

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH,

NEW DELHI.

(13)

O.A.NO.1479/94

Decided on : 6.1.99

Shri J.M.Puri
Chief P.W.I.,
Northern Railway
Gohana R/o Kartar Shah Nagar
Model Town,
Panipat.

Applicant

By : Mr.B.S.Mainee, Advocate.

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.

By : Mr.B.S.Jain, Advocate.

CORAM : HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A) &
HON'BLE MR.JASBIR S.DHALIWAL, MEMBER (JUDL.)

O R D E R

(by Hon'ble Mr.Jasbir S.Dhaliwal, JM)

This O.A. has been filed by Shri J.M.Puri, who was Chief P.W.I., Northern Railway, Gohana. While working in this position he was served with a charge sheet for major penalty on 4.11.1992, as the respondents found him responsible for causing derailment of a train U.P.Ekta Express between Naulathla and Panipat on 7.9.1992. Allegations against the applicant were that he had failed to keep the maintenance of the Railway Track upto the mark. A large number of coppers were found missing which had rendered the Railway Track quite vulnerable resulting into spread of gauge

14

and thus, derailment. In the charge sheet served on him, he was said to be responsible for poor maintenance of track as he had failed to ensure that the maintenance and inspection of track is kept in satisfactory and safe condition. The derailment had also resulted in damage to the railway property. Enquiry was held by the enquiry officer who found charges proved. The disciplinary authority agreed with the findings of the enquiry officer and passed order dated 22.4.1993(A-1). A penalty of pre-mature retirement was imposed upon the applicant. He filed an appeal which has been dismissed vide orders dated 27.7.1993. He is, thus, before this Tribunal praying for quashing the above mentioned two orders with a direction to respondents to give him all consequential benefits as if the impugned orders have never been passed.

2. Respondents contest the O.A. through a detailed reply pleading therein that the applicant was responsible for poor maintenance of the track as he had failed to ensure the maintenance and inspection in a satisfactory and safe condition. They plead that enquiry was held strictly in accordance with the rules and the penalty has also been imposed after due observation of the rules applicable. Applicant had in fact accepted that the defect was detected by him prior to the accident and he had issued instructions to PWI/PNF. Applicant, however, failed to utilise that it was his primary duty to ensure that serious defect which involved safety of the Railways is rectified. They plead that

(15)

enquiry was held by a Class-I Gazetted Officer and there is no question of his being ignorant by the fact that earlier an enquiry had been held under the Accident Manual to ascertain the cause of accident by Senior Scale Officers. That enquiry was not to find out the mis-conduct of the employees but was only to ascertain the cause of accident. Immediately after the accident had occurred, the spot inspection was done in which the applicant participated and had detected the defects in the track. That joint note was duly signed by the applicant. Applicant filed a rejoinder. We have heard Mr.B.S.Maini and Mr.B.S.Jain, learned counsel for the parties at length and have been shown the original file of the disciplinary enquiry.

3. The contention of the applicant is that the disciplinary enquiry was held jointly with his subordinate Shri Kishan Singh, PWI Panipat and thus it is illegal. We have examined the records and find the same to be not factually correct. We in fact find that this ground was neither taken in the ground of challenge in the O.A. and is an after thought. From reading of Annexure A-4, dated 13.3.1993, which is the report of the enquiry officer, we find that Shri Kishan Singh also faced disciplinary enquiry and enquiries were held separately. Some observations made in Annexure A-4 regarding Shri Kishan Singh also cannot be taken to be a conclusive piece of evidence that the enquiry may have ^{been} held jointly. The learned counsel, very strenuously, argued that the enquiry officer and the disciplinary authority have taken into consideration a joint note

which was signed by the applicant also when this document was neither supplied to the applicant nor was in the list of documents, to be relied upon annexed with the charge memo. To ascertain this fact we examined the original file and find that measurements at the spot were taken by officers including applicant and they had found some cotters missing and the distance between the two rails was varying. This has been observed to be change in the gauge which ultimately resulted in the accident. Apart from the fact that applicant himself is signatory to this exercise of measurement and on the spot inspector, we find that Senior Scale Officers had held enquiry under the Accident Manual in which the Inspection Note jointly prepared was reproduced. There is no dispute that the enquiry report held by the senior scale officers was in the list of relied upon documents and a copy of the same had been supplied to the applicant. In such circumstances, applicant cannot have any objection to reference to the measurement taken at the spot and the spot inspection which proved missing of the cotters and the change in the Gauge of the rails. The joint note signed by officers including the applicant form part of Senior Scale Officers Report also. In any case this contention for disciplinary enquiry will not make any different. In the case of UOI Vs. Parmanand, 1989(2)SCC, Page, 177, the Hon'ble Supreme Court has held that Tribunal cannot interfere, if the conclusions of the enquiry officer/competent authority are

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based on evidence even if some of it found to be irrelevant or extraneous to the matter.

