

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2081/89

DECIDED ON : 23.4.93

Shri R. N. Yadav

... Applicant

Vs.

Union of India & Ors.

... Respondents

CORAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri S. K. Bisaria, Counsel for Applicant
Shri M. L. Verma, Counsel for Respondents

J U D G M E N T

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

The applicant in this O.A. was working as ASM at Ballabgarh. His duty involved giving signals to the incoming trains on the instructions of the Dy. Station Superintendent, Ballabgarh. On 10.4.1988 at 19.20 hours, down SCPD special goods train arrived at the station, the driver of the train stopped the said goods train short of the started signal by about 42 meters, with the result that the red fouling mark remained jammed by about 41 meters. Soon thereafter, 369 DN Shuttle arrived and the applicant gave signal for the entry of the train into the platform of Ballabgarh Station. While this passenger train was entering the Ballabgarh Station due to the clear signal given by the applicant, there was a side collision between the goods train already standing at the station and the incoming passenger train, as a result of which, the driver of the passenger train died on the spot. Because of this accident alleged to be on the negligence of the applicant, a criminal case was registered against the applicant and preliminary inquiries were also conducted by the Railways. After the conclusion of the preliminary inquiries, a chargesheet

dated 27.4.1988 was served on the applicant. Shri M. P. Srivastava, TI(P), Jhansi was appointed as inquiry officer. The applicant participated in the inquiry where the witnesses were examined and the inquiry officer gave its report dated 5.7.1988 holding that the applicant violated the provisions of Rule 6.6(b) of the Railway Rules (BVH-SWR) and holding the applicant guilty of the charges. The disciplinary authority by order dated 12.7.1988, passed an order imposing the penalty of removal from service with immediate effect.

2. In the present application, the applicant has assailed the aforesaid order of punishment dated 12.7.1988 and prayed for the grant of reliefs with the order of removal from service be declared as arbitrary, discriminatory, illegal, unconstitutional bad and void and to quash the same. It is further prayed that the applicant be reinstated in service with all back wages, continuity of service and all other consequential benefits.

3. The applicant had earlier filed OA-1410/88 in which he had prayed for quashing of the impugned order dated 12.7.1988. But the said OA was dismissed as premature vide order dated 27.9.1988 by the Principal Bench of the Tribunal, since the applicant did not exhaust the statutory remedy available of filing an appeal. The applicant, therefore, preferred an appeal to the appellate authority and without waiting for the result of the appellate authority, filed the present application on 7.6.1989.

4. The respondents contested this application and filed the reply stating that the applicant was incharge of Block instrument and its operation, having independent jurisdiction for clearing back the block section on arrival of a train from down side. Before granting line clear, it is the duty of the

Cabin Assistant Station Master to ensure that previous train has arrived complete and is standing within the fouling mark as stipulated in para 6.6(b) of the Railway Rules SWR of BVH. The guard of the goods train did not give signal of complete arrival of the goods train to the Assistant Station Master (ASM). The applicant was served with the chargesheet and the inquiry officer was nominated, who has established the charges proved against the applicant. The applicant preferred an appeal against the order of punishment imposed by DRM on 11.8.1988 to COPS (BB) and the decision was given by the appellate authority vide order dated 21.2.1989, which was conveyed to the applicant on 14.3.1989 and when the applicant refused to accept refused to accept the same, the decision was sent to him through DAK post on 17.3.1989. The application, therefore, is without any merit and in view of the decision of the Hon'ble Supreme Court in Union of India vs. Parmananda, reported in AIR 1989 SC 1185 that the findings of the inquiry officer can be interefered only if malafides are proved. The applicant also filed the rejoinder, reiterating the same facts as alleged in the O.A. It is further stated that the decision of the appellate authority was never received by him and the copy of the same has also not been supplied to him. Further it is also stated that the appellate authority as well a rejected the appeal, has not applied its mind, so the order of appellate authority is also bad in law.

5. We have heard the learned counsel for the parties at length and have gone through the records of the case.

6. The first contention of the learned counsel for the applicant is that the inquiry officer has not considered the report of the fact finding inquiry conducted by a junior

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administrative grade officer on the causes of accident. A perusal of the inquiry officer's report goes to show that the inquiry officer has considered the fact finding inquiry which had prima facie held Cabin Assistant Master (A-Cabin), Ballabgarh Station responsible for violation of the rules. The applicant at that time was posted in Cabin-A at Ballabgarh Station. Otherwise also the fact finding inquiry was only to make out a prima facie case for holding departmental inquiry against the delinquent staff which was responsible for the accident on 10.4.1988. Thus, the contention of the learned counsel cannot be accepted. The learned counsel, however, referred to another report which was conducted by another junior administrative grade officer but the conclusion arrived at is not fixing the responsibility of any of the staff members but only refers to certain facts. Though in the said inquiry it has been observed that the side collusion was a result of excess load exceeding the low capacity but at the same time it does not exonerate any of the staff members from the responsibility.

7. The contention of the learned counsel for the applicant is that the applicant has not been given proper opportunity to put up his case. A perusal of the inquiry officer's report goes to show that the applicant has already been furnished before commencement of the inquiry of the relevant documents referred to in the annexure to the memorandum of chargesheet and there is nothing on record to show that the applicant has not been furnished any relevant document. In fact, on 10th and 11th June, 1988 four defence witnesses were examined by the applicant himself. The contention of the learned counsel, therefore, in this regard also is not acceptable.

