

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2718 of 2001

(12)

New Delhi, this the 12<sup>th</sup> day of August, 2002

HON'BLE MR. KULDIP SINGH, MEMBER(JUD1.)  
HON'BLE MR. M.P. SINGH, MEMBER (A)

Shri A.K. Tyagi  
Ex. Asstt. Station Master,  
Northern Railway,  
Chanehti,  
District Bareilly (UP).

-APPLICANTS

(By Advocate: Shri B.S. Maine)

Versus

Union of India Through

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

2. The Divisional Railway Manager,  
Northern Railway,  
Moradabad (UP).

3. The Senior Divisional Operating Manager,  
Northern Railway,  
Moradabad (UP).

-RESPONDENTS

(By Advocate: Shri B.S. Jain)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Jud1.)

The applicant in this OA has assailed an order passed by the Divisional Operating Manager, Annexure A-1 and another order passed in appeal by the Senior Divisional Operating Manager and also an order passed in revision by Additional DRM, Moradabad.

2. The facts, as alleged in brief are, that the applicant who was appointed initially as Assistant Station Master in the pay scale of Rs. 1200-2040 and then promoted in the post of Senior Assistant Station Master in the grade of Rs. 1400-2300 was proceeded departmentally in a departmental enquiry on the following allegations:-

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"That the said Shri A.K. Tyagi, ASM/CHT1 while working at CHT1 in 20/- hrs. to 08/- hrs. shift on 28.07.99 committed a serious misconduct as is evident from the fact that Up CHT1 Spl. was received in line for line no.4 and he did not exchange private number with both the switchmen regarding blockage of line no.4 by Up CHT1 Spl. from 0005 hrs. onwards. When Up BCN K Spl. stopped in line no.3, he removed the far rule from slot of line no.4 and applied the same in the slot no.3 and did not ascertain assurance of line no.4 from FM to FM and there was no difficulty or excuse for his not being able to discharge his responsibility by visual observation also as the leading portion of the train was just in front of the station building and would be clearly visible to the ASM whenever he would come out on the platform for exchanging all right signal with Up & Dp. trains, but he advised switchman West Cabin for giving slot for line no.4 and he gave slot to East Cabin to lower the reception signals of 4047 Up in Up loop line no.4 and arranged its reception in Up loop line no.4 which was already blocked by Up CHT1 Spl. resulting in collision of 4047 Up with the rear of stabled load goods train i.e. Up CHT1 Spl. causing death of Asstt. DSL Driver of 4047 Up, severe damage to the Locomotive, partial damage to the brake van and minor damage to the next BCN wagon.

He is, therefore, considered responsible for the lapses and thereby violated SWR para 6.2, 7.0 & 7.1 of Station Working Rules of CHT1 station and SR - 5.19/8 & 5.19/7 of General & Subsidiary Rule Book - 1995."

3. The Inquiry Officer returned the report holding the applicant guilty of the charges, upon which the impugned order of punishment was passed by Divisional Operating Manager, Northern Railway, Moradabad, Annexure A-1 and also appellate order, Annexure A-2 was passed.

4. For assailing the above orders, the applicant has taken up the ground that he was initially appointed as Assistant Station Master and his appointing authority was DPO, but thereafter when he was promoted he was promoted under the orders of Senior Divisional Operating Manager which was issued by the DPO Moradabad so the post which he was holding as Senior Assistant Station Master in the grade of Rs.1400-2300, his appointing authority

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was Senior Divisional Operating Manager whereas the punishment order has been passed by Divisional Operating Manager who is not the competent authority to pass the same as the appointing authority was Senior DPO.

5. The applicant has also taken up another ground that the order passed by the disciplinary authority vide Annexure A-1 is quite a cryptic one as he has not assigned any reason and similarly though the applicant has filed appeal running into 10 pages but the appellate authority in one line order, which is reproduced hereinbelow, has turned down his appeal:-

"I have gone through the entire case, the appeal submitted by you and the comments given by the disciplinary authority. Your appeal is turned down".

6. Thus it is pleaded that it was a non-speaking order.

7. Similarly the revisional authority had passed the following order:-

"I have gone through the Commissioner of Railway Safety's report and D&AR enquiry report of this case thrice. The gravity of lapse is too great to be overlooked or viewed leniently. The punishment given by Disciplinary authority is just and appropriate. There is no scope to reduce the punishment at all".

