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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.73/96

Date of order: 16/11/2000

Hari Datt Mishra, S/o Sh.Shankar Lal Mishra, R/o Qtr.No.238/A,
Workshop Colony, Kota, employed on Chargeman Inspecting Wing, Kota

...Applicant.

Vs.

1. Union of India through the General Manager Western Rly,
Churchgate, Mumbai.
2. Chief Works Manager, Workshop, Western Railway, Kota.
3. Production Engineer, Workshop, Western Railway, Kota.

...Respondents.

Mr.M.S.Bhargava - Counsel for applicant.

Mr.Manish Bhandari - Counsel for respondents.

CORAM:

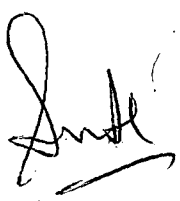
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the prayer of the applicant is to quash and set aside the charge-sheet dated 17.4.87 (Annx.A1), NIP dated 24.7.87 (Annx.A2) order imposing penalty of recovery of Rs.34,000/- imposed by respondent No.3 and appellate order dated 31.1.98 (Annx.A3) issued by respondent No.2 rejecting the appeal and to allow the consequential benefit including refund of recovered amount with interest.

2. Facts of the case as stated by the applicant are that he was working as Mistry in Gas Section Workshop, Kota in the year 1979. This post was upgraded in Sept 1981 and the applicant was promoted as Chargeman. It is also stated that the applicant was transferred from Gas Section to Production Control Office in September 1984 and he was relieved from Gas Section on 24.8.94. Thereafter, the applicant was transferred to Inspection Wing in May 1985. It is stated that Shri Hari Shanker was Material Collector in Gas Section who used to keep the



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custody of Gas Cylinders. The record of entry and delivery was also maintained by Sh. Hari Shanker and the Shop Superintendent was over all incharge. It is also stated that the applicant's job was to issue instructions for supply of Gas Cylinders to various department under the supervision of Shop Superintendent and no charge of Gas Cylinders was ever given to the applicant. It is stated that respondent No.3 issued the charge sheet on 17.4.87 to the applicant for imposing minor penalty on the ground of disobedience of instructions and neglect to perform duties resulting in loss to settle the claim of the firm to an amount of Rs.34,000/- but no charge sheet was issued to Shri Hari Shanker, Material Collector. The applicant filed reply on 2.7.87 stating that the applicant was transferred from Gas Cylinder Section in 1984 and he handedover the charge including the entire record to the next man and the record of receipt and despatch of Gas Cylinders was maintained by Shri Hari Shanker under the orders of Section Superintendent. It is stated that respondent No.3 vide order dated 24.7.87 inflicted the penalty of recovery of Rs.34,000/- from the applicant and the applicant was held guilty for loss of Gas Cylinders whereas the charge against the applicant was for disobedience of orders and neglect to perform duties, resulting the Railway putting in loss to settle the claim of the firm to the extent of an amount of Rs.34,000/-. The applicant thereafter submitted an appeal which was rejected vide order dated 27.1.88. Thereafter, the applicant challenged the same before the Tribunal vide O.A No.621/92. The matter was remanded to the appellate authority vide the Tribunal's order dated 19.8.94. Respondent No.3 again rejected the appeal vide order dated 31.1.95 in a stereotyped manner. It is stated that the applicant was never given any charge of Gas Cylinder and whatever record was with him the same was handedover at the time of transfer to another section. Therefore, the charge sheet is ex facie illegal, arbitrary and deserves to be quashed being violative of Article 14 of the Constitution and the applicant was held guilty on the basis of conjectures and surmises. It is also stated that there was a total

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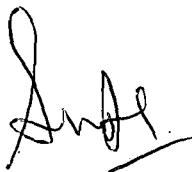
denial of reasonable opportunity to defend the case to the applicant, therefore, the impugned order of punishment is exfacie illegal, arbitrary and without jurisdiction. It is also stated that there is a specific rule in Railways that if there is any recovery of loss of more than Rs.150/-, an enquiry under Rule 9 should be held but no such enquiry was held in this case, therefore, the impugned charge sheet ordering imposing penalty and order passed by the appellate authority are bad in law and liable to be quashed. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that after upgradation the post of Mistry to that of Chargeman, the applicant became Incharge of Gas Section and he was also responsible for maintaining the quantity of stores and he was also responsible for any storage found in the quantity of stores. It was denied that the Shop Superintendent was Incharge of the Section. The Shop Supdt was Incharge of the entire Shop and responsible for the inspection and production of the sotres. He is not responsible for the shortage of any particular Section for which separate Incharge was appointed. It is also stated that the applicant was incharge of Gas Section and the applicant being the Incharge of Gas Section was supposed to maintain the record the entry and delivery of Gas Cylinders and the applicant was rightly held responsible for the loss of Rs.34,000/- to the Railways. Therefore, this O.A is devoid of any merit and the same is liable to be dismissed. It is also stated that the appellate authority has rightly rejected the appeal filed by the applicant therefore, no inference is called for.

