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**Central Administrative Tribunal
Principal Bench**

O.A.No.1477/2000

New Delhi, this the 15th day of February, 2010

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Shri Shailendra Pandey, Member (A)

Er. Chhattar Singh
Junior Engineer/Signal
Phaphund, Allahabad Divn.
Presently residing at
591/285, Ramgali,
Vishwas Nagar
Shahdara
Delhi – 110 032.

... Applicant

(By Advocate: Shri D.R.Roy)

Versus

1. Union of India, through
General Manager (S&T)
Northern Railway Headquartes
Baroda House
New Delhi – 110 001.
2. Divisional Railway Manager
Northern Railway
Allahabad.
3. Senior Divisional S&T Engineer
DRM Office
Northern Railway
Allahabad.

... Respondents

(By Advocate: Sh. Shailendra Tiwari)

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ORDER

By Shailendra Pandey, Member (A):

This case had been decided on 11.12.2000 but, on appeal, had been remanded back by the Hon'ble High Court of Delhi vide its order dated 21.10.2009 for reconsideration.

2. The brief facts of the case are that while the applicant (a Junior Engineer, earlier known as Signal Inspector) was posted at Phaphund Station on Delhi-Kanpur Section of the Railway, a Goods Train got derailed at 09.58 a.m. on 23.11.1997 in the Railway Yard of the Station. After the derailment, the senior subordinates of different Railway departments met to look into the cause of the accident and in their joint note (Annexure A4) concluded that the derailment had taken place due to unauthorized tampering with point No.37b/37a by S&T Staff. Thereafter, on 26.11.1997, the applicant was suspended and a Fact Finding Inquiry Committee of three departmental heads was appointed. This Committee also gave its finding and recommendations (Annexure A6) and held the applicant and another Shri Ram Lagan Shah responsible "for adopting short cut methods during repairing of Point No.37 at Phaphund and creating unsafe conditions, which permitted to take off reception signals without the point route already set."

3. On 07.01.1998, a Charge Memorandum was issued to the applicant, and a regular departmental inquiry was initiated against him



for imposition of a major penalty. The departmental inquiry was concluded ex-parte and he was held guilty by the inquiry officer. Thereafter, he was removed from service vide disciplinary authority's order dated 27.08.1998, which was confirmed by the appellate authority and the revisional authority.

4. In the OA, the applicant has challenged the disciplinary authority's order dated 27.08.1998, removing him from service, the appellate authority's order dated 11.01.1999, rejecting his appeal and also the revisional authority's order dated 01.02.2000, rejecting his revision petition.

5. The main grounds on which the above orders are challenged are:

- a) that the findings of the inquiry officer are arbitrary, biased and given without any evidence in support,
- b) that the report of the Inquiry Officer is ex-parte and pre-meditated, and the applicant has been made a scapegoat.
- c) that the penalty of removal from service is shockingly disproportionate to the alleged misconduct.

Apart from the above, the learned counsel for the applicant has argued that since the inquiry dates were fixed at short intervals, the applicant and his Defence Helper could not appear in the inquiry. Therefore,



proper opportunity to defend his case has not been given to the applicant which is against the principles of natural justice.

6. The respondents have opposed the above submissions and have stated that the inquiry officer conducted the inquiry giving full opportunity to the applicant to defend his case and in this regard fixed several dates for the inquiry. However, the applicant did not cooperate, and adopted delaying tactics. It is also stated that no reasons were given for non-participation in the inquiry by the applicant or his Defence Helper. It is also stated that the punishment was imposed based on the report of a Fact Finding Inquiry Committee followed by a detailed inquiry, which found the applicant guilty of the lapses alleged. The learned counsel for the respondents has also stated that the inquiry has been held and concluded in accordance with rules and the disciplinary authority, after agreeing with the findings of the inquiry officer, imposed the penalty of removal which was confirmed by both the appellate authority and the revisional authority. It is also stated that the penalty imposed is commensurate with the misconduct committed by the applicant as the same caused loss of crores of rupees to the Government. Therefore, the OA should be dismissed.

7. In the rejoinder, the applicant has reiterated his pleas taken in the OA.

8. We have heard the counsel for both sides and have been through the pleadings on record. For proper adjudication of the case,



we have been through the charge memorandum, inquiry officer's findings, disciplinary authority's order, appellate authority's order and also the revisional authority's order.

9. The various grounds mentioned by the counsel for the applicant in his OA can, for convenience, be divided into two categories:

- (i) those that relate to procedural aspects
- (ii) those that relate to the inquiry officer's findings being arbitrary and as a result of overlooking certain technical aspects of the issue.

