

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 1425/2014
MA 1225/2014

Reserved on: 28.09.2016
Pronounced on: 4.09.2016

Hon'ble Mr. P.K. Basu, Member (A)

Baldev Raj, aged 53 yrs.
s/o Shri Jodh Singh
Working as Phone Mechanic – PM 1673
R/o H.No.RS-26 P/16,
Gali No.33, Indra Park
Palam Colony,
New Delhi-110045Applicant

(Through Shri P.S. Khare, Advocate)

Versus

1. Mahanagar Telephone Nigam Ltd.
Through C.M.D.
Mahanagar Door Sanchar Sadan
5th Floor, 9 CGO Complex, Lodhi Road
New Delhi-110003
2. Executive Director,
MTNL, Delhi Unit
Khurshid Lal Bhawan,
New Delhi-110001
3. General Manager (RG)
M.T.N.L.,
Administrative Block,
Exchange Complex,
Rajouri Garden
New Delhi-110027

... Respondents

(Through Shri Sumit Chander, Advocate)

ORDERMr. P.K. Basu, Member (A)

The applicant was posted as Store keeper under the administrative control of Sub Divisional Officer (SDO) (Phones), Mahanagar Telephone Nigam Limited (MTNL), when a charge memorandum dated 8.05.2007 was issued to him alleging as follows:

"That Shri Baldev Raj P/M (PM-1673) while working as store in-charge under SDOP Ramesh Nagar (RG) MTNL, New Delhi during the period 2005-06 has committed an act of gross misconduct and misbehaviour in a manner as much as with malafide intention and vested interest he issued 103 DP posts/poles (recovered) to COC-VI(N) unit against issue slip no May' 01 dated 2.5.05 and entered the same in stock register of SDOP RG without issuing gate pass without taking authority letter from COC-VI(N) and without verifying identity and confirming signatures of the recipient on the slip of issued poles.

That the said Shri Baldev Raj P/M has never confirmed from COC-VI(N) unit i.e. store I/C of COC-VI(N) about the receipt of DP posts.

That the said Shri Baldev Raj P/M has not properly checked the authenticity of the slip of poles received by him through the contractor as per his statement dated 23.2.06 because store I/C of COC-VI(N). COC-VI(N) and DE (CCN) have denied their signatures on the slip of 103 DP posts.

That the said Shri Baldev Raj P/M bungled away 103 DP posts in connivance with his staff members, store I/C of COC-VI(N) and the contractor and thus caused a heavy loss amounting Rs.1,31,840/- to MTNL. (Annexure A-III read with 'B'). He is responsible for the loss of Rs.33,280/- towards the cost of 26 DP posts out of 103 DP posts @ Rs.1280/- due to gross negligence, malafide intention and misappropriation of 26 DP posts on his part alone."

2. The Inquiry Officer (IO) was appointed by the Disciplinary Authority (DA) on 22.08.2008 and the IO submitted his report on 31.12.2009 holding that the charges are not proved. The DA, vide memorandum dated 20.03.2010, recorded his disagreement with the IO and sought representation from the applicant within 15 days. On receipt of such representation, the DA considered it and thereafter decided to impose penalty of "withholding of one increment for one year with cumulative effect" vide order dated 28.05.2010. The applicant filed an appeal, which was rejected by the Appellate Authority (AA) vide order dated 26.09.2011. His review application was also rejected vide order dated 26.03.2013. Being aggrieved by these orders, the applicant has filed this OA seeking the following reliefs:

- "(i) to call for the records of the entire disciplinary proceedings in the matter;
- (ii) Quash and set aside the Charge Memo dated 21.04.07 and the Order dated 28.05.2010 passed by the Disciplinary Authority imposing major penalty;
- (iii) Quash and set aside the order dated 26.09.2011 passed by the Appellate Authority rejecting his appeal;
- (iv) Quash and set aside the order dated 26.03.2013 passed by the Reviewing Authority rejecting her Review Petition;
- (v) to direct the respondents to restore his pay with admissible increments with all consequential benefits;
- (vi) to direct to the respondents to pay him the arrears of pay and allowances after re-fixation of pay along with interest at 18%; and
- (vii) to pass any other order(s) that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

3. Learned counsel for the applicant stated that this case related to recovered poles which have never been brought in the applicant's store and have been kept on dumping site outside the Exchange Building at Moti Nagar under the supervision of contractor concerned to which the applicant was not involved in receiving and issuing the recovered poles from his store to anyone but it was dealt with by the SDE (stores incharge) and the DE (O/D) themselves and the applicant used to make entries of Deposit and Issue slips in the Stock Register which he did when the deposit slip and issue slip for 103 DP poles signed by Shri S.K. Malhotra, the then SDE (Store Incharge) and Shri Suresh Chand Jain, the DE (O/D) were given to him. Hence applicant was only concerned with the signature of Shri S.K. Malhotra, SDE (Stores Incharge) and Shri Suresh Chand Jain, DE (O/D)/RG who have put their signatures on the issue slip. Since the controlling officers had signed the slips, applicant was concerned only to confirm the signatures of his controlling officers. It was duly explained that the question of getting the signature and identification of the authorized person who had received the stores does not arise in this case as only the deposit and issue slips were handed over to the applicant by the concerned officers for making entries in the stock register.

