

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1303/88.

Date of decision 29.10.9

A.I. Ansari

.....Applicant.

Vs.

Union of India through the General Manager,
Northern Railway Head Quarters Office,
Baroda House, New Delhi.

.....Respondent.

For the Applicant - Mr. R.L. Sethi, Advocate.

For the Respondent - Mr. O.N. Moolri, Advocate.

B.S. SEKHON:

Disciplinary proceedings under Rule 9
of the Railway Servants (Discipline and Appeal)
Rules, 1968 (for short the 'Rules') were initiated
against the Applicant vide Memo. dated 3.6.1985
(Annexure A/6). During the material period, Applicant
was serving as P.W.I. Gd-III, Nagina. In terms of
the Rules, common proceedings were decided to be
initiated against the Applicant and Shri Ram Singh,
Acting Keyman vide order dated 4.7.85 (Annexure A/7).
The inquiry was held in respect of the following
articles of charges:-

i) Shri A.I. Ansari, PWI(III), Nagina is charged for serious misconduct in that while functioning as PWI, Nagina failed to ensure the condition of the permanent way and works under his charge inasmuch as he failed to see that length of line in his charge is efficiently maintained for the safe passage of trains resulting in that while Dn Empty Box Spl. through goods train passing at KM No. 1472/16 between Nagina and Puraini, its one E. Box Wagon No. ER 100500 - 5th from brake van derailed by all Saharanpur and trolley wheels and dragged upto 1470/5 due to buckling of

track (about 25 metres from KM 1472/16-17) on 20.4.85 at 14/30 hrs. He thus violated para 15.2 of General and Subsidiary Rules Book.

ii) Dn. empty Box Spl. through goods train load 43-106 worked by Dsl. locomotive No. 18014 WDM-4 passed Nagina at 14/25 hrs. and while while passing at KM 1472/16 - one empty Box wagon No. 100500 - 5th from brake van derailed by all wheels of SRE and trolley wheels and dragged upto KM 1470/5 on 20.4.85 at 14/30 hrs. After the accident when the site was inspected by P.W.I/Dhampur CTIR Najibabad and T.I./Moradabad, from the clues available it was concluded that the cause of derailment was buckling of track about 25 metres from KM 1472/16-17. Shri A.I. Ansari PWI/III Nagina has been considered responsible as the Permanent Way & Work of track in question was in his charge and he failed to efficiently maintain length of line in his charge for the safe passage of trains. He thus violated instructions contained under para 15.2 of General & Subsidiary Rule Book.

The Enquiry Officer found the charges against the Applicant to have been fully substantiated. The Sr. DEN acting as the Disciplinary Authority imposed the penalty of removal from service on the Applicant w.e.f. 23.12.86 vide orders dated 16.12.86 (Ann. A/3). Applicant preferred an appeal (Annexure A/8) against the orders of the Disciplinary Authority. The same was rejected by the D.R.M. While rejecting the appeal, D.R.M. made the following order (copy whereof has been enclosed to the communication dated 9.3.87 (Ann. A/2):-

"I have heard Shri Ansari Ex-APWI. He cannot be absolved of his responsibility. Still the responsibility rests with PWI/DPR who should have seen the deficiency of a large number of keys in the track. But he has

gone scot free. The lower levels can not be held more responsible.

Considering the details of the case, the punishment is reduced to reduction in the same time scale at Rs. 1600/- for three years with effect on future increments but without effect on seniority.*

Applicant's Review Petition was rejected on the ground of its being time barred. after stating that the delay can be condoned as/adequate grounds are given for the delay. ~~not no~~

The order of the C.E. was communicated vice communication No. 113T/2/18/85, dated 7.6.1988

(Annexure-1).

2. Applicant has assailed enquiry proceedings as also the orders Annexure A/1, A/2 and A/3. He has prayed that the impugned orders be set aside, and the penalty of reduction in the same time scale be quashed. Applicant has also asked for being restored back to his original position with retrospective effect and consequential benefits and he be allowed full pay and allowances for the illegal suspension.

