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OA 350/1589/2014

AN APPLICATION :

Under Section 19 of the Administrative Tribunals Act.
1985

BETWEEN

SUBRATA RANJAN DAS

Son of Late Patitpaban Das

residing at 26, Barasat Road,

P.O. Nona-Chandanpur, North 24 Parganas,

Kolkata - 700 122.

Working as Loco-Pilot (Good)

Grade-II at Dum Dum Junction under control of

Sr. DEE (TRS), Sealdah

..... Petitioner / Applicant

AND

1. Union of India, through
the General Manger, Eastern Railway
Fairlie Place, Kolkata-700 001.

2. Divisional Railway Manager
Addl. Divisional Railway Manager
Eastern Railway Sealdah Division,
DRM Building, Kolkata - 700 014.

3. Sr. Divisional Electrical Engineer(TRS),
Eastern Railway, Sealdah, Kolkata - 700 014.

4. Divisional Electrical Engineer(TRS/Sealdah),
Eastern Railway, Sealdah, Kolkata - 700 014.

5. Sr. Divisional Personnel Officer
Eastern Railway, Sealdah, Kolkata - 700 014.

6. Sri A.K. Srivastava,
Working for gain as
Divisional Electrical Engineer (OP)/(TRS)
DRM Building, Asansol, Distt. Burdwan, Pin:-713301.

..... Respondents

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA**

No.O A.350/1589/2014

Date of order : 5.2.2020

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**SUBRATA RANJAN DAS
VS.
UNION OF INDIA & OTHERS
(E. Railway)**

For the applicant : Mr. B.R. Das, counsel

For the respondents : Mr. A. Ganguly, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:-

- "i) Rescind, recall, cancel the charge-sheet being Annexure A1 for all intents and purposes;
- ii) Pass orders cancelling and/or quashing the order being Annexure A-2 passed by Respondent No.4 in defiance of the order dated 22.08.2014 as passed by the Hon'ble Tribunal in OA 350/266/2014;
- iii) Refund the amount realized from the petitioner by way of punishment vide order being Annexure-A9 with appropriate interests thereon;
- iv) Treat the period of suspension from 30.8.2011 to 12.9.2011 as spent on duty for all intents and purposes including payment of full pay and allowances;
- v) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof *conscionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iv), above;*
- vi) Costs fixing the responsibility on Respondent No.6."

2. The charge memo records the following:-

"Statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken against Sri Subrata Ranjan Das, LPG/DDJ/SDAH under CCC(R)/SDAH.

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On 30.8.2011 while he was working Tr.No.CED/Spl. Loco No.27642, of call for 21.45 hrs.(ADL), the train arrived DDJ at 02.32 hrs. from SE & there after, signal was lowered at 03.07 hrs. to proceed for destination(CP). But he failed to proceed & demanded relief at DDJ. For this reason, signal was put back at 03.40 hrs. At that time he had completed only 06.25 hrs. his duty. Finally the train departed from DDJ at 04.03 hrs. by fresh crew. As a result, detention was occurred at DDJ for 33mts. & shown on TRS account.

By the above act, he shown his gross negligence to perform his work and violated the GR/SR-2.06.

(S.N. Dasgupta)
DEE/TRS/SDAH"

3. The admitted facts are that the applicant on 30.08.2011 while he was working at Train No.CED/Spl. Loco No.27642 of call for 21.45 hrs.(ADL). The train arrived DDJ at 02.32 hrs. from SE & there after, signal was lowered at 03.07 hrs. to proceed for destination(CP). He failed to proceed & demanded relief at DDJ due to which signal was put back at 03.40 hrs. At that time he had completed 06.25 hrs. of his duty. Finally the train departed from DDJ at 04.03 hrs. with a fresh crew. As a result, detention occurred at DDJ for 33minutes and was shown on TRS account. The applicant was alleged to have shown gross negligence to work and violated the GR/SE 2.06. Therefore, as LPG/CC(R)/North, he was suspended by DEE/TRS/SDAH vide office order No.L/No.ELS/6/24 dated 30.08.2011. It was revoked vide order dated 12.09.2011 which was acknowledged by staff concerned on 13.09.2011. SF-11 was issued against the applicant vide order dated 12.09.2011 and the same was acknowledged by him on 18.09.2011. He submitted his defence reply addressed to DEE/TRS/SDAH the Disciplinary Authority, the on-duty ACC(R)/DDJ & LPP-II & LPP working as TLC submitted their opinion statement. Punishment was imposed by



