

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1263 OF 2003

New Delhi, this the 29th day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER
HON'BLE SHRI BHARAT BHUSHAN, JUDICIAL MEMBER

Mahavir Prasad S/o Late Shri Phool Singh
Sectional Engineer, Microwaves Maintenance Office of
Dy.C.S.T.E. D.R.M. Office, New Delhi.

.....Applicant
(By Advocate : Shri S.P. Singh))

Versus

Union of India - through General Manager,
Northern Railway, Baroda House, New Delhi.

.....Respondent
(By Advocate : Shri Rejinder Khatter)

O R D E R

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER:

This Original Application under Section 19 of
the Administrative Tribunals Act, 1985 has been filed
by the applicant claiming the following reliefs:-

"1. That this Hon'ble Tribunal may graciously
be pleased to quash and set aside the impugned
orders and with all the benefits arrears of
the salary and promotions due and refixed the
pay and allowances from the date involved.

2. That the respondent be also directed to
make payment of consequence financial benefits
and refixed his salary from the date of the
punishment.

3. That any other relief deemed necessary in
the fact and circumstances of the matter may
kindly be directed in favour of the applicant
against the respondent.

4. That the cost of this O.A. be allowed in
favour of the applicant against the
respondent."

By impugned order dated 16.3.2001, the applicant has
been imposed "penalty of reduction to a lower stage of
pay in grade Rs.6500-10500 for a period of 1 year
w.e.f. 1st April, 2001, with cumulative effect." The

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appellate authority has considered the appeal of the applicant and had upheld the same as per letter dated 8.8.2001. The Additional General Manager vide letter dated 29.4.2002 has also rejected revision petition and upheld the punishment awarded to the applicant.

2. It is stated by the applicant that he was working as Bridge Inspector Incharge (B.R.I. for short) Northern Railway with Head Quarter at Jodhpur. A surprise check of the stores at Rai Ka Bagh, besides other stores under the supervision of the applicant was conducted w.e.f. 3.7.1997 to 12.08.1997 for 35 days. The applicant further states that he alongwith Shri P.P.Sibbal, Shri Pankhi Lal Meena and Shri Dhirendra Agarwal was associated with the preparation of inventory and it was signed and witnessed by Shri Pankhi Lal Meena, who was the store Incharge of the stores at Rai Ka Bagh and was responsible for posting of the vouchers and issue of receipt of the store and making entries in the proper ledgers. Shri Dhirendra Agarwal Grade II under the applicant was site Incharge of Diesel Shed Bhagat Ki Kothi, Jodhpur. The applicant states that the stocks were verified and the applicant remained present for all the 35 days and signed the inventory. In view of certain shortage and excess found in the store. The applicant has been issued a charge-sheet dated 27.10.1998. As per this charge-sheet, out of 884 items, 338 items were found to be short and 546 items were found in excess. The Tool and Plant items are shown to be issued to various

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work sites and ledger balance was deducted by the quantity issued. But the same were not received back after completion of the work. Certain items like Air Compressor, Diplories (MG&G) even though found were not taken on record. Besides certain items were issued but no receipt were available. Certain items like 300 Liters Paint Red Oxide R/M and 160 liters paint Red Oxide Zinc was issued without challan and the same was found to be short. Therefore, the charge-sheet stated that the applicant "defrauded Railway and showed carelessness in maintaining the stock of BRI Store." Accordingly, he was charge-sheeted for gross mis conduct on his part which was unbecoming of a Govt. servant and thereby he contravened Rule 3 (i) and (ii) of Railway Servant Conduct Rules, 1966. An inquiry was conducted and a copy of the inquiry report was forwarded to the applicant along with letter dated 4.9.2000. The inquiry officer after considering the statement of witnesses and after perusal of the relevant material had come to the conclusion that charge No.1 relating to "for not properly accounting the stock of BRI Store and not maintaining the records properly" was proved. The inquiry officer further observed that "As regards 338 items found short and other 546 items found excess, so far as the position of inventories and present position of the ledgers, the charge is proved to that extent only. However, in absence of proper ledger of BGKT, the CO has shown his inability to accept the actual shortage but he has agreed to bear

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the cost for which further investigation is required. Moreover, as per CO, items have been shown 3/4 items, there are not 384 items but transactions. He has justified by making out list of items as 527* (refer to page 83 of the proceedings). The charge against the CO that he showed carelessness in maintaining the stock of store of BRI/RKB/JU, also stands proved to that extent only." Considering the report of the inquiry officer as well as the reply of the applicant thereon, the disciplinary authority passed the impugned order of punishment dated 16.3.2001. The appeal as well as revision having been rejected, the applicant has filed this Original Application.

