

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 1-1-2002

OA No.567/1995

Anil Panwar s/o Shri Durga r/o G.K.Jha, H.No.213 D/13, Sai Behen Colony, Gulab Bari, Ajmer.

..Applicant

Versus

1. The Union of India through the General Manager, Western Railway, Bombay.
2. Chief Works Manager (E), Workshop Ajmer, Western Railway, Ajmer.
3. Dy. Chief Mechanical Engineer (Loco), Western Railway, Ajmer Division, Ajmer.
4. Senior Personnel Officer (W), Western Railway, Ajmer Division, Ajmer.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

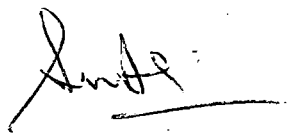
Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

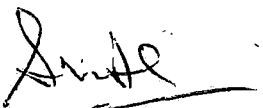
Per Hon'ble Mr. S.K.Agarwal, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, applicant makes a prayer to quash and set-aside i) memorandum of chargesheet SF-5 dated 24.7.1991 (Ann.A1), ii) NIP dated 19.7.1994 regarding imposition of penalty (Ann.A2), iii) order passed by the Appellate Authority rejecting the appeal dated 24.11.1994 (Ann.A3), iv) order dated 7.4.95 rejecting revision petition (Ann.A4) and to allow the



applicant all consequential benefits.

2. Facts of the case, as stated by the applicant, are that while working as Head Clerk in Time Office (Loco), a memorandum of chargesheet SF-5 dated 24.7.91 was issued to the applicant for major penalty. The allegations against the applicant were that the employees, who remained absent physically in Diesel Shop (Loco) were deliberately marked leave in their leave account by the applicant which resulted undue payment. Thus, applicant committed misconduct as defined under rule 3(1)(i)(ii) and (iii) of Railway Servants (Conduct) Rules, 1966. Before filing reply, the applicant requested to supply some documents so as to prepare his defence, but the same were not supplied to the applicant. Thereafter, applicant submitted reply to the chargesheet and denied the charges. The Enquiry Officer after conducting the enquiry held the applicant guilty and the Disciplinary Authority after making compliance of necessary formalities imposed the penalty of stoppage of two grade increments with future effect vide order dated 19.7.94 (Ann.A2). The applicant filed an appeal challenging the order of imposition of penalty, which was rejected by the Appellate Authority vide order dated 24.11.94 (Ann.A3). The applicant filed revision petition and the same was also rejected vide order dated 7.4.95 (Ann.A4). It is stated that the chargesheet is vague and does not disclose any misconduct as defined under rule 3(1)(i) (ii) and (iii) of Railway Servants (Conduct) Rules, 1966 and while conducting the enquiry there has been grave violation of rules and principles of natural justice. The enquiry has been conducted by an



officer lower in rank than the officer who conducted the fact finding enquiry. The findings of Enquiry Officer are based upon no evidence, hence perverse and no penalty could be imposed upon the applicant on such findings. Therefore, applicant is entitled to all the reliefs sought for.

3. Reply was filed. In the reply it is stated that there is no provision of supply of copies of the listed documents at that stage. However, the applicant could have made a request for inspection of documents, but the applicant did not do so. Moreover, the applicant as well as his defence assistant inspected the documents on 14.7.92, on the first date of regular enquiry. Thus, no prejudice was caused to the applicant by non-supply of documents, as alleged by the applicant. The respondents have denied that there has been any violation of rules/procedure while conducting the enquiry and stated that one copy of leave summary is also kept by the Time Keeper and if it was a basic document, he should have produced the same, but it was deliberately or wilfully withheld by the applicant as its production would have supported the charge against him. As no copy of the leave summary was available with the department, therefore, the same could not be produced. It is stated that returning the incomplete enquiry was not in accordance with the Railway Servants (Discipline and Appeal) Rules. Therefore, the Disciplinary Authority while completing the enquiry has corrected the deficiencies left by the Enquiry Officer and thus, there is no irregularity. It is also stated that merely the Enquiry Officer happens to be junior than the

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person who has conducted the fact finding enquiry is no ground to vitiate the whole enquiry particularly when no prejudice is caused to the applicant and the applicant has no case.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The brief arguments by the learned counsel for the applicant are i) that the chargesheet is vague and the same does not disclose any misconduct as defined under rule 3(1)(i) (ii) and (iii) of Railway Servants (Conduct) Rules. Therefore, the same is liable to be quashed; ii) The Enquiry Officer was lower in rank than the person who conducted the fact finding enquiry, therefore, the whole enquiry is vitiated; iii) The documents as demanded by the applicant were not supplied to the applicant thereby caused serious prejudice to the applicant; iv) The Enquiry Officer conducted the enquiry in violation of rules/procedure and v) The findings of the Enquiry Officer are based on no evidence, hence perverse and liable to be quashed.

