

In THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

O.A. 824/99

Date: 31.3.2000

Between:

U. Nageswara Rao .. Applicant

A N D

- 1. Senior Divisional Commercial  
Manager,  
South Central Railway,  
Vijayawada.
- 2. Additional Divisional Railway  
Manager,  
South Central Railway,  
Vijayawada.
- 3. Chief Commercial Manager,  
South Central Railway,  
Rail Nilayam,  
Secunderabad. .. Respondents

Counsel for the applicant : Mr.G.V.Subba Rao  
Counsel for the respondents: Mr.V.Rajeswara Rao

Coram:

Hon. Shri R. Rangarajan, Member (A)  
Hon. Shri B.S. Jai Parameshwar, Member (J)



## O R D E R

(Per Hon. Shri B.S. Jai Parameshwar, Member(J))

None for the applicant. Heard Mr. V.Rajeswara Rao, learned standing counsel for the respondents.

2. During April, 1995 the applicant was working as Commercial Supervisor in the scale of pay of Rs.1600-2660. He was working as GSR/BZA and was incharge of loading of consignments. On 26/27-4-95 he got loaded certain unbooked <sup>bags of</sup> lime by 8690 express in SLR SE 4810 causing pecuniary loss to the railway administration. That was detected during the vigilance check. Hence the Senior Divisional Commercial Manager, issued a charge memo bearing No.B/C Con./54/97 dt. 17-4-97. The misconduct alleged against him read as follows :

"Article -I.

That the said Sri U. Nageswara Rao, while working as PSR/OGL during the month of April, 95 committed a serious misconduct in that while on duty on 26/27-4-95 at Parcel Office/OGL he got loaded 43 bags of unbooked lime by 8690 express in SLR SE 4810 causing pecuniary loss to Railways which was noticed during a vigilance check as detailed in the statement of imputations.

Sri U.Nageswara Rao, PSR/OGL thus failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant in contravention of Rule 3(1)(i), (ii) and (iii) of Railway Services(Conduct)Rules, 1966.

Article-II

Sri U.Nageswara Rao while working as PSR/OGL during the month of April, 95 committed a serious misconduct in that while on duty on 26/27.4.95 he attempted to load 51 bags of unbooked limes, out of which 28 bags with misleading markings and 23 without marking in the rear SLR of 8690 express and stacked 52 bags of unbooked limes on platform near parcel office without booking. Thereby he attempted to cause pecuniary loss to Railways as detailed in statement of imputations.

Sri U.Nageswara Rao, PSR/OGL, thus failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant in contravention of Rule 3(1)(i),(ii) and (iii) of Railway Services (Conduct) Rules, 1966. "

A detailed enquiry was held into the charges by Inquiry Officer. The report of the Inquiry Officer is at page 49 to 57. A copy of the report of the Inquiry Officer was furnished to the applicant. Applicant submitted his explanation against the findings of the Inquiry Officer. A copy of the explanation is at Annexure VIII page 58 to 60. The disciplinary authority after considering the enquiry records and the explanation offered by the applicant, agreeing with the findings of the Inquiry Officer imposed the penalty of compulsory retirement from service w.e.f. 1-8-1998. The proceedings of the disciplinary authority is dt.22-7-98 (Annexure-I) page 18 to 20 of the OA.

3. Against the said punishment order the applicant submitted an appeal dt. 23-7-98. The appellate authority viz. ADRM considered the appeal and by his proceedings dt. 2-9-98 rejected the appeal and confirmed the penalty. The applicant submitted a revision petition to the Chief Commercial Manager, Secunderabad. The revisional authority by his proceedings No.P.86/BZA/UNR/2428/98 dt. 9-12-98 modified the punishment to that of reduction to the lower post/grade of Head Commercial Clerk in the scale of pay Rs.5000-8000(V pay commission scale) fixing the pay at the minimum of the scale i.e. Rs.5000/- for a period of two years with cumulative effect. Further, the revisional authority directed that the intervening period between the date of his compulsory retirement and the date of his reinstatement in service shall be treated as dies-non. The applicant has filed this OA challenging the orders passed by various authorities which culminated in reduction in lower rank by the revisional authority.

