

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 29.01.2004

OA No.473/2001

Lallu Ram H s/o Shri Har Bux r/o Loco Hasapura 'A' H.No. 137, at present employed on the post of Peon in the office of DC Pay and Cash department, Western Railway, Jaipur Division, Jaipur.

.. Applicant

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Cashier (OCG), Western Railway, Churchgate, Mumbai.
3. Senior Divisional Accountant Officer, Jaipur, Western Railway, Jaipur Division, Jaipur.
4. Financial Advisor and Chief Accounts Officer, Churchgate, Mumbai.

.. Respondents

Mr C.B.Sharma, counsel for the applicant

Mr. U.D.Sharma, counsel for respondents

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Ehandari, Member (Administrative)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant while working as Peon in the DPM Office, Jaipur was issued a chargesheet dated 1.3.94 (Ann.A5). The article of charge against the applicant was that while working as such on 2nd February, 1994 he has committed gross dereliction to duty in as much as he has stolen 53 currency notes of Rs. 100 denomination from the cash box of Shri G.L.Dogra, Sr. Cashier, Jaipur and as

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such he has failed to maintain absolute integrity and devotion to his duties and acted in a manner of unbecoming of a Railway servant and thereby violated sub rule (i), (ii) and (iii) of Rule 3.1 of the Railway Service (Conduct) Rules, 1966. Against this chargesheet, the applicant submitted representation dated 8.6.94 (Ann.A8) thereby challenging the validity of the concerned officer to issue chargesheet on the ground that he belongs to Cash and Pay Department and Accounts department officer cannot issue a chargesheet as the applicant is not under the administrative control of the authorities of the Accounts Department. Consequently, it appears that taking into consideration his representations and also noticing the fact that there is no separate Cash and Pay Department in Railways and the cash and pay office was under the control of Accounts Department of the Railway, as a matter of abundant caution the chargesheet dated 1st March, 94 was withdrawn and fresh chargesheet dated 19.7.94 on identical charge was issued thereby giving opportunity to the applicant to furnish defence statement to the Sr. DAO, Jaipur within 10 days. After holding regular enquiry, the Enquiry Officer submitted enquiry report on 25th August, 98 (Ann.A15) thereby holding that there is enough and sufficient circumstantial evidence to prove the charges against Shri Lallu Ram, Peon. The applicant submitted representation against the enquiry report and the Disciplinary Authority vide its order dated 17.5.99 (Ann.A2) imposed the penalty to withhold 3 increments with future effect from the date of next increment. The applicant filed appeal against the said order and the appellate authority vide order dated 30.5.2001 (Ann.A3) rejected the appeal. It is on these orders that the

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applicant has filed this OA thereby praying for quashing the impugned chargesheet dated 19.7.94 (Ann.A1), order of penalty imposed by the Disciplinary Authority dated 17.5.99 (Ann.A2) and the order dated 30.5.2001 (Ann.A3) passed by the Appellate Authority.

2. Notice of this application was given to the respondents. The respondents have filed reply thereby contesting the case.

3. The applicant has also filed rejoinder thereby reiterating the stand taken in the OA.

4. We have heard the learned counsel for the applicant and gone through the material placed on record.

4.1 The learned counsel for the applicant has raised two fold contentions. The first contention raised by the learned counsel for the applicant is that the second chargesheet on the same facts could not have been issued once the same has been withdrawn, as can be seen from order dated 26th July, 94 (Ann.A9). The second contention raised by the learned counsel for the applicant is that it is a case of no evidence and as such the penalty as imposed by the Disciplinary Authority could not have been imposed.

4.2 We have given thoughtful consideration to the submissions made by the learned counsel for the applicant and we are not agreeable to the submissions so made. In regard to the first contention that second chargesheet on the same facts could not have been issued, it may be stated that fresh chargesheet, while previous one on the same facts has been withdrawn, was issued on the

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representation of the applicant that it has not been issued by the competent authority. In fact no action was taken pursuant to the first chargesheet and even the Enquiry Officer was not appointed. The second chargesheet on the same charges is not tenable only if the earlier chargesheet was adjudicated upon. As already stated above, since no action on the first chargesheet was ever taken and even the Enquiry Officer was not appointed, as such the enquiry proceedings have not started. The matter is also covered by the decision of the Central Administrative Tribunal, Chandigarh Bench in the case of Harbhajan Singh Sethi vs. Union of India, rendered in OA No. 21/86 as reported in 1987 (1) SLJ (CAT) 537. As such, there is no substance in the first contention raised by the learned counsel for the applicant.

