

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.040/00361/2015

Date of Order: This the Day of November, 2017

**HON'BLE MOHD HALEEM KHAN,ADMINISTRATIVE MEMBER
HON'BLE MR.S.N.TERDAL, JUDICIAL MEMBER**

1. Sri Anup Kumar Das
Ex.JE-II/Tele/NGC
Son of Late Anil Chandra Das
N.F.Railway, Badarpur
Assam Applicant

By Advocate Mr.M.Chanda

-Versus-

1. The Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati-781011
2. The Senior Divisional Signal and Telecom Engineer
N.F.Railway Headquarter Complex ,
Malaigaon, Guwahati-781011
3. The Senior Divisional and Telecom Engineer
N.F.Railway, Lumding
4. The Divisional Railway Manager(P)
N.F.Railway, Maligaon
Guwahati-781011
5. Additional Divisional Railway Manmager,
N.F.Railway, Lumding

6. Sri Masood Alam
 Sr.DSTE, Maligaon, N.F.Railway
 Maligaon-11. Respondents

By Advocate Mr.H.K.Das, Railway counsel

Date of Hearing: 22.11.2017 Date of Order:

ORDER

Per Hon'ble Mr.S.N.Terdal,Member(J):

This O.A. has been filed seeking the following reliefs:-

“8.1: That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum of charge sheet dated 06.05.2014 ,impugned inquiry report dated 22.12.2014, impugned penalty order dated 12.3.2015 , the impugned appellate order dated 07.08.2015. the impugned office order bearing No.N/PF/1/174 dated 14.08.2015 as well as impugned modified appellate order dated 02.09.2015.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to reinstate the applicant in the post of JE/TELE/NGC with immediate effect with all consequential benefit including arrear monetary benefit.”

2. Heard Mr.M.Chanda, learned counsel for the Applicant and Mr.H.K.Das, learned Railway counsel for the Respondents and perused the pleadings and the documents produced by both sides.

3. The brief facts of the case are that under Rule 9 of Railway Servants(Discipline & Appeal) Rules 1968, a major penalty proceedings were initiated against the Applicant for the following charge, which is elaborated in the Statement of Imputation of Misconduct as follows:-

ARTICLE – I

That the said Shri Anup Kr. Das, while functioning as JE/TELE/NGC under SSE/TELE/GHY, Violated the Railway Service Conduct Rules 1966 Para 3.1(ii) & (iii) and Clause Nos. 17.22, 17.23 & 17.24 of Railway Telecom Manual.

ANNEXURE II

Statement of imputation of misconduct/misbehaviour to Support of the articles of charge framed against Shri Anup Kr. Das, JE/TELE/NGC under SSE/TELE/GHY.

ARTICLE – I

On 16-04-2014, an accident of Dn BG Express (15666 Dn) took place at 02:10 hrs in the section between Ajuri and Jagiroad stations. ART/NGC was called to attend the accident site at 02:30 Hrs. Siren to call ART/NGC were blown at 02:30 Hrs. ART/NGC left NGC at 03:15 Hrs. Sri Anup Kr. Das, JE/Tele/NGC who is in-charge of the Telecom equipments of ART/NGC did not attend the ART/NGC. It is the duty of Sri Anup Kr. Das, JE/Tele/NGC who has been nominated as main staff for the Telecom equipments kept in ART/NGC to respond immediately whenever ART/NGC is called and proceed by ART to the

site of accident. Sri Anup Kr. Das, JE/Tele/NGC is also responsible for establishing the communication immediately on reaching the site of accident. It is also the duty of Sri Anup Kr. Das, JE/Tele/NGC to test the ART equipments as per schedule and ensure satisfactory working of all Telecom equipments provided in ART/NGC.

Following is the list of responsibilities Sri Anup Kr. Das, failed to carryout as JE/TELE/NGC.

