

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3730/2011

Reserved on : 01.02.2017.

Pronounced on : 13.02.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Kishore Kumar Saxena,
S/o Late Sh. B.S. Saxena,
Clerk,
Under Sr. Section Engineer [Elect.]/AC
Divisional Railway Manager,
Northern Railway,
Moradabad
R/o Railway Quarter No. T-38/I,
South Colony, Line Par,
Moradabad (UP).

..... Applicant

(through Mrs. Meenu Mainee, Advocate)

Versus

Union of India : Through

1. General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Moradabad.
3. Sr. Divisional Electrical Engineer,
Northern Railway,
Moradabad.

..... Respondents

(through Sh. VSR Krishna with Sh. A.K. Shrivastava, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was working as a Clerk on 09.09.2002 when he was served with a charge sheet containing the following charge:-

“On the demand of vigilance, verification of the stock under the charge of Shri K.K. Saxena, Clerk, under the Senior Section Engineer/AC/Moradabad was carried out and from 24.2.2002 to 28.5.2002 the stock was found in short or in excess. The total value of stock found in short was assessed at Rs.7.21 lakhs and the value of the stock found in excess was assessed at Rs. 8.57 lakhs.

By means of careless and irregular conduct Shri K.K. Saxena, Clerk has failed in maintaining integrity towards his work. From this, lack of devotion to his duty appears which is against the Railway Service Conduct Rules. From this, contravention of Section 3.1 (I), (II), (III) of the Railway Service Conduct Rules, 1966 has been committed.”

2. The applicant denied the charge and an enquiry was held. The Enquiry Officer (EO) submitted his report on 29.09.2009 in which he concluded that the charge against the applicant stood proved. A copy of the enquiry report was furnished to the applicant and he was permitted to make a representation against the same. After considering his representation the Disciplinary Authority (DA) passed an order dated 01.02.2010 imposing punishment of reduction in time scale by five stages lower for a period of three years. On 05.06.2008 the DA had also ordered recovery of Rs. 3,60,500/- from the applicant's pay on instalment basis. The applicant then filed an appeal both against the order of punishment as well as against

order of recovery. This was disposed of by the Appellate Authority (AA) vide order dated 21.02.2011. The AA reduced the punishment by ordering lowering of the pay by one stage only for a period of one year with postponement of future increment. In addition, he also reduced the recovery amount to Rs.1210/-. The applicant has now challenged the aforesaid orders through this O.A. seeking the following relief:-

“(i) That this Hon’ble Tribunal may be graciously pleased to allow this Application and quash the impugned orders [Annexures A-1 and A-2 and direct the respondents to refund the amount which has already been recovered from the Applicant and then give all consequential benefits.

(ii) That this Hon’ble Tribunal may be further pleased to direct the Respondents to refund the amount which has been recovered from his salary.

(iii) That the Hon’ble Tribunal may also be pleased to award any other or further relief which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case.”

3. The respondents have filed their reply in which they have submitted that the applicant was posted as a Clerk (Electrical) on 08.09.2000. On 02.01.2002 he was unauthorizedly absent. The store of AC/MB depot was under his custody. During his absence, a Committee was constituted to open the store to take inventory and verify the stock. On the basis of stock verification and stock sheet, a Charge Memorandum for major charge penalty was issued to the applicant for shortage/excess of the material. It was alleged that the shortage/excess had arisen due to carelessness and irregular

conduct of the applicant. Enquiry was held, which was completed on 25.01.2008 in which charges were found to be proved. The DA after going through the relevant material adduced during enquiry imposed punishment of reduction in time scale to five stages lower for a period of three years with future increments being affected. The applicant then filed an appeal, which was decided on 24.02.2010. The AA vide order dated 21.01.2011 reduced the punishment to reduction in time scale to one stage lower for a period of one year with postponement of future increments.

