



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1017/2014

Wednesday, this the 19th day of February 2020

Hon'ble Sri Justice L. Narasimha Reddy, Chairman
Hon'ble Sri A. K. Bishnoi, Member (A)

Shri Prem Singh
 Ex Assistant Loco Pilot
 Under Chief Crew Controller, Daund
 Sholapur Division Central Railway, Mumbai
 Now residing at H.No.215, 1st Floor, Gali No.9
 Chandan Vihar, West Sant Nagar
 Burari, Delhi-84

..Applicant
 (Smt. Meenu Mainee, Advocate)

Versus
 Union of India Through

1. General Manager
 Central Railway, CST Mumbai
2. Chief Operating Manager
 Central Railway, CST Mumbai
3. Divisional Railway Manager
 Central Railway, Solapur

..Respondents
 (Sri Krishna Kant Sharma, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy:

The applicant was working as Assistant Loco Pilot in Central Railway in the year 2008. On 07.07.2008, he was operating the loco multiple unit at Dhaund. Collision took



place between that unit and another train coming from the opposite direction. The applicant was issued a charge memo dated 16.10.2008. It was alleged that the applicant started the loco and on account of his inability to stop it, it collided with another train. The applicant submitted his explanation, and not satisfied with it, the disciplinary authority appointed the inquiry officer. A report was submitted by the inquiry officer on 31.01.2009. Copy thereof was made available to the applicant, and on consideration of the reply submitted by the applicant, the disciplinary authority passed order dated 14.02.2009, imposing the penalty of reduction to lower stage for a period of five years, with cumulative effect. The applicant preferred an appeal against the order of punishment. The appellate authority issued a show cause notice dated 01.06.2009 to the applicant requiring him to explain as to why the punishment of dismissal be not imposed upon him.

2. An explanation was submitted by the applicant on 25.06.2009. The appellate authority passed an order dated 22.07.2009 imposing the punishment of dismissal



from service. The revision submitted by the applicant was dismissed on 07.10.2009. Hence, this O.A.

3. The applicant contends that the inquiry officer had observed that there is no fault on his part and despite that, the disciplinary authority imposed the punishment of reduction to lower stage for a period of five years with cumulative effect. He further contends that in the show cause notice dated 01.06.2009, the appellate authority has clearly indicated that he has decided to enhance the punishment and the same is contrary to law. It is also stated that the appellate authority did not take into account, the explanation submitted by him, and passed the order, contrary to law. It is stated that the revisionary authority did not examine the various contentions urged by the applicant.

4. The respondents filed counter affidavit opposing the O.A. It is stated that on account of negligence and incompetence of the applicant, a major accident took place, in which three persons died and loss to the tune of ₹1 crore had occurred. Respondents contend that though the disciplinary authority imposed the punishment of reduction to lower stage for a period of five years with



cumulative effect, the appellate authority took into account, the gravity of accident and enhanced the punishment to that of removal from service, by following the prescribed procedure. It is also stated that no interference is warranted in the order of appellate authority.

5. We heard Smt. Meenu Mainee, learned counsel for applicant and Sri Krishna Kant Sharma, learned counsel for respondents, at length.

6. The applicant was on duty as Assistant Loco Pilot on 16.10.2008. By that time, his experience was just fifteen days. He was issued a charge memo dated 16.10.2008. The charge framed against the applicant reads:-

“Article-I

That the said Shri Amit Prem Singh, ALP/DD On 07.07.08, he was booked with LP Shri. Tajuddin Gagibaxa to work Dn train Ex. GIT to DD on loco No.14901+13197 EX M/Unit. After taking over the charge of the locos in GIT yard he had done mishandling of Locomotive controls when his LP was AVL in the Trailing Locomotive Cab his operation was unwarranted & deliberated. He could not stop the moving locos. He was panicked & afraid and handled the controls more which resulted in head on collision near LC gate No.68 with CLE No.17966 + 17967 which was coming from HDP at about 4.50 hrs. during CRS enquiry he had



confirmed by his own admission. He has violated GR 4.20 (1) &2).

7. The applicant submitted his explanation stating, *inter alia*, that he tried to stop the loco, but he was unable to do it, and that resulted in collision. The inquiry officer was appointed and in his report dated 31.01.2009, he observed as under:-

“4. The charged employee has himself accepted the responsibility for operation of the locomotive controls vide answering para No.13.

