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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./RXX No. 236 of 1998
..... of

DATE OF DECISION 28.3.2001
.....

Sri Sudhangshu Chakraborty PETITIONER(S)

Mr. G.K.Bhattacharyya / G.N.Das. ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors. RESPONDENT(S)


Mr. J.L.Sarkar. ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. D.N.CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE MR. K.K.SHARMA, MEMBER (A).

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

Judgment delivered by Hon'ble Vice-Chairman.



**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 236 of 1998.

Date of decision : This the 28th day of March, 2001.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Hon'ble Mr. K.K.Sharma, Member (A).

Sri Sudhangshu Chakraborty
Son of Late Sudhir Chandra Chakraborty,
Railway Quarter No. EL/49/B
Barbari Railway Colony,
Dibrugarh (Assam).

....Applicant

By Advocate Mr. G.K.Bhattacharyya, G.N.Das.

-vs-

1. Union of India (Represented by the
General Manager, N.F.Railway,
Maligaon, Guwahati.).
2. General Manager (Personel),
N.F.Railway, Maligaon,
Guwahati.
3. Controller of Stores,
N.F.Railway,
Maligaon, Guwahati.
4. Deputy Chief Mechanical Engineer,
N.F.Railway (Workshop),
Dibrugarh.
5. District Controller of Stores,
N.F.Railway,
Dibrugarh.

...Respondents

By Advocate Mr. J.L.Sarkar, Railway Counsel.

O R D E R (ORAL)

CHOWDHURY J.(V.C.).

This application has been filed under section 19 of the Administrative Tribunals Act and is directed against the order dated 20.12.1997 passed by the District Controller of Stores, Dibrugarh - Respondent No. 5 by which the emoluments of the applicant was reduced to the lowest stage of the pay scale for a period of three years with cumulative effect and for that

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period the applicant would not earn annual increment. In addition it was further ordered that pecuniary loss cause to the Railway which was quantified to Rs. 60,637.26 would be recovered from the pay of the applicant in thirty six equal instalments while the proportionate amount would be recovered from the applicant being the loss of Bronze Ingot estimated at Rs. 87,919.77 after finalisation of the proceedings similarly initiated against the applicant who was the joint custodian of stores as DSK-I/R with the applicant. By the Appellate Order dated 8.8.1999 passed by the Appellate Authority - Respondent No. 4 modified the order of penalty dated 20.12.1997 by reducing the pay of the applicant to the lower stage in his present scale of pay for a period of one year with cumulative effect and pecuniary loss was to be recovered from the applicant in terms of the order passed by the disciplinary authority in consideration of the condition of the strong room. The thumb nail case to the facts leading to the present proceeding are given hereunder :

A Disciplinary proceeding was initiated under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 against the applicant. A Memorandum dated 14.6.1993 was served on the application with the allegation of misappropriation of Railway properties entrusted to him as Depot Store Keeper in N.F. Railway, Dibrugarh. The applicant was charged for the contravention of the provision of Rule 3(1) (i) & (ii) of Railway Service and (Conduct) Rules, 1966. A full fledged enquiry was held. The Enquiry Officer submitted his report on 24.6.1997 holding the applicant guilty of the charges. The report of the Enquiry Officer was communicated to the applicant and the applicant submitted his say in his reply. The Disciplinary Authority by its order dated 20.12.97 accepting the report of the Enquiry Officer and found that the applicant was responsible for the safe custody of materials in

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strong room No. 8 and 10 and jointly responsible with Sri Bhabatosh Chakraborty for strong room No. 9 and by causing loss of materials mentioned in the article of charges and that the applicant failed to maintain absolute integrity and devotion to duty. Accordingly his pay was reduced to the lowest stage for a period of three years with cumulative effect and during that period the applicant would not earn his annual increment. The applicant preferred an appeal before the Appellate Authority challenging the order of penalty. On his appeal the applicant came to know that the respondent No. 4 had exonerated him from the charges levelled against him and he passed a speaking order on the said appeal. The Respondent No. 4 instead of communicating the appellate order forwarded the same to the Deputy Chief Vigilance Officer, Stores, Maligaon. The applicant was thereafter communicated the order passed by the respondent no. 4 on 8.8.1998 upholding the order of the disciplinary authority but modified the order of penalty. The Appellate Authority in its finding held that the applicant was responsible for the shortage but considering the condition of the strong room the punishment is reviewed and his pay is reduced to the lower stage in his present scale of pay for a period of one year with cumulative effect and the pecuniary loss to be recovered as per Disciplinary Authority's order. The legality of the order in this proceeding is challenged on numerous grounds. The applicant mainly stressed on the fact that he was duly exonerated by the competent authority and thereafter at the interference of the Vigilance Authority earlier order was revoked and a fresh Appellate Order was passed.