As regards the former, it is the submission of the counsel for the applicant that the inquiry officer's statement that the applicant had not cooperated in the inquiry is not correct as he attended all the sittings of the inquiry and that the Defence Helper was a serving Railway employee and was required to be relieved by the officer under whom he was working to appear in the inquiry at each date fixed, which may not always be possible, and, therefore, it was the duty of the respondents and the inquiry officer to ensure that the proceedings were conducted only when the Defence Helper was present, and that in this context, the issue of short notices for inquiry sittings was an impediment and that the conclusion of the disciplinary proceedings ex-parte was not warranted. He also stated that full opportunity to cross and re-cross the prosecution witnesses cannot be stated to have been given, in the



absence of Defence Helper, and the insistence of the Inquiry Officer that the applicant give his defence statement even in the absence of the defence helper, inspite of a request made in this regard by the applicant, also amounts to denial of full opportunity to the applicant.


On the other hand, the respondents' counsel contention is that full opportunity was afforded to the applicant to defend his case and that it was the duty of the applicant to ensure the presence of his Defence Helper. A large number of dates were fixed for the inquiry but there was no co-operation on the part of the applicant and no reasons were given for his non-participation or that of his Defence Helper, and all this was just a ploy to delay the matter. Therefore, the inquiry was concluded ex-parte. It is also stated that these submissions of the applicant along with all other relevant facts were taken into account before passing of the final order by the disciplinary authority.

The fixation of a large number of dates 4th, 12th, 20th, 23rd and 29th May, 1998, 6th, 10th, 13th and 20th June, 1998 and 4.7.1998, does show that there was an attempt on the part of the respondents to afford full opportunity to the applicant for his defence with the help of his Defence Helper. Although in the case of serving Government servants who are engaged as Defence Helper, the Inquiry Officer has to write to the department but it is also the responsibility of the applicant to ensure the presence of the Defence Helper. It is seen from the inquiry report that the Inquiry Officer has stated that all concerned were informed to



attend the inquiry in writing. It is also stated in his report that no reasons were given for the absence of the Defence Helper, and as stated above, the date of the inquiry was postponed number of times to enable the presence of both the applicant and his Defence Helper. In fact, he was even informed on 20.05.1998 when the inquiry was fixed for 23.05.1998 that if he could not produce his Defence Helper on that date, it will be presumed that he will defend this case himself. The applicant has shown us any letter making a complaint that his Defence Helper was not being relieved. Since several opportunities were given to the applicant to produce his Defence Helper and he did not produce the Defence Helper, therefore, he cannot raise this grievance now.

10. The other set of grounds pertain to the inquiry officer's findings being arbitrary, without basis and "pre-meditated. It is the contention of the counsel for the applicant that findings the inquiry was an 'eye wash' because immediately after the accident, a team of his immediate seniors had given their findings against the applicant in a Joint Note which was followed by an adverse findings by a Fact Finding Committee of three departmental heads, and with the senior officers having given adverse findings, the inquiry officer (being a junior officer) tailored his report to support such findings. In this connection, the counsel for the applicant also states that the Inquiry Officer has disregarded the findings given by the applicant's senior in a "Dissent Note' about the cause of the accident.





11. Before we proceed further in the matter, it would be useful to place on recall the Joint Note, the dissent note, findings of a Fact Finding Committee, the Chargesheet and the findings of the inquiry officer.

As mentioned earlier, after the accident, a joint inquiry had been conducted by senior subordinate staff of different Railway departments to look into the cause of the accident and their findings were given in a Joint Note, which is extracted below:

"Joint note

We the undersigned after careful examination of site records, statements, written/oral and circumstances of this derailment are of the opinion that this derailment/accident took place due to unauthorized tempering with Pt. No.37b/37a by S&T Staff resulted. That signal aspects remained as it is, but the facing point No.37b set for Gds. Shed Sdg. (Line) left in same condition due to approaching of train with full speed.

Responsibility:- S&T Staff PMD is responsible for this accident/derailment"

The immediate superior of the applicant – the Senior Section Engineer/Signal (SSE) - gave a detailed note (Annexure A5 to the OA) disagreeing with the findings recorded in the Joint Note. The contents of the dissenting note are as follows:

"(I) Joint Observation of panel portion of Signal points, track circuits was not recorded jointly by Station Supdt. and others and could



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not be ascertained that route for what line was sent on panel and signal was through for main line.

