) The applicant had by his note dt. 15.2.90 brought to the notice of the Dy. Chief Mechanical Engineer, Wagon Workshop, Guntupalli as to certain irregularities.

d) The Dy. Chief Mechanical Engineer had accordingly, ordered to constitute a Survey Committee consisting of (a) Assistant Controller of Stores, and (b) Assistant

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Works Manager(M) and that the said Committee failed to meet.

e) That the applicant worked as Dy. Shop Superintendent (Scrap) from 2.6.89 to 11.5.90. The stock sheet was issued on 14.6.90;

f) The charge Sheet was issued, after about 3 years after he ceased to function in the said post; and

g) it is not established whether the draw bar hooks and screw couplings were either stolen or missing.

Hence, the applicant cannot be held responsible for not reporting or lodging a theft memo.

12. The respondents have filed a counter stating that the applicant had worked as Dy. Stores Superintendent/ Scrap Depot/WWS/GTPL between December 88 and April 90; that on 14.6.90 a stock sheet was issued to enable the applicant to offer item-wise remarks in respect of excess deficiency noticed in the Work Shop; that the applicant furnished item-wise remarks only after persistant reminders. On 13.8.92, the applicant's explanation was found to be not satisfactory and hence the charge memo dt. 14.7.93 was issued.

That items 1 and 2 of the article of charges were based on the stock verification conducted from 19.3.90 to 31.3.90
Stock
by the Assistant Verifier of the Accounts Department in the presence of the applicant. The Stock verification statements were attested by the witnesses and were counter-signed by the applicant; that the applicant, as custodian of the RC items, had failed to carry out physical checks of the availability of items; that the applicant admitted his lapse while answering question No.14 during the enquiry; that it was the bounden duty of the

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custodian of the R.C. items i.e. the applicant, whenever he noticed missing of any RC items, he was required to lodge a theft memo, which the applicant failed to do so; that the applicant failed to maintain proper records of RC items which resulted in loss to the Railway Administration; that the applicant submitted a note dt. 15.2.90 (Annexure-R4) to the R-2; that the same was considered and a Survey Committee was constituted; that the applicant had not prevailed upon the committee to make survey and fix the responsibilities; that the fundamental duties of the applicant as Dy. Stock Superintendent were reclamation, Custody, Disposal and proper accountal of the RC items; that the Assistant Stock Verifier of the Accounts Department gave evidence to the effect that the object of stores verification was to verify the ground balances as per the description of the material in the ledgers and to ensure proper accountal and substantiate by valid vouchers; and that the applicant submitted only a note dt. 15.2.90 to the respondent No.2. It was submitted along with the his defence submission that the applicant failed to prevail upon the Survey Committee to complete the work to ascertain the responsibility of expenditure of the RC items; that the applicant failed to maintain a proper ledger and to have physical checks of the RC items; that had the applicant been diligent in conducting the physical checks periodically, the loss would have been avoided or at least minimised; that the loss caused to the Railway Administration runs into lakhs of rupees; that the

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applicant exhibited utter calousness in the performance of the legitimate duties; that sufficient and adequate opportunity was given to the applicant to prove his innocence of the charges levelled against him; that the ~~other~~ authorities have considered the defence of the applicant and have passed appropriate order; that even the respondent No.1 has considered the grounds of the appeal raised in the appeal and taken a lenient view and modified the punishment imposed by the disciplinary authority; and that there are no grounds to interfere with the impugned orders.

They submit that the O.A. has to be dismissed

13. There is little variation in the tenure of the applicant. in the post of Dy. Shop Superintendent, Wagon Workshop, Guntupalli. The applicant submits that he worked between 2.6.89 and 11.5.90. However, the respondents in their reply have stated that the applicant worked in the post of Dy. Shop Superintendent from December, 1988 to June, 1990. As regards the duties to be performed by the Dy. Shop Superintendent, it is not disputed by the applicant. One of the duties is physical verification of the R.C. items under his custody. This physical verification has to be done periodically and reports to be submitted to the higher officers. The applicant during the tenure of his service appears to have not done the physical verification of R.C. items and submitted a report. Had he submitted the periodical reports then it would have been possible for the superior officers to fix the responsibility on the missing items.



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14. The discrepancy as well as deficiency of the stock of the R.C. items was noticed when the Asstt. Stock Verifier of the Accounts Department conducted the check of the R.C. items ~~on~~ from 19.3.90 to 31.3.90. This check was conducted in the presence of the applicant. The applicant has signed the Stock Verification Report submitted by the Asstt. Stock Verifier. This report was attested by 2 witnesses. After the stock verification was conducted by the Asstt. Stock Verifier, the applicant was required to offer his explanation for the deficiencies found during the check. The applicant took 2 years time to offer his explanation to the report. The applicant now submits that the disciplinary authority issued the charge memo 3 years after he ceased to hold that post and that there was inordinate delay in initiating the disciplinary proceedings. We are not prepared to accept the contention of the applicant. The Hon'ble Supreme Court in the case of State of Andhra Pradesh Vs. N. Radhakrishnan 1998 (2) ATJ.559 (para 19) has clearly stated that ~~there is~~ no hard and fast rule can be laid down as to the period ~~within which the disciplinary proceedings can be initiated~~ or conclude-
It all depends on the facts and circumstances of each case. Therefore, we ~~can~~ find no substance in the contention of the applicant that there was inordinate delay on the part of the disciplinary authority in issuing the charge memo. Considering the fact that the applicant himself took more than one and half years to submit his explanation to the Stock Verification Report submitted by the Asstt. Stock Verifier of the Accounts

