

Arun Kumar Vs. Union of India Through the General Manager, Northern Railway

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Aug-19-2010

Judge : Honourable Mrs. Meera Chhibber, Member (J) & Honourable Mr. Shailendra Pandey, Member (a)

Appeal No. : O.A. No.636 of 2010

Appellant : Arun Kumar

Respondent : Union of India Through the General Manager, Northern Railway

Advocate for Pet/Ap. : For the Applicant : Shri Yogesh Sharma, Advocate. For the Respondent : Shri R.L. Dhawan, Advocate.

Judgement :

Mrs. Meera Chhibber, Member (J)

Applicant has challenged orders dated 5.10.2009 (page 23) whereby his revision has been rejected, 23.01.2009 (page 21) whereby appellate authority has reduced the penalty and 04.02.2008 (page 16) whereby penalty was imposed on the applicant by the disciplinary authority. It is submitted by the applicant that memorandum dated 22.12.95 was served on the applicant with the following allegations:-

Articles of Charge

i) On 24.11.1994/25.11.95 Shri Arun Kumar Material Clerk while working as such committed serious irregularity so much so that he misappropriated money value books (80 Nos.) by giving 520 PW bill books as against 600 books for onward supply to SM/Delhi and misappropriated 80 Nos. books with the connivance of Sh. Nathu Lal Meena, DKSP M. Value Book, Shri Ram Sunder Verma, Sh. Ram Asrey and Sh. Santu, Packer.

ii) He has also failed to obtain the signature of Sh. Nathu Lal Meena, DSKP in token of correct supply of books demanded by him.

By the above act of omission and commission Sh. Arun Kumar, Material Clerk failed to maintain absolute integrity exhibited lack of devotion to duty thereby contravened Railway Service Conduct Rule No.3.1 (i) (ii) (iii) of 1966 .

2. Immediately thereafter the applicant had requested the authorities to supply him the relied upon documents so that he may prepare his defence statement but no reply was given to him, in spite of his repeated representations. He has, thus, stated that his right to give effective defence, at the outset, was denied. It was only after the enquiry was started that the Inquiry Officer ordered supply of photocopies of the relied upon documents to the applicant whereas as per rule 9 (7) of Railway Servants (Discipline and Appeal) Rules, 1968, relied upon documents were required to be given to the Charged Officer along with the charge- sheet. He has, thus, submitted that O.A. deserves to be allowed on this ground alone.

3. Counsel for the applicant further submitted that it is a case of no evidence as none of the witnesses had stated anything against the applicant. On the contrary, all the witnesses have stated that it is a duty of the DSKP to get the money value books packed. Moreover, the DSKP had himself stated that he had sent 600 money books, which is evident from the punishment order given to the DSKP Shri Nathu Lal Meena (page-65), therefore, applicant cannot be held responsible. There is no rule to take acknowledgment. This fact is admitted by the Appellate Authority. Nathu Lal, nowhere states he received less books from the applicant. He has, thus, prayed that the OA may be allowed. He placed reliance on J.T. 2010

(1) SC 618 State of U.P. and Ors. Vs. Saroj Kumar Sinha and 148 (2008) DLT 433 (DB) Union of India and Ors. Vs. T.P. Venugopal.

4. Counsel for the respondents, on the other hand, submitted that in the Memorandum itself, it was mentioned in para 2 that the applicant can inspect and take extracts from the documents mentioned at Annexure-3 at any time during the office hours within 5 days of receipt of the memorandum, therefore, it was open to the applicant to inspect the relied upon documents within the stipulated period. It was not obligatory on the part of the respondents to supply the same. To substantiate this, he relied on Annexure R-2 Railway Board's letter dated 29.03.1985 (page-92). In any case no prejudice has been caused to the applicant as before the enquiry started, he was given the copies, therefore, it cannot be stated that principles of natural justice have been violated. He relied on State Bank of Patiala Vs. S.K. Sharma 1996 (2) SLR 631. He also submitted that onus was on the applicant to prove that he had given 600 books to the DSKP, which has not been proved, Shri Nathu Lal Meena and his staff including the applicant misappropriated 80 money books in connivance with each other, therefore, this case calls for no interference. He relied on B.C. Chaturvedi's judgment to state that Courts cannot re-appreciate the evidence and so long some evidence is there, it is for the executive to decide what punishment should be imposed.