(II) As per observation item No.2 point 37b was set for loops line (goods line) in that condition, the uphome signal could not be green and point 37a was in normal position. As per this observation taken it shows that two ends of point was out of correspondence. Interlocking will no permit it to display indication in normal position at panel in this condition.

(III). The driver could not control the train as soon as he negotiated the loop line (goods line). It shows that he was not aware of the route entered and failed to take quick action to control the train and finally train was come to stand by dashing the Engine from Dead end.

(IV) At the time of observation derailment no key of any relay room was taken by S&T Staff and there was no signaling gears failure. In panel Interlocking it is not possible to occurred any unsafe failure in a condition. If there will be any defect in interlocking this will exist.

(V). If there is any defect in interlocking then it will repeat on creating same condition at site after observation.

(VI). On the basis of the above fact given in Joint Note D&T staff is not responsible without losing the panel Interlocking by creating same condition at site. Also driver of UP DER Spl. is responsible since he was not award when he entered from point No.37b in goods Siding (approximate distance from 37B to dead end is 800 Meters) driver could not apply emergency brake as soon as he entered in goods siding capseizing of 19 wagons shows that driver came with full speed upto dead-end."

(23)

Thereafter, a Fact Finding Inquiry Committee consisting of three departmental Heads, i.e., Chief Safety Officer, Chief Electrical Engineer and Chief Signal Engineer, looked into the matter and their findings are extracted below:

“1. Sh. Chhatar Singh, St/Phaphund is held responsible for adopting short cut methods during repairing of Point no.37 at Phaphund and creating unsafe conditions which permitted taking off reception signals while the points in the route were not properly set for the movement via main line.

He thus violated SR 14.03/1 and para 3.1.1.(a) of IRSEM of 1988.

2. Sh. Ram Lagan Shah ESM/Phaphund is held responsible for adopting short cut methods during repairing of Point No.37 at Phaphund and creating unsafe conditions which permitted taking off reception signals while the points in the route were not properly set for the movement via main line.

He thus violated SR 14.03/1.”

Thereafter, the chargesheet dated 7.1.1998 (Annexure A7) was issued against the applicant for initiating DAR inquiry for major penalty, as reproduced below:

“While working in the capacity of JE/Signal/PHD on 23.11.1997 is held responsible as under:-

That the said Shri Chattar Singh tampered with point No.371/37a and associated Gears at SHO on 2.11.1997 at 9.59 hrs. in unauthorized

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manner in the face of UP DER and resulted in display of aspect of UP Home Signal not corresponding to position/selling of point.

Thus Shri Chattar Singh JE/SHO is held responsible for adopting short cut methods during repairing of Pt. No.37 at PHD and creating unsafe conditions which permitted taking off reception signals, which the points in the route were not properly set for the movement vin mainling this violated on 14.03/1 and para 3.1.1.(a) of result of 1968. [Correction dated 12.3.1998 gabe as below 3.11(a) of IRSEM 1988]"

The applicant denied the charges leveled against him. The inquiry officer, in his report concluded as under:

"Since Shri Chattar Singh JE/PHD and his, D.H. is not cooperating in the enquiry and using delaying noice, an exparte decision is being taken in finalizing SF-5 against Shri Chhattar Singh. After careful examination of records, Cross examination of witnesses No.1, 2, 4 and 6 & 9 joint note and H.Q. enquiry report, it is found that Shri Chattar Singh, JE along with Shri Ram Lagan Shah, ISM/II was working on point No.37-A at PRD without any prosecution. After operations of point No.37 from panel normal to revertise and again name JZ/PHD could not ascertain the position of 37-B and which remained in reverse position and 37A and became normal. They adopted short cut method for giving normal indication of 37 at the penal from the gate. So, the train DER/Spl. which was signaled for main line took the path in goods after trailing through point No.37-A."

It is submitted by the applicant's counsel that the issue involved in the case is a highly technical one, relating to use of highly sophisticated and complex technology and that any findings with regard


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to such issues can only be given by technical expert or on the basis of the advice of the technical experts. In this connection, the disregarding by the Inquiry Officer of the dissent note recorded by the immediate superior of the applicant, renders the inquiry findings illegal and arbitrary. Further, the statement that the applicant adopted "shortcut methods" without specifying and explaining the "shortcut method" also vitiates the inquiry findings. And that the findings have also been given "without testifying the fidelity of operation of the equipment from the panel wherefrom it is normally operated", and to arrive at a proper finding with regard to the allegations, it was necessary to create the same conditions on the ground and cross-check the happenings therefrom. It is, therefore, contended that the findings of the two Committees, namely, (i) Joint Note and (ii) Fact Finding Committee (consisting of three departmental heads) fall on the touchstone of the "technical possibility of the system" and, therefore, the findings are unwarranted being one-sided. Finally it is submitted that when the Fact Finding Inquiry Committee had recommended as many as three improvements in the working of the system, holding the applicant responsible for this without having effected such improvements is unfair. During arguments, it was also submitted that tampering was physically impossible and that tampering cannot be done in view of the fact that system installed is a full proof system and that the signal would not lower if any one had tampered with the point.