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the Disciplinary Authority(DEE/TRS/SDAH) against Sri Das, LPG/CC(R)/North under CCC(R)/SDAH, of stoppage of 3(three) years' increment with non cumulative effect vide punishment order dated 02.11.2011 and the same was acknowledged by Sri Das on 11.11.2011. Sri Das submitted his appeal to the Appellate Authority, the Sr. DEE/TRS/SDAH on 06.12.2011 against the punishment. But the punishment was upheld by Appellate Authority vide order 10.05.2012. Finally Sri Das submitted his revision petition to ADRM(O)/SDAH the Revisional Authority on 19.06.2012 but his punishment was upheld by the ADRM(O)/SDAH vide order dated 03.12.2012. The applicant preferred O.A.No.1159/2012 which was disposed of on 04.12.2013. As per this Tribunal's order dated 04.12.2013, directing the Disciplinary Authority to give an oral hearing to the applicant within a period of 2 months and to pass appropriate orders in accordance with law within one month thereafter, personal hearing was ordered to Sri Das on 06.01.2014 by the Appellate Authority instead of the Disciplinary Authority, which was a mistake. The order was challenged in O.A.263/2014 when this Tribunal quashed the order as under:-

".....with liberty to the respondents to act in terms of the order dated 4.12.2013 passed in OA 1159 of 2012 i.e. to give an oral hearing to the applicant by the disciplinary authority within two months from the date of communication of this order and pass an appropriate order within one month thereafter from the date of hearing in accordance with law."

Oral hearing was accorded by the Disciplinary Authority on 27.10.2014, and an order was issued which was received by applicant on 07.11.2014.



4. The speaking order dated 30.10.2014 issued by the Disciplinary Authority, the DEE/TRS/SDAH is extracted hereunder for clarity:-

**Speaking Order against OA No.350/00263 of 2014 – Hon'ble CAT/KOL of
Sri Subrata Ranjan Das, LPG/SDAH**

As directed by the Hon'ble CAT/Kolkata the Personal Hearing of Mr. Subrata Ranjan Das, LP(G) was conducted on 27.10.14 by Disciplinary Authority. During Personal Hearing Sri Subrata Ranjan Das wanted the initial charge framing document. In this regard it has been found that charges framed against Sri Subrata Ranjan Das on the basis of Traction Loco Control Report which is Control Organisation under Electrical TRS Department for relaying unusual occurrences of train movement to all concern. Hence on the basis of departmental control report charges are framed against Sri Subrata Ranjan Das. Hence charges framed on the basis of TLC report against Sri Subrata Ranjan Das is totally justified.

During Personal Hearing Sri Subrata Ranjan Das said that he has not demanded any relief but in his appeal against punishment issued by DEE/TRS/SDAH/Eastern Railway, he accepted that he submitted a Memo to on-duty SM/ADL at 22.15 hrs. (annexure-I enclosed). In this regard submission of Memo to SM is always taken as a claim. He had not completed his total duty hours vide Railway Board's Order No.ELL/91 HER/1-11 dt. 13.4.1992(annexure-II enclosed). He had completed only 6.25 hours of his duty. Hence submission of any Memo to SM is not justified.

During Personal Hearing Sri Subrata Ranjan Das said that he had not got T-409 but it has been found from the statement of Mr. M.C. Mondal at pages 18 & 19 (annexure-III enclosed) and on-duty TLC at page 17 (annexure-IV enclosed) that the LP(G) Sri Subrata Ranjan Das had not intimated any of them regarding non-receipt of T-409. Hence the concerning LP(G) Sri Subrata Ranjan Das failed to intimate anyone regarding non-receipt of T-409 and detaining the train after lowering of signal which is a behavior of unbecoming of a Railway Servant.

