

(2015) 02 RAJ CK 0212
In the Rajasthan High Court
Case No : Civil Writ Petition No. 393 of 2001

Union of India and Others

APPELLANT

Vs

Haridutt Mishra and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Citation : (2015) 2 RLW 1194

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : P.C. Sharma, for the Appellant; Lokesh Kumar Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J.

1. Instant petition is directed against order of the Central Administrative Tribunal dt. 16/11/2000. Brief facts of the case are that the respondent-employee was working as Mistri in Gas Section Workshop, Kota in the year 1979 and this post was upgraded in September, 1981 and he was promoted as Chargeman. While he was holding the post of Chargeman of the Section, on reconciliation of the records, it revealed that 19 gas cylinders were missing and holding him to be responsible, an enquiry under the Railway Servants (Disciplinary and Appeal) Rules, 1968, for minor penalties, was initiated against him by serving him a notice and after taking note of his representation and the available records, the disciplinary authority arrived to a conclusion that the charge against him stands proved and holding him guilty, punished him with the penalty of recovery of Rs. 34,000/- to adjust loss which was caused to the establishment vide order dt. 24/07/1987 and it reveals from the record that earlier the respondent-employee approached the Tribunal by filing Original Application and that came to be decided with direction to the disciplinary authority in affording him opportunity and assign reasons in upholding the charge against him. Pursuant thereto, the disciplinary authority re-looked the matter and taking note of the defence of the

respondent-employee, arrived to a conclusion that the procedure prescribed under the Scheme of Rules of 1968 was followed for inflicting minor penalty and after the charge stood finally proved, held him guilty and punished him with the punishment to the extent of recovery of the amount of Rs. 34,000/- to adjust the loss which was caused to the establishment and we find from the order passed by the department/disciplinary authority dt. 31/01/1995 that all the objections raised by the respondent-employee available in his defence have been considered by the department/disciplinary authority and after repealing his contention, upheld the order of penalty inflicted upon him.

2. The respondent-employee thereafter again approached the Tribunal by filing Original Application No. 73/1996 and after the parties being heard, the Id. Tribunal under its order impugned, treating it to be a super appellate authority, re-appreciated the finding of fact which at one stage re-looked by the disciplinary authority and confirmed about his responsibility as a Chargeman assigned to him for the period during which on reconciliation of statements of records, 19 gas cylinders were missing and a financial loss of Rs. 34,000/- was caused to the establishment and to the extent of monetary loss suffered on account of the alleged misconduct being committed by the employee, the penalty for an equal sum of Rs. 34,000/- was inflicted upon him to be recovered.

3. However, the Id. Tribunal proceeded on the premise that no preliminary enquiry was conducted and the fact, which all the time referred to is that the respondent-employee as alleged was not the incharge of gas section and letters has been addressed to one Mr. Hari Shankar and no disciplinary action was taken against Mr. Hari Shankar and he was absolved from initiating disciplinary enquiry, arrived to a conclusion that the very charge-sheet served upon the respondent-employee was not justified and in the absence of a preliminary enquiry being conducted, the procedure followed by the disciplinary authority in holding the respondent-employee guilty and passing order of penalty of recovery of a sum of Rs. 34,000/- was not sustainable.

4. We have heard counsel for the parties and also perused order of the Tribunal impugned herein and so also the material available on record.

5. Taking note of the submission, we are of the view that the Tribunal could not have acted as a super appellate authority in re-appreciating the finding of fact which was recorded by the disciplinary authority based on the record of the departmental enquiry and as regards the finding recorded that in absence of holding preliminary enquiry, the disciplinary authority could not have initiated under Rules of 1968, is wholly without substance for the reason that it is open for the disciplinary authority to take a decision as to whether in a given case and circumstances, there is any need for holding any preliminary enquiry but there is no requirement under the scheme of Rules that whenever the enquiry is to be initiated, for minor or major punishment, it is a precondition/requirement for holding preliminary enquiry and as regards the finding recorded by the Tribunal that he was not incharge of the gas section, we find from the record that there

are sufficient documentary evidence placed on record to substantiate that he too was holding the charge of a Chargeman of the section and may be sharing responsibility with Hari Shankar but that could not absolve him from responsibility by shifting the burden on the shoulders of Hari Shankar as alleged being incharge of gas section and even in the given facts and circumstances, a delinquency has been committed by him for which departmental enquiry was initiated and inflicted a minor penalty under the Scheme of Rules, 1968, we do not find any error in the decision making process which has been adopted by the disciplinary authority.

6. It is also brought to that under Rule 6 of Rules 1968, that provides nature of penalty which could be inflicted upon an employee for the delinquency committed and for sufficient good reasons, recovery from pay of the full or part of any pecuniary loss caused to the administration is one of the minor penalty prescribed under the Schedule appended to the Rules of 1968 and in our considered view, the finding which has been recorded by the Tribunal under order impugned is not legally sustainable in the eye of law.

7. It is not the case of the delinquent employee that the procedure prescribed under the Scheme of Rules 1968 either was not followed or there is violation of principles of natural justice or fair opportunity of hearing was not afforded to him and that being so, we find no error in the process adopted by the railway administration in conducting enquiry or inflicting minor penalty. Consequently, the appeal succeeds and is hereby allowed. The order of the Id. Tribunal impugned herein dt. 16/11/2000 passed in OA No. 73/1996 is hereby quashed and set aside. No costs.