

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No.283/1999

Hon'ble Shri V.K.Majotra, Member (A)  
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 15<sup>th</sup> day of May, 2001

Kapoor Chand Verma  
s/o Late Shri Rajinder Prashad  
aged 38 years, r/o 514-A, Company Bagh  
Northern Railway-TUNDLA  
Dist. Firozabad - 283204. .... Applicant

( By Advocate: Shri A.K.Behera)

Vs.

1. General Manager (P)  
Northern Railway  
Baroda House  
New Delhi.
2. Chief Engineer (Track)  
Northern Railway  
Baroda House  
New Delhi.
3. Divisional Reegional Manager  
Northern Railway, Allahabad.
4. Divisional Superintending Engineer-II  
Northern Railway  
Allahabad. .... Respondents

( By Advocate: Shri R.L.Dhawan)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, who is employed as Permanent Way Inspector Grade-III, has assailed an order passed by the disciplinary authority dated 17.11.1997 in pursuance of a major penalty proceedings whereby he had been removed from service. The applicant has also assailed an order passed 26.3.1998 issued by the appellate authority wherein the punishment of removal from service has been reduced to reduction to initial pay in the grade for five years permanently with cumulative effect. The applicant further aggrieved by the order dated 12.11.1998 wherein the reviewing authority has exonerated the applicant of all the

charges and a new charge as alleged by the applicant has further reduced punishment to reduction to initial stage of pay in the grade for two years permanently with cumulative effect. The applicant seeks quashing of all these orders and grant of consequential benefits including treatment of suspension period from 15.9.1996 to 28.10.1996 as period spent on duty for all purposes.

2. A departmental enquiry had been proceeded against the applicant by issuance of a charge-sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. Thereafter the departmental enquiry was held against the applicant on six charges including his absence during getting the work done of changing of rail and also failure to ensure proper protection by issuing certain directions to subordinates and ensure safety measures which resulted in derailment of Magadh Express which has admittedly assessed the total loss of Rs.3000/- but no loss of life or injury occurred to other property of the Railways nor to the Engine. After completion of the enquiry, the enquiry officer has exonerated the applicant from Charges No.2 and 5 and the applicant was held guilty of Charges No.1, 3, 4 which were proved and the charge No.6 is partially proved. The disciplinary authority on the basis of proved charges and also the charge No.6 which was partially proved by the enquiry officer, when disagreed with the enquiry officer's report and without giving his tentative reasons and opportunity to the applicant to show cause, inflicted an extreme punishment of removal from service upon the applicant. On appeal the same was

reduced by the appellate authority. On filing a review petition, the reviewing authority has not found the applicant guilty of the charges alleged against him but held him guilty for his failure to supervise training staff working under him and also failure to control over the staff. (B)

3. The applicant has assailed these impugned orders on various legal pleas including that the disciplinary authority, while disagreeing with the findings of the enquiry officer over charge No.6, has not accorded him an opportunity to show cause and had not communicated tentative conclusion with a view to make an effective reply. The applicant has also assailed the order on the ground that he has been held guilty by the reviewing authority after exonerating him of all the charges alleged against him in the charge-sheet and making altogether a new charge to which the applicant has not been afforded a reasonable opportunity to defend. The applicant has also contended that the appellate authority has not accorded him a personal hearing and the orders passed by the disciplinary authority and appellate authority as well as the reviewing authority are without application of mind and without reasons. It is further contended that the authorities have not at all taken into consideration the contention put forth by the applicant in his representations. The applicant has also contended that he has been denied the Telegram Message Book which was relied upon against the applicant. The applicant has lastly contended that co-accused of the applicant has not been proceeded against along with the applicant and he has

been rather made a witness by taking into his statement recorded in separate enquiry and used against the applicant.

(14)

4. The respondents in their reply refuted the contentions of the applicant and stated that the Tribunal has no jurisdiction to reappraise the evidence and cannot act as an appellate authority by holding a fact finding enquiry. It is further contended that when enquiry is held and a reasoned finding is given, it is not incumbent upon the disciplinary authority to state detailed reasons. It is further contended that no prejudice has been accused to the applicant as such the procedural infirmity would not vitiate the enquiry. It is contended that the charges have been proved against the applicant and the negligence of the applicant has been amply proved. It is contended that the charges on which the punishment was lastly reduced by the reviewing authority are not new charges but the applicant has been held guilty of not having sufficient control over his staff and not taking protection which squarely comes within the purview of his negligence in supervisory responsibility. It is lastly contended that sufficient opportunities have been accorded to the applicant in conduct of the enquiry and also by imposing a lesser punishment the applicant has been shown lenient view despite his involvement in the misconduct which has been proved.

