

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.95/2015

Reserved on: 04.12.2017
Pronounced on: 15.12.2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Inder Pal Yadav, aged about 56 years
s/o late Sh. Hariya Singh,
Working as Technician (Sig.Maint) Gr.II
Group 'C' at Dy. CSTE (Construction),
Northern Railway,
Tilak Bridge Railway Station,
New Delhi – 01

R/o Rly Qr. No.7/7, Kishan Ganj,
Railway Colony, Delhi – 110 007. ...Applicant

(By Advocate: Sh. P.S. Khare with Sh. H.P. Chakravorti)

Versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House, New Delhi – 01.
2. The Chief Signal & Telecom Engineer,
(Construction), Northern Railway Const. HQ
Kashmere Gate, Delhi – 07.
3. The Deputy Chief Signal & Telecom Engineer,
(Construction), Northern Railway,
Tilak Bridge Railway Station, New Delhi – 01.
4. The Executive Signal & Telecom Engineer,
(Construction), Northern Railway,
Tilak Bridge Railway Station,
New Delhi – 01. ...Respondents

(By Advocate: Sh. VSR Krishna with Sh. A.K. Srivastava)

O R D E R

By Hon'ble Uday Kumar Varma, Member (A):

The applicant by virtue of the instant OA has prayed for the following reliefs:-

"8.1 To allow the OA and quash the impugned memo/orders dated 06.06.2011, 31.12.2012,

27.06.2013 & 24.07.2014 (Ann A-1 to A-4) with all consequential benefits and consequently direct the respondents to restore the pay and release promotional benefits at par with junior counter parts; and

8.2 To pay and other or further order or direction which the Hon'ble Tribunal deem fit and proper may also be granted to the petitioner with the exemplary cost to the tune of Rs.50,000/- besides expenses incurred in the present litigation, there being gross violation statutory rules and harassment of the petitioner upto maximum extent, it being second round of litigation on same subject matter."

2. Brief facts of the case, emanating from the OA, are that the applicant, who was engaged as Casual Labour on 17.08.1978, after a long legal battle was granted temporary status w.e.f. 01.01.1983 and was subsequently absorbed in regular Group 'D' post fixing the lien in Delhi Division in the year 1990. It is the case of the applicant that in the year 1992, he was promoted as Stores Chaser on *ad hoc* basis and then as Signal Maintainer Gr. III in the pay scale of Rs.950-1500/-. He was again promoted as Signal Maintainer Gr. II in PB-1 in the pay scale of Rs.5200-20200 with GP Rs.2400/-. The applicant contends that after a lapse of more than ten years from the incident i.e. between 2000 and 2006, on the basis of incomplete investigation done by the Vigilance Department and in order to let off the real culprits, the applicant was made scapegoat and he was issued a major penalty charge-memo (SF-5) dated 06.06.2011 (Annexure A-1) on the following Article of charges:-

“A check conducted on the issues of P.Way material by various SE/P Way in the records of SSE/C/Sig/TKJ revealed that:

- a) *Fake demands of P. Way material were placed with various SSE/CP. Ways through demand letters having fake signatures of SSE/C/Sig/TKJ even through no such materials were required by SSE/C/Sig. all these demand letters had signatures of Sh. Inder Pal Yadav as authorized official for receiving the demanded materials.*
- b) *Based on these demand letters, P.Way materials were issued by various SE/P.Way (viz. SE Road, GZB, MB, NDLS, KKDE & KUN) to SSE/C/TKJ. In all transactions of P. Way materials, the material was physically received by Sh. Inder Pal Yadav, the then Store Chaser working under SSE/C/Sig/TKJ under his signature. The value of such material received by Sh. Inder Pal Yadav was assessed as Rs.50,39,925/- in 2006.*
- c) *The entire P. Way material received by Shri Inder Pal Yadav never reached the Store of SSE/C/Sig/TKJ and was fraudulently misappropriated by you.*
- d) *However, the verified issue notes with fake signatures of SSE/C/TKJ were received in office of SSE/P.Ways.”*

Thus Sh. Inder Pal Yadav misusing his official capacity as Store Chaser received by P.Way materials whose value was assessed as Rs.50,39,925/- in 2006, on fake demand letters and then fraudulently misappropriated them. Further to camouflage the misappropriation of Railways materials carried out by you you forged signatures on documents exchanged between the material issuing units and SSE/C/Sig.

By the above acts of omission and commission, Shri Inder Pal Yadav the then Store Chaser under SSE/C/Sig/TKJ now Signal Maintainer under SSE/C/Sig/TKJ failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby contravened the provision of Rule 3.1 (I), (ii) & (iii) of Railway Service Conduct Rules, 1966.”

Annexure-II of the Memorandum of Charge above (SF-5) is exactly the same contends the applicant.