- (i) Sri Anup Kr. Das, JE/TELE/NGC did not attend the ART when it was called to attend the accident. It is duty of Sri Anup Kr. Das, JE/TELE/NGC to attend the ART whenever an accident takes place and ART/NGC is called to attend that accident site.
- (ii) Sri Anup Kr. Das, JE/TELE/NGC is responsible for establishing the communication immediately on reaching the site of accident. Sri Anup Kr. Das, JE/TELE/NGC failed in establishing the communication at site. It is the duty of Sri Anup Kr. Das JE/TELE/NGC to establish emergency communication immediately after ART/NGC reaches an accident site.
- (iii) 3 Nos. of pairs of the cable provided in ART/NGC were found faulty by SSE/TELE/GHY while he was trying to establish control phone at the accident site. This resulted in late establishment of control phone at the accident site. Sri Anup Kr. Das, JE/TELE/NGC is responsible to test the ART equipments as per schedule and ensure satisfactory working of all equipments. Sri Anup Kr. Das, JE/TELE/NGC failed to ensure the satisfactory working of the cable provided in ART NGC to establish the communication at site.”

4. The applicant submitted representation against the same. A Departmental enquiry was conducted and the Enquiry Officer submitted Enquiry Report on 22.12.2014 holding that the charge was proved. The Applicant submitted representation against the Enquiry Report. The Disciplinary Authority by order dated 12.3.2015 after considering the above said Enquiry Report and the representation imposed the penalty of removal from service with immediate effect with 1/3 of compensation allowance. The applicant filed appeal. The Appellate Authority on 7.8.2015, disposed of the Appeal reducing the penalty which is extracted below:-

“The Appellate Authority, ADRM/LMG has disposed the appeal of Sri Anup Kumar Das, EXJE/Tele/NGC)CO) and has given the following Speaking Order:-

“I have gone through the details of the case and the remarks made by the DA on prepage. Further the employee was given a personal hearing to appreciate the views and position put forth by him. However, the arguments put forth by the employee are lacking in content and substance, except the fact that he had recovered from illness prior to the incident. The employee has however made fervent appeals to consider his appeals as sole bread earner for his family and health problems in the family. In view of the above, the penalty of “**Removal**” from service is reduced and

a penalty of “Reduction to a lower post of Technician III at the initial of the scale. The period of reduction to the lower post will be so as to postpone future increments of his pay. The employee is to be transferred and posted under Sr.DSTE/Lumding in administrative interest.”

5. Subsequently, the Appellate Authority on 2.9.2015 modified the penalty as follows:-

The penalty imposed may be considered as:-

“Reduction to a lower post of Technician III at the initial of the scale. The period of imposition of the penalty will be five years. Thereafter the employee will be restored to his original grade and pay.”

6. The learned counsel for the Applicant took us through the deposition recorded during the Enquiry Proceedings. He submitted that a Memorandum of Charge dated 6.5.2014 is not specific or definite that there is no imputation regarding the charged official deliberately or wilfully not attend the accident site immediately or even after the receipt of the information of accident on 16.4.2014. He further submitted that the Enquiry Officer has not recorded on the basis of any evidence that non attending the accident site was wilfully or deliberately nor is there any evidence to the effect that inspite of the Applicant being communicated about the same, he did not attend the

accident site. He further submitted that the Enquiry Officer held the charge proved contrary to the evidence on record. He further submitted that the Disciplinary Authority imposed the penalty without considering the evidence on record and as such the order of the Disciplinary is arbitrary and vindictive. That the Appellate Authority also failed to look into the evidence on record and he did not communicate the decision himself. But he communicated the appellate order through the Disciplinary Authority and that the Appellate Authority passed multiple penalties which are contrary to the provisions of Rule 6 & 22 of Railway Servants (Discipline Appeal) Rules 1968.