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Department, there is no justification for him to contend that there was in-ordinate delay in issuing the charge memo. Only after ascertaining the explanation of the applicant the concerned authorities have come to a conclusion whether prima facie case existed or not to proceed against the applicant.

15. In that view of the matter, the applicant's contention that there is inordinate delay in initiating the disciplinary proceedings against him is rejected.

16. The appellate authority has absolved the applicant of ~~the~~ item No.3 of the charge memo. Item No.3 relates to ~~the~~ meeting of the ~~the~~ Survey Committee. As already observed the applicant had submitted a note dt. 15.2.90 to the Dy. Chief Mechanical Engineer. Then the DCME, in order to ascertain the responsibilities of different custodians of the R.C. items had constituted a Survey Committee consisting of Asstt. Controller of Stores and Asstt. Works Manager (M). The said Committee did not meet and submit its report within 10 days. The DCME had directed to the said Survey Committee to submit its report within 10 days. Then, at least the DCME should have issued a reminder to the said Committee to submit its report or when the DCME had constituted the Survey Committee on the basis of the note submitted by the applicant, the applicant could have persuaded the Survey Committee to convene a meeting and fix the responsibilities for the missing R.C. items. No doubt, the applicant may not be able to give any direction to the Survey Committee to convene and submit its report. In this background of the case, the appellate authority felt that ~~charge~~ against the applicant as indicated in the item 3 of the charge memo.

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is not correct and thus absolved him of the said charge.

17. The contention of the applicant that because of the findings of the appellate authority on the item No.3 of the charge memo, items No.1 and 2 also have to be held as not proved cannot be accepted. As already stated items No.1 and 2 of the charge memo are based on the Stock Verification Report submitted by the Asstt. Stock Verifier of the Accounts Department which prepared the report in the presence of the applicant. The applicant accepted his liability to the said report and submitted his explanation during the month of August, '98. Therefore the item 3 of the articles of charge memo does not in any way relate or based on the items 2 and 3 of the charge memo. In view of the findings recorded by the appellate authority on item No.3 of the charge and it does not automatically absolve the applicant of the misconduct imputed against him under items 1 and 2 of the charge memo.

18. The contention of the applicant that items 1 and 2 of the charge memo are not based on any evidence cannot be accepted. As already observed items 1 and 2 of the charge memo are based on the stock verification report submitted by the ASV of the Accounts Department and the explanation offered by the applicant during August, 1982. Further, the concerned ledger book, stock issue register and vouchers also formed the basis of the items 1 and 2 of the charge memo. When that is so, it cannot rightly be brushed aside concluding that items 1 and 2 of the charge memo are based on no evidence. Hence the contention of the applicant is rejected.

19. The applicant has confirmed that he submitted a note dt. 15.2.90 to the DCME, Wagon Workshop. That does not absolve him of the items 1 and 2 of the charge memo.

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In his note dt. 15.2.90, he brought out recorded deficiency of the RC items. It appears that this is the first note submitted by him after he worked in the post as DSS. As already submitted, the duties of the DSS are reclamation, custody, disposal and proper accountal of the RC items. The applicant should have explained before the Inquiry authority or the disciplinary authority about his innocence of the charges. Only way he could have done was that he should have placed the periodical checks carried out by him to ascertain the deficiency in the RC items. Had the applicant carried out the periodical checks of the stock of the RC items, then necessarily he should have submitted his report to the DCME. If he was punctual in the performance of his duties as DSS, then he should have summoned the DCME to produce the periodical check reports submitted by him. The disciplinary proceedings is not like a criminal trial where an accused can keep mum and ask the prosecution to prove the charge. Here the things are different. He submitted his explanation to the Stock Verification Report conducted by the Accounts Department during October, '82. It is not his case that ^{There} he was not deficient in the stock of RC items report as noticed in the Stock Verification Sheet.. When that is so the applicant should have produced some acceptable evidence to show that he was punctual in performance of his duties in protecting the materials of the Railway Administration. Simply submitting that charge is not proved and this charge is not based on no evidence does not help the applicant in any manner.