3. The enquiry officer conducted the enquiry and after taking into account the statements of prosecution witnesses

and defence given by the applicant, concluded that Article of Charges No.(a) & (b) 'Partially Proved' and rest of the Article of charges 'Not Proved'. The enquiry report dated 27.04.2012 was furnished to the applicant asking him to make his representation which he submitted on 09.12.2012. It is the case of the applicant that none of his grounds made in the representation was taken into consideration and even then, despite having no disagreement note of the disciplinary authority, the applicant, vide non-speaking order dated 31.12.2012 (Annexure A-3), was imposed with the penalty of reduction to the lower stage in the time scale of pay for four years with further directions as on the expiry of such period, the reduction will have effect of postponing the future increments of his pay with immediate effect and reducing his pay from Rs.11,380/- to Rs.7,600/- in PB 5200-20200 + GP Rs.2400/-. The applicant preferred an appeal dated 11.02.2012 against the penalty order and the appellate authority (respondent no.3) rejected the appeal upholding the punishment imposed by the disciplinary authority by a non-speaking order dated 27.06.2013, which is reproduced hereunder:-

"In reference to above it is intimated that your appeal has been considered sympathetically by undersigned.

The previous order passed by the DA hold good. This is your for kind information."

The revision petition dated 22.07.2013 preferred by the applicant also came to be callously rejected vide order dated 24.07.2014.

4. In support of the averments in the OA that the impugned memorandum of charge dated 06.06.2011 is not sustainable in the eyes of law on the ground that the investigation done by the vigilance inspectors and part of prosecution witness is totally incomplete. He has also submitted that the real culprits have been let off, the respondents have committed irregularities in the conduct of enquiry, the disciplinary authority, though did not have any disagreement with the inquiry officer who has partially proved two charges only, yet the punishment has been imposed by non-application of mind, which is disproportionate to the charges partially proved; the appellate authority/revisional authority have failed to take into account the relevant provision of law while rejecting the revision/appeal of the applicant by cryptic and non-speaking orders. The applicant further submits that the whole journey from issuing the charge memorandum to imposing punishment upon him is arbitrary, illegal, against the principles of natural justice, unjust and, therefore, not sustainable in the eyes of law. In view of these

circumstances, the applicant prays that the OA may be allowed with costs.

5. Per contra, the respondents filed their counter affidavit and while admitting the factual matrix of the case, denied the allegations made by the applicant in the OA. The respondents have submitted that as the applicant has done serious irregularities with regard to government material, a chargesheet was issued to him as per rules, his representations were received and considered, inquiry was fairly conducted with sufficient opportunities having been provided to him, inquiry report was furnished to the applicant and the representation submitted by him was also considered before imposition of penalty, his appeal and revision were sympathetically considered and rejected by the appellate and revisional authorities. The respondents further submit that keeping in view the irregularities committed by the applicant, he has rightly been imposed the impugned punishment.

6. The applicant has filed the rejoinder reiterating the averments made in the OA. However, in support of his claim, the applicant has relied upon the decisions of Hon'ble Apex Court in ***Ram Chander vs. Union of India & Ors.***

[ATR 1986 (2) SC 252] and **Punjab National Bank & Ors. etc. vs. Kunj Behari Misra etc.** [1998 (7) SCC 84].

7. We have carefully gone through the pleadings of the case as also the judicial pronouncements relied upon by the applicant and have also heard the arguments so advanced by the learned counsel for the parties.

8. Admittedly, out of four Articles of charges only two charges i.e. Articles of charges No.(a) & (b) have been proved partially whereas rest of the two charges have not been proved by the inquiry officer. It is also not in dispute that the disciplinary authority did not make any disagreement note against the inquiry report and even then the punishment has been imposed upon the applicant as if all the charges have been proved against him. We have also gone through the appellate order and find the same cryptic one as nothing seems to have been considered by the appellate authority while upholding the punishment imposed upon the applicant by the disciplinary authority and so done by the revisional authority while rejecting the revision petition of the applicant.

9. It will be appropriate and necessary for proper adjudication of this case to quote the relevant portions from

the order of the disciplinary authority as well as from the enquiry report. The order of the disciplinary authority imposing punishment upon the applicant reads as under:-

“I have gone through your representation dated 19.12.2012 in reply to this office confidential letter No. of even no. Dt: 04.12.2012, I do not find your representation to be satisfactory due to the following reasons:

“On careful consideration it has been found that fake demands of P.Way material were placed with various SSE/C/P.Way through demand letters having fake signature of SSE/C/Sig/TKJ even through no such material were required by SSE./C/Sig/TKJ. All these demand letter had signature of Sh. Inder Pal Yadav as authorized official for receiving the demand material. Based on these demand letter P.Way material were issued by various SSE/P.Way to SSE/Sig/C/TKJ. In transaction of P.Way material, the material was physically received by Sh. Inder Pal Yadav the then Store Chaser working under SSE/C/Sig/C/TKJ under his signature.