On considering the above facts Disciplinary Authority comes to the conclusion that Charged Official Sri Subrata Ranjan Das is guilty of charges framed against him. He had shown irresponsible behavior and also violating GR/SR 2.06.

However, as a considerable time has been passed on imposing the penalty by Disciplinary Authority and taking some lenient view on the case and punishment imposed to the Charged Official is withholding of increment of pay for 2 (two) years with non-cumulative effect.


30/10/17
(A. K. Srivastava)

DEE/TRS/SDAH

&
Disciplinary Authority

5. It is the contention of the applicant that he in his written statement was categorical to submit that the train could not be started due to non-availability of caution order from the Station Master concerned being of the type of T/409 which is a must for the Loco Pilot on duty particularly when in the present case the petitioner had to move to the Chitpur Yard. Even after waiting for 33 minutes the caution order was received by him. The applicant has alleged that the statement of the Sr. DEE is misleading and he did not leave the Loco without making over the charge to the same incumbent who would have relieved him off at the destination point at Chitpur Yard. Rather he moved the train all through from the starting point with duly issued caution order under T/409(Annexure -A7) which ended in Dum Dum Junction and the train could not be proceeded further without any caution order issued by the Station Master on duty at Dum Dum Junction which is an intermediate originating station. It is enjoined in Rules that in case of notice, originating or intermediate originating station on duty station master is responsible to serve the caution order once it has been issued. Therefore, the applicant would assert that the disciplinary authority failed to apply his independent mind all along and by all evidence was dictated by the so-called appellate authority notwithstanding the direction of the Hon'ble Court that it is the disciplinary authority i.e. Respondent No.4 should exercise his powers and give the petitioner a hearing. He has further alleged that the order Annexure-A2 very clearly testifies to the factum that the purported



speaking order dated 30.10.2014 was only prepared by the overzealous appellate authority i.e. Respondent No.3 and only signed by the disciplinary authority "for Senior DEE/TRS/SDAH" and as such not in accordance with the directive by the Hon'ble Court in OA No.263/2014 dated 22.08.2014 wherein the Hon'ble Court was pleased to hold that the disciplinary authority i.e. Respondent No.4 should give an oral hearing to the applicant within 2 months and pass an appropriate order. The purported speaking order dated 30.10.2014 is not tenable in law having been passed beyond 2 months from the date of "oral" order dated 22.08.2014 passed in the presence of the Ld. Advocate for the Respondents and deemed to have been communicated immediately upon pronouncement on the same date. The applicant has claimed that the rule enjoins that it is for the concerned Station Master to prepare T/409 and issue the same to Guard and Driver and the record foil of T/409 to be preserved for a period of 12 months. The intervention in the matter by TLC or RRI/DDJ or ATFR/DDJ would not have saved the detention. Understandably, the ASM on duty inspite of his best efforts could not ascertain the situation as necessary to come out with the caution order and that a regular enquiry, as enjoined in Rule 11(1)(b) of the Rules, would have confirmed the situation which the disciplinary authority failed to hold for unexplained reason.

6. The ld. counsel for the applicant in support of his contention would place the following at hearing:-

CAUTION

CAUTION:- Whenever for any reason the driver is required to observe any speed restriction, such speed restriction is called caution. There are three types of speed restriction which is as follows:-

- A) Day light caution.
- B) Temporary caution/Temporary speed restriction.
- C) Permanent caution/Permanent speed restriction.

A) Day light caution :- Means the caution imposed for a day only. In railway day means the time from sunrise to sun set. Caution order (T/409) is issued for this type of caution and Banner flag and detonator also used for this. This caution is treated cancelled with sun set automatically.

B) Temporary caution :- Means the speed restriction which is imposed temporarily and not incorporated in the WTT. This caution is imposed for both day and night. Caution order (T/409) are issued for temporary caution and engineering boards are also fixed for the guidance of the Driver.

C) Permanent caution :- Means the caution which is of permanent nature and mentioned in WTT. Engineering boards are provided for this type of caution but T/409 is not issued.



