

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

DATE OF ORDER: 20.7.2004

ORIGINAL APPLICATION NO. 570/99

Smt. Kalawant & Others LRS to Shiv Kumar son of Shri Baldev Singh Rajput aged about 45 years, by caste Rajpur now-a-days Sr. Clerk, Office of Deputy Controller of Stores, Western Railway, Kota Division, Kota. Resident of C/o Shri Ram Swaroop Railway Quarter E-90-B, Old Railway Colony, Kota Junction, Kota.

....Applicant

VERSUS

1. Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. Chief Personnel Officer, Headquarter Office, Western Railway, Churchgate, Mumbai.
3. Addl. Divisional Railway Manager, Western Railway, Kota Division, Kota.
4. Deputy Controller of Stores, Western Railway, Kota Division, Kota.
5. Shri K. Chandra Shekhar Pillai, Enquiry Officer (Vigilance), GMS Office, Central Railway, Mumbai V.T.

....Respondents.

Mr. S.K. Jain, Counsel for the applicant.

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

CORAM:

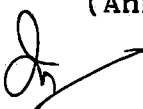
Hon'ble Mr. S.K. Agrawal, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK

Initially Shri Shiv Kumar filed this OA u/s 19 of the Administrative Tribunal's Act. During pendency of this case, Shri Shiv Kumar has expired and his legal heirs have been brought on records. The applicant has assailed the charge sheet dated 31.12.1990 (ANNEXURE A/1), penalty order dated 24.1.1997 (Annexure A/2) by which he was ordered to be removed from service, Appellate order dated 28.4.1997 (Annexure A/3) the rejection of his appeal and lastly



the Revising Authority's order dated 12.7.1999 (Annexure A./4) through which the penalty of removal has been modified to that of compulsory retirement by the Revising Authority.

2. The abridged facts of this case considered relevant for resolving the controversy are that while working on the post of Jr. Clerk, the applicant was issued with a charge sheet for major penalty vide Memo dated 31.10,1990 alleging that during the period 1984-1987, he manipulated the issue of rails in Issue Slip Nos. 229334 dated 11.9.1985 and 282752 dated 7.10,1985 and kept accountal in vague manner. However, he did ~~keep~~ proper records of issue of railway materials issued to the contractors for zonal works and he failed to identify the work and Head of accounts of issue slips amongst other issue.

3. The applicant demanded ten documents in support of his defence out of which three documents were listed documents with the Annexures to the charge sheet. The applicant was allowed to inspect seven documents. However, he was not allowed to inspect documents nos. 1, 6 and 10 (Annexure A/6). The listed documents were also amongst the documents which were shown to him on 24.9.1991. Thereafter, the Inquiry Officer was appointed on 8.10,1991. The applicant demanded some of the documents from the Inquiry Officer and some of them were produced during the inquiry. There was change of the Inquiry Officer. The inquiry was proceeded by DEN Kota subsequently. The Inquiry Officer gave his finding and held all the charges as proved. The applicant submitted his representation against the finding of the Inquiry Officer whereafter the Disciplinary Officer imposed the penalty of removal from service dated 24.1.1997. The applicant preferred an appeal which also came to be rejected vide letter dated 28.4.1997. Thereafter the Revision Petition was preferred in which the order of removal was modified to that of compulsory retirement vide order dated 12.7.1999. The factual matter regarding the working of the applicant, his responsibility and relation with the charges as well

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as evidences brought out by the Inquiry Officer has been discussed in a dilated manner. The grounds and the facts are inter-mixed.

4. The respondents have contested the case and have submitted that the applicant did not submit his written defence statement within ten days from the date of inspection of the documents relied upon and therefore, Inquiry Officer was appointed. The documents have been made available to him. The applicant did not raise any objection regarding the charge of the Inquiry Officer, at the relevant time. There was change of the controlling authority of the applicant on transfer of applicant and the DEN became his disciplinary authority as per provisions of rules. The Inquiry Officer has held that the applicant has manipulated the issue slips and kept accountal in misleading manner and he cannot be considered to be innocent. The scope of judicial review of the Tribunal has also been narrated. It has been averred that this Bench of the Tribunal would not re-appreciate the evidence. Hence the applicant is not entitled for grant of any relief, whatsoever.

5. We have heard the learned counsel for the parties at a great length and have bestowed our earnest consideration to the pleadings and the records of this case.

6. The learned counsel for the applicant has submitted that before submitting his defence statement, the Inquiry Officer was appointed. The applicant was denied reasonable opportunity to submit his defence inasmuch as he was neither supplied the documents which were relevant for his defence nor his Defence Assistant was allowed to cross examine the witness. He has cited two judgements in support of his contention that Inquiry Officer could not have been appointed until the applicant submitted his statement of defence. They are Randheer Singh vs. State of Rajasthan & Others 1992(2)RLR 519 and Kailash Chand Verma vs. Board of Director PNB & Others 2004(2)ATJ 69. He has next contended that the various documents

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which have been relied upon were not proved and ought not to have relied upon by the Inquiry Officer. This way, the applicant has made a scapegoat. The learned counsel for the applicant has also made us to travel through the various documents including the statement of witness produced by the prosecution before the Inquiry Officer and has tried to persuade us that the said witnesses have no concern with the instant case. He has also submitted that the applicant was not responsible for the alleged mis-conduct and there was no loss of any account to the Railways. Therefore, the penalty is also disproportionate to the alleged misconduct and this Hon'ble Tribunal would be pleased to allow the relief which has been claimed by the applicant.