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8. The inquiry officer has consciously applied the relevant rules in conduct of the inquiry. The first part of the charge is that Cabin Assistant Station Master (in short CASM) "A-Cabin will ensure personally that the train has arrived complete within the fouling marks with the tail lamp board of the last vehicle." The inquiry officer has also on 4.7.1988 went to the spot of accident and had a practical demonstration regarding visibility of tail lamp by using the red aspect of the HS lamp after placing it on the track where the DN SCPD Spl. goods train was standing at the time of collusion on 10.4.1988. He observed that the tail lamp would have been detected by the CASM fouling the adjacent line, i.e., down loop line. The inquiry officer has considered and discussed the evidence which was adduced by the administration and held that the charge for violation of para 6.6(b) of Ballabgarh Station Working Rules has been violated. The said rule is quoted below :-

- "(i) CASM A-Cabin will ensure personally that the train has arrived complete within the fouling marks with the tail lamp/tail board of the last vehicle and also,
- (ii) the guard of the train is given alright signal to the CASM in token of the train arrived complete within the fouling marks before giving the train after section signal."

9. On the basis of the evidence the inquiry officer held the charge proved. The learned counsel for the applicant could not show any infirmity or irregularity in the evidence taken by the inquiry officer and adequate opportunity was given to the applicant to cross examine the witnesses.

10. Similarly, the second part of the charge that the guard of the train has given alright signal to the CASM in token of the train arriving complete within the fouling marks before giving the train out of the section signal. The applicant has

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stated before the inquiry officer that the guard of SCPD goods train had given alright signal from his break van. However, it is observed by the inquiry officer that the delinquent could not produce any witness in support of his version. The four defence witnesses examined by the applicant did not state that they saw the guard giving alright signal to the delinquent. The findings, therefore, of the inquiry officer are based absolutely on the evidence adduced by the parties in the departmental proceedings. The disciplinary authority in the impugned order dated 12.7.1988 has considered the inquiry officer's report and held that the applicant had violated provisions laid down in para 6.6(b) of Ballabgharh Station Working Order. The disciplinary authority has accepted the findings of the inquiry officer and held that the applicant while working as CASM A-Cabin at Ballabgharh Station cleared the block section without ensuring complete arrival of SCPD special goods train and without getting alright signal from the guard of SCPD special goods train. The contention of the learned counsel for the applicant is that the order of the disciplinary authority is not a speaking order. However, the disciplinary authority while agreeing with the finding of the inquiry officer need not himself appreciate the evidence unless there is any disagreement with the finding arrived at by the inquiry officer. The learned counsel for the applicant, however, referred to the authority reported in 1975 Service Law Weekly Reports pg. 615 : Harbans Singh vs. Union of India, to highlight the argument that there should be a speaking order by the disciplinary authority also. A perusal of the order passed by the disciplinary authority fully illustrates the reasons of agreement with the inquiry officer's report and the disciplinary authority also agreeing with the report of the inquiry officer held that the

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charge against the delinquent stands proved. In view of these facts, the cited authority does not help the applicant.

11. The learned counsel for the applicant also argued that the disciplinary authority has taken into account the earlier punishment awarded to the applicant while passing the impugned order of punishment. In fact, that was a casual observation in which the disciplinary authority observed that earlier also a lenient view was taken while imposing the punishment of stoppage of increments for six months when the applicant was found asleep on duty. In fact, this matter has been considered only with regard to the imposition of penalty and not with regard to coming to a finding of guilt against the applicant. The contention of the learned counsel for the applicant that principles of natural justice have been violated and he also placed reliance on the authority of S.N. Mukerji vs. Union of India : AIR 1990 SC 1984, but in the present case the principles of natural justice have been fully observed at all stages of the departmental inquiry. The contention of the learned counsel, therefore, has no force.

12. The learned counsel for the applicant also argued that an appeal was preferred after a direction was issued in an earlier O.A. No. 1410/88 decided on 27.9.1988 filed by the applicant that the applicant should exhaust the departmental remedy of filing an appeal and revision. The applicant, therefore, preferred an appeal on 11.10.1988 and that the result of the appeal according to the learned counsel has not been conveyed to the applicant, but the respondents in their counter have specifically stated that the appeal was disposed of on 21.2.1989 and it was conveyed to the employee on 14.3.1989 when he was specifically called to collect the said order, but the applicant

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refused to accept the same and as such the same was sent to him by dak on 17.3.1989. In view of this it cannot be said that the decision of the appeal has not been conveyed to the applicant. When the applicant denies the receipt of the order of the appeal, the argument of the learned counsel that the appellate order is a non-speaking order, cannot be accepted.

13. In view of the above facts and circumstances, the learned counsel for the respondents argued that the Tribunal cannot sit as an appellate authority over the findings of the inquiry officer and in this connection referred to the decision of Shankar K. Damle vs. Union of India : 1989 (2) SLJ 681, and K. G. Palde vs. Union of India : 1988 (6) ATC 254. The power of the Tribunal to interfere with the findings can only be arrived at when the delinquent had not been given adequate opportunity during the proceedings of inquiry or that there has been irregularity in complying with the relevant rules or principles of natural justice. In the present case we find no fault in the conduct of the disciplinary proceedings and the application of the rules.

14. The learned counsel for the respondents also argued that in view of the decision of Union of India vs. Parmananda : AIR 1989 SC 1185, the Tribunal could not interfere with the penalty imposed by the competent authority. Otherwise also, we find that it was a serious accident where the driver of the goods train also died on the spot. The learned counsel for the respondents also argued that the guard, Shri K. L. Meena, was also removed from service in the departmental proceedings on 20.2.1989.

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15. In view of the above facts and circumstances, we find that the present O.A. is devoid of merit and the same is, therefore, dismissed leaving the parties to bear their own costs.

S. R. Adige
(S. R. Adige)
Member (A)

J. P. Sharma
23.4.93
(J. P. Sharma)
Member (J)

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