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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.70/2003

This the 1st day of October, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Soni Singh S/O Kalli,
Ex-Waterman, N.Rly. Tohana,
Delhi Division,
R/O HRA-36, Sharma Market,
6, ft. Road, Pul Parlahadpur,
New Delhi.

... Applicant

(By Shri G.D.Bhandari, Advocate)

-versus-

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

2. Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.

... Respondents

(By Shri R. P. Aggarwal, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant while he had been working as a Waterman in the Delhi Division of the Northern Railway, was charged for unauthorisedly working as Booking Clerk from 11.7.1997 to 31.7.1997, 13.8.1997 to 4.1.1998, 23.1.1998 to 7.2.1998 and onwards on various dates and committing serious misconduct and misappropriation of the Government cash for his personal use to the tune of Rs.29,587/- thereby indulging in embezzlement of Government cash through various means like non-payment of CR notes, collective preparation of CR notes, taking false credit in balance sheet etc. An enquiry officer was nominated for conducting D&AR enquiry. Applicant was asked to

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nominate his defence helper. He did not do so despite several opportunities. Thereafter applicant was held guilty of the charge on the basis of his statement to the enquiry officer and imposed a penalty of removal from service vide Annexure A-1 dated 1.6.2001. This punishment was upheld in the appeal and revision. Applicant has challenged the punishment of removal from service in the present application.

2. The learned counsel of applicant stated that applicant had been working in place of the Booking Clerk who had been suspended. It was within the knowledge of the Inspector incharge with whose consent he had been working as such. Several officials who had visited the Booking Office during the period while applicant functioned as Booking Clerk had not raised any objection to such functioning of applicant. He further stated that though applicant did not admit the charges and the enquiry officer did not hold any further enquiry, the authorities have punished applicant without affording him any opportunity of defence. The learned counsel further stated that applicant was not relieved to participate in the enquiry as is evident from Annexure A-10. The learned counsel stated that applicant had made a statement before the enquiry officer which was conditional which could not have been considered as admission of the guilt.

3. The learned counsel of respondents on the other hand, stated that applicant had admitted the charge whereupon the enquiry officer submitted his report to the

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disciplinary authority who, finding that applicant was guilty of a serious charge, imposed the punishment of removal from service. This punishment has been upheld in the appeal and revision. The learned counsel of respondents has also produced official record relating to the enquiry which we have carefully perused. Annexure R-1 is a copy of the statement submitted by applicant to the enquiry officer, original of which is present in the departmental enquiry records seen by us. It has been stated by applicant that he admits the charges levelled against him but he would submit a statement within ten days. He also stated that he does not want any enquiry in the case.

4. Although applicant had stated that he would submit his statement within ten days after he had admitted the charge, he did not submit any such statement. In this backdrop, there was nothing wrong in considering this admission as unequivocal. After admission if applicant did not fulfil his undertaking of filing his statement within ten days, adverse inference has to be drawn against him. He had himself stated that he did not want any enquiry and that he had admitted the charge. In such a case no further enquiry was necessary under the rules and the enquiry officer or the disciplinary authority were within their powers to give their finding about the charges against applicant. In the present case, the enquiry officer forwarded the case to the disciplinary authority reporting to him that applicant had accepted the charges of SF-5 and that he did not want any enquiry. It was also ~~not~~ conveyed that he

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would submit the defence statement within ten days. While the admission statement was made by applicant before the enquiry officer on 19.2.2001, the disciplinary authority passed the final orders on 1.6.2001. Applicant did not submit any further statement after his admission to the enquiry officer or to the disciplinary authority. Rule 9(9)(a)(iii) of the Railway Servants (Discipline & Appeal) rules, 1968 reads as follows :

"(iii) Where all the articles of charge have been admitted by the Railway servant in his written statement of defence, the disciplinary authority shall record its findings on each charge, after taking such further evidence as it may think fit and shall act in the manner laid down in Rule 10."

5. While applicant had admitted the charge in Annexure R-1 and when he did not submit any other statement within ten days as stated by him, Annexure R-1 was an admission complete in itself and the disciplinary authority was competent to pass final orders in terms of the rule cited above. It is not necessary in the facts of the present case to record any further evidence in the case when the admission had clearly been made by applicant and also that he did not want any further enquiry.

6. We also notice that applicant had stated in his appeal that he had been imposed a penalty of withholding of one set of passes for three years earlier and that he had been awarded punishment of removal from service in the same case. When asked to establish that applicant had been punished for the same charge earlier, the

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learned counsel of applicant could not establish the same. He merely stated that applicant had been awarded another punishment in a similar case on an earlier occasion. Although applicant had alleged double jeopardy in the present case, this allegation has not been established by him.

7. It is true that the enquiry officer had fixed the enquiry on 12.2.2001 and 19.2.2001 as per Annexure A-10 and that the concerned authorities had been asked to relieve the applicant to participate in the enquiry on these dates. Applicant attended the enquiry on 19.2.2001 and made the admission statement Annexure R-1 to the enquiry officer. Thereupon the enquiry officer was within his right to conclude the enquiry and submit his report to the disciplinary authority who, in turn, had powers to hold applicant guilty on the basis of his statement and also award punishment.

8. Finding no procedural irregularity and in the facts and circumstances of the case as discussed above, we do not discover any merit in the case. The OA is dismissed accordingly. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

/as/