7. In support of the contention, the learned counsel for the Applicant relied upon the judgments of the Hon'ble Supreme Court in the case of **Union of India and Others, Vs.J.Ahmed reported in (1979) 2 SCC 286**, in the case of **Krushnakant B.Parmar, Vs.Union of India and another reported in (2012) 3 SCC 178, Vijay Singh,vs.State of Uttar Pradesh and others reported in (2012)5SCC242**, and judgment of this Tribunal passed in **Nilkanta Sannyasi and another, Vs.Principal Accountant General (Audit) and others reported in (1995) 31 ATC 250.**

8. From the perusal of the Enquiry Report, the penalty orders passed by the Disciplinary Authority and the Appellate Authority, it is clear that none of the procedural provisions have been contravened in the conduct of the Disciplinary Proceedings. The learned counsel for the Applicant has also not pointed out any of the procedural provisions having been contravened in conducting the Departmental proceedings except Rule 6 and 22 of the Railway Servants Rule (Discipline & Appeal) Rules, 1968. The Enquiry Officer after recording of the procedural provisions have been observed, recorded the following analysis and assessment while holding that the charge is proved. The same is extracted below:-

“5. Analysis and assessment of Evidence:

(1) At the end of inquiry proceedings, when Shri Anup Kumar das was asked to examine himself as his own witness, he answered in negative but adduced his deposition in writing under Mandatory Examination of CO, in which Shri Snup Kr.Das stated that on 16.04.2014 the day of accident, he did not get any such information regarding movement of ART/NGC. Also he did not have any kind of railway communication facility. The only communication media cell phone with BSNL SIM”, he was using became out of order almost one year back and now he doesn’t have any cell phone. Shri A.K.Das also stated that even if he

got the ART/NGC call, he would not be able to reach the ART/NGC at such an odd hour at night since his is not having any vehicle/bike etc. By his own submission CO himself accepted that he did not attend and accompany the ART/NGC when it was called to attend the accident site. However this fact is also established from documentary evidences marked as PD/I, PB/3 PD/4 and PD/5 having written statements of Shri P.K.Adhikari (SN-4), Shri, Gulzar Khan (SN-6), Shri M.R.Payeng (SN-8) and Shri Jehirul Haque (SN-9) respectively. Same was testified by respective individuals in person in front of I/O, DC and CO vide question No.2 of proceedings of Regular hearing on 25th & 26th August 2014.

Shri Anup Kumar Das was a nominated Telecom incharge supervisor of ART/NGC who was assisted by Telecom maintainers and Khalasi's, Office order for the same is annexed with charge sheet and it is placed at SN-2. Indian Railway Telecommunication manual have clear cut directions vide SECTION E clause 17.23 that". The nominated staff shall respond immediately whenever an accident takes place and proceed by ART to the site of accident. According to clause 17.23 it is the responsibility of incharge supervisors as well as other nominated staff to keep themselves ready for attending ART as and when required. But Shri Anup Kumar Das in his defense statement said that "He is residing at Maligaon which is far distant from ART/NGC location" and "that even if he got the ART/NGC call, he would not be able to reach the ART/NGC at such an odd hour at night. Although ARME/GHY had also run to the accident site, which is evident from Signal Control MLG report at SN-69 and it was situated in GHY station, he could have caught

the ARME at GHY station. Therefore by this statement Shri Anup Kr.Das showing his lack of devotion towards his duty as incharge supervisor of ART/NGC and also violated clause no.17.23 of railway telecommunication manual.

(2) CO Shri Anup Kr.Das also stated in his Defense brief that "he is not provided with any railway communication facility" which is nothing but another excuse for failing to catch ART/NGC. As it is evident from the RE-examination in chief of Shri M.R.Payeng where , answering to question No.15 (SN-99) Shri M.R. Payeng deposes that he used to call CO regarding instructions and information of ART/NGC. And Shri Anup Kr.Das also used to call him occasionally. Also while answer to question no.19(SN-99) Shri M.R.Payng stated that he had alled CO thrice to give information of ART/NGC movement but CO did not receive the call neither he called back. This is not understood, why Shri Anup Kr.Das did not receive the call of his ART associate staff while he know that there was no other means of communication between him and his ART staff except that Mobile phone (number) definitely no any subordinate would like to disturb his officer incharge at such a night time for amusement only. Definitely the information need to be conveyed by such call is worth in disturb him.

