

(M)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

O.A.NO. 1077 OF 96

DATE OF DECISION: 5-2-1998

TVG Prasada Rao PETITIONER (S)

GV Sekhara Babu ADVOCATE FOR THE
PETITIONER (S)

VERSUS

UOI, rep. by Secy. M/o Rly.
New Delhi and 6 others RESPONDENT (C)

N.R. Devaraj ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE Mr. Justice DH Nasir, VC

THE HON'BLE Mr. H. Rajendra Prasad, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? -
4. Whether the Judgement is to be circulated to the other Benches

[Signature]

JUDGEMENT DELIVERED BY HON'BLE Mr. Justice DH Nasir, VC

(112)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1077/96

dt. 5-2-1999

Between

Shri TVG Prasada Rao

: Applicant

and

1. Union of India, rep. by
its Secretary
Min. of Railways
New Delhi

2. General Manager
Central Organisation
Railway Electrification
Allahabad

3. General Manager
Rail Nilayam
SC Rly., Secunderabad

4. Chief Project Manager
Rly. Electrification
BZA/Vijayawada

5. Dy. Chief Electrical Engr.
Rly. Electrification
Vijayawada

6. Sri DVS Raju
Divnl. Electrical Engr.
C/o Sr. Divnl. Electrical Engr.
(Traction Rolling Stock)
Rly. Electrification
Vijayawada

7. Sri K. Venkata Rao
Asstt. Electrical Engr.
(Gauge Conversion)
C/o Divnl. Rly. Manager's Office
Hubbali

: Respondents

Counsel for the applicant

: G.V. Sekhara Babu
Advocate

Counsel for the respondents N.R.

: N.R. Devaraj
SC for Railways

Coram

Hon. Mr. Justice D.H. Nasir, Vice Chairman

Hon. Mr. H. Rajendra Prasad, Member (Admn.)

Judgement

order (per Hon. Mr. Justice D.H. Nasir, Vice Chairman)

This OA calls for a minute scrutiny of disputed questions of facts in connection with the disciplinary action against the applicant resulting from the shortage of stocks while the applicant was posted as Electrical Foreman at EF/RE Stores. We, however, hasten to add that the allegation against the applicant that he refused to accept the chargesheet and abstained from participating in the Disciplinary proceedings, may have a great bearing on the conclusions which may be arrived at by this Bench on the reliefs sought by the applicant. In fact the fate of this OA hangs on that singular fact.

2. The applicant is a Diploma holder in Electrical Engineering. He was appointed to the Railway service in 1971. Thereafter he was directly selected and appointed by Railway Service Commission as Electrical Chargeman and was eventually appointed as Assistant Electrical Foreman. According to the applicant on 14-9-1987 the charge of Electrical Foreman of Railway Electrification was handed-over to him by his predecessor Respondent-7. No stock verification was done before handingover charge to the applicant. The applicant continued in the post till 22-6-1988. In 1989 during stock verification a shortage of 1.2 M.T. of MS Channel was noticed and the applicant was called upon to explain the shortage. Although he was not concerned with the same, according to the applicant, he verified the official records and found that the material was issued by K. Venkat Rao, who was EF (Electrical Foreman) to ELS (Electrical Loco Shed) for erection or foundation of machinery. The original DMTR (Daily Material Transaction Register) of November, 1986 on page 18 contained an entry

that 1.2 MS 125x65 size 1200 MT was issued to ELS (Works) and that the said entry was posted and signed by R-7. Further, according to the applicant, an entry showing that 12 MT MS Channel was issued on 27-11-1986 to ELS (Works) was also found in the Ledger and the said entry was posted and signed by R-7 as transaction had taken place during his tenure before the charge was handed over to the applicant. However, according to the applicant the said issue was not posted by R-7 in the copy of the DMTR which was sent to the DEE (Divisional Electrical Engg.)/RE/BZA in normal course (Annex.IV).

3. Further according to the applicant on the basis of these facts his explanation that it was issued and utilised during the tenure of R-7 and that proper voucher was not prepared and recorded and that therefore was no shortage infact could not be overlooked. The applicant, therefore, requested for obliteration of remarks on the ground that it was a procedural lapse committed by R-7. Respondent-7 also issued a statement in his own handwriting and signature that 1.2 tonnes of MS 1.25x65 was issued ELS/BZA for recovery of machinery (Annex.V).