4. The applicant has challenged the impugned order on the following grounds:

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- (a) The enquiry was conducted by an officer of the vigilance department and the Inquiry Officer was biased towards him;
- (b) The findings of the Inquiry Officer is perverse and not on the basis of any evidence;
- (c) The charges framed against him were vague;
- (d) The departmental procedural orders which are enumerated in Commercial Code/Volume prescribed to be followed by the staff in their daily duties were violated; were not brought out in the chargesheet except stating that the service conduct rules of the railway servants; What was the misconduct that was committed by the applicant had not clearly mentioned in the charge memo;
- (e) During the enquiry proceedings on 21-1-98 certain documents were required to be produced for the defence of the applicant. However, those documents were not produced. The applicant submits that non furnishing of the documents is fatal to the enquiry;
- (f) The enquiry officer adopted double standard in appreciating evidence of the witnesses.
- (g) The Inquiry Officer has not properly brought any proof;
- (h) The charge that 43 bags of lime were unbooked is nowhere established. If they were unbooked the Vigilance Inspector would not have allowed the packages to be re-loaded at Vijayawada after getting them unloaded. To cover up the lapses on the part of Vigilance Inspector a message was issued by him in the name of Sr.DCM /BZA to the destination station to check the packages etc.

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- (i) The disciplinary authority has not applied his mind to the inquiry report under Rule 10 of the Railway Servants (D&A) Rules, 1968.
- (j) The ADRM has no jurisdiction to consider the appeal under the rules. The appellate authority has not applied his mind to the enquiry report as well as the enquiry proceedings; and.
- (k) The revisional authority who gone through the records has come to the conclusion that the applicant was not responsible, but however based his findings on ~~the~~ <sup>preponderance</sup> of probability. When there was no positive proof established no inference could have been drawn on surmises.

Thus the impugned orders are not sustainable in law and are therefore liable to be set aside.

5. The respondents have filed a reply. It is submitted that as per rules in vogue, the parcel office staff should personally supervise the loading/unloading of parcels at Brake-van of train and also ensure packing conditions are correctly followed by the consignor and also ensure proper markings on the consignments in order to reach ~~the~~ <sup>the</sup> correct destination. Whenever loading of any consignment was done, it is the responsibility of the parcel staff to hand over the relevant parcel way bills to the Guard of the train in order to hand over the same ~~at~~ the destination station. As there was no group "D" staff available at Ongole Railway station to load/unload the parcels, the parcel staff were permitted to engage the Licenced Porters against the Payment of Charges. It is not correct to state that the vigilance check was done after the departure of the train no.8690 at Ongole Railway station and also at Vijayawada platform on arrival of the train. In fact, the vigilance staff had kept incognito watch on the loading/unloading operations since ~~the~~ <sup>the</sup> arrival of the train. It is also a fact that the vigilance officials checked the loaded parcels pertaining

to Front SLR at Vijayawada Railway Station and also observed the parcels, which were attempted to load in Rear SLR by the applicant. The applicant had also stated in para No.VI(1) that he had attempted to load some consignments after loading of one parcel from Rear SLR. Another important fact is that the parcels which were attempted to load at rear brake-van had no markings. If the parcel consignment is not having any markings during the transit, it will get unconnected and lead to claims. As an incharge of parcel office on that day, the applicant was to ensure before loading of the parcels, whether all the consignments were marked and properly booked in order to ensure correct despatch and delivery of the parcels. On this score the applicant had violated the rules in vogue while booking and transport of the parcels. The contention of the applicant that the express train stops at the station for a few minutes during which time whatever bags out of the stocked consignments come to hand the licenced porters load them into the brake-van and it is not possible to pick up the bags according to the parcel way bills and signature is obtained from the Guard of the train for the number of bags loaded as per the railway marks is incorrect. The parcel staff should personally ensure loading of consignments into the brake-van as per the prescribed rules for such loading in order to avoid claims and damages to the consignments.


