

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Hon'ble V.C
May kindly be
notified
28/11/2002

O.A. No. 386/1998
T.A. No. 386/

199

DATE OF DECISION

D.W.
29/11

Radha Raman Gupta	Petitioner
Shiv Kumar adv. brief holder for Anupam Agarwal	Advocate for the Petitioner (s)

Versus

Union of India & Others	Respondent
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U. D. Sharma	Advocate for the Respondent (s)
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CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

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

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

(A. P. NAGRATH)
MEMBER (A)

(G. L. GUPTA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 29/11/2002

O.A. No. 386/98.

Radha Raman Gupta S/o Shri Late Sh. B. L. Gupta, aged about 52 years, resident of Char Bagh Hospital Road, Bharatpur.

... APPLICANT.

v e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Additional Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Senior Divisional Commercial Manager, Kota Division, Kota.

... RESPONDENTS.

Mr. Shiv Kumar Adv. brief holder for
Mr. Anupam Agarwal counsel for the applicant.
Mr. U. D. Sharma counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Mr. A. P. Nagrath)

The applicant was working as Senior Goods Clerk, Bharatpur, when a memorandum of major penalty under Rule 9 of the Railway (Discipline and Appeal) Rules 1968, was issued to him on 13.03.1996 (Annexure A-3). An oral enquiry was held and the departmental proceedings culminated into imposition of penalty by the Disciplinary Authority by order dated 19.05.1998 (Annexure A-1). The penalty imposed was reversion from the post of Senior Goods Clerk to that of Goods Clerk from grade Rs. 4000-6000 to Rs. 3200-4900 with minimum pay of Rs. 3200/- p.m. affecting his seniority etc. The applicant preferred an appeal to the Appellate Authority. ADRM, Kota vide order dated 5.06.1998 (Annexure A-2) reduced the punishment to reduction to 3 stages below in the same time scale of pay for a period of 3

years with future effect. Aggrieved with these orders, the applicant has come before us by filing this OA and has made a prayer that the orders dated 19.05.1998 (Annexure A-1), 05.06.1998 (Annexure A-2) and 13.03.1996 (Annexure A-3) be quashed and set aside. The Article of charges have been enumerated in Annexure A-1 to the charge sheet and statement of imputation is in Annexure A-2 of the said document. A reading of that statements of the imputations makes it clear that three charges were levied against the applicant. Briefly stated, these are :-

i) that he had permitted removal of coal from Wagons on 26.01.1996, which was a non working day. Had this not been detected by Vigilance, the Railway would have lost an amount of Rs. 5040/- which was collected on 27.01.1996 as Wharfage.

ii) Though he had placed 18 wagons loaded with cement at 5.35hrs on 25.01.1996 but he had shown the timing of placement as 8.00hrs on 26.01.1996, thereby giving undue advantage to the consignee. Further, that before giving book delivery of 12 out of these 18 wagons, he permitted unloading from those 12 wagons also, with ulterior motive of benefitting the consignee.

iii) On 24.08.1995, 4 wagons were placed in the Yard and unloaded by the party at 10.00hrs. It was observed that unloading had already been completed while Shri R. R. Gupta, i.e. the applicant had entered the

timing of placement as 10.00hrs on 24.08.1995.

The sum and substance of these charges is that the applicant had manipulated the timings of placements of the wagons to give undue advantage to the parties taking delivery and that he had permitted unloading even on Republic Day, which is to be considered as a 'non working day'.

2. The applicant has raised many grounds on which the penalty orders have been assailed. We find that the Enquiry Officer had given a finding wherein he had held the charge of entry of wrong timings in Work Register Transfer (WTO, for short) on 24.08.1995 as not proved. Other charges were held established. The Disciplinary Authority agreed with the findings of the Enquiry Officer. Therefore, we do not consider it necessary to dwell on this charge in respect of the event of 24.08.1995.
3. From the order of the Appellate Authority, we find that he has specifically given a finding that permitting unloading on 26.01.1996 was done at the behest of Shri Randhir Singh, Goods Supervisor, for which no blame lies on the applicant. Thus, it is not necessary for us even to discuss the applicant's guilt vis a vis this particular charge. The only other charge remaining is that he had shown wrong timings of placement of the 18 wagons in WTR inasmuch as the wagons were alleged to have actually been placed at 5.30hrs on 25.01.1996 whereas the applicant had shown the timing at 8.00hrs on 26.01.1996. Also that the applicant had permitted unloading from 12 wagons even before giving both delivery of the same to the party.