In view of above, I hold you responsible for the charge of generating fake demand & collecting material etc. as per charge No.(a)&(b) of above mentioned SF-5 of dated 06.06.2011 (Annex-I). It is proposed to impose a penalty of “Reduction to the lower stage in the time scale of pay for four years with further directions as on the expiry of such period, the reduction will have effect of postponing the future increments of his pay” with immediate effect and Reducing his pay from Rs.11,380/- to Rs.7,600/- in pay band 5200-20200 + GP Rs.2400/-...”

It may be noted from the above that the disciplinary authority has held the applicant responsible for the charges of generating fake demands and collecting material etc. as per Charge No.(a)&(b) of SF-5. To ascertain that the disciplinary authority has taken into account only proved

charges for imposing the punishment, we may visit the relevant portion from the enquiry report, which reads as under:-

Charge No.	Charge	Conclusion of inquiry officer
a	<i>Fake demands of P. Way material were placed with various SSE/CP. Ways through demand letters having fake signatures of SSE/C/Sig/TKJ even through no such materials were required by SSE/C/Sig. all these demand letters had signatures of Sh. Inder Pal Yadav as authorized official for receiving the demanded materials.</i>	<i>The plea taken by the CO as above cannot be ruled out completely.....But there is no material on record of enquiry to prove that Ex.P-4, Ex.P10, Ex.P-15 and Ex.P-19 are demand letters having fake signatures of SSE/C/Sig/TKJ and Fake demands of P.way material placed with various SSE/C/P.Ways even though no such materials were required by SSE/C/Sig. Signatures of CO on Ex.P-19 is also not established by CFSL/CDG. Thus from above discussions and evidences the charge is proved only upto the extent that Ex.P-4, Ex.P-10 and Ex.P-15 bears the signatures of the CO as authorized person to collect the material.</i>
b.	<i>Based on these demand letters, P.Way materials were issued by various SE/P.Way (viz. SE Road, GZB, MB, NDLS, KKDE & KUN) to SSE/C/TKJ. In all transactions of P. Way materials, the material was physically received by Sh. Inder Pal Yadav, the then Store Chaser working under SSE/C/Sig/TKJ under his signature. The value of such material received by Sh Inder Pal Yadav was assessed as</i>	<i>The plea taken by the CO as above cannot be ruled out completely. It is clear from the above discussion and evidences on record of enquiry that signatures of CO are available on Gate Pass No.04 dt.08.08.2000 (Ex.P-3) has been issued by SSE/C/P.way/GZB and Gate Pass No.209477 dt.04.12.03 (Ex.P-9) was issued by SSE/C/P.way/GZB only. But there is no any evidence available physically received by Sh. Inder Pal Yadav, the then Store Chaser working under SSE/C/Sig/TKJ under his signature except the deposition of SSE/C/KKDE, who confirmed that CO took the material from him. Cost of the material issued is also not mentioned in any of document available on record of enquiry thus it is not possible to ascertain the value of material taken away by the CO. There is no any witness on record in this case who witnesses the CO receiving the</i>

	Rs.50,39,925/- in 2006.	<i>material physically. There is no any evidence available on record that the material mentioned in the issue note was actually handed over to CO. There is no store ledger to prove the receipt and issue of the subjected materials. Thus the charge is proved only upto the extent that CO signed above gate passes and issue notes only rest part of the charge is not proved.</i>
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Closely seen, it is clear that the disciplinary authority made “collecting material” as proved charge for passing the impugned order of punishment which is not in consonance and in accordance with the enquiry report. It is, therefore, clear that the disciplinary authority has imposed the punishment taking into account a charge which is proved but also taking into account another charge, which is not proved. In our view, the disciplinary authority has no power to go beyond the findings of the enquiry officer, if not disagreed, to punish a delinquent employee. Therefore, to this extent, the order of the disciplinary cannot be said to be legally sustainable.

10. In view of this, we are of the considered opinion that the ends of justice will be served if the instant OA is disposed with a direction to the disciplinary authority to re-visit the order with regard to punishment imposed by him to the applicant as this punishment has been imposed taking into account the two charges – one of which is not proved and to

which no disagreement has also been recorded by the disciplinary authority. Resultantly, the OA is partially allowed. The appellate order dated 27.06.2013 and revisional order dated 27.04.2014 are quashed and set aside. The order of the disciplinary authority dated 31.12.2012 is set aside to the extent of quantum of punishment with a direction to the disciplinary authority to re-visit the issue of quantum of punishment in the light of our observations made in previous paragraphs and pass a fresh and speaking order within a period of two months from the date of receipt of certified copy of this order. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/Ahuja/