4. We have heard both sides and perused the material placed on record. The applicant has submitted that when the stock verification was conducted, he was on leave. He was not responsible for the shortage found as the store was not in his charge. He further submitted that the EO has given his report without considering the statements of all the witnesses. The DA and AA have also passed non-speaking orders based on extraneous material. No reason has been assigned for recovery of Rs. 1210/- from the applicant. Applicant also submitted that the necessary documents asked for by him during enquiry were not supplied to him.

4.1 In response, the respondents contended that the enquiry had been conducted strictly in accordance with rules and there has been no violation of the procedure or principles of natural justice.

The respondents with their affidavit have also cited several judgments to support their contention, many of which are not relevant to the present case.

4.2 The first ground taken by the applicant was that the stock verification was conducted when he was on leave. The respondents, on the other hand, have alleged that the applicant was unauthorizedly absent and since it had become necessary to check the AC store a Committee was constituted to take inventory of the available stock and conduct verification. It is not necessary for us to decide whether the applicant was on leave or unauthorizedly absent during the period stock verification was conducted. The respondents had constituted a Committee to prepare the inventory and conduct the verification. Applicant has not alleged any mala fide against this Committee. Therefore, it does not make any difference whether the stock verification was conducted in presence of the applicant or in his absence.

4.3 Next the applicant has contended that the necessary documents were not supplied to him. In this regard, our attention has been drawn to pages-41-42 of the paper-book wherein a list of documents asked for by the applicant is available. In response, the respondents have stated that except for two documents listed at Serial Nos. 2 & 4, all other documents had been supplied to him. The

applicant had also been furnished reasons for non supply of these two documents. We notice that at Serial No. 4 the applicant had asked for the copy of letters of subsequent appointment of the applicant on promotional basis. This had not been supplied to him. We failed to see how non supply of these documents has caused prejudice to the defence of the applicant. The applicant had also not been supplied document listed at Serial No.2 where the applicant had been asked for copy of document showing that the store items were specifically given in charge of the applicant and he held possession of the same as a store clerk. In response, the respondents had communicated to the applicant vide their letter dated 17.01.2005 (page-43 of the paper-book) as follows:-

"Copies of documents; at the time of taking over the charge of the stock your signature on the stock ledger make it clear that the charge of the stock and the goods in the stock were available there. Issuing and receiving of stock is done by you. G.M.(P)'s letter which has been given to you; from items Nos. 9 and 7 it is clear."

In our opinion, this was sufficient. From this it is also clear that as per G.M.(P)'s Instructions issuing and receiving of the stock was done by the applicant. Thus, there is no merit in the ground taken by the applicant, namely, that he was not responsible for the shortage found in the stock.

4.4 The applicant has also alleged that orders of DA & AA were non-speaking. We have perused the same and we find that this is

not the case. The grounds taken by the applicant in his defence have been considered by the authorities. Reasons for not agreeing with the same are also contained in the aforesaid order. The orders are sufficiently detailed and well reasoned. Therefore, we do not find any merit in the applicant's contention.

4.5 The applicant has also alleged that the EO has given conclusion without considering his defence. The EO has concluded that as per Instructions given by GM(P) vide letter dated 01.07.2002 it was the duty of the Clerk (Electrical) to receive and issue various items of stores. The material available in the store was required to be entered in the ledger. Since on stock verification the ledger was not found to be properly maintained, the applicant alone can be held responsible for the same. EO has also submitted that there was no evidence of the store room being opened during the absence of the applicant. Thus, the applicant's contention is not sustainable.

4.6 Lastly, the applicant has argued that recovery of Rs.1210/- has been ordered from him by the AA without any basis. While the original order is not legible, English translation of the same has been furnished by the applicant himself with his OA. It is evident from the order that the AA has observed that the stock sheets had been revised and it was found that the shortage had been reduced from Rs. 7.2 lakhs to Rs. 10,313/- thereafter based on the valuation of items

Rs.1210/- has been ordered to be recovered from the applicant. Thus, the basis for ordering recovery is mentioned in the order itself.

5. In view of the above, we do not find any merit in any of the grounds taken by the applicant. No other ground was pressed before us. We, therefore, dismiss this O.A. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/