4. The next contention is that the disciplinary authority has passed a non-speaking order. We do not find the same to be correct. The law is settled that if disciplinary authority agrees with the findings and the reasons given by the enquiry officer, he need not all over again repeat the reasoning and can straight-way record his acceptance of the report and proceed to pass order under the relevant rules. The order of the disciplinary authority is not suffering from vice of being an order without application of mind. All these objections would become academic once we see that the applicant in fact had accepted the missing of the coppers and the change in the gauge of the rails. We are reproducing part of his representation/appeal from Annexure A-6, as under :-

"As during routine inspections the coppers are not physically visible being situated in the ballast section. I could not detect this shortage of coppers at the same time as sufficient quantity of coppers were made available to the mate and sectional PWI as and when required by them. It was the personal responsibility of gang mate & PWI/Gr.II to recoup the missing copper while attending the section in his charge during through packing or picking of slacks & moreover the sectional mate and PWI/Gr. II also give their certificate of non missing of fastenings from track in the year ending 1992. Being sectional incharge I have been assigned duties of maintenance of track from Km.0.58 to Km.35/- including Gohana yard as no PWI for this Section has been posted. As such I have to made my programme including office & store work towards the section of PWI/Gr.II/PNP. However, the defect was detected by me & PWI/Gr.II/PNP was ordered

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to attend it, but he failed to attend the same till such time the said happening occurred & the facts have also been confessed by the PWI/Gr.II/ PNP in presence of AEN/ROK & DEN-II/NDLS."

The above admission by the applicant coupled with the Spot Inspection taking into consideration by the Senior Scale Officers in their report clearly shows that not only the coppers fastening the rails were missing but the maintenance of the track was not proper. The applicant had noticed the defects before the accident but had failed to perform his supervisory duty by seeing to it that the defect detected by him is immediately rectified. We would not have gone into this part of the evidence but since the learned counsel for applicant had dwelled on this aspect for considerable length of time, we have thought it fit to bring it on record.

5. Since applicant himself was part of the Inspecting Team and was signatory to the joint note showing the defects and appears to have admitted the existence of defects and non-correction of the same before the accident took place, the objection by the applicant that during the enquiry the evidence has not been put to him as required under rule 9(20) of the Railway Servants (Discipline & Appeal) Rules, would lose its impact. We find that the applicant had been given enough opportunity to cross examine the witnesses produced by the Presenting Officer. His grievance that evidence has not been discussed in detail to come to the conclusion will also have no bearing on the final result arrived at

by the enquiry officer and the disciplinary authority.

The disciplinary enquiry is not a criminal trial which requires the above mentioned observations of the law in strict manner. In the case of Union of India Vs. Sardar Bahadur, 1972 SLR, Page 355 (SC), the Hon'ble

Supreme Court had so observed. In any case the law by now stands fully crystallised that the Tribunal is not to sit as a Court of Appeal in disciplinary enquiries.

The role of Courts in fact is only secondary. In the

case of Indian Oil Corporation Limited Vs. Ashok Kumar

Arora, 1997 (3), SCC, Page-72 and in the case of UOI & Anr. Vs. G. Ganayutham, it has been held, after considering

all the available law, that the Courts/Tribunal will play only a secondary role while the primary judgement as to the reasonableness of the disciplinary enquiry will remain with the executive or the administrative authority. Exercise of the secondary power by the Tribunals/Courts is to find out whether in a given case the administrative authority has reasonably arrived at a decision. The courts will not interfere unless decision of the Administrator suffers from procedural ambiguity or irrational decision which shows out-rageous conclusions or lack of moral standards. Courts and Tribunals are restrained from interfering unless the

penalty is found to be defying logic or morality. In the present case we find no violation of the rules in holding the enquiry or in coming to the conclusions arrived at by the concerned authority which, we find, is based on evidence. Unlike a criminal trial which require proof beyond all reasonable doubt, in a disciplinary enquiry the enquiry officer and the disciplinary authority can arrive at a conclusion on the pre-ponderance of evidence available before them.

20

Not only this is present in this case but it is coupled with the admission of the applicant about the defects which ultimately resulted in the derailment of the railway train. We have not been informed whether there was loss of life also which keeps on occurring on derailment, but damage to the Railway property was found.

6. On consideration of all the contentions raised by the learned counsel for applicant, we find no reason to interfere with the orders impugned in this case, in exercise of our power of judicial review. The O.A. is accordingly dismissed. No costs.

J.S.D.
(JASBIR S.DHALIWAL)
MEMBER (JUDL.)

Arif Aliji.
(S.R. ADIGE)
VICE CHAIRMAN (ADM.)

HC *