

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

O.A.No.312/2001

Decided on : April 5, 2005.

CORAM : **HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN.**

Sushil Chandra Chaturvedi (S.C. Chaturvedi), Aged about 60 years, son of Shri Tara Chand Chaturvedi, Resident of 15, Vijay Colony, Nimbaheda Road, Chittorgarh (Rajasthan), at present Opp. Ration Factory Bhim Manch, Kota-JM.

.....
Applicant

By : Mr.Rajeev Sharma, Advocate.

Versus

1. Union of India through General Manager, North Western Railway, Charch Gate, Mumbai-20.
2. Deputy Chief Engineer ©, Western Railway, Kota Jn. Kota (Raj.).
3. Assistant Engineer (C.E), Western Railway, Kota Jn. Kota (Raj.).

By : Mr.Manish Bhandari, Advocate.

O R D E R (ORAL)

KULDIP SINGH,VC

In this O.A the applicant has challenged order dated 25.6.1999 (Annexure A-1), passed by the Deputy Chief engineer ©, Kota, by which the appeal filed by the applicant against penalty of recovery of Rs.24,552/- imposed upon him, has been rejected alongwith other orders.

The facts as alleged by the applicant are that he was inducted in Railway service on 26.8.1966 and he retired on 30.9.2000, as Senior Clerk. During working of applicant on Railway Station Chanderia in Ratlam Division in Construction Unit in 1992, a material of Steel was booked from the Bombay by a private party. The same was supposed to be booked for Chanderia Railway Station but out of bonafide mistake or intentional act, the steel was booked for Chittorgarh. The quantity of booked material was supposed to be 25 Mtrs. But it was

not booked by the party in full, thus, the quantity of material was received only 17613.48 Kg. It was less by about 9 Mtrs. This shortage was because of bad delivery by the party. The material was received by time-keeper and not by the applicant.

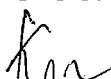
Since the delivery was short by about 9 Mtrs., the applicant represented the matter to the Executive Engineer who took it up with the higher authorities and the Executive Engineer suggested to recover the cost of short material from concerned party. Instead of doing this, the applicant was served with a charge sheet dated 16.11.1998 (Annexure A-2) on the ground that he has caused loss to the Railways. To this the applicant submitted a reply on 10.12.1998. However, he was imposed recovery of Rs.24,551.75 paise, by order dated 25.6.1999 (Annexure A-4). The applicant filed an appeal on 4.8.1999 (Annexure A-5), which has been rejected by the respondents vide order dated 22.7.2000 (Annexure A-1).

In the grounds to challenge the impugned order, the applicant pleads that it is a case of no evidence. On the one hand the charge against him is that he failed to take delivery of the goods at Chanderia, but it is nowhere mentioned that whether the delivery was booked for that station. When no delivery was booked from Bombay to Chanderia and no such delivery was made to such place, how can the applicant be held responsible for any short delivery of the item. It is admitted fact that the steel was booked for Chittorgarh where the applicant was not posted and the material was received by Shri Madan Lal Sharma, Time-keeper. In the preliminary inquiry conducted by respondents, no case was made out against the applicant. Shri M.L.Sharma was also penalized and he has been held responsible to pay Rs.10,000/-, out of Rs.24,552/-. The Accounts Department made 98% payment in advance without perusing the relevant record as there was no order to book the material from Bombay to Chittorgarh. The R.R. Was sent by

the party concerned to the Accounts Department. In the R.R. It was mentioned that the material will be booked from Bombay to Chittorgarh. Since, it was a wrong entry, therefore, no payment should have been released by Accounts Department. The applicant is a retiree and penalty of recovery is too harsh. The applicant has prayed for declaring the whole inquiry, charge sheet dated 16.11.1998, penalty order dated 25.6.1999 and order dated 22.7.2000 as illegal, arbitrary, malafide, ineffective and discriminatory and for quashing the same and for refund of the amount of Rs.4,605/- etc.

Notice in this O.A was issued to the respondents on 31.7.2001 for 4.9.2001. Till date the respondents have not cared to file any reply despite lapse of about 3-1/2 years. Their right to file reply is forfeited. The O.A is being take for disposal as not being opposed by the other side.

The only question raised by the applicant is that the entire proceedings against him are without any evidence. I have considered the O.A from this angle. Undisputedly, the allegations against the applicant were that applicant failed to take proper delivery of M.S.Bar booked from ^{by} M/s Om Steel Mumbai and dispatched to DSK(C), can at CCR, vide R.R. Dated 3.2.1997, against supply order dated 7.1.1992 for total quantity as per RR 27.220 MT. As the delivery could have been taken measurements of all 442 Nos. of Bar received in 11 bundles at Goods Shed during unloading as the same was measured in Depot afterwards. As per the length of each bar, the applicant received 4574.93 RM, which works out to 17.513 MT instead of 27.220 MT, as such there is shortage of 9.507 MT. The stand of the applicant is that he was ready to take delivery of the material if the same was given by weightage system. However, the Executive Engineer ©, had decided after discussion with other concerned persons that it is not possible to weigh the items as there is no facility available for weightment of good

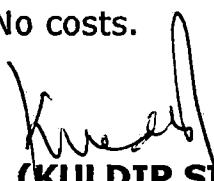


4

in Shed, thus, the material can be weighed on way at "Dharam Kanta" which was to be witnessed by Goods Clerk and since the Goods Clerk was not ready to accompany for every trip, the applicant did not take delivery. The applicant has mentioned certain other facts also with positive assertion that he is not at fault and the impugned orders are illegal, arbitrary and cannot be sustained in the eyes of law. To these pleas, there is no rebuttal on the part of the respondents. Since the pleas taken by the applicant against the impugned orders go un-rebutted, this O.A is can be allowed on this short ground alone.

It appears that the disciplinary authority had not bothered to consider the pleas raised by the applicant at all. The impugned order does not suggest as to on what basis / evidence the disciplinary authority had concluded that the applicant is guilty. Merely because Railway has suffered loss the disciplinary authority had held the applicant guilty, without evidence. Thus, the order passed by the disciplinary authority is perverse and is liable to be quashed.

Accordingly, this O.A. Is allowed. The impugned orders are quashed and set aside. The respondents are directed to refund the amount recovered from the applicant, within a period of three months from the date of receipt of copy of this order. No costs.



(KULDIP SINGH)
VICE CHAIRMAN

April 5,2005.

HC*