5. On the basis of Answering Paras Nos. (6), (7), (9) and (27), C.R.S. Report 5-1-2, Page 21 by the Loco Pilot, at the time of movement of locomotive the fact about the correct place/position of the Loco Pilot is doubtful.

6. It is possible after going through and studying answers in paras Nos. (6) and (14) of the Asstt. Loco Pilot and chart of MEP 660 locomotive No.13197 that the Loco Pilot had shown the signal through torch light to the Asstt. Loco Pilot to open the control.”

8. The remarks of the applicant were called for and thereafter the disciplinary authority passed order dated 14.02.2009. It must be said to the credit of the disciplinary authority that he has undertaken extensive and relevant discussion about the entire incident and ultimately imposed the punishment of reduction to lower



stage for a period of five years with cumulative effect. We do not find any legal or factual error in it.

9. Feeling aggrieved by the order of punishment, the applicant availed the remedy of appeal. The appellate authority is conferred with the power to enhance the punishment, in case he is of the view that the record warrants such an action. Before taking any decision in that behalf, the appellate authority is required to issue a show cause notice to the employee. It is natural that the conclusion, which the appellate authority proposes to arrive at, must be tentative and the final conclusion can be only after the consideration of the representation of the employee. We, however, find some deviation in this regard. The show cause notice dated 01.06.2009 issued by the appellate authority reads:

“Show-cause memorandum

You are hereby informed that in exercise of powers confirmed by Rule No.25 (i) & (v) of RS (D&A) Rules, 1968, the documents connected with his DAR case. I have noticed that you have issued with Major penalty charges of memorandum (SF-05) for collision between two coupled light engine on Pune-Hadapsar section of Pune Division on 07.07.2008.

The penalty of “Reduction to lower stage for a period of 05 years with cumulative effect” was



imposed upon him by Disciplinary Authority i.e. ADME/Solapur vide Penalty Order No.SUR/M/173/L/ Accd/09/08 dated 14.02.2009.

I have observed that Shri Amit Prem Singh Asst. Loco pilot/Daund was issued with the Major penalty charge memorandum SF-5, the charges framed against him is very serious. However, by over looking these aspects by ADME/SUR the D.A. has taken lenient view and imposed penalty upon him.

In view of the above, the undersigned has provisionally come to the conclusion to enhance the penalty imposed by D.A. ADME/SUR and decided to impose upon Shri Amit Prem Singh Asst. Loco pilot/Daund, the enhanced penalty of same to that of 'Dismissal from railway service'.

Shri Amit Prem Singh Asst. Loco Pilot/Daund is given an opportunity to submit his presentation to the undersigned against the proposed penalty within 10 days from the date of receipt of this 'show cause memorandum', though CCOR/DD, if he failed to do so, it will be presumed that he has no representation to make and final order will be passed against him ex-parte."

10. It was no doubt mentioned that he has provisionally come to enhance the punishment. However, he observed that though the charge framed against the applicant is very serious, the disciplinary authority has taken a lenient view. In a way, it suggests that the appellate authority has formed his final opinion.



11. The applicant submitted reply on 25.06.2009. However, in the final order dated 22.07.2009, the appellate authority did not make any reference to the reply of the applicant. It was not even indicated that the findings of the inquiry officer are wrong, much less any disagreement was indicated; and straightway the punishment of dismissal from service was imposed.

12. The conferment of power on the appellate authority to enhance the punishment is an extra-ordinary measure. Basically, the appeal comes to him on being filed by an employee, with a prayer to set aside the punishment or to reduce it. Before he enhanced it, proper examination of the record is to be undertaken, and the explanation submitted by an employee must be discussed in detail. The appeal filed by the employee cannot be converted into an opportunity to impose a more severe penalty. We are of the view that the appellate authority in the instant case did not follow the prescribed procedure, nor did he furnish any acceptable reasons for enhancing the punishment. This particularly so, when the inquiry officer did not hold that the charge fully proved.



13. We, therefore, set aside the order dated 22.07.2009 passed by the appellate authority and order dated 07.10.2009 passed by the revisionary authority. We, however, uphold the order dated 14.02.2009 passed by the disciplinary authority. The applicant shall be reinstated into service and be made to undergo the punishment imposed by the disciplinary authority. We direct that the period between 07.10.2009 and preceding the date of reinstatement, shall be counted for the purpose of pension and other benefits, but the applicant shall not be entitled to any arrears of salary.

There shall be no order as to costs.

February 19, 2020
/sunil/