 It would be seen from the above that all the arguments raised ~~above~~ relate to technical aspects of the functioning of the Signal systems/gears, and on this aspect this Tribunal would not be in a position to express any technical opinion. What we can, however, see is whether the issues have been assessed at appropriate technical levels, and our answer to this would be in the affirmative. It is noted that a Joint Note was recorded and followed by a Fact Finding Inquiry Committee, consisting of three technical experts of three departmental heads at very senior levels and it is not appropriate nor desirable nor possible to even attempt to question their technical findings. It is indeed true that there was a dissent note by the immediate senior of the applicant but this would have been taken into account by the Fact Finding Inquiry Committee as well as by the disciplinary authority who have the necessary technical expertise.

12. We, however, now proceed to examine the orders of the disciplinary authority and the appellate authority to see if they are free from legal infirmities.

13. The inquiry officer, in his report dated 07.01.98, had recorded the following conclusion:

“After careful consideration of the facts, circumstances, records on file, documentary evidences and cross examination of PW and COI, the undersigned without being prejudice came to the conclusion that the charges leveled vide memorandum are established against Shri Chattar Singh JE/Sig./PWD as such Shri





Chattar Singh has violated railway conduct Rules.”

14. In reply to the above, the applicant made a representation to the disciplinary authority on 28.07.1998 whereby he had raised several issues primarily relating to it being incorrect to say that he had not co-operated in the inquiry and that it was the duty of the Inquiry Officer to ensure timely communication of dates of the inquiry to the Defence Helper, examination of only a few prosecution witnesses and finalization of the inquiry ex-parte. He also requested for a fresh inquiry to be conducted by another Inquiry Officer as he had lost faith on the present Inquiry Officer. However, the disciplinary authority imposed the penalty of removal from service vide its order dated 27.08.1998 (Annexure A-1). From a perusal of the Disciplinary Authority's order, it is noted that points raised by the applicant in his representation have been adequately addressed before passing of the order.

15. Thereafter, the applicant filed an appeal dated 30.09.1998 (Annexure A-13), which was around 8 pages, to the appellate authority, mentioning various averments/submissions/ contentions but it is seen that the appellate authority rejected the said appeal vide its order dated 11.01.1999 (Annexure A-2), which is extracted below:


“I have gone through the whole case. It is seen that Shri Chhatar Singh was charged for tempering of track point at PHD, in an



unauthorized manner which caused an accident of Goods-Train. This was proved beyond any contradiction during the inquiry. Even though it may be fact that this is his first offence, in the matters of safety no compromise should be made and IR cannot afford to give one chance each to the sixteen lakh employees. I do not find any ground for any reduction of the punishment already awarded”.

From a perusal of the order of the appellate authority, it is crystal clear that it is completely non-speaking. The appellate authority has not expressed his opinion on any of the averments/contentions raised in the applicant's appeal (other than on quantum of punishment). In fact he has not even referred to them. The applicant, in his appeal, has raised a large number of grounds on the basis of which he has questioned the disciplinary authority's order imposing on him the severe punishment of removal from service. It is necessary for the appellate authority to address the issues raised and record reasons in support of his decision, as this is the basic requirement of natural justice. When the order is cryptic, as the present one indeed is, it is liable to be set aside. It is also not permissible to pass a detailed order on the file but to hold it back and communicate a simpler order without reasons to the charged employee because in its absence, the employee will not be aware that he has received fair treatment in the matter of his appeal. On this ground, the appellate order, therefore, needs to be quashed and set aside.

16. In view of the above discussion, the OA is partly allowed. The order of the appellate authority dated 11.01.1999 is quashed and the case is remitted back to the appellate authority for further action in the matter in





accordance with law. Final orders in this case may be issued and communicated to the applicant within a period of two months from the date of receipt of a copy of this order. No costs.



(Shailendra Pandey)
Member (A)



(Meera Chhibber)
Member (J)

/nsnrsp/cc

Fresh MA 1204/10 for
Extn. of Time