5. We have heard both the counsel and perused the pleadings. At the relevant time, applicant was working as material clerk and the charge against him is that he committed serious irregularity inasmuch as he misappropriated money value books (80 Nos.) by giving 520 PW bill books as against 600 books for onward supply to SM/Delhi and misappropriated 80 Nos. books with the connivance of Sh. Nathu Lal Meena, DKSP M. Value Book, Shri Ram Sunder Verma, Sh. Ram Asrey and Sh. Santu, Packer. He also failed to obtain the signature of Sh. Nathu Lal Meena, DSKP in token of correct supply of books demanded by him.

6. It is relevant to note that the charge sheet is dated 22.12.1995. Within one week, applicant requested the authorities to give him relied upon documents so that he may give his defence statement which was followed by reminders but those documents were not given to him. At this juncture, it would be relevant to

refer to Railway Board's letter annexed by respondents themselves, which reads as under:-

“1)Under the present rules, only the documents listed in Annexure III of the Charge Memorandum are required to be shown to the charged employees before the enquiry stage. To avoid delays at the stage of obtaining of reply to the Charge Memorandum it has been decided that Photostat or typed copies of all the listed relied-upon documents should be furnished along with the Charge Memorandum. This shall not however, affect the right of the charged employees to inspect the original of the listed documents if he so desires.

2)The Railway Board have decided that simultaneously with the issue of the Charge Memorandum, orders for appointment of the Inquiry Officer as well as the Presenting Officer, where one is intended to be appointed, should invariably be issued. The enquiry may, however, start only after the Disciplinary Authority remits the case to the Enquiry Officer, after consideration of the defence to the charged memorandum. In case, the defence is not received in time, ex-parte enquiry will have to be ordered, as usual .

7. It is, thus, clear that the respondents had themselves taken a decision that copies of relied upon documents should be served on the delinquent. Even otherwise if the argument advanced by the counsel for the respondents is tested, we find no merit in it because for inspection of documents also, somebody had to permit the applicant to inspect the documents. Applicant could not have inspected the documents on his own, therefore, we would agree with the counsel for the applicant that his right to defend at the initial stage was indeed denied. However, it is admitted by the applicant that before the enquiry was started, he was given not only copies of the relied upon documents and additional documents as well, therefore, no prejudice is caused to the applicant because he had full opportunity to defend himself before the Inquiry Officer. We, therefore, hold that though principles of natural justice were violated at the initial stage but that would not vitiate the proceedings.

8. Counsel for the applicant next contended that there was no provision for taking the signature from DSKP. No evidence has come on record to suggest that

applicant was responsible for the lapse, therefore, the findings of Inquiry Officer are not based on any evidence. In this context, it would be relevant to quote the observations of the appellate authority himself, which read as under:-

“3.Prosecution witnesses have stated in their statements the practice being adopted in the N.B. section though it is not supported by any administrative instructions. One of the prosecution witnesses Sh. Ram Sunder, Packer has stated in his statement that on 25.11.04, you had issued 600 (six hundreds) money value books and 5000 requisition slips which were got packed by DSKP of NB section Sh. Nathu Lal Meena in eight gunny bags with the help of Sh. Santoo and Ram Asre packers including him (Sh. Ram Sunder). He further stated that out of eight gunny bags, only seven were sent. To confirm or disagree this statement, S/Sh. Santoo and Ram Asre have not been subjected to examined or cross-examined.

4.I have perused the contents of your appeal dated 20.2.2008 and with a view to provide natural justice I have given due consideration to the facts of the case with reference to find out your involvement in the less supply of these 80 money value books and it is substantiated that you would have been exonerated had you obtained the signatures of the DSKP in token of receipt of 600 books ignoring the actual practice in vogue in NB section. Although the statements of prosecution witnesses does not suggest your active involvement in this process which involves the money value books but to ensure adopting fool proof procedure, you should have obtained the signatures of the DSKP”.

9. From above, it is clear that even the appellate authority was of the view that from the statements of PWs, that the applicant's involvement is not proved. Once this finding was recorded, the applicant could not have been punished on the ground that he had not taken the signatures. In fact the evidence which had come on record, itself shows that there was no provision for taking acknowledgment from the DSKP. Total 9 PWs were examined.

10. PW1 DMS-I/SSB in cross examination admitted that the DSKP is the custodian of all the material lying in number book section and M.C. is to assist. No acknowledgment is given to the M.C. by the DSKP. The DSKP will get the material

packed in his presence. At the time of packing, the M.C. does not remain present. In response to a question by the Inquiry Officer he categorically stated that it is the hand work of DSKP concerned.