2. The respondents submitted its written statement denying and disputing the claim of the applicant. The respondents in its written statment did not dispute that the respondent no. 4 has exonerated the applicant from the charges

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levelled again him and the same was later on modified at the interaction of the Vigilance Officer. The respondents in its written statement stated that the Vigilance Department in the Railway is a department of the Railway, the vigilance works under the General Manager, Railway in case of theft, corruption, mismanagement likely to cause financial loss to the Railway has a role to play and the respondents have to work in co-ordination with the said Vivilance Department.

3. Mr. G.K. Bhattacharyya, learned counsel for the applicant amongst other mainly urged that the respondent No.4 fell into error in exercising his power not at his own and it is the Chief Vigilance Officer who interferred in his decision making process. Mr. Bhattacharyya learned counsel further submitted that respondent no. 4 was the appellate authority and he was entrusted with the Appellate power. The respondent No.4 was to exercise his power under the statute and the statute provided the manner for consideration of appeal. In the Discipline and Appeal Rules 1968 vigilance officer had no role in consideration of the appeal. Mr. J.L.Sarkar, learned counsel for the Railways submitted that when loss of public property was concerned naturally in such matter vigilance department was required to see a as to whether there was any serious lapse on the part of the concerned officer. The department of vigilance is a part of the administration and therefore there was no bar on the part of the Appellate Authority to consult with the Vigilance departments and the Appellate Authority passed a reasoned order. The Railway Servants Discipline & Appeal Rules 198 in Part IV provides the procedure for major penalty. In Part V provides the provision of Appeal. The Appellate Authorities are prescribed under Section 19 of that schedule and section 19 of that schedule and section 20 prescribed the priod of limitation and form and contents and submmision of appeal indicated in Section 21 and 22.

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Provisions are made for consulting the Commission, namely, Union Public Service Commission in all cases where such consultations is necessary. The Rule does prescribed any provision for consultation with the vigilance commission. Mr. J.L.Sarkar, learned counsel for the Railways however submitted that rule also did not exclude such consultation and therefore it was open for the respondents to take aid and advice of the vigilance department. The contention of Mr. Sarkar is difficult to accept solely on the ground that no prohibition is made to consult the vigilance department. Since the rule do not provide for such consultation presumption is that consultation is excluded. The power to decide the appeal was entrusted to the Appellate Authority and not to the vigilance department. The discretion is solely conferred on the Appellate Authority and not to other authority and therefore the vigilance department could not have arrogated into the power of the Appellate Authority as is reflected in the instant case.

3. From the records produced before the Bench it reveals that the Appellate Authority passed a reasoned order on the appeal of the applicant on 30.12.1997. The Appellate Authority in its observation found that it was established beyond all doubts that there was every probability of theft of materials in question from 05-ward by the unknown miscreants in connivance with the Depot Watchman at night. The full text of the Appellate Authority order dated 30.12.1997 is reproduced below :

" On carefully going through the appeal and the details of the enquiry report the following observations ohave been noted :

1. It was apparent from the joint report of Depot Store Keepers dated 17.8.89 (SN-92) that due to deteriorated and unsafe condition of all the stocking godowns there was increasing tend of theft in the DBRT Stores Depot.