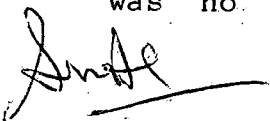
6. On the other hand, the learned counsel for the respondents objected all the aforesaid arguments and argued that the charge against the applicant is not at all vague/ambiguous and it clearly discloses misconduct as defined under rule 3(1)(i) (ii) and (iii) of Railway Servants (Conduct) Rules. He has also argued that the applicant and his defence assistant inspected all the required documents except leave summary which was not

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chargesheet on the ground that it was vague/ambiguous and does not disclose any misconduct as defined under rule 3 (1)(i) (ii) and (iii) of Railway Servants (Conduct) Rules.

9. As regards issue No.2, the preliminary enquiry conducted in this connection is merely a fact finding enquiry which is done only to collect material about the allegation made against the delinquent employee and it is not in the nature of statutory enquiry. It is, therefore, immaterial whether the officer conducting the fact finding enquiry is senior to the Enquiry Officer or not. There is no provision in the rules which lays down any prohibition in this regard as to whether the Enquiry Officer is required to be senior than the officer who has conducted the fact finding enquiry. In Pankajesh v. Tulsi Gramin Bank (cited supra), Hon'ble Supreme Court held that the fact that the Enquiry Officer not being of higher grade than the delinquent officer do not result any prejudice to the applicant unless there is substantial miscarriage of justice prejudicial to the delinquent. Merely that the person who has conducted the fact finding enquiry was junior/senior to the Enquiry Officer does not affect the enquiry proceedings. Therefore, the ground raised by the learned counsel for the applicant has no substance.

10. As regarding issue No.3, the applicant in his OA raised an objection that the documents as demanded by the applicant were not furnished to him thereby caused serious prejudice to the applicant. In reply to the OA filed by the respondents it has been made clear that there was no provision to supply copy of the documents as



person who has conducted the fact finding enquiry is no ground to vitiate the whole enquiry particularly when no prejudice is caused to the applicant and the applicant has no case.

4. Heard the learned counsel for the parties and also perused the whole record.

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6. On the other hand, the learned counsel for the respondents objected all the aforesaid arguments and argued that the charge against the applicant is not at all vague/ambiguous and it clearly discloses misconduct as defined under rule 3(1)(i) (ii) and (iii) of Railway Servants (Conduct) Rules. He has also argued that the applicant and his defence assistant inspected all the required documents except leave summary which was not


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available with the respondents and the applicant failed to establish the fact as to what prejudice has been caused to the applicant because of non-supply of the documents at that stage. He has also argued that no procedural irregularity has been committed by the Enquiry Officer while conducting the enquiry and if there has been any, the applicant failed to establish the fact as to what prejudice has been caused to him. It is further argued that the findings of the Enquiry Officer are based on the evidence on record, hence cannot be termed as perverse. In support of his contention, the learned counsel for the respondents referred to:-

- i) Secretary to Govt. of Tamil Nadu v. Subramanyan Rajadevam, 1996 (4) SLR 498 (SC).
- ii) Pankajesh v. Tulsi Gramin Bank, 1997 (4) SLR 591 (SC).
- iii) State of UP v. Harendra Arora and ors., 2001 SCC (L&S) 959.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

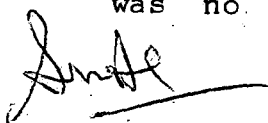
8. As regards issue No.1, it clearly reveals on perusal of memorandum of chargesheet issued to the applicant that the charge is not at all vague and ambiguous. On perusal of the chargesheet it cannot be said that chargesheet does not disclose misconduct as defined under Rule 3(1)(i) (ii) and (iii) of Railway Servants (Conduct) Rules, 1966. The chargesheet is not defective in any manner rather it is very clear and comprehensible. Therefore, we do not find any ground to quash the



chargesheet on the ground that it was vague/ambiguous and does not disclose any misconduct as defined under rule 3 (1)(i) (ii) and (iii) of Railway Servants (Conduct) Rules.

9. As regards issue No.2, the preliminary enquiry conducted in this connection is merely a fact finding enquiry which is done only to collect material about the allegation made against the delinquent employee and it is not in the nature of statutory enquiry. It is, therefore, immaterial whether the officer conducting the fact finding enquiry is senior to the Enquiry Officer or not. There is no provision in the rules which lays down any prohibition in this regard as to whether the Enquiry Officer is required to be senior than the officer who has conducted the fact finding enquiry. In Pankajesh v. Tulsi Gramin Bank (cited supra), Hon'ble Supreme Court held that the fact that the Enquiry Officer not being of higher grade than the delinquent officer do not result any prejudice to the applicant unless there is substantial miscarriage of justice prejudicial to the delinquent. Merely that the person who has conducted the fact finding enquiry was junior/senior to the Enquiry Officer does not affect the enquiry proceedings. Therefore, the ground raised by the learned counsel for the applicant has no substance.