11. PW3 on cross examination clarified that Shri Nathu Lal Meena, DSKP was the custodian of money value book items and competent to issue these items. The role of M.C. is to take out the books as per indent and handover. After handing-over his role ends. There is no practice to obtain acknowledgement of the material issued correctly. Ex. P-2 is the summary, which is prepared by the dispatch clerk and signed by DSKP and dispatch clerk in token of its correctness. Ex.P-3 is signed by DSKP/money value book section. On being asked by the Inquiry Officer this witness stated that such type of bugling cannot take place without the assistance and connivance of staff below.

12. PW 4 is the Sr. Packer. It is important to read what he stated in cross examination because he categorically stated that he was working as a packer in money value book section in Nov-94. He remembered that 8 packets of the material were prepared by the packers but does not know how 7 packets were despatched. He also stated that the Material Clerk used to take out material as per the quantity and handover to the DSKP who would check it and get it packed.

13. It is also relevant to note that PW 7 Supdt. (PandS) SSB on cross examination clarified that the role of the M.C. (CO) in this case is only to take out the material from the stock as per quantity allowed on the indent and handover to DSKP who get the same packed. This PW also stated that there is no system of DSKP giving any acknowledgment to the MC(CO). The other witnesses are not relevant as far as the charges against the applicant are concerned because they confirmed that on refilling the money value books in 7 gunny bags, only 520 money value books could be fitted in.

14. If we dissect the evidence as quoted above, most of the PWs have stated there was no system of DSKP giving any acknowledgment. DSKP was the custodian of money value books. Role of Material Clerk came to an end after he handed over the material. It was for the DSKP to check and point out shortage if any. All the witnesses have stated, it was the duty of the DSKP to check and get

the material packed. The most important aspect of the matter is that Shri Nathu Lal Meena, DSKP was also chargesheeted with the following allegations:-

“Shri Nathu Lal Meena, DSKP (Money Value) while working on 25/11/94 committed serious irregularities so such so that he sent 520 number PW bill books (P-36A) instead of 600 books to Station Manager, Delhi. He had shown in his record to have sent 600 books.

Thus he misappropriated 80 PW bill books in connivance with Shri Arun Kumar, Materials Clerk, Shri Ram Sunder Verma, Shri Ram Asrey and Shri Santhu Packers.

That by the above act of omission and commission Shri Nathu Lal Meena, DSKP failed to maintain absolute integrity exhibited lack of devotion to duty thereby contravened Railway Service (Conduct) Rules 3.1(i), (ii) and (iii) of 1966”.

15. Perusal of the order dated 17.05.2005 (page.65) passed by the authorities in his case shows Shri Meena had shown in his record to have sent 600 books. This would have been possible only if he had received 600 books from the Material Clerk. It goes without saying the admission of DSKP in records that he had sent 600 books would mean the Material Clerk had given him 600 books which is corroborated by the statement of PW 4 also who had stated that as a packer, he had filled the books in 8 gunny bags. If 8 gunny bags were filled and DSKP sent only 7 bags then applicant cannot be held responsible for it. His role ended after money books were handed over to the DSKP. It has also come on record that there was no provision for taking acknowledgment from the DSKP. Moreover, DSKP did not even file representation against the Inquiry Officer's report meaning thereby he had accepted his mistake. He could also not explain why money books were sent in gunny bags when they were earlier sent in paper packing so that they could be counted immediately. The DSKP was punished for sending 520 books instead of 600 as shown by him in his record.

16. Connivance of applicant could have been proved only if Nathu Lal had objected that 600 books were not handed over to him. Shri Nathu Lal was not produced as a P.W. nor is it respondent s case that he had counted the books and

found them less than 600.

17. In these circumstances, we would agree with the counsel for the applicant that it is a case of no evidence as far as connivance of applicant is concerned. Prosecution witnesses have stated there was no provision of taking acknowledgment. Respondents have only relied on one sentence stated by PW3 that bungling cannot take place without assistance and connivance of staff below. This sentence does not prove the connivance of the applicant. We, therefore, hold the applicant could not have been punished.

18. Counsel for the respondents submitted that Tribunal cannot re-appreciate the evidence. The law is well settled that so long there is some evidence Courts cannot sit in appeal over the decision taken by authorities but if it is a case of no evidence, Court can interfere. Even In B.C. Chaturvedi Vs. Union of India and Ors. reported in AIR 1996 SC 484 also, Hon ble Supreme Court held Court can interfere in disciplinary case if conclusion or finding is based on no evidence.

19. Since we have held it is a case of no evidence, orders dated 4.2.2008, 28.4.2009 and 5.10.2009 are quashed and set aside. Applicant would be entitled to consequential benefits.

20. O.A. is accordingly allowed. No costs.

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