

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 396/2009

Date of Order: 25.08.2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDICIAL)

R.C. Meena S/o Shri Badri Lal Meena, aged about 43 years, R/o 972-B, New Railway Colony, Kota Junction, and presently working as Section Engineer (W) WD-Kota under Assistant Engineer (Works) Kota.

... Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West-Central Zone, West-Central Railway, Jabalpur.
2. Principal Chief Engineer, West Central Zone, West Central Railway, Jabalpur.
3. Additional Divisional Railway Manager, West-Central Railway, Kota Division, Kota.
4. Senior Divisional Engineer, Coordination, West Central Railway, Kota Division, Kota.

.. Respondents

Mr. Anupam Agarwal, counsel for respondents

O R D E R (ORAL)

The present Original Application is directed against the order dated 24.03.2009 passed by the revising authority and communicated by the Divisional Railway Manager vide letter dated 30.04.2009 by which the revision petition filed by the applicant has been rejected against the punishment of reduction of pay to one stage below in the time scale for three years without future effect preferred against rejection of appeal vide order dated 28.11.2007 against the punishment imposed by the respondent no. 4 vide order dated 30.07.2007.



2. The brief facts of the case are that the applicant is substantive employee of the respondent-Railway, and while working as Section Engineer (Works) WD, Kota, applied for 07 days Earned Leave and Assistant Divisional Engineer vide letter dated 20.06.2006 directed one Shri H.P. Nigam, Section Engineer (Works) to look after the work of the applicant in leave period, and applicant, after return from leave, joined on 27.06.2006 by curtailing one day Earned Leave for 27.06.2006.

3. The respondent no. 4 taking into consideration of vigilance check conducted on 23.06.2006 when the applicant was on leave alleged that before proceeding on leave he did not hand over the charge of the work site to any responsible supervisor and also not handed over the record and violated provision of Rule 3.1 (i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966 and served charge memo for minor penalty vide memo dated 25.04.2007 (Annex. A/9). The Disciplinary Authority having considered the representation of the applicant, imposed punishment of reduction of pay to one stage below in time scale for three years without future effect vide order dated 30.07.2007 (Annex. A/3) on the ground that the applicant not handed over the charge to Shri Nigam in spite of the fact that authority concerned vide annexure A/5 ordered that in absence of the applicant, Shri Nigam will look after the work.

4. Being dis-satisfied from the order passed by the Disciplinary Authority dated 30.07.2007, the applicant preferred an appeal dated 21.08.2007 (Annex. A/11) before the



respondent no. 3 and the same was dismissed, against which a revision petition dated 03.10.2008 (Annex. A/14) has been preferred by the applicant before the respondent no. 2 and the same has also been dismissed vide order dated 24.03.2009 upholding the order passed by the Disciplinary Authority and the Appellate Authority.

5. The main challenge to the impugned order passed by the Disciplinary Authority, Appellate authority and the Revising Authority is on the ground that at the time of misappropriation of cement bags, the applicant was on leave, and the applicant further submitted that one Shri A.K. Uprit, Senior Section Engineer (Works) Special Quota, who is also responsible for the same charge, and served minor penalty charge-sheet on the same day with the applicant vide memo dated 25.04.2007 by the same Disciplinary Authority and further imposed punishment of reduction of pay to one stage below in the time scale for the period of one year without future effect vide order dated 28.06.2007 and further the Appellate Authority modified the punishment into stoppage of one increment for a period of one year vide order dated 28.11.2007, whereas the applicant awarded punishment of reduction to one stage below in time scale for three years without future effect and the same upheld by the Appellate Authority as well as the Revising Authority, therefore, the Disciplinary Authority, Appellate Authority and Revising Authority discriminated by upholding the punishment



against the applicant in comparison to Shri A.K. Uprit, Senior Section Engineer (Works).

6. The learned counsel appearing for the applicant placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **State of U.P. vs. Raj Pal Singh** reported in 2002 (3) ATJ page 177, and the judgment rendered by this Bench of the Tribunal in **OA No. 174/2002 – Bhagwan Singh vs. Union of India & Ors.** - decided on 16.02.2004, and the judgment dated 15.07.2011 passed by this Bench of the Tribunal in **OA No. 390/2007 – Om Prakash vs. Union of India & Ors.**

7. The main thrust to the submission of the applicant is on the ground that looking to the charges levelled against Shri A.K. Uprit, the charges levelled are disproportionate looking to the lapse on the part of the applicant as alleged by the respondents.

8. The respondents in their reply has submitted that the punishment order has been passed after due enquiry and after affording opportunity of being heard to the applicant, and the enquiry conducted by the vigilance officials of the Railway Administration was found him guilty of the charges levelled against him and the charges found fully proved.