6. On the other hand, the learned counsel for the respondents has reiterated the defence as stated in the reply. The learned counsel for the respondents has submitted that the applicant was given sufficient time to submit the statement of defence but he should thank to himself in delaying the same and the respondents had no option except to proceed with the inquiry. The applicant was also allowed the inspection of all the relevant documents asked by him. In any case, the applicant has not narrated as in what way, the appointment of the Inquiry Officer without his statement of defence or as to in what way non supply of the alleged documents in support of his defence have prejudiced his defence. He has contended that it is an admitted position of the case that the applicant was a dealing clerk and was responsible for the accountal of the stores in question and admittedly there were over-writing and cutting in records. It has also been contended that it is wrong to say that the witnesses was not on the posted strength at the relevant time. It is also wrong to say that no loss was caused to the Railways. He has drawn our attention that there is specific mention in the imputation of the charges that there was a loss to the Railway Administration to the tune of Rs.57,156.98 which resulted in non recovery of the dues from the contractors due to not-maintaining the accounts

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properly. The further defence of the respondents is that even a very lenient view has been taken by the Revising Authority and the penalty of removal from service was converted into compulsory retirement and he has been allowed all pensionary benefits.

7. We have considered the rival submissions raised on behalf of both the parties. It is a settled position that scope of judicial review in such matter is very limited. This court cannot act as an Appellate forum over the findings reported by the Disciplinary Authority and confirmed by the Appellate Authority. The adequacy or reliability of evidence is not a matter which can be produced before the court in these departmental proceedings and violation of the procedure vitiate the inquiry. In this connection, the decisions in case of R.S. Saini vs. State of Punjab 1999 SCC(L&S)1424: K.L. Shinde vs. State of Mysore AIR 1976 SC 1080: Raibarile Kshetriya Gramin Bank vs. Bhol Nath Singh & Other AIR 1997 SC 1908: Bank of India & Another vs. Degala Surya Narainan 1999 SCC(L&S) 1036: Inspector General of Police vs. Thavasiappan JT 1996(6) SC 450, refer.

8. It is of course true that if there is no evidence worthname to hold the charges proved, the order can be set aside by the Tribunal. This case, however, is not of that type where the findings of the guilt have been recorded without any evidence whatsoever. Firstly, we would deal with the submissions of the learned counsel for the applicant as to the appointment of the Inquiry Officer before his defence statement. We find from the records that the applicant was allowed inspection of the documents, at least the documents that are the listed documents with the charge sheet in support of the charges were inspected by applicant on 24.9.1991 and the Inquiry officer was appointed on 8.10.1991. Thus, there was more than ten days gap but the applicant did not avail the opportunity of submitting the defence statement and no reason for the same are forthcoming. We do not find any illegality in the action of the respondents inasmuch as there is no averment that defence of the

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applicant in any way was prejudiced. As regards the cases which have been relied upon by the applicant regarding this issue, the same are distinguishable on facts inasmuch as in both those cases, the time was given for submitting the defence but ~~the~~ before the expiry of the time, the Inquiry Officer was appointed and in those circumstances, the Court passed the order in favour of the petitioner therein. Thus the same does not support the case of the applicant.

9. As regards the submission that this is a case of no evidence, we have carried out an incisive analysis of the records and find that the applicant was definitely dealing with the accounting of the stores and there has been over writing and cutting of the documents. The documents were in possession of the applicant. There is specific averment that there was loss to the Railways inasmuch as certain timely recovery could not be made from the contractors. It is not the case of the applicant that he was not dealing with the records. We specifically made a query as to whether there was any loss to the State but the learned counsel for the applicant made a precarious assertion and replied in negative. The similar was the position regarding the posting dates in support of the witnesses which was produced on behalf of the respondents. As we have earlier said that we are of the firm opinion that this is not a case of no evidence. Hence we are not in agreement with the submission made on behalf of the learned counsel for the applicant.

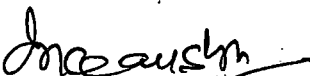
10. Now adverting to the another issue- As regards giving reasonable opportunity to defend the case, the contention of the learned counsel for the applicant that the applicant was not supplied with relevant documents and was not allowed to inspect all the documents, firstly it cannot be accepted as such. It also cannot be accepted that the documents which has been relied by the Inquiry Officer were not proved. Since we do not find that any objection was raised to this effect during the inquiry on behalf of the applicant. However, the learned counsel for the

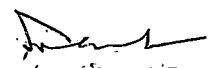
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applicant has not ^{been} able to satisfy as to in what way, the documents which ~~have~~ ^{have} said to be not supplied to him were relevant and non supply of them has caused any prejudice to the defence of the applicant. We have tried to know what was the relevancy of the same to the case of the applicant but the learned counsel for the applicant was at difficulty to give any proper reply and could not substantiate his version. Similar is the position regarding the cross examination of the prosecution witness. We find that the prosecution witnesses in fact took over the charge subsequent to the date of incidence and therefore, the defence of the applicant can by no stress of imagination be said to ^{be} prejudiced. Thus this ground of the applicant is groundless and cannot be sustained.

11. Regarding the proportionality of penalty to the alleged misconduct, this issue has already been rightly considered by the Revising Authority and the penalty of compulsory retirement ^{has} ~~has~~ imposed upon the applicant. We may point out that this is ^{been} ~~is~~ case where the action of the applicant has caused loss to the Railway Administration and the alleged misconduct was of grave nature and the Revising Authority has already taken a lenient view in the matter, hence no interference is called from us. Therefore, none of the grounds raised on behalf of the applicant are sustainable and we do not find that this is fit case for resorting judicial review by this Bench of the Tribunal.

12. In view of what has been stated and discussed above, we reach to a irresistible conclusion that the OA sans merit and fails and the same stands dismissed accordingly, however without any order as to costs.


(J.K. KAUSHIK)
MEMBER (J)


(S.K. AGRAWAL)
MEMBER (A)

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