4. It was made clear in the representation by the applicant to the D.A. to go through the evidence on record viz. deposition of PW III, Shri S.K. Malhotra, SDE (Store Incharge) PW-IV, and the Exhibit S-5 along with Exhibit S-8, which prove that there was

no fault on the part of the applicant (CO) and the authority letter, ACE-5, Gate Pass etc. were not required in this case as confirmed by them and the confirmation of receiving the 103 poles is also proved including the identity of the authorized person while signing the issue slip.

5. Learned counsel for the applicant also referred to the inquiry report and the depositions before the IO, specifically to the following:

Deposition of Shri B.K. Sinha, PW-II, the then COC-VI (North)

“Q-3 – Kindly inform to the inquiry how many charge-sheets serve to you and out come of the charge-sheets till date, if any?

Ans. - I have received three charge-sheets. One for major penalty & two for minor penalty.

Q-9. - As you have prepared an issue slip regarding 103 Nos. of poles and got the counter signature of your DET. Kindly tell to the inquiry to whom you have authorized to collect the 103 poles from the store of Rajouri Garden exchange?

Ans. - I categorically deny that exhibit S-2 slip were either prepared by me or bear my signature, but below the sentence “the slip was not prepared by me” certainly bear my signature.

Q-15. - Do you know Sh. Ramesh Chand, Store-in-charge, who was working under you?

Ans. - Yes, Sh. Ramesh Chand was posted as store-in-charge of COC-VI (North) Unit during my period of COC-VI (North).

Q.17 - Had you objected about the statement given by Sh. Raju Kumar Chaubey on dated 04.01.2006 on the plea that you do not know him and having no connection with him?

Ans. - At the time of recording of the statement of Sh. Raju Kumar Chaubey I was asked to, by the investigator Sh. Radha Krishan, then the VO, and Sh. R.P. Singh, the then AVO, to extend my remark otherwise they threatened me to hand over me to CBI.

Deposition of Sh. Suresh Chandra Jain AGM
(Admn) PW-III

Q-8. - Kindly see again the deposit slip signed by Sh. Raju Kumar Chaubey and confirmed that it was signed by you and Sh. S.K. Malhotra in the presence of Sh. Raju Kumar Chaubey?

Ans. - Sh. Raju Kumar Chaubey first came to Sh. S.K. Malhotra, the then SDO then came to me for counter signature and it was signed by me."

Deposition of Sh. S.K. Malhotra, PW-IV

Q.4 - Kindly see the exhibit S-2 and confirm as to who brought this issue slip for your signature?

Ans.- Sh. Suresh Chandra Jain, the then DE Rajouri Garden Telephone Exchange called me in his chamber & directed me to sign the said exhibit S-2 & said that it has already been signed by him so you also sign as the regular store-in-charge Sh. Bhupinder Singh was on leave under the direction I also wrote please issue and sign on dated 2.05.2005.

Q-8. - What happened after your signature & signature of the DE on issue slip i.e. exhibit S-2?

Ans. - The said document was with DE (O/D) RG & further he handed over to Sh. Raju Kumar Chaubey and directed the Store Keeper/ in-charge to enter in the stock register as per issue slip of pole number of 103 dated 2.05.2005.

Cross Examination By IO

Q.1 - As such you have stated in his reply above that Sh. B.K. Sinha confirmed about receiving the 103 poles. Why you did not try to confirm it at your end because you were the transferor of the store?

Ans. - Sh. Raju Kumar Chaubey ring up from my seat to Sh. B.K. Sinha & confirmed first and then handed over me the

telephone on which Sh. B.K. Sinha again confirmed that the pole 103 received by them I also recognized the voice of Sh. B.K. Sinha."

6. It is argued that it will be clear from the above depositions that the order for movement of 103 DP poles was made by Shri B.K. Sinha, COC – VI (North), which was confirmed by the deposition of Shri S.K. Malhotra and Shri Suresh Chandra Jain, who were the applicant's superior officers. Moreover, it would be seen that Shri B.K. Sinha, who is now denying his signature, also doesn't have a clean past. Based on evidence, the IO had, therefore, held that the charges against the applicant are not proved because the prosecution has not been able to establish through their witnesses that the applicant never confirmed from COC – VI (North) receipt of the store whereas PW-4, Shri S.K. Malhotra categorically stated that stores were received by the unit of COC – VI (North). Moreover, the charge that the applicant did not check the authenticity of poles received from the contractor, is not proved as he relied on the signatures of his senior officer on the slip. Based on the above two, the charge of the applicant bungling away 103 DP polls causing a heavy loss of Rs.1,31,840/- was also not proved.