CO stated in his defense brief that "he was sick since 09.04.14 to 13.04.14 and advised light duty by Sr. DMO/NGC". He had been given fit for duty on 14.6.2014 by Sr,DMO/NGC though Sr.DMO advised light duty but did not mention what light duty; because no such light duty defined for safety

category staff. It is evident from the written statement of Shri P.K. Ahikari then SSE/Tele/GHY vides PD/1 that CO Shri Anup Kr.Das did not reach at accident site by ART/NGC or ARME/GHY. But he was seen at the site at about 11.55 Hrs far after establishment of communication at site KM-71/7-8. It is also testified by Shri J.Haque as answer to Question No.11(SN-102) where he deposed that he saw CO Shri Anup Kr.Das near communication set- up around 10.00 Hrs. It is also evident from PD/2 that at accident site establishment of communication was done by Shri M.R.Payeng Tech/NGC and Shri Indrajit Singh Tech/III/GHY. As per clause no.17.24 of railway Telecommunication manual "The nominated staff shall be responsible for establishing communication as detailed in para 17.5.& 17.6, immediately on reaching the site of accident." But in this incident, subordinate staff had to move with ART without their incharge supervisor Shri Anup Kr.Das. This also caused delay in establishment of control communication at the site KM-71/7-8.

(3) CO in his defense brief contend about 300 meter faulty cable, citing justification of regular ART/NGC inspection by him. Also CO overruled the possibility of cable fault by giving analytical calculation which is reproduced here again:

"As may be evident from the PW-1 is own submission PVC cable provide in ART/NGC 500 meters 300 meter found faulty $500 - 300 = 200 + 300$ meters replaced restoring to 500 meters + 500 meters new added bringing the total to 1000 meters and not 700 meters

as adduced in reply to DC's Q.No.22. The justification cited by CO does not sustain against the charge "*3 Nos. of pairs of the cable provided in ART/NGC were found faulty by SSE/Tele/GHY while he was trying to establish control phone at the accident site. This resulted in late establishment of control phone at the accident site*". That, Indian railway Telecommunication manual defined 15 days periodicity for complete testing of ART equipments by ART nominated staff. But as per the copy of ART/NGC inspector register submitted by ShriP.K.Adhikari PW1 during his answer to Q.No.18(SN.107), CO used to maintain the periodicity of one month for testing of ART/NGC equipments. More over PW 3 also in his deposition during Re-Examination of IV vide Q.No.22(SN-99) stated that "*out of 5 coils of PVC cable 100 meter each, all 3 pairs of one coil of 100 meter was faulty, this resulted in late establishment of control phone at ART*". Same fact was also mentioned by PW-1 in his deposition during RE-Examination by IO as answer to Q.No.18 (SN-107). PW-3 in his reply to Q.No.26 (SN-98) during Re-Cross examination by DC depose that "Since the 100 meter PVC cable was faulty, and therefore we used D-8 wire to establish control communication.

CO's argument regarding restoring faulty cable after the accident is just a misinterpretation of the statement of PW-1. As deposed by PW-1 in reply to Q.No.20 ShriP.K.Adhikari said he had replaced all 300 meter out of 500 meter cable with a fresh 500 meter cable. Hence total quantity become 700 meter which was written on

the ART/NGC inspection register and signed by Shri P.K. Adkhikari and CO himself on 21.04.2014. Even the same quantity was recorded again by CO in the same inspection register on 16.05.2014 (copy at Sn-76& 78).

Findings:-

From the overall episode of regular inquiry and going through the PD and deposition of witnesses in the case I as an IO find out:-

i) That CO Shri Anup Kr Das did not attend ART/NGC despite his ART associated staff Shri M.R. Payeng called him three times in the night on his mobile which was often used by CO to communicate with ART/NGC staff. CO deliberately make himself at ease by getting isolated from communication medium citing the excuse of no railway provided communication at his residence. CO made excuse of non availability of any self vehicle and public transport at late hours of night. But he was duty bound to attend the ART as and when called for. Being a Junior Engineer/Telecommunication he was absolutely familiar with the obligations connected with the duty of ART incharge.