3. The salient grounds on which the enquiry proceedings have been challenged are that the PWI Incharge who was responsible for buckling in terms of Para 13.1.6 (V) of the Manual of Instructions of Long Welded Rails, 1979 had been left out of the common departmental proceedings, Applicant has been discriminated against, the Enquiry Officer resorted to ex-parte proceedings after denial of reasonable opportunity of defence

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the Enquiry Officer refused the assistance of defence helper approved by the disciplinary authority and asked the Applicant to submit a list of three defence helpers in contravention of the rules. Only three witnesses were specified in the charge sheet, the Enquiry Officer, however, recorded evidence of S/Shri Avtar Singh, CPWI, P.K. Sinha, Guard, H.P. Sharma, CPWI Hdqrs. and Lal Bahadur, Diesel Driver in violation of the rules and established procedure. The order made by the disciplinary authority Annexure A/3 has been assailed, inter alia, on the grounds that the same is not a speaking order, has been passed mechanically and without application of mind and it was passed without allowing an opportunity of personal hearing. The disciplinary authority did not ensure compliance with the provisions of Accident Manual which essentially requires the institution of facts finding enquiry. The penalty imposed is not warranted by the evidence on record. The Enquiry Officer as also the Disciplinary Authority failed to take cognizance of LWR Register and also ignored that none of the witnesses or documents adduced noticed the wheel mounting marks on the rails the absence whereof establishes that the derailment was due to wagon defects. The punishment for the alleged misconduct under the Railway Board order dated 16.7.82 is withholding increments for 3 years, whereas, the Disciplinary Authority has imposed penalty of removal from service. Annexure A/2 has been assailed on the grounds that Appellate Authority has passed a non speaking order ignoring

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that:-

- i) Penalty order was bad in law as it far exceeded the quantum of punishment prescribed for the alleged misconduct;
- ii) Penalty order was arbitrary and discriminatory. Taking of preventive measures against the buckling of track is the specific responsibility of PWI Incharge who has been allowed to go scot free, whereas, the Applicant has been made the scape goat and has been discriminated arbitrarily.
- iii) He had been condemned unheard, without affording a reasonable opportunity of hearing and the order is based on non existing record.

Annexure A/3 has been challenged on the ground that the original authority should have gone into the merits rather than rejecting the Review Petition on non existing technical ground.

4. Respondents' defence as set out in the counter is that D.A.R. action was initiated on confirmation by the competent Disciplinary Authority, it was the duty of the Applicant and the Keyman to see that the length of the track in his charge was properly and efficiently maintained, Applicant is one of the persons responsible, Enquiry Officer is competent to examine any witness not specified in the orders passed by list of witnesses, the Disciplinary Authority as also by the Appellate Authority are stated to be speaking orders. The Appellate Authority gave a personal hearing to the Applicant on 18.2.1987. The Enquiry Officer as also the Disciplinary Authority had taken into consideration all the relevant facts prior to imposing penalty including the admission of offence by the Applicant. Saying that the Tribunal will not sit in appeal over the enquiry proceedings and re-assess the evidence, Respondents have added that

the Tribunal is not a Court of appeal and is not competent to go into the facts and details of the enquiry proceedings so long as the proper procedure has been followed and proper opportunity has been given to the Applicant. Respondents have also refuted the allegations about the alleged illegality in the DAR procedure and the other grounds pleaded by the Applicant. The Review Petition has been rightly rejected under the rules.

5. We have considered the arguments addressed by the learned counsel for the parties, the pleadings and the documents on record.