3. The grievance of the applicant is that he was not Incharge of the stores of Rai Ka Bagh. Shri Pankhi Lal Meena was the Incharge of the stores. If he has not carried out certain duties, the applicant cannot be held responsible for the same. Learned counsel of the applicant places reliance on the decision of the Hon'ble Supreme Court in the case of Habeeb Mohammad Vs. The State of Hyderabad, 1954 S.C.R. 475 in support of his contention that the Inquiry officer did not examine Pankhi Lal Meena who was a key witness. In this connection, the learned counsel also referred to the reply dated nil in response to the opportunity granted by the disciplinary authority while serving a copy of the inquiry officer's report with letter dated 4.9.2000. It was stated in this regard by the applicant that "I had given a request to P.O.

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during the inquiry. Rule 9 (10) (Annex-I) but he did not listen to it & rejected my request & thus I was deprived off to X-Examine Sh. P.L. Meena Hd. Clerk who was maintaining store & record & was accompanying the store verification. He thus, was a Key witness to unfold the facts." Learned counsel further pointed out that not only that the key witness was not allowed to be cross-examined by the inquiry officer but even the copies of the documents relied upon were not shown or supplied to the applicant. The learned counsel invited attention to the proceedings before the inquiry officer wherein the applicant with reference to inquiry officer order-sheet dated 2.6.2000 has stated that "the ledger/register to which material has been transferred from T & PLEGR Exh. P/6 page 75, 77, 78, 79, 80 has not been produced by prosecution although Shri Baboo Lal Meena had made a ref of it in his statement exh.P-20, Exh.P-13 is not the same register from which ref. has been made in Annex-III of Memorandum of Charges and whown to Shri Shri Baboo Lal Meena as maintained in my Section at BGKT. Thus I had been deprived off to inspect the concerned document under ref. and to X-examine the witnesses." The learned counsel of the applicant referred to the decision of Hon'ble Supreme Court in the case of Tirlok Nath Vs. Union of India and others, 1967 S.L.R. (S.C.) 750 in support of his contention that the inquiry must be treated as one in violation of rules and provisions of Constitution, if documents had not been furnished to the applicant. The applicant



had also asked for certain additional documents as per his letter dated 10.4.2000 but even these additional documents were not supplied. In this connection, reliance was placed on para 18 of the procedure for imposing major penalty which reads as follows:-

"(18) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiry authority may, in its discretion, allow the Presenting Officer, if any, to produce evidence not included in the list given to the Railway servant or may itself call for new evidence or recall and re-examine any witness and in such cases the Railway servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Railway servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Railway servant to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice."

4. The learned counsel of the applicant also pointed out that the stock verification has not been done as per the provisions contained in the Chapter xxxii relating to Stock Verification of Stores depots by the Accounts Department. According to him, para 3263 relating to Important Points for Scrutiny provides as follows:-

"While scrutinizing the stock sheets, the Senior Inspector should see-

- (i) that explanations recorded against discrepancies represent facts;
- (ii) that they are clear, intelligible and definite;

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(iii) that independent explanations are furnished against individual discrepancies and that excesses under some items are not adjusted against shortages in dissimilar items. In case of analogous items (where sizes only differ) such adjustments may be passed up to 2% of the transaction since the date of last verification, but any bigger differences must be taken up;

(iv) that in case of items accounted for in numbers large differences do not arise;

(v) that where shortages found as a result of stock verification are attributed to the neglect of the subordinate holding charge of stores, the cost of the missing articles is invariably recovered from the parties at fault..."

5. The respondents have opposed the prayer of the applicant. Learned counsel of the respondents invited attention to the statement of the applicant dated 28.12.1997 wherein the applicant has clearly admitted that the inventory of the stock was properly prepared by the checking team in his presence. In response to a question he has stated that inventory has been prepared properly after considering the inventory of each day in the presence of the applicant. These inventories also bear the signature of Shri Dhirendra Agarwal and Shri Pankhi Lal Meena. The only defence taken in the statement dated 28.12.1997 was that any deficiency or excess is on account of non-maintenance of proper accounts and inventories in the stock ledger/register by Shri Pankhi Lal Meena, Store Clerk (last answer of the statement). The respondents' learned counsel also pointed that it is wrong to state that the applicant was not allowed to inspect the documents. In this connection reliance was made to the proceedings dated 3.5.2000 before the inquiry officer which reads as follows:

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"At the outset of the enquiry, the following documents were produced by the P.O., shown to CO & DH, taken on record of the proceedings and exhibited/markd, are shown below:-...."