10. As regarding issue No.3, the applicant in his OA raised an objection that the documents as demanded by the applicant were not furnished to him thereby caused serious prejudice to the applicant. In reply to the OA filed by the respondents it has been made clear that there was no provision to supply copy of the documents as





demanded by the applicant at that stage. Moreover, it has been categorically stated in reply filed by the respondents that applicant alongwith his defence assistant had inspected the listed documents on 14.7.92 except leave summary which was not available with the department. The applicant cannot, therefore, make any grievance about the non-supply of listed documents. He could have inspected the documents at that time but he did not make any such request. The applicant also failed to establish as to what prejudice was caused to him on account of non-supply of listed documents at that stage. Therefore, in our considered view, the issue raised by the applicant in this OA has no substance and there has been no violation of the provisions of rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968.

11. As regards issue No.4, it is stated by the applicant that the Enquiry Officer has conducted the enquiry in violation of rules/procedure to which respondents have denied in their reply. In the OA certain examples of violation of rules/procedure has been given to which a categorical reply has also been given by the respondent department as per the reply filed by them, but the applicant has completely failed to establish the fact as to what prejudice has been caused to him. In State of UP v. Harendra Arora and ors. (cited supra) the theory of prejudice has been discussed at length and decision given in State Bank of Patiala v. S.K.Sharma, 1996 SCC (L&S) 711 has been followed and on perusal of aforesaid rulings, we are of the opinion that in strict sense of rules there has not been any violation of rules/procedure and more so the applicant has failed to establish the fact as to what

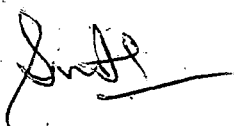


prejudice has been caused to him by not following the rules/procedure. Therefore, the arguments as put forwarded by the learned counsel for the applicant has no force and is not sustainable in law.

12. At the time of arguments the learned counsel for the applicant has stressed on the point that finding of the Enquiry Officer is perverse as no misconduct could be established against the applicant by the enquiry report.

13. The Court/Tribunal can only interfere in the departmental proceedings where the High Court/Tribunal is of the opinion that there has been denial of reasonable opportunity and or/there has been violation of principles of natural justice and the finding are based on no evidence or the punishment is totally disproportionate to the proved misconduct of an employee.

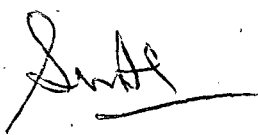
14. In B.C.Chaturvedi v. UOI, 1996 (32) ATC 14, Hon'ble the Supreme Court, inter alia held that the Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive on its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion of finding reached by the disciplinary authority is based on no evidence.



15. In Indian Oil Corporation vs. Ashok Kumar Arora, (1997) 3 SCC 72, it was held by Hon'ble Supreme Court that High Court in such cases of departmental enquiry and findings recorded therein does not exercise the power of appellate court/authority. The jurisdiction of the High Court in such cases is very limited. For instance, where it is found that domestic enquiry is vitiated by non-observance of the principles of natural justice (2) denial of reasonable opportunity, if findings are based on no evidence, (3) punishment is disproportionate to the proved misconduct of the employee.

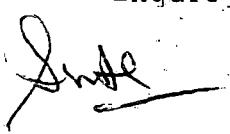
16. In Kuldeep Singh v. Commissioner of Police and ors. 1999 (1) SLR 283, Hon'ble Supreme Court held that the Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstances can the court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

17. In Apparel Export Promotion Council v. A.K.Chopra, 1999 (2) ATJ SC 327, Hon'ble Dr. A.S. Anand, Chief Justice observed that High Court cannot substitute its own conclusion with record to the guilt of the



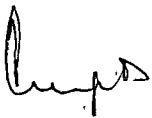
delinquent for that of departmental authorities unless the punishment imposed by the authorities is either impermissible or such that it shocks the conscience of the High Court.

18. In the instant case, it appears that the findings of the Enquiry Officer are based upon the evidence on record. Merely the leave summary has not been produced by the department at the time of enquiry is not a ground to say that it is a case of no evidence and hence findings of Enquiry Officer is perverse. In this connection, we would like to say that one copy of leave salary is also kept by the Time Keeper. If leave summary was only a basic document, it was also the responsibility of the applicant to produce the said leave summary. The respondents department has categorically stated in the reply that leave summary is not available with them. Therefore, the same could not be produced but applicant has not explained as to why he has not produced the said leave summary as a defence document. In case it had not been listed as listed document alongwith chargesheet which goes to show that the said leave summary had been deliberately and wilfully withheld by the applicant as its production would have supported the charge against him as mentioned in the chargesheet. As the other copies of the said leave summary were not available in other sections of the Department and applicant appears to have withheld the copy of leave salary which he also keeps with him. Therefore, non-production of leave summary is of no consequence against the applicant and the findings of the Enquiry Officer cannot be said to be perverse. The penalty



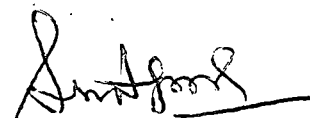
of stoppage of two increments with future effect has only been imposed upon the applicant which in the facts and circumstances of this case cannot be said to be disproportionate to the gravity of the charge.

19. In view of above, we do not find any merit in this OA and the same is liable to be dismissed. We, therefore, dismiss this OA having no merits with no order as to costs.



(A.P.NAGRATH)

Adm. Member



(S.K.AGARWAL)

Judl.Member