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20. Another dereliction of duty imported against the applicant is that when he noticed deficiency in the RC items, then he should have as a responsible officer lodged a theft memo. Admittedly, the applicant has not lodged a theft memo. The explanation of the applicant for this is that he was not aware whether the RC items were missing or stolen. He himself submits that he was not aware of the RC items. This explanation of the applicant clearly indicates that he was not devoted in performing the duties. When he found certain RC items missing, he should have lodged a theft memo and it was for the authorities/whether they were missing or they were stolen. It is not necessary that theft memo should be filed only when the officer satisfies himself as to the occurrence of the theft. When once certain RC items were found missing, it was his duty to bring to the notice of the authorities concerned and lodge a theft memo before the concerned authorities. The concerned authorities would have conducted/investigation into the theft memo and come to the conclusion whether it was a stolen case or missing case of the RC items. This also clearly indicates that the applicant was/diligent in performance of his duties.

21. This Tribunal cannot re-appreciate the evidence considered by the respondent authorities and record a different finding. The respondent authorities are well versed with the manner of appreciation of evidence and reach a proper conclusion. As already stated above, the disciplinary authority had held all the 3 items of the charge memo as proved and ~~it had~~ imposed the penalty of removal from service. Further the appellate authority after

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perusing the inquiry records and also the order passed by the disciplinary authority disagreed with ~~the~~ regard to the findings as to the item No.1 of the charge memo and absolved the applicant of the item 3 of the charge memo and reduced the punishment. ~~and the disciplinary authority~~

22. We feel that the appellate authority has done ~~its~~ justice in reducing the punishment of the applicant. In view of the matter, we find no reasons to interfere with the impugned order passed by the appellate authority. The appellate authority has taken into consideration the loss incurred by the Railway administration and considered the future prospects of the applicant and modified the penalty of removal from service to that of reduction to a lower grade. We feel that the appellate authority was lenient in deciding the appeal of the applicant.

23. After we concluded the order, the learned counsel for the applicant submitted his written arguments on 7.9.98. We feel it proper to go through the same and consider the contentions raised by the applicant.

24. It is stated that the RC items were under the custody of various custodians and that therefore, when the applicant submitted a note dt. 15.2.98 then the DCME ~~was to constitute~~ ^{Survey} a committee to inquire into and ascertain the proper custodian of the lost RC items and directed said committee to submit its report within ten days. No doubt the DCME ordered so on the basis of the note submitted by the applicant. It is not known whether the committee performed its job and submitted its report to the DCME of the Wagon Work Shop. As already observed, it was in the interest of the applicant, the DCME ordered to constitute a ^{Survey} Committee.



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When that was so, the applicant should have prevailed upon the Committee to conduct the check and ascertain the various explanations of the different custodians of the RC items.

25. When that is so, we cannot say that the applicant was not at all responsible for the loss of the RC items. In fact the ASV of the Accounts Department conducted the checks during the the month of March, 1990. The applicant submitted his explanation during August, 1992. If that is so, the applicant should have asked the report of the Committee to enable him to offer his explanation or he should have got Survey summoned the report submitted by the Committee to establish responsibility of the applicant to the extent indicated in the charge memo. The applicant has not done so. Therefore, Survey merely because the DCME has ordered to constitute a Committee that does not absolve the applicant in any manner. As already observed the appellate authority considered and absolved him of item No.3 of the charge memo.

26. The appellate authority has revised the penalty imposed by the disciplinary authority. The applicant further submits that the penalty imposed by the appellate authority is too severe. We are not persuaded to accept the said view. The loss caused to the Railway administration runs into lakhs of rupees. When that is so, we are not prepared to accept the contention of the applicant that the punishment imposed by the appellate authority is too severe. It is for the authorities concerned to take a practical and pragmatic view of the matter and impose a suitable punishment. The Tribunal or the Court has no role in the said matter. Even the Court or Tribunal cannot interfere with the punishment.



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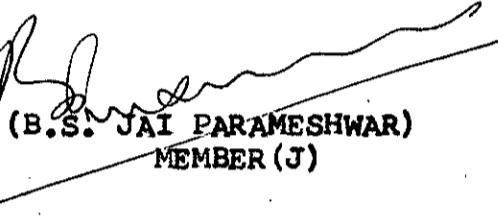
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27. In that view of the matter no different view can be taken in the case even after perusal of the written arguments submitted by the learned counsel for the applicant.

28. Therefore, the only order that can be passed in this O.A. is to dismiss the same.

29. The O.A. is accordingly dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)

MEMBER (J)


(R RANGARAJAN)

MEMBER (A)

Dated, the 18th September, '98

CS

OA. 743/96

Copy to :-

1. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. The Deputy Chief Mechanical Engineer, South Central Railway, Wagon Workshop, Guntupalli, Krishna District.
3. One copy to Mr. P. Krishna Reddy, Advocate, CAT., Hyd.
4. One copy to Mr. N.R. Devaraj, Sr.cGSC., CAT., Hyd.
5. One copy to HBSJP M(J), CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate copy.

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29/10/98
II COURT

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CHECKED BY
APPR VED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD CEN. HYDERABAD

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

AND

THE HON'BLE SHRI S.S. JAI PARAM SHWAR:
M(J)

DATED: 18/10/98

ORDER/JUDGMENT

M.A/R.A/C.P.H.C.

in
O.A. NO. 743/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLR

