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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2395/89

New Delhi this the 29th day of July, 1994.

MR. Justice S.K.Dhaon, Acting Chairman
Mr.B.K.Singh, Member(A)

Shri J.B.Khanna,
P.W.Inspector
Northern Railway
Amroha

Applicant

BY ADVOCATE SHRI B.S.MAINEE.

vs.

Union of India: Through:

1. The General Manager,
Northern Railway
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway
Moradabad.
3. The Chief Engineer,
Northern Railway,
Baroda House
New Delhi.

Respondents

NONE FOR THE RESPONDENTS.

ORDER

JUSTICE S.K.DHAON:

The applicant, a Permanent Way Inspector (P.W.I) Incharge Amroha, was subjected to disciplinary proceedings under the Railway Servants(Discipline and Appeal) Rules,1968(the Rules). The disciplinary authority appointed an inquiry officer who, after conducting the enquiry, submitted his report to it(the disciplinary authority).. That authority on 11.7.1989, passed an order of punishment thereby reducing the applicant from P.W.I Grade I to the lower Grade of P.W.I/III in the scale of Rs.1400-2300 at the pay of Rs.1400/- and he was to be treated in all ways as a new entrant in that grade. Future promotions were to take place as per normal procedure as for a new entrant.

2. The appellate authority while maintaining the order of the disciplinary authority modified the punishment awarded to the applicant by reduction to next lower grade of Rs.1600-2600/- at Rs.2200/-

per month. His further promotion was to be governed by normal rules applicable to ^{the} post in Grade II (Rs.1600-2600). The two orders are being impugned in the present OA.

3. On 23.11.1988, Divisional Superintending Engineer, Moradabad issued a memorandum accompanied by a statement of Article of charges on the basis of which action was proposed to be taken against the applicant. Statement of imputation of misbehaviour or misconduct in support of the Article of charges framed against the applicant was also issued.

4. On 20.1.1989, a fresh memorandum was issued by the Additional Divisional Railway Manager describing himself, as the disciplinary authority, accompanied with a statement of Article of charges and a statement of imputation of misbehaviour or misconduct in support of the Article of charges framed against the applicant. The same were duly served upon the applicant. The statement of Article of charges served upon the applicant along with the memorandum dated 20.1.1989 was the subject matter of the disciplinary proceedings.

5. The statement of Article of charges may be extracted:

" Shri J.B.Khanna, PWI I/C AMRO is charged for serious misconduct in as much as he is held responsible for misalignment of curve No.16. In spite of repeated bad versine readings, he failed to take prompt measures to attend alignment of this curve, which is revealed from the Joint track readings recorded after the derailment of 17.10.1988 and also from the inspections conducted from time to time as per the curve register. He thus violated para No.118(1), 123(1), 125(1) of Indian Railway P.Way Manual."

6. The statement of imputation of misbehaviour or misconduct in support of the Article of charges may also be extracted:

" On 17.10.1988, 412 DN Nauchandi Exp. arrived GMS at 21.55 hours and started at 21.57 hours. While the train was passing over curve No.16, driver felt jerk. He applied brakes and the train stopped immediately. 12 Bogies of the train got derailed. In

the joint track readings recorded thereafter, evidence of misalignment of curve No.16 was observed. Inspection of the curve register maintained by PWI I/C AMRO also shows that on almost every occasion whenever the curve was inspected it was found misaligned. There was no effective step taken by the PWI to rectify the defects. Thus Shri J.B. Khanna PWI I/C AMRO failed to take prompt measures to attend alignment of the curve."

7. It is apparent that the gravamen of the charge is that in his capacity as a PWI incharge Amroha, the applicant is held responsible for the misalignment of curve No.16. In other words, the charge is that it was the duty of the applicant to maintain Curve No.16 in a proper condition. The applicant was called upon to submit his written statement within a specified time.

8. On 25.1.1989, the applicant addressed an application to the Additional Divisional Railway Manager, Northern Railway, Moradabad with reference to the memorandum dated 20.1.1989. In this application, he, inter-alia, prayed that copies of certain documents including the inspection note of Shri Darshan Dayal, the then AEN/Hapur dated 20.1.1981 and 28.1.1981 and a copy of the inspection note of Shri Ashok Kumar from the date of his resumption as AEN/Hapur to 16.10.1988 between GMS-GGB may be supplied so as to enable him to submit his written statement of defence.

9. To cut the matter short, neither copies of the aforesaid documents were supplied to the applicant nor was he permitted to inspect the same. The reason given by the respondents for denying even the inspection of the said documents was that the said documents were being treated as "classified documents".

