

Central Administrative Tribunal
Principal Bench

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OA-3330/2002

New Delhi this the 29th day of September, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Harish Chander Sharma,
S/o Late Sh. Hardwari Lal.
R/o C/o Ram Prakash Sharma.
84-Ghante, Near Guddu
Advocate, Moradabad. Applicant

(By Advocate Shri G.D.Bhandari)

Versus

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad. Respondents

(By Advocate Shri B.S.Jain)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application the applicant has impugned the action taken by the respondents in which they have passed penalty order of compulsory retirement dated 1.3.2002. He submitted an appeal on 18.4.2002 which has been rejected by the Appellate Authority's order dated 25.9.2002/1.10.2002.

2. Applicant had been issued a charge sheet dated 28.2.2001 (Annexure-II) ^{which} ~~whereof~~ contains a Statement of Imputations of misconduct or misbehaviour in support of each Article of Charge.

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There is only one charge levelled against the applicant, which reads as follows:-

"Article-I"

That the said Shri Harish Chandra Sharma, Asstt. Station Master/KGF while working at East Cabin KGF in 00-08 hrs. shift on 29-30/08/2000 committed a serious misconduct and acted in a most careless and irresponsible manner as is evident from the fact that he took over charge in KGF East Cabin from Shri Ummed Singh at 00-00 hrs. in the night of 29-30/08/2000 and signed the relief diary in token of going through the remarks given by his predecessor Shri Ummed Singh and saw the remarks given by Shri Ummed Singh about sending an emergency key at gate No.413-A and getting it back in the morning. Shri H.C.Sharma recorded that all locks, points signals and block instrument were in order. though seals of KT. of 413-A and emergency key box in the cabin were in broken condition. During his deposition, he also confessed that he did not see the broken seals. He has also confirmed that when emergency key is sent to the L-Xing gate, OPT-80 (caution order) should be issued to the train driver but he continued to pass the train in normal manner by transmitting and releasing the key of gate No.413-A. He has explained that had Shri Ummed Singh resorted to interlocked working and issued caution orders, the accident would have possibly not taken place. He confessed that he should also have resorted to non interlocked working, but he did not do so, because the key was functioning properly and Shri H.C.Sharma continued to follow the wrong procedure for passing the trains through the level crossing, eventually culminating into this accident i.e. dashing of 3050 Dn. against three (3) road vehicles at manned level crossing gate No.413-A of KGF station on 30/08/2000 at about 05.02 hrs. and dragged for a distance of 397 meters beyond level crossing before stopping. As a result of this accident four persons of the road vehicles lost their lives at the accident spot. Two persons of road vehicles were grievously injured and six of train passengers received trivial injuries.

He is, therefore, considered primarily responsible for this accident. Had he suspended normal working and resorted to non interlocked working, the signals would have been lowered only after getting the second private number from the gate confirming closure the gate and thereby responsible for

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contravening rule 1.6 of Appendix 'A', para 2.1 & 2.14 of Appendix 'D' (Duties of ASM) of Station Working Rule of KGF station and GR-2.11(1)(a) & (b) of General and Subsidiary Rules-1995".

3. One of the grounds taken by Shri G.D. Bhandari, learned counsel is that the above article of charge levelled against the applicant is vague as it does not disclose under which provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 the applicant is alleged to have committed a misconduct. We are unable to agree with this contention as the charge levelled against the applicant is that he has committed serious misconduct in not following certain Rules which have been mentioned in the charge sheet. This ground, therefore, fails.

4. Learned counsel for the applicant has also taken other grounds to challenge the order issued by the Disciplinary Authority/Senior Divisional Operations Manager (Sr.DOM) and the Appellate Authority's order passed by the Additional Divisional Railway Manager, stating that they are non-speaking orders. He has submitted that the Disciplinary Authority of the applicant is the D.O.M and the Sr.DOM is the Appellate Authority but at the last stage of the enquiry proceedings held against the applicant, the Appellate Authority/Sr.DOM has acted as ~~the~~ ^{By} Disciplinary Authority and the Revisional Authority has assumed the role of Appellate Authority. It is relevant to note that these specific averments have been given in paragraph-5.10