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2. No action appeared to have been taken by the Administration to repair the godowns as understood from CO's appeal to DCOS/DBRT, dated 6.3.90 (SN-97) and dated 11.11.91 (SN-93).
3. DCOS/DBRT on receipt of theft report on 7.11.91, submitted jointly by the CO and Sri B. Chakraborty, DSK/I/DBRT, inspected the alleged godowns along with others, and detected on C.I. sheet over the roof of Godown No.9 and 10 of 05 Ward had been forced opened from the back side and the roof of the sub-godown covered by expanded metal was also found forced opened.
4. No FIR was lodged with the Police/RPF by DCOS/DBRT or directed the custodians to do so. Had it been done instantly it would have been possible to arrest the culprits.
5. Departmental fact finding enquiry by Sri J.N.Saikia, DSK/I/R was ordered on 12.11.91, i.e. after 5 days of reporting theft when some more clues other than those mentioned above might have been disappeared.
6. All the PW-1, PW-2, and DW-1 opined that there was possibility of criminal interference through the force opened roof sheet, during Cross-examination by DC and EO. DW-1 also confirmed vide his answer to Q. No. 7 at page No. 23 that theft can be occurred without tampering the seals on the locks.
7. PW-1 vide his answer to Q. No. 6 confirmed that there was no scope for theft during day time being working hours. According to him theft took place at Night.
8. It revealed from the answer to Q.No. 21, Page-1 by PW-1 (F.F. Enq. Officer) that no watch & ward staff under DCOS/DBRT was examined at the time of preliminary enquiry of subsequently.
9. The observations noted in S/No. 4 and 8 above are no doubt a lapse on the part of the Enquiry officials as well as a great lacuna to find out the truth of the case.
10. The defence witnesses named S/Sri Hiralal - Panika and Sri Ramdhani Goala under DCOS/DBRT were not made available on the schedule date of Enquiry and E.O. dropped them on the ground that they did not attend the enquiry which should not have been done by E.O. in view of giving reasonable opportunity to C.O. for defending his case.
11. The analysis of E.O. in respect of shortage of such heavy materials from 05-ward noted in the Eng. report at page 24 to 26 does not appear to be based on any documentary or oral evidence, rather contradictory.

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12. There are many instances of theft at DCOS/DBRT's store depot by the miscreants in connivance with the depot Watchmen, against one of such case three watchmen. S/Shri Bhula Shah, Sri Gautam Das and Sri Thanuram Chutia were red handed caught by IPF/DBWS while pilfering the valuable N.F. materials from DBRT store depot in June 1996. According to IPF/DBWS, their modus operandi was that the lock hinges of doors and boxes are meticulously broken, and once the goods have been taken out, these are put back in position, the wax seals are put on once again on the hinges. These forged seals made of clay, leave nothing for the chowkidars to be suspected. Eight such forged seals and lock breaking instruments have been recovered from the possession of the arrested three. They have been charged under Dibrugarh RPF case Section 3 (A) of the Railway properties (Unlawful Possession) Act, and still under suspension.


In view of the above observations, it has been established beyond all doubts that there was every probability of theft of materials in question from 05-ward by the unknown miscreants in connivance with the depot watchman at Night. Therefore the question of shortage of said materials due to mismanagement on the part of C.O. (Sri Sudhangshu Chakraborty, DSK/III) does not arise. Hence, C.O. is exonerated from the charge leveled against him vide SF-5 under reference."


The aforementioned order passed by the Appellate Authority on 30.12.1997 and was sent to Dy. CVO, Stores, Maligaon by communication No. M/CONDBRT/17 dated 4.3.1998 by the office of the Deputy Chief Mechanical Engineer, Dibrugarh, Workshop. By the aforementioned communication the order was sent to the Dy. Chief Vigilance Officer and he was requested to go through the speaking order passed by the Deputy Chief Mechanical Engineer and if acceptable the approval was to be given from his end for further action. Admittedly the order dated 8.8.98 was passed by the Appellate Authority which was manifestly inconsistent with the order dated 30.12.1997.. The Appellate Authority in its order dated 30.12.1997 recorded its own reason for exonerating the applicant upon consideration of the materials on record, the evidence and gave its own evaluation. The vigilance department under the provisions of the Rule could not have acted as a super Appellate Authority or a Reviewing

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Authority. after passing of the final order on 30.12.1997 there could not have been any other order contrary to the order passed by the Appellate Order, save and except the procedure prescribed by the Rule. On that count alone the impugned order dated 8.8.1998 is set aside and quashed and the respondents are now directed to communicate the order dated 30.12.1997 and take necessary steps according to law.

The application is accordingly allowed to the extent indicated above. There shall however be no order as to costs.


(K.K.SHARMA)
Member(A)


(D.N.CHOWDHURY)
Vice-Chairman

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