10. On 18.3.1989, the applicant sent his written statement of defence to the Additional Divisional Railway Manager (disciplinary authority). In para 1 of the written statement, the applicant at the outset

pointed out that, in spite of repeated prayers from time to time, the extracts of certain documents for preparing defence reply had not been given to him. However, he submitted his defence reply stating therein: the realignment of curve No.16 was highlighted for the first time by the then A.E.N./HPU, Shri Darshan Dayal in 1981 followed by similar observations and recommendations made by him (the applicant) and the sectional P.W.I on every inspection which is on record i.e. in the curve Register of the section. It is evident from the curve Register that neither A.E.N. nor any of the officer has ever inspected the curve since 1981 in spite of the fact that their attention was attracted to this fact. In September, 1988 complaints had been made of rough and uncomfortable riding over the said curve and earlier also similar complaints were made but none of the Engg. officers including A.E.N./D.E.N. neither took a serious note of it nor did they suggest any realignment or imposition of speed restriction over the said curve. Had they been serious to the rough and uncomfortable riding the tragedy would have been altogether averted. The realignment job of the curve is very cumbersome, costly and full of various intricacies and responsibilities, including daily traffic block. That is why none of the officers recommended for its realignment. Shri R.K. Srivastava, the then A.E.N./HPU recommended only local adjustment. In spite of the derailment of 412 Dn. Exp. attributed to misalignment, the curve is still bad rather worse than before and is under speed restriction of 70 KMPH and nobody has bothered for its realignment although a period of 152 days has gone by. The accident had not taken place on account of misalignment of the curve.

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11. The applicant admitted in his written statement that curve No.16 was defective and it required realignment. We may also note at this stage that, in the written statement, the applicant has not denied the charge that as PWI incharge Amroha it was his duty to maintain the curve in a proper shape. The applicant has also not stated in his written statement that he made any effort to remove the defects existing in curve No.16 and if so what efforts and in what manner. He, however, stated that the accident could be averted if the speed restrictions had been imposed. Again, he had not stated that he had no authority whatsoever in the matter of restriction of speed when the train passed through his territory. He did not point out as to which authority was competent to regulate the speed of the train in his territory.

12. Annexure 'A-22' to this OA is a copy of the written brief/Defence Note dated 10/12.6.1989 submitted by the applicant. The applicant in the very opening para of the reply states:

" I have been held responsible for "Misalignment of Curve No.16 and failed to rectify the same", which has no relevance with the cause of derailment of 412 Dn on 17.10.1988. As per the findings of the fact finding committee, this derailment took place owing to Rail fracture of the inner rail of curve No.16."

He has emphasised that it is difficult to pin point the misalignment as the cause of derailment. He states that it is an admitted fact, well within the knowledge of the entire administration, right from Moradabad to New Delhi, that curve No.16 requires realignment. He further states that besides men, material and daily traffic blocks, there are also obligatory points which

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require dismantling of passenger platform at GGB Station, huge earth work due to high bank etc. major girder Bridge Br. No.52 (Ganga River) of 200'x11 is also a factor to be kept in view as situated near TP of this curve. Keeping in view the failures on the part of the administration for the arrangements and solution, local adjustments were carried out under the instructions of the superiors of the applicant as well on his own accord. The readings of this curve from time to time and after doing local adjustments did not warrant any speed restriction nor any of the Inspecting Officers ever proposed or imposed any kind of speed restriction during his stay for 8 years. In spite of disaster and lapse of more than seven months, the administration has not been able to arrange realignment of the curve rather preferred the speed restriction of 70 KMPH as its solution.

13. It appears that immediately after the passing of the order by the disciplinary authority, the applicant came to this Tribunal by means of O.A. No. 144/89. That O.A. was disposed of on 3.8.1989. This Tribunal directed the appellate authority to dispose of the appeal of the applicant in the light of the judgment of the Supreme Court in **RAM CHANDER Vs. U.O.I. & ORS. (1986 (2)SLR (SC) 608)**. The Tribunal, however, gave liberty to the applicant to approach this Tribunal if he felt dissatisfied with the appellate order.

14. We may now read the appellate order. The appellate authority heard the applicant in person. The appellate authority noted in its order that the fact finding enquiry had indicated that derailment of 412 DN had taken place due to rail fracture of

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the inner rail of Curve No.16. It observed:

"While the direct cause of the accident was rail fracture, the track reading as recorded after the accident in portion unaffected by accident had shown that the curve was badly maintained and had a potential of causing accidents. In the appeal, Sri Khanna has contended that the derailment on a curve occurs only if the misalignment is associated with buckling. This is technically not correct as misaligned curve can lead to mounting of wheels and derailment even without buckling taking place. Shri Khanna has contended that particular curve was giving trouble often and that inspite of his repeated requests made to every AEN and DEN prior to the date of accident, no one took pains or realised the necessity to find out a permanent solution of this curve. As a PWI of the section, Shri Khanna was responsible in terms of Paras 118(1), 123(1) and 125(1) to maintain track under his charge to safe condition and was required to be vigilant to locate faults in the track and removed them.