9. With regard to the plea of discrimination, it is stated that the case of A.K. Uprit is having a different footing than the case



of the applicant as the vigilance found some short-coming in the stock of cement and for that the applicant is held responsible as he has not handed over the charge as directed by the respondents, and therefore the charge-sheet was issued to the applicant, whereas in the case of Shri A.K. Uprit, the charge-sheet issued to him is different than the charges alleged against the applicant.

10. The learned counsel appearing for the respondents referred the representation dated 16.05.2007 filed by the applicant against the memorandum of charge for imposing minor penalty. In the representation, the applicant has categorically stated that "I would have show consumption of cement on 19.06.2006 and 20.06.2006 itself. The entries of 19.06.2006 and 20.06.2006 has been done by me itself before proceeding on leave." After referring the representation of the applicant, the learned counsel appearing for the respondents submits that admittedly no work was carried out on 19.06.2006 and 20.06.2006, and therefore in the statement of imputations against the applicant, it has rightly been stated that "thus, he paved the way for misutilization / misappropriation of cement and his connivance with the contractor cannot be ruled out", and this aspect has been thoroughly considered by the revising authority vide order dated 24.03.2009 (Annex. A/1, which is reproduced as under:

"You have applied for a seven days LAP from 21.06.2006 to 27.06.2006 on 16.06.2006 and proceeded on leave as per sanction conveyed to you verbally. Before proceeding



on leave, you issued 250 bags of cement to the contract on 19.06.2006. There appears to be doubt regarding leave arrangements, however it was your duty to make suitable arrangements to look-after the work in your absence, especially when a good quantity of Railway material was in the custody of the contractor. Before proceeding on leave, you should not only ensure that Railway material issued to contractor is utilized only for Railway work, but also should have ensured a proper alternative supervision arrangement to ensure proper quality control in your absence. Apparently, this has not been done in this case."

11. Having considered the rival submissions of the respective parties and upon careful perusal of the material available on record as well as judgments referred by the applicant, it is not disputed that the applicant failed to hand over the charge during his leave period from 21.06.2006 to 27.06.2006, and it is further not disputed that 250 bags of cement has been issued to the contractor on 19.06.2006, and this has rightly been observed by the revising authority that there appears to be doubt regarding leave arrangements, however, it was the duty of the applicant to make suitable arrangements to look-after the work in his absence, especially when a good quantity of Railway material was in the custody of the contractor. Therefore, I am fully convinced that the applicant is guilty of charges levelled against him regarding issuance of 250 bags of cement to the contractor on 19.06.2006, and admittedly on 19.06.2006 and till 23.06.2006, there was no consumption of cement. There was no entry in the register and the applicant proceeded on leave from 20.06.2006.



12. Now the question remains for consideration whether the penalty, which has been imposed by the Disciplinary Authority, upheld by the Appellate Authority and Revising Authority against the applicant, is disproportionate looking to the charges levelled against the applicant, and further the question is required to be determined on the ground of charges issued to Shri A.K. Uprit whether any discrimination has caused to the applicant or not as held by the Hon'ble Supreme Court in the case of **State of U.P. vs. Raj Pal Singh** (supra). The Hon'ble Supreme Court in the case of **State of U.P. vs. Raj Pal Singh** has observed that the delinquents cannot be awarded different punishment when the charges are same and identical in relation to one and same incident. As discussed hereinabove, the charge-sheet issued to Shri A.K. Uprit and the applicant are not same and identical, therefore, the ratio decided by the Hon'ble Supreme Court in the case of **State of U.P. vs. Raj Pal Singh** is not applicable to the facts and circumstances of the present case.

13. Now with regard to the imposition of penalty disproportionate looking to the charges. In the case of **Om Prakash vs. UOI & Ors.** (supra), the applicant's counsel submitted that the Appellate Authority should not discriminate in imposition of punishment awarded to the complainant and the applicant, as the allegations are based on the same set of facts and same punishment ought to have been awarded in the case of the applicant too. In the case of complainant Shri Subhash Chandra, the Disciplinary Authority awarded same punishment



and in appeal the Appellate Authority reduced the penalty of reduction for 3 years to one year that too without cumulative effect, and therefore, the Tribunal has also reduced the penalty and modified the punishment order passed by the Reviewing Authority to the extent that the penalty of reduction of pay for a period of three years with cumulative effect shall be treated for one year without cumulative effect. The facts and circumstances of the present case is altogether different as in the present O.A. the Disciplinary Authority awarded a punishment, which has been upheld by the Appellate Authority and the Reviewing Authority, and this Tribunal also find no cogent reason to interfere with the punishment awarded by the Disciplinary Authority, Appellate Authority and Reviewing Authority. Consequently, no interference is called for to the impugned punishment orders, and the Original Application being bereft of merit deserves to be dismissed, and the same is dismissed with no order as to costs.


(JUSTICE K.S.RATHORE)
Judicial Member