4. Respondent-6 therefore, issued an order dated 27.1.89 incorporating the explanation of the applicant and directing the Chief Electrical Foreman to 'inspect and advise the utilisation of the said material. He obtained the statement of R-7 who confirmed the utilisation by his statement on the said letter on 30-1-1989 (Annex.VI). The applicant alleges that the later notings were made in the concerned file sheet by the concerned staff including R-6 that there was no shortage of material but 'Issue' was not posted in DMTR and

it was a procedural lapse on the part of R-7.

5. Certain disputes subsequently arose between the applicant and R-7 as well as R-5 over certain adverse Confidential remarks against the applicant. According to the applicant R-5 and R-7 who were close to each other joined hands to victimise the applicant by implicating him in a false case and that with that intention in view R-5 reopened the stock sheet instead of sending it to Accounts for closure and noted on the file sheet that DEE (R-6) remarks were not confirming the lapses and there was no reason why it should be condoned by CEE. Respondent-6 endorsed the said remarks instead of explaining the matter properly for condoning the same on the ground that it was merely a procedural lapse (Annex.VII). Respondent-5, therefore after obtaining a letter dated 21-2-1991 from R-7 induced him to deny utilisation of the material during his tenure and to claim that there was an excess of 98 kgs. during stock verification on 29-12-1987. The said letter, according to the applicant, was fabricated and interpolated with the consent and connivance of R-5 and R-7 (Annex.VIII). R-6 made an endorsement disputing the explanation of the applicant and accepting the alleged fabricated letter as genuine. Respondent-5 and Respondent-6, thereafter kept quiet for 13 months from 21-2-1991 and three years from the date of the stock sheet. Further according to the applicant when he was due for promotion to the post of Chief Electrical Foreman on 13-7-1992, and for the post of AEE (Asst. Electrical Engr.) on 14-7-1992, R-5 prepared a chargesheet vide memorandum dated 20-3-1992. On 31-3-1992 R-6 called the applicant to his chamber and told him that a charge sheet was due to be issued to him on the stock sheet issue. When the applicant requested R-6 to allow him to

discuss the same, as it was already recommended for closure, R-6 recorded that the said request was a refusal to receive the chargesheet and abstained from issuing it.

6. Further according to the applicant, R-5 arbitrarily passed an ex-parte order of penalty dated 6-5-1992 holding the applicant liable for the whole loss of 1.2 MT MS Channel and imposing recovery of Rs.12,000/- from the salary of the applicant in 24 instalments. Accordingly, the sum of Rs.12,000/- was recovered from the applicant's salary from May, 1992 to April, 1994. This action of R-6 is challenged in this OA by alleging that it was resorted to without issuing a chargesheet and without giving the applicant an opportunity of being heard and without any inquiry.

7. The applicant preferred an appeal dated 8-6-1992 to R-4 (Annex.X). Respondent-4 however confirmed the penalty without any application of mind, according to the applicant, to the facts and circumstances of the case in a routine manner vide the impugned order. The applicant submitted a Revision Petition dated 17.11.1992 against the same but the same was also rejected and the penalty was confirmed. This order was also passed according to the applicant without application of mind to the facts and circumstances of the case. The applicant thereafter submitted representations through SCR Employees' Sangh vide letter dated 29-3-1995 and 21-7-1995 for reconsidering the penalty, but in vain.

8. The applicant, further brings to the notice of the Bench that he was a Trade Union Leader, a hard-working person and that he was awarded certificate of merit dated 13-4-1989 (Annex.XVI). He also received appreciation letter dated 14-6-1989 for his work (Annex.XVII), and in the selection list the applicant secured third place whereas R-6 could secure only 5th place (Annex.XVIII).

9. Further according to the applicant in 1992, out of 207 candidates eligible for the post of Asstt. Electrical Engg (AEE) only six were qualified including the applicant in the written test and that the applicant secured the highest marks in the written test vide list dated 16-4-1992 (Annex. XIX). The applicant also earned a cash award of Rs.200/- for his efficiency and hard work but in view of certain confidential remarks adverse in nature, disputes/differences arose between him on one hand and R-5 and R-6 on the other who indulged into implicating the applicant in false cases by virtue of the prejudice which they had developed against the applicant.