6. It is submitted that during the vigilance check it was found that out of 43 bags of lime only 16 bags were having some railway marks and remaining bags were having no marks. Loading of consignments without marks and parcel way bills/memo in case of left over consignments is highly irregular. In this instant case it is proved that there was loading of unbooked parcels of 43 bags of lime. The question is as to who was responsible for this loading. The applicant was on duty and was looking after the loading operations of parcels. Hence he was only responsible for this irregularity. The applicant

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himself stated that he had attended the Rear SLR to look after the loading and unloading operations and as there was no room to load the parcels, he was with Chief Guard until the departure of the train. The applicant never stated who prevented him not to go and attend to Front SLR with a view to ensure whether there was any unloading/loading.

7. The parcel office staff were expected to attend FSLR and RSLR of all the passenger carrying trains in order to ensure whether any consignment was available for unloading. It was strange why the applicant remained at Rear SLR until the departure of the train. In fact, Seal Card of the FSLR was found in the pocket of the applicant during the vigilance check on the platform after departure of the train. It is submitted that the rule applies only in case of unclaimed articles and it will not apply to the instant case. It is not correct to say that there was no record to prove that the consignment which were not booked were despatched by that train and the railway marks and private marks on the packages had not been documented and there was also no summary prepared by the clerk to establish that the bags were unloaded. In fact, the vigilance people arrived at the exact number of unbooked bags of lime which were loaded in the FSLR and which were attempted to load in the RSLR and enumerated in the statement of imputations by the disciplinary authority in detail.

8. It is not correct to state that the railway administration was not able to establish one single instance of such consignments which had been received at the destination unbooked as they were not able to establish by record that the consignments from Ongole were received unbooked and they were auctioned. The very purpose of vigilance organisation is to detect the irregularities and appraise the railway administration about such malpractices in order to prevent leakage of revenue.



9. The disciplinary authority had carefully gone through the proceedings and relevant records and imposed the penalty of compulsory retirement which was confirmed by the appellate authority. However, after filing the revision petition the applicant had approached the Hon. High Court in WP No.27817/98 and as per the directions of the Hon. High Court the revisional authority considered the revision petition and modified the punishment to that of reduction to lower post/grade of Head Commercial clerk in the scale of Rs.5000-8000 for a period of two years with cumulative effect.

10. The enquiry was conducted in accordance with the principles of natural justice and procedure indicated in the rules. There are no grounds to interfere with the impugned orders as the revisional authority has modified the penalty to that of reduction to lower post.

11. The main gravamen of the charge is that the applicant had loaded 43 bags of lime which were unbooked into train no. 8690 at Ongole on 26/27-4-95. When he was incharge of the parcels it was his duty to load/unload the parcels covered by permanent way bills. His version that the express train stopped at the station for a few minutes and hence the licenced porters without reference to the permanent way bills loaded the parcels into FSLR cannot be accepted. Further contention of the applicant is that he was at RSLR with the Chief Guard till the departure of the train and was not aware as to the loading/unloading done in FSLR and if any irregularity was committed then it was by the licenced porter at the FSLR.

12. The vigilance staff was moving with the train. They noticed the irregularity when the train left Ongole railway station. It is for the applicant to state what parcels he had loaded on the day with reference to

§permanent way bills. When certain unbooked parcels were noticed it was his duty to explain how the unbooked bags of lime loaded into the train at FSLR. He cannot absolve his responsibility mainly on the pretext he was with the Chief Guard till the departure of the train. The very fact that the applicant remained with the Chief Guard till the departure of the train clearly indicated that he was fully aware of what was going on at FSLR of the train. He cannot shirk his responsibility on the licenced porters who according to him loaded the parcels without reference to the permanent way bills.