7. Apart from the above issues, learned counsel for the applicant also stated that in the disagreement note, the DA has recorded as follows:

"It has been observed that the Inquiry Officer has held all the articles i.e. 1,2 & 3 as not proved. The

Inquiry Report has been examined and found that the I.O. has not taken many vital points into consideration while arriving at the decision of proving the charges so the undersigned disagree with the report of the Inquiry Officer for the following reasons:

1. The charge in the article No.1 vide point No.7.1 of report, has been held not proved by the I.O. in his Inquiry Report which is not acceptable for the reason that the Charged Official(C.O.) Shri Baldev Raj, PM was in-charge of store for last two years and was fully conversant with the procedure of receipt and issue of store items and he had failed to get the signature and the identification of the authorized person who had received the store.
2. For article No.2 vide point No.7.2 of report has been held not proved by I.O., which is also not acceptable as Shri Baldev Raj, PM has issued store to third party and failed to confirm the receipt of the store from the indenting unit which resulted in pilferage of store items in transit.
3. As per article No.3 vide point No.7.3 of report, has been held not proved by I.O., which is also not acceptable as the store was not received at the indenting end which caused a loss amounting to Rs.1,31,840/- towards the cost of the poles due to his negligence or malafide intention.”

8. It is stated that the settled law is that in a disagreement note, the DA only sets out tentative conclusion and it is only after hearing the charged officer that it can arrive at a final finding of the guilt whereas the above quoted para would show that the DA had arrived at a final finding of guilt. In this regard, the learned counsel relied on **Lav Nigam Vs. Chairman & MD, ITI Ltd. and another**, (2006) 9 SCC 440 and order of this Tribunal in OA 1772/2011, **Shri Vinod Babu Vs. Union of India and others** decided on 10.02.2014. Further, it is argued

that the respondents did not give notice of proposed punishment.

9. It is also stated by the learned counsel for the applicant that the AA's order dated 26.09.2011 is very cryptic and vague and there is no discussion whether there is at all any evidence to hold the applicant guilty.

10. Learned counsel for the respondents states that penalty imposed on the applicant is a minor penalty of withholding one increment for one year with cumulative effect although this was a part of the larger scam in MTNL and several persons have been proceeded against. It is further stated that from the following deposition of Shri S.K. Malhotra, PW-4, it will be clear that the applicant was also present at the time when exhibit S-2 was being signed by his senior officer:

"Q-6. - Any other official was also present there?

Ans. - Sh. Baldev Raj, Store Keeper also came by chance."

11. I have heard the learned counsel for the parties, gone through the records of the case and perused the judgments/orders cited.

12. The facts are that the applicant was a Store keeper. He received a slip signed by his superior officers, who did not deny their signature that a particular store is being moved from point 'A' to point 'B' and, therefore, he should make entries in the

stock register. Admittedly, the store was not in the store room of which the applicant was incharge but at an outside location. For this reason, there was also no question of any gate pass. Moreover, the deposit slip was signed by his superior Shri S.K. Malhotra in the presence of the contractor's man, Shri Raju Kumar Chaubey, and thereafter countersigned by Shri Suresh Chandra Jain, AGM.

13. The contention of the learned counsel for the applicant that the disagreement note was not tentative is not acceptable as from the language of the disagreement note it would be clear that it is a tentative finding against which the representation of the applicant was sought. Since it was a minor punishment, the respondents also did not issue any notice for the proposed punishment.

14. However, the contention of the learned counsel for the applicant is correct to the extent that the appellate authority has passed a rather vague order without any discussion as to how he came to the conclusion that there is evidence against the applicant.

15. I am aware of the fact that the Hon'ble Supreme Court has settled the law that the Tribunal shall not get into reappraisal of evidence. However, in this case the evidence was thoroughly gone into by the IO and he gave cogent reasons why he found that neither of the charges are proved. The learned counsel for the applicant has only tried to bring out those evidences before me to establish that the IO had drawn the right conclusion. I

also find that the disagreement note does not flow from the evidence by the PWs as brought out above because the disagreement note, order of the DA dated 28.5.2010 as well as order of the AA dated 26.09.2011 do not discuss at all the evidence brought out by the learned counsel and recorded above.

16. In fact, if I agree with the respondents, that would mean that the evidence of Shri S.K. Malhotra and Shri Suresh Chandra Jain are being rejected by the DA, AA and Reviewing Authority. Nowhere is it said so in their orders and in case the deposition by these two officers is correct, then the applicant has committed no mistake because these two senior officers had signed the slip for him to make entries in the stock register for movement of goods which were kept outside his store room and further because these two officers confirmed that the movement of store had actually been made.

17. In view of above discussion, I hold that the order of DA dated 28.05.2010, tentative disagreement order, order of the AA dated 26.09.2011 and order of the Reviewing Authority dated 26.03.2013 suffer from the defect of not considering evidence in its totality and, therefore, have to go. These orders are, therefore, quashed and set aside. As a consequence, the respondents are directed to restore the pay of the applicant with admissible increments and payment of arrears arising there

from. I fix a time frame of 90 days from the receipt of a copy of this order for implementation of above directions. No costs.

(P.K. Basu)
Member (A)

/dkm/