As PWI Incharge he has enough resources to attend to all track defects on track under his charge including realignment of curve. Even when the resources were not immediately available, it was his duty to rectify the defects to the extent feasible and to impose suitable speed restriction so as to ensure total safety of traffic. He has failed to do so as is evident from the track readings, specially versine readings taken on curve No.16 after the accident on 17.10.88. In his appeal, Shri Khanna has contended that he was on leave from 14.5.88 to 26.9.88 during which another PWI was maintaining the track. Shri Khanna joined his duty on 26.9.88. Derailment took place on 17.10.88. The extent instructions require a PWI to inspect his entire section once a week by push trolley twice a month by foot plate of engine of a fast train and entire section atleast once a month by last vehicle of a fast train. During the period from 26.9.88 to 17.10.88, Shri Khanna had enough time to go over the section as per above Inspection Schedule and to locate weak spots and to either carry out necessary repairs or to impose suitable speed restriction pending carrying necessary repairs.

In the light of above discussions, I am convinced that Shri J.B.Khanna, PWI/ Amroha, was responsible for poor maintenance of curve No.16 referred to above and that he violated paras 118(1), 123(1) and 125(1) of the Indian Railways Permanent Way Manual and allowed unsafe conditions to exist on track under his charge.

Taking above facts into account the fact that he has put in 31 years of service, I feel that ends of justice will be met if he is given punishment of reduction to next lower grade i.e. Rs.1600-2600(RPS) at Rs.2200/- per month.

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His further promotion shall be governed by normal rules applicable to post in Gr.II (Rs.1600-2660(RPS))."

15. Let us now read this OA to see whether the applicant has been able to demonstrate that the appellate authority fell into an error in holding that, in his capacity as PWI of the section, he was responsible for the maintenance of Curve No.16. We have read and re-read the averments in the OA but we do not find even a whisper in them challenging the findings of the appellate authority, as extracted above. Even in the grounds in support of the OA, there is no challenge to the findings of fact recorded by the appellate authority. The only point emphasised in the grounds is that the accident had taken place on account of fracture of the rail.

16. The learned counsel for the applicant has not assailed the findings of the appellate authority during the course of his arguments. He made no reference at all to the relevant rules referred to in the appellate order much less citing them. The only argument advanced by him in support of this OA is that the non-supply of inspection notes of Shri Darshan Dayal, the then AEN/Hapur dated 20.1.81 and 28.1.81 and the note of Shri Ashok Kumar from the date of his resumption as AEN/Hapur to 16.10.1988 between GMS-GGB and the failure of the respondents to allow inspection of the said documents to the applicant resulted in the denial of a reasonable opportunity to him to defend himself thereby violating Article 311(2) of the Constitution. To buttress this contention, the learned counsel urged that the aforementioned documents by no stretch of imagination can be termed as "classified documents" and, therefore,

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non-supply of their copies to the applicant or disallowance of the inspection of the same by the applicant was on an extraneous consideration.

17. We have considered this submission with the care it deserves and we are satisfied that, having regard to the facts and circumstances of the case, and in view of the unrebutted findings of the appellate authority and also keeping in view the charge levelled against the applicant, he was in no manner prejudiced by either the copies of the aforesaid documents not being supplied to him or their inspection not being permitted to him. Assuming the said documents contained the recital that Curve No.16 was in a bad shape and required realignment, the case of the applicant would not be advanced at all. It is not the case of the department that Curve No.16 was in a perfect order. The charge, in substance, is that in spite of the said curve being in a bad shape, the applicant as incharge PWI of the area wherein it fell failed to discharge his duty of doing his utmost to keep the same in order. The applicant, as highlighted by the appellate authority, did not care to inspect the curve during the period from 26.9.88 to 17.10.88 even though he had the infrastructure for doing so at his disposal. We are satisfied that the charge as framed against the applicant has been brought home to him by the appellate authority.

18. We may note that the appellate authority has modified the severe punishment awarded to the applicant by the disciplinary authority. Therefore, it cannot be said that the punishment awarded to him is disproportionate to the guilt attributed to him. No ground for interference exists at all.

19. This application fails and is dismissed but without any order as to costs.

(B.K.SINGH)
MEMBER(A)

(S.K.DHAON)
ACTING CHAIRMAN