

Central Administrative Tribunal
Principal Bench

O.A. No. 1582/89

New Delhi, this the 21st day of August, 1995.

Hon'ble Shri J.P. Sharma, Member (Judicial)
Hon'ble Shri B.K. Singh, Member (Administrative)

Kanchan Singh
son of Shri Sunder Lal
c/o Shri Rakesh Kumar Sharma,
C-92, Kidwai Nagar East,
New Delhi- 110 023.

...Applicant.

(By Ms. A. Oberoi, Advocate)

Versus

Union of India through

1. Principal Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. General Manager,
Western Railway,
Churchgate,
Bombay.
3. Divisional Railway Manager,
Western Railway,
Kota : Rajasthan.
4. Sr. Divisional Mechanical Engineer,
Western Railway,
Kota : Rajasthan.
5. Divisional Mechanical Engineer (I)
Western Railway,
Kota : Rajasthan.

...Respondents

(By Shri Shyam Moorjani, Advocate)

ORDER (ORAL)

By Hon'ble Shri J.P. Sharma, Member (J):

The applicant was the driver of BTE Special UP Goods Train. There was a head-on collision between BTE Special Train and 933 Down train at Patholi (Agra) railway station

on Western Railway, Kota Division on 26.2.1987 at 4.16 hours. Shri Bankey Lal was the driver of 933 Dn. Train.

The applicant was served with a memo of chargesheet dated 3.3.1987 with the allegations that the train entered Patholi Yard against signals at danger at a speed of about 25 to 30 KMPH and collided with the stationary load of 933 DN goods train. He failed to observe signals properly as well as control his speed well in time which resulted into this mishap, in which, engines of both the trains and one empty DRH of 933 DN derailed and 8/11 wagons of his train BTE Spl. also derailed, capasized and collided over one another in heap, resulting into blockade of all the three lines of Patholi Yard. In addition, two members of Military escorts of BTE Spl. were killed on the spot and two others injured. He was, therefore, held responsible for careless working and violations of rules of GR 3.80(1) and C & SR 4.40. The applicant denied the charges.

Shri R.S.Bali, A.M.E. was appointed Enquiry Officer who submitted his report on 21/22-9-1987 and exonerated the applicant of the charges. The disciplinary authority DME at Kota Shri R.S.Sharma differed with the findings of the Enquiry Officer and he passed the order of punishment of

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removal from service holding the applicant guilty. The order of the disciplinary authority is re-produced below:-

"Shri Kanchan Singh driver IDH was issued SF/5 based on findings of MJE for head on collision between BTE Spl. goods with 933 Dn at PTLI at 4.16 hrs. on 26.2.87 for the charges:-

While working as driver of BTE Spl. Ex. AEB to BTE on 25/26.2.1987 on diesel engine No. 17854 WDM2 entered PTLI Yard against the signals at danger at a speed of about 25/30 KMPH and collided with stationary load of 933 Dn goods train. He failed to observe signals properly as well as to control his speed well in time which resulted into the collision and capsizement of 8/11 wagons and death of two escorts on BTE Spl. Had he been alert on duty and observed the GR 3.80(1) and G&SR 4.40 this accident could have been averted"

The EO/AME-IDH(DAR enquiry) has stressed upon the correction of timings of arrival of 933 Dn at PTLI i.e. 4.10 instead of 4.15 and secondly he has stressed upon the statement of Bankelal in which he had reported that the signal aspect of UP signals which are not relevant for his train. UP Signals are relevant to UP trains which may not be necessarily viewed by the down trains specially when the train is to be haulted at a station.

The collision of such heavy impact itself shows that one of these two trains have passed signals at danger and collided with one of the stationary trains. The jumping off and capsizement of few wagons of BTE Spl. train reveals their movement were as unalteration of stationary position 933 Dn. remains unchanged even after collision shows its standing position. Therefore, it is evident from the findings of the MJE that the train No. BTE Spl. collided with stationary train No. 933 Dn. PTLI Station.

Therefore, I agree with the findings of MJE and reject the findings of EO/AME-IDH(DAR enquiry) and held Shri Kanchan Singh driver BTE Spl. train responsible for not controlling his train and colliding with stationary train No. 933 Dn on the same line on which he entered at PTLI station".