8. Besides the objection of non-speaking order passed by the revisional authority the applicant has taken up the ground that the revisional authority while passing the order on revision had also taken into consideration the report of Commissioner of Railway Safety and D&AR enquiry report which was not supplied to the applicant at all during the enquiry despite his

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demand by the applicant and the reasons assigned for the same was that the document, as asked for by the applicant, was a confidential one.

9. The respondents who are contesting the OA submitted that as far the appointing authority is concerned, the appointing authority of the applicant is only a DPO as it is clear from page 12 of the counter-reply, Annexure R-1 which is a service book of the applicant.

10. The counsel for the respondents on the basis of this submitted that Senior Divisional Operating Manager was never the appointing authority so the order passed by the disciplinary authority has been passed by a competent authority who was also the rank of the appointing authority.

11. As far the objections regarding the non-speaking order passed by the appellate authority and the revisional authority are concerned, the counsel for the respondents submitted that since a comprehensive enquiry report has been submitted and authorities had agreed with the reasoning given by the Inquiry Officer so it should be treated as if they had adopted the same reasoning adopted by the Inquiry Officer so they need to be specific in their order while disposing of the appeal and revision.

12. We have heard the learned counsel for the parties and gone through the records of the case.

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13. The learned counsel for the applicant has referred to a judgment of this Tribunal in B.D. Lamba reported in 1997 (2) ATJ page 33. The counsel for the applicant has also submitted that as per the definition given in the Railway Servants (Discipline and Appeal Rules), appointing authority has to be defined as under:-

"(a) 'appointing authority' in relation to a railway servant means:-

(i) the authority empowered to make appointments to the service of which the railway servant is, for the time being, a member or to the grade of the service in which the railway servant is, for the time being, included or

(ii) the authority empowered to make appointments to the post which the Railway servant, for the time being holds, or

(iii) the authority which appointed the Railway servant to such service, grade or post, as the case may be, or

(iv) where the Railway servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that service or to any grade in that service or to that post whichever authority is the highest authority".

14. In that case also the applicant was initially appointed as ASM by the orders of the DPO who was in the senior scale of Rs.3000-4500 but later on the applicant had been promoted to Senior ASM and the dismissal order in that case was also passed by DPO as in this case whereas when the applicant was promoted he was promoted by an order passed by an officer who was in the JAG scale of Rs.3700-5000 and the court concluded that there is merit in the contention of the applicant that there was a fatal infirmity in the dismissal order dated 20.10.95 and the matter was remitted back for the orders to be passed by the competent authority.

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15. In this case we find that the judgment of the Lamba's case squarely applies on the facts as well as on the legal position involved in this case. In this case also the promotion vide which the applicant had been appointed as Senior ASM which is placed on record shows that though the same has been issued for and on behalf of the DPO but the appointment letter Annexure A-4 had been issued only after it had been approved by competent authority which means that the authority who was competent to promote the applicant in the post of Sr.ASM was higher in rank then DPO and the next higher rank is only in the JAG grade and in this case also the impugned order had been initially passed by an officer who was in the rank of Sr. Selection Grade and not in JAG grade. Thus the judgment in the case of Lamba squarely applies to this case and on this score alone the order passed by the authority who had passed the punishment order is liable to be set aside and similarly the order passed by the appellate authority and the revisional authority also goes to show that the same are non-speaking. Besides that the revisional authority had relied on an extraneous material which was not supplied to the applicant which has also caused prejudice to the applicant. So all these orders, i.e., impugned order, Annexure A-1, appellate authority's order and the revisional authority's order cannot be sustained and the same are liable to be quashed. Since the impugned orders are liable to be quashed on the basis of Lamba's case (Supra), so we are not dealing with other contentions.

16. In the result the OA succeeds and is allowed. The impugned orders dated 28.9.2000, 19.12.2000 and 11.7.2001 are quashed and set aside. In accordance with the Judgment passed in the case of B.D. Lamba (Supra)

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the matter is remitted back to respondents for being placed before the competent authority to pass fresh orders in accordance with law within a period of 2 months from the date of receipt of a copy of this order. No costs.

*M. P. Singh*  
(M. P. SINGH)  
MEMBER (A)

*Kuldeep Singh*  
(KULDIP SINGH )  
MEMBER (JUDL.)

Rakesh