10. Further according to the applicant the order of penalty of 6.5.1992 was issued when the applicant was due for AEF and AEE selection but he was wrongfully denied his promotion as Chief Electrical Foreman (CEF) which was due to him on 13-7-1992 and Asstt. Electrical Engr.(AEE) which was due on 14-7-1992 and his juniors viz. Sri Chakrapani, Sri Subramanyam, and Sri Srinivasan were promoted which according to the applicant was arbitrary, illegal, and void. Further according to the applicant lower marks were awarded to him in view of the penalty and the stigma of penalty was imposed so that promotion could be denied to the applicant and therefore according to the applicant it became necessary for him to file this OA for obtaining relief claiming that the order of penalty vide No.RE.Con/Misc/10/Dy.CEE/Vol.II dated 6-5-1992 and 23-9-1992 and vide order No.E/1/19/DAR dated 1-3-1993 and order No.RE/Con/Misc/Dy.CEE/Vol.II dated 29-2-1996 respectively passed by Respondent-5, Respondent-4, and Respondent-2 were illegal and void and that the same deserved to be quashed and set aside. A further direction is also sought that the respondents be called upon

to refund the sum of Rs.12,000/- with interest at 12% p.a. from 1-5-1992 till release and to provide all consequential benefits of promotion with effect from 13-7-1992 as Chief Electrical Foreman and as Asstt. Electrical Engineer with effect from 14-7-1992.

11. Reply affidavit is filed on behalf of Respondent-4 resisting and denying the facts narrated and pleas taken by the applicant. Respondent-5 had to pass the ex-parte order dated 6-5-1992 because the applicant refused to receive the charge-sheet is the fulcrum of the contention raised by the official respondent. It is submitted by learned counsel for the respondents, Mr. V. Bhimanna, that the Appellate authority considered each and every point raised by the applicant and passed a speaking order confirming the penalty.

12. In support of the contention that the applicant refused to receive the chargesheet, it is stated in the counter affidavit that the applicant's refusal had been recorded in the presence of two Supervisory officials who were colleagues of the applicant. It is further pointed out that the applicant did not raise any issue with regard to his refusal, in his appeal dated 8-6-1992.

13. On the facts of the ^{case the} respondents deny the allegation made by the applicant that the Disciplinary authority reopened the stocksheets with a prejudicial approach and say that the Disciplinary authority had handled and accepted the closure of the stock sheet in view of the observations of finance and other facts and therefore the question of reopening stock sheet does not arise.

14. On the question of legality of the impugned order it is contended by the learned standing counsel for the respondents that the order of imposition of minor penalty was issued under Rule-6(iii) of the Railway Servants (Discipline and Appeal) Rules, 1968, and that it was a speaking order despite ^{fact} that it was an ex-parte decision.

15. It is not disputed by the respondents that the stock-sheet was prepared on 25-5-1989 and the charge-memo was issued on 20-3-1992 but the respondents come up with an explanation that the delay was only due to the difficulties involved in establishing and fixing up the responsibilities. The allegations of mala fide intention and harassment allegedly caused to the applicant and subjecting him to victimisation are emphatically denied by the respondents.

16. The respondents also raised a contention that the applicant refused to receive the chargememo SF-11 dated 20-3-1992 in the presence of two witnesses on 31-3-1992 and therefore according to the Disciplinary authority, as per extant rules, the charge sheet was deemed to have been served on the delinquent.

17. As far as the conclusion arrived at by the Disciplinary authority is concerned, it is stated in the impugned order in paragraph 2 that the applicant was responsible for the shortage in question for the following reasons : -

"Sri T.V. Giri Prasad Rao, refused to receive SF.11 vide memo No.RE/Con/MISC/10/Dy. Point CEE/11 dated 20-3-1992, being a senior subordinate. It is clear from the stock sheet No.ASV/AO.3/EF/G/RE/BZA/Supp/ISA/89-90 dated 25-5-1989 that he is responsible for the loss of 1.2 MT of MS Channel to the tune of Rs.12,000/-. Therefore, it has been decided ex-parte by the undersigned to impose on him the penalty of recovery of the cost, as mentioned below, to avoid loss to the Railways".

18; However it does not appeal to our conscience. We are ~~however~~ at a loss to appreciate the contention raised by the respondents that the impugned order of penalty was a speaking

..8.

documents relating to the charges levelled against the applicant found that the shortage of 1.2 MT MS Channel (125 x 65 mm) had occurred from the Railway stock which was in applicant's possession. On first verification in December, 1987 the stock was found to be 2802 MTs i.e. 98 kgs. was in excess but on subsequent stock verification in May, 1989 the stock was found short by 1.2 MTs and therefore according to the Revisional authority the plea taken by the applicant that 1.2 MT MS Channel had not been used by the applicant's predecessor was not acceptable and that it was a case of shortage found during stock verification and that it had been proved.

21. The above observations though briefly stated, cannot be ignored. But the question whether it was conclusively proved before the Disciplinary authority and if so, what material was taken into consideration and what was the evidence on the record which inspired the authority to come to ^{that} the conclusion is a matter which requires indepth scrutiny of facts.