The applicant preferred an appeal dated 9.11.1987 covering in eight full-scape papers and enclosing certain documents. This appeal was placed before Sr. DME, Kota who

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rejected the appeal. The applicant preferred a Revision against the aforesaid order under order 24(2) of R.S.(D&A) Rules, 1968 but the same was rejected by the order dated 22rd January, 1989 observing that the appellate authority has already considered the point and no interference is called for in the punishment and review against that was also dismissed as not permissible.

The applicant filed this original application in August, 1989 praying for the grant of the relief that respondents be directed to quash the punishment order and to re-instate the applicant in service with due benefits.

On notice the respondents contested this application by filing a written statement stating that the penalty has been imposed upon the applicant by the competent authority after considering various aspects of the accident and the disciplinary authority came to the conclusion that the applicant as driver of BTE Spl. train could not control the speed because of the impact on the stationary train and no interference is called for.

The applicant has also filed the rejoinder.

We have heard the learned counsel Ms. A. Oberoi for the applicant and Shri Shyam Moorjani counsel for the respondents at length and perused the record. The learned counsel for the applicant has raised primarily crucial point that one person

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cannot be arbiter of his own cause. In this case, as the record shows, the Enquiry Officer has exonerated the applicant by giving his own reasons on the basis of the documents as well as MJE report but the Disciplinary authority only stating a few lines in two paragraphs and agreeing with the findings of the M.J.E. differed with the findings of the Enquiry Officer and held the applicant guilty of the charges levelled against him.

Infact a detailed reasoning is required to discard the conclusion of the Enquiry Officer by the disciplinary authority if he is actually in disagreement with the conclusion drawn by the Enquiry Officer. The Enquiry Officer has given reasons which have not at all been taken into account by the disciplinary authority and only basis of holding the charge established against the applicant is detailed in the last two paragraphs of the order which has been quoted in the earlier part of this order. This will show that the disciplinary authority was much impressed by the findings of the M.J.E. It appears from the record that the President of MJE was Sh. S.K. Gupta, Sr. DME (KTT). The appeal has also been considered by the same authority i.e. Shri S.K. Gupta, Sr. D.M.E.(KTT).

As the reliance was placed by the disciplinary authority on the report of MJE as said above in the interest of

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justice and to observe the principle of natural justice Sr. DME Shri S.K.Gupta should have refrained from considering the appeal and may have been passed over to the Divisional Railway Manager either to deal with himself or to appoint another appellate authority of equal status or rank. This has not been done in this case. However, Since the applicant has filed revision, the matter would have been satisfactorily explained if the revisional authority has applied its own mind. The revisional authority has left everything on the finding of the appellate authority and that is why did not pass any speaking order in the revision filed by the applicant. In view of this it becomes necessary without commenting on the merits of the case that the appellate authority should be other than the person who was President of MJE. Now the matter has passed so many years and the Appellate authority might have changed and the Sr. DME might have changed, we, therefore, on the basis of the authority of the Hon'ble Supreme Court in the case of Ram Chander reported in 1986 (2) SLR p. 608 direct the respondents that the appellate authority shall consider the various grounds taken in the memo of appeal and after giving a personal hearing to the applicant pass a speaking and reasoned order. In view of the order passed in the revision also goes away. The appellate

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authority shall consider the order passed by the disciplinary authority of disagreement with the order of the Enquiry Officer and will judge the same in the light of the various grounds taken in the memo of appeal. The appellate authority will also go through the findings of the Enquiry Officer and the various records maintained by the Railways regarding coming and going of the trains and also consider the allegations made by the applicant regarding change of arrival time of the trains. This in the nutshell what the appellate authority may have to do is primary besides the other requirements required under law while disposing of an appeal.

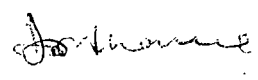
In view of the facts and circumstances of the case without going into the merits of the rival contentions, the application is partly allowed and the order passed by the appellate authority Shri S.K.Gupta, Sr. D.M.E. dated 11.5.1988 is quashed and set aside and the case of the applicant is remanded to the appellate authority for decision afresh on the appeal filed by the applicant on 9.11.1987. The order passed by the revisional authority is also quashed. The appellate authority will consider the appeal aforesaid of the applicant in the light of the observations made in the body of this judgement and also will give a personal hearing to the applicant on various points taken in defence and pass a speaking and reasoned

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order within a period of six months from the date of receipt of this order. We have perused the record and the same is retained with Shri Shyam Moorjani counsel for the respondents. Cost on parties.


(B.K.SINGH)
MEMBER (A)


(J.P.SHARMA)
MEMBER (J)

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