

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 317 of 1999

Jabalpur, this the 19th day of September, 2003

Hon'ble Shri Anand Kumar Bhatt, Administrative Member
Hon'ble Shri G. Shanthappa, Judicial Member

Shri S.C. Sahgal, Son of Shri
Govinddas Sehgal aged 58 years,
resident of behind RPF Office
Railway Station : Sherpura,
Bhopal.

... Applicant

(By Advocate - Shri A.K. Tiwari)

V e r s u s

1. Union of India, through its
General Manager, Central
Railway, Mumbai, CST.
2. Divisional Railway Manager,
Central Railway, Bhopal.
3. Senior Divisional Operating
Manager, Central Railway,
Bhopal.

... Respondents

(By Advocate - Shri S.P. Sinha holding brief of Shri A.K.
Pathak)

O R D E R

By Anand Kumar Bhatt, Administrative Member -

This Original Application is against the order of
punishment dated 18.06.1998 (Annexure A-13) by which the
penalty of compulsory retirement with full pensionary benefits
has been imposed with effect from 30.06.1998, appeal order
dated 08.09.1998 (Annexure A-14) rejecting the appeal and the
recovery order dated 28.10.1993 (Annexure A-5).

2. The facts as per the applicant in brief are that the
applicant was a Station Master at Dawanganj, where he was
issued a major penalty charge sheet ^{was issued to him at} on 26.04.1993 (Annexure
A-1). The applicant denied the charges and an enquiry officer
was appointed who submitted his report on 10.06.1994 (Annexure
A-4). In the enquiry report the charges were partially proved
and the charge of embezzlement was not proved. During the

pendency of the said disciplinary proceedings the respondents treated loss of Rs. 22,793/- as an admitted debit and recovered the same in monthly instalment vide order dated 28.10.1993 (Annexure A-5). Two years after the submission of the enquiry report and after issuance of the order of recovery, the earlier charge sheet issued was withdrawn and a fresh charge sheet was issued on 14.06.1996, wherein similar charges were imposed. Another enquiry was started and the enquiry officer submitted his report on 02.01.1998 (Annexure A-10). Again the charge of embezzlement was not proved and other charges were held to be proved. A show cause notice was given, the applicant replied to the show cause notice and the disciplinary authority imposed the penalty of compulsory retirement. The appeal was also rejected.

3. The grounds taken by the applicant are that once the proceedings are initiated against Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and the same is dropped, then the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officer, unless the reasons for cancellation of the original charge memorandum are appropriately mentioned. The first charge sheet was not acted upon by the disciplinary authority for 2 years then the second charge sheet is ab initio void.

4. In the oral submissions the learned counsel for the applicant stated that so far as the cash was concerned the practice was to send it once in 15 days and he was away because of illness and was admitted in the Railway Hospital. He reiterated that the issue of the second charge sheet without assigning reasons is not valid. As the amount was ^{already} recovered, the issue of second charge sheet is not valid. The appeal order is not a speaking order and is bad in law. Moreover in the appeal order (Annexure A-14) "absconding" was ~~the~~

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mentioned,
A ~~charge~~ whereas this was never the charge in the charge sheet issued. The learned counsel for the applicant has cited a number of judgments of the Tribunal, which will be mentioned^{later} in this order.

5. From the respondents side it has been stated that there has been no irregularity or denial of an opportunity to the applicant in the departmental enquiry proceedings. Fresh charge sheet was issued by withdrawing the earlier charge sheet, for the reason that the earlier charge sheet was not signed by the competent authority. However in the order dated^{14.06.1996} (Annexure A-7) the reason for withdrawing the earlier charge sheet and issue of new charge sheet has been clearly mentioned that as the DOM was not competent to sign the first charge sheet it is i.e. second being withdrawn and fresh charge sheet/is being issued.

6. In the oral submission Mr. S.P. sinha stated that^{there is} no proof of ^{to me applicant} being admitted in the Railway Hospital. The fact of the case is that he did not deposit the cash and the key of ^{the Almirah} ~~the Almirah~~ was with him and when he came back the money was not found.

7. We have seen the pleadings on both the sides and heard the learned counsel for both the sides.

8. The reasons for withdrawal of the earlier charge sheet and issue of the fresh charge sheet has been clearly mentioned in Annexure A-7 dated 14.06.1996 and therefore there does not seem to be any violation of D & A Rules. Earlier charge sheet was withdrawn and fresh charge sheet was issued only for the technical reason that the competent person has not signed the earlier charge sheet and this cannot be a ground for declaring the entire proceedings as vitiated. The charges against the applicant have been partially proved and on the basis of that

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the punishment has been given. It is beyond the scope of the Tribunal to re-appreciate the evidence and come to some other conclusion.

9. The learned counsel for the applicant has cited a number of cases decided by the various Benches of the Tribunal. In OA No. 1622/2000 (K. Srinivasa Murthy Vs. Sr. Divisional Commercial Manager and Ors.) decided on 26.09.2002 by Hyderabad Bench, it has been held that if no reason has been given for the new charge sheet, the proceedings cannot be upheld. However this does not seem to be the case here. The fresh charge sheet was issued only for the technical reason and cogent reasons which were given while withdrawing the earlier charge sheet and issuing the fresh. Similar are the cases of OA No. 222/1997 (P.K. Mittal Vs. Union of India and Ors.) decided on 17.06.2002 in Ahmedabad Bench and OA No. 2176/1998 (Amar Chand and Ors. Vs. Jt. Commissioner of Police and Ors.) decided on 13.09.2000 in Principal Bench, New Delhi. In OA No. 441/1997 (Balmukund Vs. Union of India and Ors.) decided on 19.09.2002 by Jabalpur Bench, it was a case of disagreement of the disciplinary authority with the enquiry, where the reasons for disagreement were not recorded. It is not the case here. In Ram Das Singh Vs. Union of India and others reported in (1990) 13 ATC 136, decided on 14.02.1990 by the Jodhpur Bench of the Tribunal, it has been held that charges "having not been proved" and "having not been conclusively proved" have been held as synonymous. There is no such case here. In Ranjit Ghosh Vs. Union of India and others reported in (1991) 15 ATC 328 decided on 19.12.1989 by the Calcutta Bench of the Tribunal, the compulsory retirement on the basis of two minor remarks in the ACR was held to be invalid. However in this case there was a departmental enquiry and the charges are entirely different.

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10. Thus we do not find any infirmity in the disciplinary proceedings taken and the punishment awarded to the applicant. Accordingly the original Application is dismissed. No costs.

(G. Shanthappa)
Judicial Member

(Anand Kumar Bhatt)
Administrative Member

"SA"

पृष्ठान्कन सं ओ/न्या.....जबलपुर, दि.....
प्रतिनिधि अन्ये मिल

(1) उत्तर प्रदेश जल संसाधन विभाग, लखनऊ

(2) ~~...~~ काउंसल

(3) के सदस्य

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रचना एवं आवश्यक कार्यवाही अनु

Signature
26/9/03

A. R. Tivari - Acc
A. R. Pathak - Acc

A.K. Pakhal, A.K.

Received
29/9/03