4.2.1 Now let us deal with the second submission made by the learned counsel for the applicant that it is a case of no evidence, as such the penalty as imposed by the Disciplinary Authority and affirmed by the appellate authority could not have been imposed. The learned counsel for the respondents has taken us to the findings given by the Enquiry Officer vide his enquiry report dated 25th August, 98 (Ann.A15). We have gone through the documentary as well as oral evidence relied upon and discussed by the Enquiry Officer. While discussing the documentary evidence Ex.F/2, the document prepared by Shri F.R.Meena, DPM and endorsed by Shri R.K.Garg, DC(I) JF whereby Shri R.K.Garg confirmed that the document was made in connection with theft of 53 currency notes of Rs. 100 denomination and that he had called Shri Lallu Ram (applicant) and apprised him that Shri Dogra has made complaint against the applicant. Shri Garg asked the applicant as to what he had

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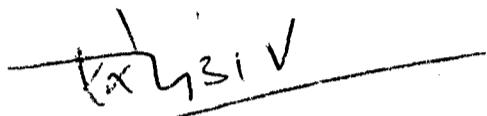
to say in the matter to which he replied that he has lost his sence and he should be pardoned. Similarly, document Ex.P/5 and P/6 are currency notes put up by Shri K.R.Meena, DPM, Jaipur reporting the incident of theft to ADAO/Jaipur and Sr. DAO/Jaipur. Shri K.R.Meena has brought out the fact that he has confronted Shri Lallu Ram in front of Shri R.K.Garg, IOC and asked him as to why he did it. Shri Lallu Ram replied that he had lost his mental balance and had made a mistake. Similarly, there is evidence that the applicant had orally confessed commission of offence while handing back the currency note as per the statement made by Shri G.L.Dogra. Further, there is a statement made by the independent witness Shri R.K.Garg which is to the effect that on 4.2.94 Shri Lallu Ram did make a oral confession before Shri Garg. This witness has further stated that the applicant refused to sign any document on 4.2.94. The Enquiry Officer has also given categorical finding that the defence of the applicant that the respondents wanted to shift him out of the office because they have a feeling that being a member of the union, he was not behaving properly, as such false case has been initiated against him, cannot be accepted, as according to the enquiry officer, the applicant has not made any complaint regarding initiation of false case to the administration. From the evidence as discussed above, we are of the view that it cannot be said to be a case of no evidence. It has been held by the Apex Court in a number of decisions that standard of proof in departmental enquiry is not the same as in the criminal trial. Technical rules of evidence and proof beyond doubt is not applicable to departmental enquiries. The case has to be proved on the basis of preponderance of probabilities and

conclusions drawn as a reasonable man from evidence on record sufficient for the purpose of departmental enquiry. This is the view which has been held in the case of High Court of Judicature at Bombay through its Registrar vs. Uday Singh s/o Ganpatrao Naik Nimbalkar and ors. 1997 SCC (L&S) 1132. Further, the apex Court in a number of decisions has held that scope of judicial review is very limited in departmental proceedings. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. When an enquiry is conducted on charges of misconduct by a public servant, the court/tribunal is concerned to determine whether the enquiry was held by a competent officer or whether the rules of natural justice has been complied with. Whether the findings or conclusion are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The court/tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and arrive at its own independent findings on the evidence. This is the view which has been taken by the Apex Court in the case of

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B.C.Chaturvedi vs. Union of India, 1996 SCC (L&S) 80. In view of the law as laid down by the Apex court and the fact that the findings and conclusions are based on some evidence, it can not be said to be a case of no evidence.

5. Therefore, the applicant has not made out any case so as to interfere in the matter. Accordingly, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)