4. Rejoinder was also filed reiterating the facts as stated in the O.A.

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

6. The counsel for the applicant has argued that neither the applicant was incharge of the Gas Section nor he was responsible for maintenance of record. He further argued that Shri Hari Shanker was



responsible for the loss/shortage of Gas Cylinders. He further argued that the applicant was transferred in the month of September 1984 in Producing Wing therefore he cannot be held responsible for the shortage of 19 Gas Cylinders and the order imposing the recovery of Rs.34,000/- from the applicant is perverse and liable to be set aside. On the other hand, the learned counsel for the respondents has argued that the applicant was fully responsible for the loss/shortage of 19 Gas Cylinders and the impugned order imposing upon the applicant is perfectly legal and valid and cannot be interfered by this Tribunal.

7. We have given anxious consideration to the rival contentions of the parties and also perused the whole record and concerning file produced before us.

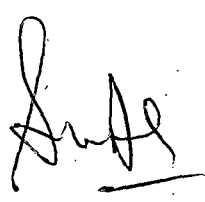
8. In Kuldeep Singh Vs. Commissioner of Police, 1999 (1) SLR 283, it was held by Hon'ble Supreme Court that normally the High Court/this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of guilt is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. In this judgment 'perverse' has also defined is: "If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse."

9. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 227, it was held by the Hon'ble Supreme Court that once the finding of fact based on appreciation of evidence are recorded, High Court in writ jurisdiction may not normally interfere with those findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be ^{canvassed} compassed before the High Court. High Court cannot substitute its own conclusion with regard 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.

10. Admittedly, the applicant from the very beginning alleging the

fact that he was not incharge of Gas Section and the record pertaining to the Gas Section was maintained by Shri Hari Shanker, the then Material Collector. On the perusal of Annx.A6, Annx.A8 and Annx.A10 issued by the respondents, it appears that copy of these letters were also sent to Shri Hari Shanker, HSK Gr.II Welder, which confirm the contention of the applicant and no charge sheet was given to Shri Hari Shanker. Why he was not given any charge sheet and why he was absolved from the liability that has not properly explained by the respondents. There is no evidence on record so as to prove the fact that the applicant was Incharge of Gas Section so as to make him fully responsible the any loss/shortages/damages in that section. No verification report has been produced so as to prove that in which year this loss has occurred. No preliminary enquiry was ever conducted to fix the liability on the person who was responsible for the shortage of 19 Gas Cylinders. It is also strange that for such a huge amount of loss, the respondents have issued a charge sheet for minor penalty where as according to the applicant, if loss is more than Rs.150 in all, a major penalty charge sheet must be issued to fix the liability. But in this case the respondents issued a charge sheet for minor penalty and imposed a penalty for recovery of Rs.34,000/- from the applicant. It is also very strange that while passing the impugned order of penalty, the reply/defence as submitted by the applicant was not at all discussed. Therefore, the impugned order of penalty recovering Rs.34,000/- as cost of 19 Gas Cylinders from the applicant is perverse and liable to be quashed. So also the order issued by the appellate authority, rejecting the appeal is also liable to be set aside.

11. On the basis of foregoing, we are of the opinion that the order imposing the penalty for recovery of Rs.34,000/- from the applicant and the order rejecting the appeal filed by the applicant are ex facie perverse and liable to be quashed and set aside.



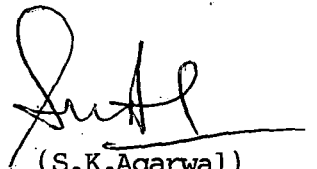
12. We, therefore, allow the O.A and quash and set aside the charge sheet dated 17.4.87 (Annx.A1), NIP dated 24.7.87 (Annx.A2) and the appellate order dated 31.1.98 (Annx.A3). However, this order shall not preclude the respondents' department to make a preliminary enquiry in the matter and if on the basis of preliminary enquiry, liability of loss of 19 Cylinders is fastened ~~and~~ suitable disciplinary action can be taken against the delinquent.

13. No order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).