The list of documents is of Exhibit P-1 to Exhibit P-17 and includes material issue Register for Diesel Shed/BGKT site. Learned counsel also invited attention to the findings of the inquiry officer as per his report wherein it has been recorded as follows:-

"His stress that his Hd.clerk was not obeying his orders are also supported by the evidence but every subordinate incharges would say that his staff does not obey him. What will happen, she CO cannot absolve himself from the responsibility as the staff below him is at his disposal.

Regarding rejection of addl. witnesses to be called as PWs, it is not permissible.... The CO did not narrate what was to be unfolded by the witnesses to be called. It is for the disciplinary authority to submit a list of PWs. CO himself stated that he wanted them as PWs, which I am afraid is against the rules. The CO has put forth one plea that his Hd.clerk of Sh.P.L. Meena to suitably taken him up. No doubt, I agree to the extent that Hd.clerk/store is equally responsible."

The inquiry officer has clearly held that the charged official "responsible for showing carelessness". It is further pointed out by the learned counsel that the applicant was overall Incharge of the stores. It was his duty to ensure proper maintainance of records of the stores in his charge. If the concerned clerk did not discharge his duties properly, the same cannot absolve the applicant as supervisory officer.

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6. Learned counsel of the respondents stated that the charges as per charge-sheet were substantially proved on the basis of material as well as statements. This Tribunal cannot interfere with the decision of respondents on reappraisal of the facts, materials and statements. According to him, there was at least some evidence on record to support the charges and it is not a case of no evidence. The learned counsel further stated that there is no violation of rules or prescribed procedures even the principles of natural justice have been complied with and on the facts of this case, no interference is called for.

7. In the rejoinder reply, the learned counsel stated that merely because some documents were shown is not enough as per the decision in the case of Trilok Nath (supra), documents should be supplied to the applicant. If it is not so done, the decision of the respondents can be held unfair and consequential punishment deserves to be quashed and set aside.

8. We have heard the learned counsel of the parties and have perused of the material available on record carefully.

9. There is no dispute that the applicant was Incharge of the stores at Bhagat Ki Khoti as well as Rai Ka Bagh in respect of which certain discrepancies were found by the inspecting team. We are of the view that substantial compliance of rules of natural

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justice is done when the documents listed in the charge-sheet as well as some of the witnesses listed in the charge-sheet are examined during the course of inquiry. From the perusal of the annexure to the charge-sheet, it is noticed that Shri P.L. Meena is not listed as prosecution witness. His statement was not considered relevant so far as the charges against the applicant were concerned. If the applicant wanted him to be produced as his defence witness, he could have done so and made a request to that effect. He cannot say that Shri P.L. Meena who according to the applicant was responsible for maintenance of records of Rai Ka Bagh having not been examined the entire proceedings are bad in law. The reliance of the learned counsel on the decision of the Hon'ble Supreme Court in the case of Habeeb Mohammad (supra) is also not relevant. That was a case of criminal appeal. The Hon'ble Supreme Court observed that failure to call material eye witness and failure to issue process of important defence witnesses vitiates the trial. The disciplinary proceedings are based on the principles of preponderance of probability and are basically to enforce discipline in the administration. The criminal trial proceedings are on the basis of strict proof of evidence beyond any reasonable doubt. The cardinal rule of criminal justice is that innocent should not get punished even though some offender may be allowed to go scot-free for want of evidence. Therefore, it is held that the rules of evidence as in criminal cases are not applicable in the disciplinary

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proceedings and this decision of the Hon'ble Supreme Court is not relevant on the facts of this case.

10. Undisputed fact remains that the applicant was overall incharge of the stores. During checking, certain items were found short while some items were found in excess. Therefore, the charge of careless discharge of official duties relating to the applicant stands proved.

11. In our considered view, no prejudice is caused to the applicant if the documents relied upon are shown to him. It is not necessary that copies of such documents like registers be given to the applicant. The decision of the Hon'ble Supreme Court in the case of Irilok Nath (supra) also does not help the applicant. The Hon'ble Supreme Court in that case held that "...failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the Inquiry...". From the above, it is clear that the rules of natural justice were not complied with in that case inasmuch as the basis for issuing the charge-sheet and even the copy of the charges were not supplied to the employee. In the present case, the applicant has been supplied and shown all the relevant materials on which the charge-sheet was based. The



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inquiry officer has also allowed him adequate opportunity. It is further noticed that the disciplinary authority has taken a lenient view and has merely imposed the penalty of reduction to a lower stage of pay for one year only. In our view, there is no reason to interfere with the orders of the respondents on the facts of this case.

12. In the result, this Original Application is dismissed without any order as to costs.


(BHARAT BHUSHAN)
JUDICIAL MEMBER


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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