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of the OA. It is equally significant to note that in the reply affidavit filed by the respondents on 12.5.2003 to paragraph 5.10, a common reply in respect of paragraphs 5.1 to 5.21 has been given stating that "averments are wrong and denied as submitted in replies to various paras above". During the hearing, learned counsel for respondents has not been able to show us which of the earlier paragraphs denies the averments given by the applicant regarding incompetence of the Sr.D.O.M to act as the Disciplinary Authority instead of the D.O.M. In this regard, another submission has been made by Shri G.D. Bhandari, learned counsel that the Disciplinary Authority/Sr.D.O.M. has in the reasons given while issuing the penalty order of compulsory retirement stated that it is "on the basis of the enquiry report submitted by the Enquiry Officer and the report of the Divisional Operations Manager", he has come to the conclusion that penalty should be imposed. He has referred to the fact that the D.O.M. had given a report, including the proposed penalty of compulsory retirement to be imposed on the applicant. He had submitted the same to the Sr.D.O.M who has, instead of critically examining the entire record of the proceedings imposed the penalty of compulsory retirement on the applicant. We note from the list of documents annexed to the Charge Memo (Annexure-III) that 12 documents have been listed. The Disciplinary Authority/Sr.DOM in his order dated 1.3.2002 has also relied on the report of the D.O.M.

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while coming to the conclusion that a punishment of compulsory retirement should be imposed on the applicant. From the documents on record, it appears that only the Enquiry Officer's report has been given to the applicant as required under law for his comments but not the report of the D.O.M. We also see merit in the submissions made by Shri G.D. Bhandari, learned counsel that in the same departmental enquiry held against the applicant, there could not have been two Disciplinary Authorities namely, the Sr.DOM who has issued the penalty order dated 1.3.2002 and the D.O.M who also refers to himself as the Disciplinary Authority, in the letter dated 31.12.2001, signing the covering letter by which the Enquiry Officer's report was sent to the applicant. This letter does not mention anywhere that his own report, i.e., D.O.M's report has also been sent to Sr.D.O.M, which has been categorically mentioned in the penalty order as also a report relied upon by him. It is further relevant to note that nothing has been stated by the respondents to show that the report of D.O.M. has been given to the applicant at any stage. In the facts and circumstances of the case, we are unable to agree with the contentions of the learned counsel for respondents that no prejudice has been caused to the applicant, when a Senior Officer to the Disciplinary Authority has passed the penalty orders relying on a report which has not been supplied to the applicant.

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5. The applicant in his appeal has also submitted that the D.O.M, Shri K.C. Sharma had proposed the penalty of compulsory retirement on him and had sent the suggestion to Sr.DOM, Shri Sanjay Bajpai, who had imposed the penalty order of compulsory retirement. A perusal of the Sr.DOM/Disciplinary Authority's order shows that it is a non-speaking order and does not discuss the evidence and other relevant documents, with particular reference to the Enquiry Officer's report or the report of the DGM referred to therein. Similarly, the Appellate Authority's order dated 25.9.2002/1.10.2002 is also a non-speaking order which has not discussed the grounds taken by the applicant in his appeal.

6. During the hearing, learned counsel for respondents had stressed on the facts that because of the negligence of the applicant in carrying out his duties, the Railway accident had occurred causing death of four persons and grievous injury to six persons. Nobody denies the seriousness of the charge but at the same time it should also be dealt with by the respondents in as much seriousness as the situation requires and in accordance with the law, rules and instructions. Learned counsel for respondents submits that applicant had admitted to his guilt, If that is so, why the respondents chose to issue a major penalty charge under the Railway Servants (Discipline and Appeal) Rules, 1968 and

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proceeded against him in the enquiry is not at all satisfactorily explained. Once they have taken the decision to proceed against the applicant in terms of the Railway Servants (Discipline and Appeal) Rules, 1968, they ought to have fully complied with the Rules and Procedure laid down in law. In this context, as already mentioned above, it is also relevant to note that the counter affidavit filed by the respondents is not at all satisfactory as the specific averments made by the applicant have not been referred to and replied in the manner they ought to have been done.

7. In the result for the reasons given above, the OA is allowed. Accordingly, the Disciplinary Authority's order dated 1.3.2002 and Appellate Authority's order dated 25.9.2002/1.10.2002 are quashed and set aside. The applicant shall be entitled to be reinstated. However, in the circumstances of the case, liberty is granted to the respondents to pass appropriate orders in the disciplinary proceedings initiated vide Charge Memo dated 28.2.2001 in accordance with the relevant Rules and keeping in view the observations made above. With regard to the intervening period, i.e., from the date of compulsory retirement to the date of reinstatement, the respondents shall pass necessary and appropriate orders in accordance with Rules within three months from the date of receipt of a

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copy of this order. In the circumstances of the case, cost of Rs.3000/- (Rupees three thousand only) are awarded against the respondents and in favour of the applicant.

V.K. Majotra
(V.K. Majotra)
Member (A)

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

cc.