13. Even before arrival of the train on the Ongole station platform, the applicant should have arranged the parcels along permanent way bills/forms for purposes of loading them either into FSLR or RSLR. He should have properly instructed the licenced porters to load only those parcels covered with permanent way bills/forms. As a parcel staff if the applicant could not take care of these basic necessities we feel there was something wrong in the performance of the duties of the applicant.

14. The explanations of the applicant that the 8690 Express train stopped at Ongole Railway station for a short period and that the licenced porters loaded parcels into FSLR without reference to permanent way bills/forms has to be accepted with a pinch of salt. He could have summoned the Permanent Way register to show how much parcels were loaded into FSLR & RSLR on 26/27-4-95 and was there any difficulty for him. As per his own version, he was at RSLR with the chief guard and he was aware of the number of parcels to be loaded into the train, he could have requested the Chief Guard to detain the train for some more time to enable him to discharge his duties in accordance with the rules. The Chief Guard or the underguard cannot accept any parcel not covered by the permanent way bill. We could not think that the Chief Guard would not have obliged the applicant.

15. The way the applicant purposely remained at RSLR and allowed the licenced porters to load the parcels into the FSLR without reference to permanent way bills/forms remotely suggests that he was definitely aware of what was going on at FSLR.

16. It is not his defence that 43 bags of lime were never loaded at Ongole railway station. Further he has not explained the possession of seal card in his pocket. The authorities have carefully taken note of these circumstances and passed the impugned orders.

17. The permanent way bills should have been with the applicant and should have been careful enough to load only those parcels which were covered under the permanent way bill. It is not his case that the 43 bags of lime loaded at Ongole station were booked. He has not explained and he has not examined any witness to show that he was responsible for loading the unbooked bags of lime.

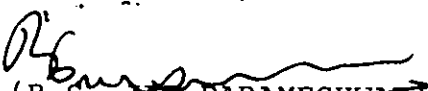
18. The applicant while challenging the impugned order had stated that certain documents requested by him were not produced or furnished during the enquiry. The applicant has not given the details of the documents to ascertain whether any injustice has been caused to him. Merely saying that the enquiry officer failed to furnish the required documents is not a sufficient ground to set aside the orders passed by the respondent authorities.

19. His grievance is that the enquiry was conducted by the vigilance staff and therefore the inquiry officer was biased towards him. We cannot accept this contention because vigilance staff cannot have biased attitude towards the delinquent employee. They are expected to act impartially. Therefore the contention of the applicant that the enquiry officer being from vigilance wing recorded his findings without any evidence cannot be accepted. We are not convinced that it is a 'case of no evidence as urged by him.

20. Even though the disciplinary authority had imposed the penalty of compulsory retirement on the applicant and the same was accepted by the appellate authority. However, the revisional authority after considering the enquiry records and the nature of the charge modified the penalty to the reduction in lower rank. In that view of the matter we do not feel it necessary to interfere with the impugned orders.


21. In the case of State Bank of Patiala vs. S.K. Sharma (AIR 1996 SC 1669) the Hon. Supreme Court has laid down certain guidelines to be followed in adhering to the principles of natural justice and has also specifically observed that Court or Tribunal shall not set aside the orders passed by the disciplinary authority after conducting enquiry as per service rules merely on technical grounds. The above view of the Hon. Supreme Court is aptly applicable to the facts of the case. The applicant who was incharge of the parcel staff has failed to perform his duties in accordance with the code and manual.

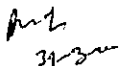
22. In that view of the matter we find no merit in the OA and the same is liable to be dismissed. Accordingly OA is dismissed. No order as to costs.

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

33-3-00

MD

  
(R. RANGARAJAN)  
Member (A)

  
31/3/00