

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2366/1995

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New Delhi, this 31st day of March, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Vishnu Dayal
c/o Raja Ram
Marudhara Polypack Industries
C-34, Sector 2, NOIDA (Ghaizabad) .. Applicant

(By Shri B.S.Maine, Advocate - not present)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway, Moradabad .. Respondents

(By Shri R.P.Aggarwal, Advocate - not present)

ORDER(oral)

Smt. Shanta Shastry

None of the parties either in person or through the counsel is present. The matter pertains to 1995. Therefore, we have proceeded to dispose of the same on the basis of available on merits.

2. The applicant has impugned the order dated 5.12.1992 whereby he was removed from service. being aggrieved by this order, the applicant had filed an appeal. When the OA was filed, the appeal had not been decided.

3. The facts are that applicant was working as a Gateman and was posted at Gate No.292-C on 20.10.1984. While so working, on 5.4.1992 he failed to protect the gate as per the rules when the occupants of a Tractor No.UCD-3623 snatched

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the keys and opened the gate knowing well that one S.B. Passenger train was approaching the gate. Applicant failed to protect the down line when the same was fowled by the tractor parts resulting in the accident and the death of occupants of the tractor and injuries to others. Therefore an enquiry was initiated against the applicant for a major penalty charge for violating G. Rules 16.07, S.Rules 16.03/4(a) and G.Rules 3.62 of G and SR of 1983 and para-3(i) and (ii) of Railway Service Conduct Rules, 1966. The enquiry was conducted and thereafter a copy of the enquiry report was given to the applicant for making representation if any. Thereafter disciplinary authority agreeing with the findings of the enquiry officer held the applicant guilty of charges and passed the order of removal from service with effect from 5.12.1992. Thereafter the appeal made by the applicant was also rejected by the appellate authority.

4. It is the case of the applicant that he was not responsible for the accident. After the accident, the respondents had nominated a committee of three senior officers who had held the preliminary enquiry and had given their findings holding the occupants of the tractor responsible for dashing of their tractor with 1 SB Passenger Train at the level crossing. It also held that the applicant was responsible for not preventing the accident by protecting the gate. According to the applicant the enquiry is vitiated because the enquiry officer without

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examining the witnesses in accordance with the statutory rules and without discussing the rule of documentary evidence gave his findings holding the applicant responsible. The applicant has further stated that there is no evidence on record.

5. We have perused the counter reply of the respondents. The respondents have clearly averred that the applicant was given full opportunity for his defence but he failed to do so. It has also been denied that the enquiry officer had given his report without examining witnesses or without discussing the oral or documentary evidence as contended by the applicant. The charges are proved as the applicant has been found guilty after holding a proper enquiry. The respondents have also denied that the disciplinary authority passed the order for removal without any application of mind. The appeal of the applicant was also considered by the appellate authority and the findings were communicated to him.

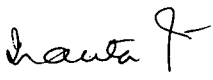

6. We do not however find the order of the appellate authority on record as the same has not been produced by the respondents. The respondents ought to have given a copy of the order of appellate authority to the applicant. The applicant in his rejoinder has stated that the respondents have not produced copy of the order passed by the appellate authority and the

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respondents be directed to supply a copy of the appellate authority and the applicant reserves his right to file additional reply.

7. The order of the appellate authority is not on record. It is not clear as to when the order was passed by the appellate authority and when it was communicated to the applicant and the contents thereof. In view of this, we direct the respondents to make available the orders of the appellate authority to the applicant immediately, if not already done, and in any case within one month from the date of receipt of a copy of this order. If on receipt of the order of the appellate authority the applicant is still aggrieved, he is at liberty to proceed in accordance with law. We dispose of the OA accordingly. No costs.

 (Smt. Shanta Shastry) Member(A)	 (Smt. Lakshmi Swaminathan) Member(J)
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