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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.2198/94

New Delhi: this the 6th October, 1997.

HON'BLE MR.S.R.ADIGE VICE CHAIRMAN (A)

HON'BLE DR.A.VEDAVALLI MEMBER(J)

Shri S.P.Singh,
S/o Shri Nagina Singh,
Asstt. Station Master,
Muzaffarnagar

....Applicant.

(By Advocate: Shri B.S.Mainee)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

..... Respondents.

(By Advocate : Shri R.L.Dhawan)

JUDGMENT

BY HON'BLE MR.S.R.ADIGE VICE CHAIRMAN (A)

Applicant impugns the Disciplinary Authority's order dated 2.8.93 (Annexure-A1); the Appellate Authority's order dated 13.9.93 (Annexure-A2) and Revisional Authority's order dated 23.3.94 (Annexure-A3) and seeks promotion in the grade of Rs.1600-2660/- with effect from the date of promotion of his junior with consequential benefits.

2. Applicant was proceeded against departmentally on 22.4.92 (Annexure-A4) on 4 articles of charge relating to derailment of two coaches of a train on 7.3.92 causing damages to the railway property to the extent of Rs.90,500/-.

3. The Enquiry Officer in his report (Annexure-A5)

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held applicant guilty of one of the four charges namely of tampering with the entries of the record of train passing and signal failure register in order to conceal some facts. Copy of the Enquiry Officer's report was forwarded to applicant on 22.6.92 (Annexure-A5) for representation, if any, and on receipt of his representation dated 12.2.93, the Disciplinary Authority vide impugned order dated 2.8.93 held that the charge No.4 had been proved and there had been considerable slackness on the applicant's part and the applicant's vigilance could have avoided the accident and therefore imposed the punishment of withholding of applicant's increment raising his pay from Rs.1950/- to Rs.2000/- in the grade of Rs.1400-2300 normally due on 1.10.93 for a period of 3 years without postponing his future increments. The appellate authority vide impugned order dated 13.9.93 while rejecting the appeal observed that the manipulation of train passing record/signal failure register entries was a serious misdemeanour in itself and in the context of track failure and subsequent derailment of train which arrived there soonafter, before the failure could be rectified, added to the seriousness of the offence and applicant's lapse was indeed very serious and was indicative of slackness in working and lack of vigilance on his part, for which accident could have been avoided.

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The Revisional Authority in its impugned order dated 23.3.94 while rejecting the revision had held that tampering with records was only a manifestation of the interference which was done to interlocking arrangements, resulting in the derailment and there was no extenuating circumstance to modify the punishment already awarded.

4. We have heard Shri B.S. Mainee for applicant and Shri R.L. Dhawan for Respondents.

5. Shri Mainee has emphasised that although the Enquiry Officer had not held the applicant guilty of any slackness or lack of vigilance and had held him guilty only of Charge No.4, namely tampering with records of train passing and signal failure register, the Disciplinary Authority, Appellate Authority as well as Revisional Authority had gone beyond the Enquiry Officer's findings which was arbitrary and based on considerations not contained in ED's report, and therefore ^{in the case} warranted judicial interference. He further emphasised that if the Disciplinary Authority had disagreed with the ED's findings, proper procedure should have been followed and the reasons for disagreement should have been communicated to the applicant giving opportunity to him to file his representation against the same before the penalty was imposed.

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6. Certain judgments have also been cited in support of this argument including SLJ 1992 (2) CAT 189 K.R.Babure Vs. State of Karnataka & others; ATJ 1991(2) 518 Dr. S.C.Miglani Vs. UOI. Shri Mainee also stated that as only minor penalty has been imposed, applicant's promotion should not have been withheld (Paragraph 3.1 of Railway Board's letter dated 21.1.93 reproduced in Digest of Discipline, Appeal and Conduct Rules, IV Edition-1997, Bahri Brothers).

7. Respondents in para 4.19 of their reply admit that the Disciplinary Authority was not in full agreement with the findings of the Enquiry Officer but contend that Disciplinary Authority applied its own mind and found the applicant to be slack and not vigilant which had contributed to derailment. Reliance has been placed by Respondents on 1993(2) SCC 554 UOI Vs. K.Kumar; SLJ 1997(1) SC 11 N. Rajaratnam Vs. State of Tamil Nadu & others; and JT 1997 (5) SC 178.

8. We have considered the matter carefully. The citation in 1993(2) SCC 554 does not relate to UOI Vs. K.Kumar but instead to a case relating to Raymond Woollen Mills Ltd. Vs. MRP Commission & Ors., and manifestly has no relevance with the present case. Similarly in N. Rajaratnam's case (Supra) in which the Hon'ble Supreme Court has held that standard of proof of disciplinary enquiry is the preponderance of probability, and the Court is not fact finding body and if there

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is some decision on record, the decision of the Enquiry Officer cannot be faulted, is not directly relevant to the facts of the present case, nor indeed is the judgment in JT 1997 (5) SC 178 directly relevant.

9. In Miglani 's case (Supra), the Tribunal has held that where the Disciplinary Authority did not agree with the Enquiry Officer's findings and retired the applicant compulsorily without giving him opportunity of hearing, the principle of natural justice has been violated and on that point alone the respondents' action was liable to be struck down. In Bapure's case (Supra), Karnataka Administrative Tribunal held that when the part material on which the decision was based is held invalid, it cannot be presumed that the same decision would stand on balance part material.

10. It is well settled that if the Disciplinary Authority disagrees with the Enquiry Officer's findings, reasons for such disagreement should be recorded and communicated to the charged officer and he should be given opportunity of representing against those reasons for disagreement before the Disciplinary Authority takes a decision in the disciplinary proceeding. In the present case, this procedure has not been followed. No materials have been shown to us to persuade us to believe that this procedure is to be followed only in those cases which lead to the imposition of a major penalty and not to cases such as the present one where the

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major penalty proceedings lead to the imposition of a minor penalty. It is important to mention here that the allegation of negligent working by applicant which contributed towards the derailment specifically forms Article 1 of the Charge but as stated above, the Enquiry Officer in his enquiry report did not hold the applicant guilty of that charge and in fact held guilty him of only Charge No.4 i.e. of tampering with the record. Under the circumstances, as the Disciplinary Authority on the basis of the available materials also held the applicant guilty of slackness and lack of vigilance, we are compelled to hold that he disagreed with the findings of the EO, in which case reasons for his disagreement should have been recorded, and thereafter communicated to the applicant, and an opportunity should have been given to him to show cause before the punishment was imposed. This informity which vitiates the departmental proceeding was also not cured either at appellate or revisional level.

11. In the result, this OA succeeds and is allowed to the extent that the Disciplinary Authority's order dated 2.8.93; Appellate Authority's order dated 13.9.93 and Revisional Authority's order dated 23.3.94 are quashed and set aside. The case is remanded back to the Disciplinary Authority to take up the departmental proceeding from the stage of communicating the reasons for his disagreement with

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the EO's report, the applicant who should be given a reasonable opportunity to reply to the same, and thereafter the Disciplinary Authority should dispose of the proceedings in accordance with law. Meanwhile the prayer of the applicant for promotion with consequential benefits should be examined and disposed of in accordance with contents of Railway Board's letter dated 21.1.93 and other relevant rulings and instructions on the subject. These directions should be complied with 4 months from the date of receipt of a copy of this judgment.

12. This OA stands disposed of in terms of paragraph 11 above. No costs.

A. VedaValli
(DR. A. VEDAVALLI)
MEMBER(J)

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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