ii) That CO being an incharge of ART/NGC was responsible to reach the accident site with ART and immediately establish control and ADM communication with HQ. But CO did not attend the ART/NGC and even not bother to catch ARME at GHY which was also moved to the accident site, after little later than dispatch of ART/NGC. Since other ART/NGC staff had to move with ART in the absence of their

incharge supervisor which ultimately resulted in late establishment of communication at the site.

iii) Three pair of the cable provided in ART was faulty, which caused further delay in establishment of communication at the accident site. Although CO used to do regular Inspection of ART/NGC equipments at an interval of one month, but prescribed frequency as per Railway Telecommunication manual is 15 days. Shri Anup Kr.Das deliberately failed to Technical supervision of maintenance of ART equipments therefore did not find out the condition of communication cable in ART.NGC during his scheduled inspection.

On the basis of documentary and oral evidences adduced during the course of inquiry, I as an Inquiry Officer consider that the charge leveled against Shri Anup Kumar Das, JE/TELE/NGC vide memorandum No.N/Staff/CON/MLG/Pt.II(Loose) dated 06.05.2011 issued by Sr.DSTE/MLG is as:-

That Shri Anup Kumar Das, while functioning as JE/Tele/NGC under SSE/Tele.GHY.Violated the Railway Service Conduct Rules 1966 Para 3.1.(ii) & (iii) and Clause No.17.22.17.23 & 17.24 of Railway Telecom Manual **are sustained and hence all the charges are proved.”**

From the above analysis and assessment of evidence , it is crystal clear from the evidence available on record that the conduct of the Applicant was in flagrant violation of the duties and responsibilities entrusted to him under the relevant provisions. The said flagrant violation is further

clear from the deposition extracted in the application and read out at the time of hearing. From the evidence on record it is further clear that there are no compelling circumstances which prevented the Applicant from not performing his duties and responsibilities alleged in the articles of charge.

9. In the circumstances, the law laid down by the Hon'ble Supreme Court of **Union of India and Others, Vs.J.Ahmed reported in (1979) 2 SCC 286**, in the case of **Krushnakant B.Parmar, Vs.Union of India and another reported in (2012) 3 SCC 178**, do not come to the rescue of the Applicant.

10. From the perusal of the order passed by the Disciplinary Authority, it is clear that he has carefully taken into account the Enquiry Report and the representation of the Applicant before passing the penalty order. The Appellate Authority though communicated the appellate order through the Disciplinary Authority, he has passed the Appellate order after going through the details of the case and perusing the appeal filed by the Applicant and after giving personal hearing to the Applicant. This is clear from the order dated 07.8.2015 passed by the Appellate Authority is extracted above.

11. The Appellate Authority passed another subsequent penalty order on 2.9.2015. Though the Appellate Authority has passed two orders, but however, the subsequent order dated 2.9.2015 is not enhancement of the penalty passed earlier on 7.8.2015. Moreover, the counsel for the Applicant has not brought to the notice of the Court any provisions which have been violated thereby. Thus by passing two orders on 7.8.2015 and on 02.9.2015 no prejudice is caused to the Applicant. From the perusal of the last order passed by the Appellate Authority in our opinion, it is not in contravention of the provisions of Rule 6 or Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968. As such, law laid down by the Hon'ble Supreme Court in the case of **Vijay Singh, vs. State of Uttar Pradesh and others reported in (2012) 5 SCC 242**, is not applicable to the case of the Applicant. The counsel for the Applicant submitted that the Applicant was under medical treatment and he was advised to take up light work and to avoid night duties. But however, as submitted by the counsel for the Respondents as on the date of the incident the Applicant was medically fit and that he had never requested for changing him from ART duties and that when a train accident takes place, in such emergency situation, his plea of medical advice should not be given any weightage.

The Appellate Authority has transferred the Applicant in the administrative interest and though recorded the said transfer in the impugned Appellate order, but however, thereby the Applicant is not prejudiced to the extent of warranting this Tribunal to set aside the appellate order, particularly in view of the fact that the said transfer has been acted upon by the Applicant.

12. In view of the facts and analysis made above, the O.A. has no merit.

13. In the result the O.A. is dismissed. No order as to costs.

(S.N.TERDAL)
JUDICIAL MEMBER

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

Im