4. Learned counsel for the applicant, while canvassing the case for the applicant, stated that the findings of the Enquiry Officer in respect of this charge are totally erroneous for the reason that the Wagons could not have been placed on 25.01.1996 as there was no room for their placement. He emphasized that the wagons were in fact placed only at 8.00hrs on 26.01.1996 and that entry made in the WTR is correct. The applicant was also permitted to defend his case before us. He asserted that the charge against him was merely based on the fact that when the Vigilance check was made, the work of unloading on all the 18 wagons had been completed, which in the view of Enquiry Officer, Disciplinary Authority and the Appellate Authority would not have been possible if the wagons had been actually placed only at 8.00hrs. The applicant contended that the rules provided for a free time of 5.00hrs for unloading irrespective of the number of wagons to be unloaded by a party. The free time is reckoned from the time, the delivery is made over to the party. The applicant asserted that there should be no reason of doubt to say that when the Vigilance made a check which was about three and a half hours after the time of placement, the unloading work could not have been completed substantially. The plea of the applicant is that the entire charge is being forced upon him though the circumstances in the evidence run to the contrary. Learned counsel on his behalf contended that it was a case of no evidence having regard to the evidence adduced before the enquiry officer and the records of the case and that no conclusion can be drawn that the applicant had manipulated the entries in the register for showing a favour to the consignee.

5. Learned counsel for the respondents, Shri U. D. Sharma, strongly urged that the case against the applicant had been

fully established during the departmental proceedings and that this Tribunal would not like to sit in judgement over the findings of facts. He further stressed that there was no infirmity in the proceedings and the action of the disciplinary authority and the appellate authority cannot be faulted. The enquiry officer had considered the statements of all the witnesses and had also scrutinised the relevant records. He has held all the charges except one proved as there was enough evidence against the applicant. The Disciplinary Authority agreed with the enquiry Officer and imposed a penalty of reversion, the same was reduced by the appellate authority, for which detailed reasons have been given in the order. Learned counsel submitted that there was no ground at all for the applicant to challenge the order of the appellate authority.

6. Having perused the documents brought on record in the OA and the arguments led on behalf of the parties, we find that the Enquiry Officer had held 2 of 3 charges proved against the applicant. The Appellate Authority for the reasons in his order dated 05.06.98 had held only one charge proved and this is that the applicant had made wrong entry in respect of timings of placement of the wagons. We discern from the facts that as per respondents the Vigilant check was conducted on 26.01.1996 at 11.30 hrs and unloading was seen going on from all the 18 wagons, though the book delivery of the 12 wagons had not been officially made over to the party even up to the time of the vigilant check. The applicant had refuted this by stating that vigilance check was conducted at 12.15hrs while the book delivery of the 12 wagons was given at 11.35 hrs. and that there was nothing wrong if unloading was going on from all the wagons. It is well established law that the Courts and Tribunals cannot go into the findings of facts and conclusions

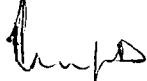


arrived at unless it is apparent that the findings of the enquiry officer are so far removed from the evidence led before him that no person of ordinary prudence would have arrived at such conclusion in the face of the facts before him. The present is not a case falling in that category and we have no reasons to interfere in the findings of the enquiry.

7. We find that in his appeal against the order of the Disciplinary Authority, the applicant had submitted an appeal to the Appellate Authority (Annexure A-13). We have gone through the contents of this appeal and we find that against each allegation held proved the applicant had raised definite and specific contentions. One aspect of this matter which was vehemently stressed by the applicant in his appeal against the order of the Disciplinary Authority that it was not possible for the wagons to have been placed earlier than 8.00hrs on 26.01.1996 as there was no room, does not appear to have been duly considered by the appellate authority. A perusal of the appellate authority's order makes it obvious that the same does not have the necessary ingredients of a reasoned and speaking order, inasmuch as it does not take into account, the points raised by the applicant in his appeal dated 26.05.1998. The applicant has stated that it was not possible to place the wagons for delivery on 25.01.1996 as there was no room, secondly he has also stated that book delivery of 12 wagons had been effected at 11.35hrs while the Vigilence team reached for a check at 12.15hrs. Thus he has defended that there was nothing wrong in having permitted loading from these 12 wagons. The Appellate Authority has not given his findings on these aspects of the matter which have a direct bearing on the lapses alleged against the applicant. We are, therefore, unable to uphold the said order.

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8. In view of the discussions aforesaid the order of the Appellate Authority dated 05.06.1998 (Annexure A-2) is hereby quashed and set aside. However, we deem it proper to remit the case back to the Appellate Authority to pass a fresh reasoned and speaking order after giving his clear finding on the statement of imputations listed in Para 1.2,1.3,1.4 and 1.5 vis-a-vis the contentions raised by the applicant in his appeal. This shall be done by the Appellate Authority within a period of two months from the date of receipt of a copy of this order. No costs.


(A. P. NAGRATH)

MEMBER (A)


(G. L. GUPTA)

VICE CHAIRMAN