22. With the situation being as stated above on the culpability of the applicant with regard to the charge of stock having been found short during the tenure of the applicant we are not inclined to give a clean chit to the respondents ^{to} to confirm that sufficient material was available on the record which could be treated as proved in evidence, for holding the applicant responsible for the shortage in question. We are of the considered view that sufficient material was not available on the record of the case for the authorities concerned to arrive at a definite conclusion that the applicant was responsible for the shortage. With this situation in view we believe that it is necessary that the controversies on various questions are straightened out by conducting departmental inquiry

order. Nothing else except the above observations made in the impugned order could be treated as discussion on merits and substance of the case for arriving at a definite conclusion. A mere statement made in the concluding part of the impugned order that under Rule 19 of Railway Servants(D&A) Rules, 1968 he may prefer an appeal against his order - does not absolve the impugned order suffering from the vice of arbitration. By no stretch of imagination this order could be treated as a speaking order.

19. The conclusions arrived at by the Appellate authority that the shortage had taken place during the tenure of the person who was incharge of Stores at the relevant time and he was wholly responsible for the same does not stand divulged in a manner as if any thing which came to surface was consistent with the guilt of the delinquent alone and none else. Merely stating that the authority had gone through all relevant documents and evidence available on the record does not convert a silent order into a speaking order. The grounds stated in para (b) that the delinquent's statement that the material was utilised during the period of his predecessor Sri Venkat Rao although denied by Sri Venkat Rao himself vide letter dated 21-2-1991 cannot be treated as the last word because the inquiry being ex-parte, the same has not been tested on the anvil of cross-examination. The same applies to the observations made in paragraphs (c), (d) of the order of the Appellate authority.

20. In the order dated 12-3-1993 passed by the Revisional authority appearing at Annex.XIII, it is observed that the Revisional authority concerned after carefully going through the entire Disciplinary proceedings, relevant

from the stage of serving the charge sheet which has been served on the applicant or which was attempted to be served but not received by the applicant. It would be hazardous for any Tribunal to arrive at conclusions on the controvertial factual aspects of the case without the benefit of the same having been tested on the anvil of cross-examination and for this purpose a full-fledged domestic inquiry is a must.

23. This OA could therefore be disposed with a direction to the Fifth respondent to cause departmental inquiry to be conducted from the stage of serving the charge sheet on the applicant and to take all necessary steps in accordance with law to ensure that the inquiry is held and completed expeditiously.

24. The High Court of Andhra Pradesh in G. Shiva Prasad Rao Vs. Bank of India¹ held that it was obligatory on the part of the inquiring authority to record findings in respect of each and every charge which had been levelled against the delinquent officer. In the case before us, the report of the Inquiry Officer is not there because the charge sheet was alleged to have been refused by the applicant and the order of punishment issued by the Disciplinary authority was totally silent about the factors which prompted the Inquiring authority to record a finding of guilt.

25. The Calcutta High Court in Paramahans Pandey Vs. Union of India² expressed a view that in the departmental proceedings there must be evidence on the basis of which reasonable inference of fact may be made by the disciplinary authority, some of the basic evidences were missing and it was left in

1. 1990(1) SLR 375
2. 1990(6) SLR 108

the realm of surmises and conjectures. The High Court further observed that insufficient material had been revealed in the disciplinary proceeding on the basis of which reasonable inference about the complicity of the delinquent on the charges levelled against him could be made and therefore, it was held that no useful purpose would be served by proceeding further from the stage of second show cause notice.

26. The opinion which we have expressed earlier that a full-fledged domestic inquiry was required to be conducted so that the facts in controversy could be properly examined by the higher forum if and when the matter is taken to such forums, stands amply supported by the above decision and therefore, we feel doubly sure in directing the departmental inquiry to be conducted ~~whole hog~~ ^{AS} from the stage of serving the charge sheet.

27. In that view of the matter, therefore, this OA is disposed with a direction to the Fifth Respondent to cause departmental inquiry to be conducted from the stage of serving charge sheet on the applicant within two weeks from the date of receipt of the copy of this order and to take all necessary steps expeditiously so that the inquiry could be completed as early as possible. The applicant is directed to receive the charge sheet, which, in fact, forms part of the record of this case. The applicant shall co-operate fully with the authorities in the expeditious conclusion of the enquiry and shall himself not give any cause for any delay.

28. This entire exercise shall be completed not later than 30th April, 1999.

29. In the meantime, the orders which have been challenged by the applicant in this OA shall remain in suspended