CAUTION ORDER ISSUING STATION :- The caution order are issued from the following station:-

- A) Originating station - Means the station from where the trains originate. The caution orders are issued from an originating station for the section up to the next notice station.
- B) Notice station - Means the station responsible for issuing caution for the section up to the next notice station. A list of such notice station is mentioned in WTT and those are specially notified by DRM for this purpose.
- C) Intermediate Originating Station - Means the station which is situated between two notice station, from where train originates. An intermediate originating station is responsible for issuing caution order for the station up to next notice station.
- D) The station immediately in rear of the affected section - Caution order T/409 and reminder caution (T/B 409) are issued from here.

THE REGISTERS MAINTAINED IN A STATION MASTER'S OFFICE FOR SPEED RESTRICTION:-

CAUTION REGISTER (OP/T-91) - Caution register is the register maintained by the station master in which all the particulars are recorded regarding caution/speed restriction in that station. The existing cautions are brought forwarded to the next page at odd hours on every Monday. The following particulars are recorded in the OP/T- 91 register :-

1. Date and time
2. Message No.
3. Issuing authority
4. Kilometer
5. Speed restriction / Limit (KMPH).

When any caution is cancelled then an entry is made on the cancellation column mentioning the date, time, cancellation message No. and canceling authority.

Caution memo book :- It is the register on which the caution imposing message and caution cancellation messages are kept pasted. Whenever a new caution imposing message is received it is duly relayed to the section controller at odd hours, 48 hours in advance from imposition and private NO. is exchanged. Then the message is kept pasted on the left side of the register, when a cancellation message is received of any existing caution then it is also relayed to the section controller on date and kept pasted on the right hand side of the corresponding caution memo book.

Caution Message book :- At every stations from where cautions are imposed, a separate register is maintained and it is called message Book. Whenever the situation necessitates to impose a caution due to any reason, like foggy weather, rail fracture, run over case, or any other obstruction, then caution is imposed by the stations. Then caution imposing message and also the cancellation message is written on this book.

Caution Order :- There are three types of caution order :-

1. T/409 (Caution order)
2. T/A 409 (Nil caution order)
3. T/B 409 (Reminder caution order) :- Reminder caution order is not issued in suburban section

N. B. :-

1. The carbon copy of the caution order is issued to Guard and Driver.
2. The record foil of T/409 should be preserved for a period of 12 months.
3. The signature of ASM or Driver and Guard's foil must be in inked not by carbon process.
4. No entry should be done in the reverse of T/409.
5. If more than one engine is attached (assisting engine) then signature will be taken from the driver of both the engine but the driver copy will be handed over to the leading engine driver.
6. If there is any banking engine in rear then the Guard foil will be shown to the banking engine driver and his signature will be taken in the record foil.
7. At the time of completing duty the Guard will hand over the caution order to the station master or TNC and the driver will hand over the caution order to the loco foreman / TFO.

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13. SR-4.09.03(b)(ii) – Note – The driver shall not start the train and guard shall not give signal to start the train from a Notice Station until they have received the caution order.



7. We heard the ld. counsels for both sides and perused the record.
8. The order dated 04.12.2013 in O.A.1159/2012 records the following:-

"Heard learned counsels of both sides and perused the materials on record.

2. A minor penalty charge sheet was issued against the applicant under Rule II of Railway Servant (Discipline and Appeal) Rules, 1968 on 12.09.2011 with the following statement on imputations of misconduct or misbehaviour:-

"On 30.8.2011 while he was working Tr.No.CED/Spl. Loco No.27642, of call for 21.45 hrs.(ADL), the train arrived DDJ at 02.32 hrs. from SE & there after, signal was lowered at 03.07 hrs. to proceed for destination(CP). But he failed to proceed & demanded relief at DDJ. For this reason, signal was put back at 03.40 hrs. At that time he had completed only 06.25 hrs. his duty. Finally the train departed from DDJ at 04.03 hrs. by fresh crew. As a result, detention was occurred at DDJ for 33mts. & shown on TRS account.

By the above act, he shown his gross negligence to perform his work and violated the GR/SR-2.06."