5. The applicant in his rejoinder has reiterated the pleas taken by him in his OA.

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6. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the applicant that the disciplinary authority disagreed on charge No.6 which has been partially proved by the enquiry officer and by recording his findings on this charge proved the same fully by recording his own reasons in the order of punishment dated 17.11.1997. It is contended that the procedure adopted by the disciplinary authority is in violation of principles of natural justice as in view of the ratio laid down by Yoginath D. Bagde Vs. State of Maharashtra, JT 1999(6) SC 62 before reaching to a tentative conclusion disagreeing with the findings of the enquiry officer, it is incumbent upon the disciplinary authority to state the reasons for his disagreement and his tentative conclusion and to further communicate the same to the delinquent official with an opportunity to effectively defend the same. Although the Railway Servants (Discipline & Appeal) Rules, 1968 do not contain any such procedure to be adopted by the disciplinary authority but in the Railway Board's letter dated 4.4.1996 the same has been provided. Apart from it Yoginath D. Bagde's case (supra) basing upon the reliance of Kuni Bihari's case the Hon'ble Apex Court clearly held that the rules of principles of natural justice are implicit in a rule and are part and parcel of the same. While coming to the facts of the present case, no show cause notice or the reasons of disagreement has been issued or recorded by the disciplinary authority to the applicant before imposing the punishment on him. This is in violation of the principles of natural justice. But the fact remains that the order of the removal has

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been modified to a reduced punishment by the appellate authority and thereafter the same has been further tonod down by the reviewing authority on the basis of other charges where interalia no reliance has been placed on Charge No.6 on which the disagreement has been arrived at by the disciplinary authority. As no prejudice has been caused to the applicant and ultimately this part of the charge has not been placed reliance to impose punishment upon the applicant, the applicant has not been prejudiced in any manner. Mere violation of procedure rules or principles of natural justice would not so motto vitiate the proceedings or punishment order unless it is shown that some prejudice has been caused to a Government servant. In this view of ours we are fortified by the ratio laid down by the Hon'ble Apex Court in State Bank of Patiala Vs. S.K.Sharma, JT 1996(3) SC 722. As such this contention of the applicant is not legally tenable.

7. The applicant has further contended that the orders passed by the disciplinary authority and appellate authority and the reviewing authority are non-speaking without dealing with the contentions of the applicant. Referring to the Railway Board's letter dated 20.1.1986, it is contended that the disciplinary proceedings are quasi-judicial in nature it is incumbent upon the disciplinary authority to record reasons to tender explanation by the delinquent official. In this regard, Railway Board's letter dated 20.12.1955 has been referred to. On the other hand, respondents' contention is that the orders are speaking orders. We have perused the orders passed by

the disciplinary authority, appellate authority as well as reviewing authority and we find that the orders passed by the disciplinary authority and appellate authority have been merged with the order of reviewing authority, wherein the punishment was reduced. In this order the reviewing authority has recorded reasons to arrive on the findings against the applicant and had applied his mind to the contentions of the applicant. As such we are of the considered view that orders are reasoned and speaking orders as per the Railway Board's letters referred to above.

(17)

8. It is also contended that the reviewing authority while further reducing the punishment has held the applicant guilty of a charge which has not been alleged against him in the charge-sheet issued under SR-5. The observations of the reviewing authority is reproduced as under:

"The case of Shri Kapoor Chand Verma, PWI/TDL was put up to the competent authority who has passed the following orders:-

"I have gone through the complete details of accident enquiry report, D&AR enquiry proceedings and the other relevant documents available on record, from the facts of the case, it is clearly established that you were not available at the work site when the rail renewal was in progress resulting in causing accident. Even the fact that you had issued the oral instructions through your Head Trolleyman, has not been established during the D&AR enquiry. Also it is the primary responsibility of the staff executing the work at the site to insure that all safety precautions are followed. In this case, both Head Trolleyman and Blacksmith were not the authorised persons to carry out the work and should have been held primarily responsible for unauthorised/unsafe tempering with the track. You in this case can only be held responsible to the extent of your failure in supervisory responsibilities, training of staff working under you and control over your staff.

You are a directly recruited candidate as PWO/Grade-III in year 1987. The present punishment imposed of reduction to initial pay in the grade for five years permanently with cumulative effect will almost finish your career for all times to come. With such harsh punishment. You will have no incentives in work and it will be total discouragement for any improvement/development in your career. Considering your career prospects and giving you an opportunity to improve your working, your punishment is reduced to reduction to initial stage of pay in the grade for two years permanently with cumulative effect."