6. The learned counsel for the Applicant contended in the first instance that the order dated 4.7.85 (Annexure A/7) whereby the Disciplinary Authority had decided that common proceedings be taken against the Applicant and Shri Ram Singh, Gangman acting Keyman is arbitrary. As envisaged by rule 13, the President or any other competent authority is competent to make an order directing disciplinary action against two or more railway servants concerned in any case, to be taken in common proceedings. The learned counsel for the Applicant was not able to pin-point any breach of provisions of rule 13. We are also unable to find any arbitrariness in Annexure A/7. The aforesaid contention is, therefore, held to be bereft of merit. Equally devoid of merit is the submission of the learned counsel for the Applicant about impugned orders Annexures A/2 and A/3 being non speaking. A plain perusal of Annexure A/3 makes it plain that the same cannot be said/unreasoned.

During the course of arguments, the learned counsel for the Applicant submitted that Applicant was asked by the Enquiry Officer to submit a list of three helpers notwithstanding the fact that the Disciplinary Authority had approved the defence helpers proposed by the Applicant and the Enquiry Officer refused him assistance and that the Enquiry Officer also examined S/Shri Avtar Singh, CPWI, P.K. Sinha, Guard, H.P. Sharma, CPWI Hdqrs. and Lal Bahadur, Diesel Driver in contravention of the rules and established procedure. A perusal of the Enquiry Report enclosed to Annexure A/3 goes to show that the Applicant did not submit defence statement despite opportunities granted in this behalf. Vide para 6.7 of the Application, Applicant has averred that the Enquiry Officer resorted to ex-parte proceedings after denial of reasonable opportunity of defence. It is further averred in the said para that the Disciplinary Authority/approved the defence helper proposed by the Applicant but Enquiry Officer refused his assistance and asked Applicant to submit a list of three defence helpers out of which a common defence helper could be appointed and that this was against the rules, which the Enquiry Officer was apprised of but no action was taken. In the corresponding para of the counter, Respondents have merely stated that Para 6.7 is patently and factually wrong and incorrect and is denied as is quite apparent from the documents filed by the petitioner himself. The factum of approval of the defence helper whom the Applicant wanted to assist him, by the

Disciplinary Authority has not been specifically denied by the Respondents. It is difficult to appreciate as to how the Enquiry Officer could insist that the Applicant should submit three defence helpers with proper ^{icated} certif/ when the defence helper Shri R.C. Gupta had already been approved by the Disciplinary Authority. Besides the question of nominating the defence helper is to be decided by the Disciplinary Authority. As the correspondence on this aspect and other matters was going on, the Enquiry Officer decided to proceed ex-parte. The decision to initiate ex-parte proceedings against the Applicant in the facts and circumstances of this case would seem to be unjustified. The Enquiry Officer has examined S/Shri Avtar Singh, CPWI, P.K. Sinha, Guard, H.P. Sharma, CPWI Hdqrs. and Lal Bahadur, Diesel Driver whose names were not specified in the list of witnesses. This has been done even without giving a notice to the Applicant. The aforesaid action of the Enquiry Officer is also, thus, not sustainable.

7. In view of the foregoing, we find that the enquiry conducted in this case cannot be sustained. The Enquiry Report is, therefore, hereby set aside. With the setting aside of the Enquiry Report the orders made by the Disciplinary Authority, Appellate Authority and the Reviewing Authority (Annexures A/1, A/2 and A/3) have also to go. Accordingly, Annexures A/1, A/2 and A/3 are also hereby set aside. In view of the order, we propose to make, we are not advisedly expressing any opinion on the merits or demerits of the other contentions put forward by the rival parties. The

case is remitted to the Disciplinary Authority with the direction that a fresh enquiry in accordance with law be held. After the enquiry is completed, the Disciplinary Authority shall make a fresh order in accordance with law. These directions shall be ^{with} complied/within a period of six months from the date of receipt of copy of this judgment. Regarding the claim of the Applicant for pay and allowances during the period of suspension, Applicant is directed to approach the competent authority who shall decide the matter in accordance with law.

8. Application stands disposed of with the above directions/observations but in the circumstances, we make no order as to costs.

29/10/91
(P.C. JAIN)
MEMBER(A)

MS

B. S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

29-10-91