

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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DATED: THE 20th TH DAY OF MAY 1999

CORAM : HON'BLE MR. R.K.AHOOJA, A.M..
HON'BLE MR. S.L.JAIN, J.M..

P.T.NO. 138/96
In
ORIGINAL APPLICATION NO.1332 OF 1996

Francis S/o Shri I.P.Singh,
Ex. Driver Goods, N.R.Railway,
Moradabad.

Residential Address

Francis,
No. H-201-B
Harthala Colony,
Moradabad.

.... Applicant

C/A Shri G.D.Bhandari, Adv.

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

... Respondents

C/R Shri Rajiv Bansal, Adv.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

The applicant has challenged the order dated 31.7.95 passed by the disciplinary authority by which the applicant was found guilty and punished with the order of removal from service, Annexure-A1 and an appeal against the same was rejected by order dated 18.12.95, Annexure-A2.

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2. The applicant's case, in brief, is that he was posted as a driver goods on 12.9.94 train No.DN. RAC special with Engine No.16030 WDS-2, while it had passed Gunda Pandey Railway Station, run through he found the gate signal of gate no.404.8 in on position, he reduced the speed and later on observed that the warner signal was also in on position, he prepared to stop at the gate signal, short of the gate, but in meanwhile the gateman on duty after closing the gate lowered the signal, he again picked up the speed and went on without stopping. The major portion of the train had passed the gate, the gateman with a view to clear the rush of traffic, opened the gate, the rear portion of the train could not clear before road traffic clear from Rampur side started and a bus from the Rampur side started and the clearing the gate up line reached the down line in order to clear the gate, the last wagon of the train which was a break van, the rear portion of the bus struck against the buffer end of the break van resulting in the bus over turning, a lady passenger died on the spot while two other passengers sustained injuries.

3. The applicant was suspended and an enquiry was conducted by enquiry committee consisting of senior officers of J.A. Grade, they recorded the evidence and submitted the enquiry report on 19.9.94, on the said basis the disciplinary proceedings were commenced against the applicant for contravention of 4.42/439A and G.R.2.11 of G.S.R. The applicant was not supplied with the copy of the said enquiry report and statement recorded by officer, he was not intimated of the dates of hearing, enquiry proceeded ~~but~~ ^{sought} an adjournment ~~was~~ ^{was} not granted, no opportunity to adduce defence evidence

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was afforded and he has been held guilty by the disciplinary authority and his appeal is also rejected.

4. The claim is resisted by the respondents.

5. The learned counsel for the applicant argued that the charge was in respect of violation of Rule 4.42/4.39 A and G.R.2.11 of the general and subsidiary rule book 1990. According to him, these rules have been framed by the Railway Administration under the Railway Act and have the statutory force. The offence is to be tried by criminal court, applicant has not been tried and he has been furnished by departmental authorities which is defective one.

6. A railway employee, in a case ^{of an} ~~an~~ accident is liable to be prosecuted for contravention of provisions contains in the Railway Act and general and subsidiary rule. He is also liable in departmental proceedings for the act. The decision of the ^{criminal} ~~general~~ court in no way bars the departmental authorities to proceed in disciplinary ~~activities~~ actions. Both the proceedings may be ^{taken} ~~seen~~ simultaneously, one by one, non prosecution of the applicant before a criminal court does not absolve the applicant from the departmental actions. Hence in our considered view the arguments do not assist the applicant.

7. The applicant vide Annexure-A1 was asked that an appeal against the order lies to DRM Moradabad and he has submitted the appeal accordingly. para 31 of the C.A. makes it clear that appeal was considered by Senior Divisional Mechanical Engineer and Divisional

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Railway Manager as appellate authority was wrongly mentioned in the punishment notice.

8. The learned counsel for the applicant argued that the disciplinary authority is the Divisional Mechanical Engineer and the appeal has been decided by Senior Divisional Mechanical Engineer which is in contravention of Rule 19(IVB) Discipline and Appeal Rules 1968. We have perused the order of the appellate authority Annexure-A3. On perusal of the same we find that the competent authority Senior Divisional Mechanical Engineer has passed the order in appeal.

9. The learned counsel for the applicant argued that punishment of removal from service can be awarded only by Appointing Authority or an authority equivalent in rank or any higher authority. We agree to the said proposition. The applicant was a group 'D' employee, the ~~appointing~~ appointing authority for him is Senior Divisional Mechanical Engineer.

10. The competent authority was Senior Divisional Mechanical Engineer who has decided the appeal which is also an authority competent to pass the order of removal from service in respect of the applicant.

11. Regarding re-appreciation of evidence, it is sufficient to state that it is not permissible before the Tribunal for the reason that it is not a case of no evidence and re-appraisal of evidence cannot be undertaken by the Tribunal.

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12. No other point is urged before us.

13. In the result, we find no merit in the O.A. and it deserves to be dismissed and is dismissed accordingly with no order as to costs.

J. D. Smith
JUDICIAL MEMBER

R. K. D. S.
ADMINISTRATIVE TRIBUNAL