The Disciplinary Authority found that the applicant is guilty and imposed a penalty of 3 increments stoppage and while issuing such penalty order, the Disciplinary Authority failed to give any reason apart from the following:-

"After considering your reply dated(not legible) to the charge sheet issued to you vide Minor Penalty C/Sheet No.ELS/6/24118391 dated 12.09.11.

On going through the charge and reply of the C/O, also related documents/statement on duty DDJ/ATFR and TLC. I am in the opinion that on duty loco pilot is fully responsible for the following reasons-

- (i) Loco pilot not supposed to claim relief as he not completed stipulated duty hours as per HOER.
- (ii) Block DDJ yard demanding relief.
- (iii) Signal put back for refused to go.
- (iv) Not talked with on duty TLC.
- (v) Refused to give any statement."

It is not in disputed that the allegations were factual. The applicant had offered his explanation in the following manner:-

"I like to say that for movement of train there are statutory three prime items to be complied with as appended below:-

1. Othriy to proceed on lowering the respective signal of the train or paper line clear in terms of issuing T 369(3b).

2. Necessary consent with due acknowledgement from the guard on duty at the time of starting of the train.
3. Caution in terms of T 409 is to be supplied for thorough awareness of the path on which the nominated train had an schedule to proceed up to destination. It is must for movement of any train for point of view of safety of railways.

On 30.08.2011, the serial no.1 & 2 as stated above were complied with (signal was lowered at 3/07 hrs and subsequently put back at 3/40 hrs.) for due movement of my train but serial no.3 was not complied with which was related with safety on movement of my train. So due to non compliance of the serial no.3 I did not have any scope to start of my train without receipt of due caution order.

In view of the above the allegation as alleged in terms of violation of GR/SR 2.06 is not substantiated against me for this reason I should not be accounted for detention of train at DDJ for 30 minutes as stated in the chargesheet and therefore be exempted me from the alleged charge brought against me."

3. Since the charges were factual and the applicant had denied the allegations, it was incumbent upon the authorities to give oral hearing in view of the law laid down in **O.K. Bhardaj vs. UOI & Ors. 2002 SCC(L&S)188** which has mandated the following:-

"While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

We also find that the applicant preferred an appeal against the penalty order and appellate authority has given his one line decision in the following words:

"I have gone through the case and charges imposed are proved beyond doubt. I consider punishment imposed is just and hence stands."

4. As the order passed by the Disciplinary Authority is without any reason and the appellate order is equally cryptic, in view of the mandate of **O.K. Bhardaj(supra)**, we quash the penalty order dated 02.11.2011(Annexure A/2) and remand back the matter to the Disciplinary Authority to give an oral hearing to the applicant within a period of 2 months and to pass appropriate orders in accordance with law within one month thereafter.

5. OA is accordingly allowed. No costs."



9. The disciplinary authority, as we decipher, has failed to record reasons whether such caution order was mandatory and in absence of such caution order whether the applicant could move the train an inch, *Further* and one Mr. M.C. Mondal the on duty TLC were made to issue statements/depose at the back of the applicant to use it to his prejudice but without affording the applicant any right to cross examine him, which is a serious flaw in the conduct of the proceeding..

In **B.C. Chaturvedi v. Union of India & Others, (1995) 6 SCC 749**, the Hon'ble Apex Court on the scope of judicial review has held as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the inquiry was held by a Competent Officer or whether the inquiry was held by a Competent Officer or whether Rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical Rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the Disciplinary Authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the Rules of natural justice or in violation of statutory Rules prescribing the mode of inquiry or where the conclusion or finding reached by the Disciplinary Authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with me conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."



Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has observed as under:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a Competent Authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case."*

In **Ranjit Thakur v. Union of India & Others, 1989(1)SLJ 109 (SC)=(1987)4 SCC 611**, the Hon'ble Supreme Court evolved the principle of proportionality in the following words:

".....It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

10. In the aforesaid backdrop having noted the lacunae in the proceedings we quash the order dated 30.10.2014(Annexure A/2) with liberty to the respondents to proceed against the applicant in accordance with law.

11. Accordingly the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member