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9. From the perusal of the aforesaid order we find that the applicant has been given clear chit on all the charges but has been held guilty for his failure in supervisory responsibility, training of staff working under him and also control over the staff. Referring to these charges, it is contended that none of these charges have been alleged against the applicant in the charge sheet issued to him. It is contended that he has been charge sheeted for not physically present at the time of changing the rail and ordering change of rail. The applicant further contended that he has also charged for not ordering his subordinate staff to ensure proper protection taken and do not ensure safety measures and also charge of tried to destroy the available evidence in connection with the accident and given the block cancellation memo to ASM/BHBB along with the requisition block requisition in advance. In this back ground, it is contended that the applicant has never been charged for lack of control and supervision and training over his staff. It is further contended that in the reviewing authority's order, it has not been highlighted as to how the applicant hold responsible for this extraneous charge which does not

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found part of the charge alleged against him in the charge sheet. Referring to the above contentions, it is stated that the applicant has been held guilty and punished on a charge which has not been put to him and against which the applicant has not been accorded a reasonable opportunity to defend. This according to the applicant, is in violation of principles of natural justice and laid down procedure rules. On the other hand, the respondents contended that the applicant has been charged for not ordering his subordinate staff to ensure proper protection and do not ensure safety measures would cover the charge of lack of supervision control and training over his subordinate staff. It is contended that these charges have already been proved during the course of the enquiry and as such what has been alleged by the reviewing authority has already been stood proved against the applicant in the enquiry.

10. We have given careful thought to the contentions of the rival parties and also perused the Annexures produced by the applicant wherein it is contended that the applicant was working as Permanent Way Inspector-Gr.III and was not in over all charge as regards the training of subordinate staff and to see that the subordinate staff are well known with the relevant rules. This is not within the duties of the applicant and is the responsibility of Permanent Way Inspector overall charge. As he has not been in the overall charge, he cannot be alleged and held guilty for lack of supervision, control and training of his subordinate staff. We have also considered the facts that reviewing authority has categorically observed in

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his order that both Head Trolleyman and Blacksmith were not authorised to carryout work, they should be held primary responsible for unauthorised tempering of the track. The charge for training of lack of training of the staff and control over the staff and failure in supervisory responsibility cannot be considered to be a charge already raised against the applicant. As the charge framed against the applicant which the learned counsel for the respondents have admitted to bring within the purview of the charge on which the reviewing authority has reduced the punishment and ensuring the proper protection by ordering his subordinates and ensuring safety measures at the place would not be by any stretch of imagination can be deemed to be a charge of failure and supervisory responsibility training of staff and also control over the staff. We are conscious of our jurisdiction not to reappraise the evidence recorded by the departmental authorities and also not to assume a role of fact finding authority. As contended by the learned counsel for the respondents placing reliance on the N.Rajaratnam Vs. State of Tamil Nadu, AIR 1997(1) SC 11, we confirm to the view of the respondents and are not reappraising the evidence but what has been alleged before us is non-compliance of a procedural rule in violation of principles of natural justice to which we have a jurisdiction in so much as this new charge without any details alleged against the applicant for the first time in the order of the reviewing authority has taken the applicant by surprise. This charge has not been put to him and in the enquiry and against which he has not been accorded the reasonable opportunity to defend in accordance

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with the rules. It is a cardinal principles of fair play that a Government servant cannot be condemned and unheard and he should be put to a proper notice to the circumstances and charges levelled against him. As this charge on which the punishment was further reduced does not find mention in the charge-sheet issued to the applicant and on other charges the applicant has not been held guilty by the reviewing authority, the action of the respondents by maintaining a lesser punishment on this extraneous matter and a new charge would have certainly caused prejudice to the applicant as he has not been accorded a reasonable opportunity to defend the same and as such the ratio laid down in S.K.Sharma's case, supra would not have any application in the present case and rather as prejudice has been caused to the applicant by non-observance of substantial provision of putting a charge and the relevant notice of it to the applicant and further according him an opportunity to defend the same is not legally tenable.

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11. Having regard to the reasons recorded and discussions made above, we allow this OA and set-aside the impugned orders dated 17.11.1997, 26.3.1998 and 12.11.1998, which were passed by the disciplinary authority, the appellate authority and the reviewing authority respectively. The applicant shall also be entitled for all consequential benefits. No order as to costs.

S. Raju  
(SHANKER RAJU)  
MEMBER(J)

V.K. Majotra  
(V.K. MAJOTRA)  
MEMBER(A)

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