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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A.NO.1354/90

New Delhi, this the 2nd November, 1994

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

Hon'ble Shri B.K. Singh, Member(A)

Shri Alladin,
s/o Shri Sumar Khan,
Retired Driver
c/o Shri Gulam Farid,
123-J, DCM,
Rail Colony,
Meter Gauge, Railway Shed,
Delhi.

... Applicant

Vs.

1. Union of India
through the
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Bikaner.

... Respondents

O R D E R

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

The applicant is a retired driver. Departmental disciplinary proceedings were drawn against the applicant in connection with bursting of UP side point No. K6 at PVZ while working 92DN ex. CUR to DE on 29/30.7.84 with diesel Loco No. 6416 YDM 4 on the basis of SF 5 dated 5.10.84. Shri V.K. Saxena was appointed as Inquiry Officer to inquire the charges levelled against the applicant. The Inquiry Officer held that the charges stand proved and gave his finding in the Enquiry Report dated 22.5.85. By the order dated 4.6.85,

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the disciplinary authority agreeing with the finding of the Inquiry Officer imposed the punishment reducing the applicant to a lower post of Driver 'B' in the scale of (Goods) Rs.425-640 at Rs.640/- p.m. and after one year from the date of the order, to be restored to the higher post of Driver 'A' in the scale of Rs.550-750 without postponing future increments. The applicant preferred an appeal and the appellate authority COPS reduced the penalty of reversion to Group 'B' Driver, to stop his increment for one year without having recurring effect.) A

2. The applicant in this application filed on 6.7.90 after his retirement w.e.f. 31.8.86 praying for the grant of the reliefs:-

"In view of the facts humbly submitted and averments made, the applicant prays that their Lordships be kindly pleased to:-

- i) Set aside and quash the Imposition of Penalty Orders dated 4.6.85 (A-2) and also the orders of with-holding the increment for one year without cumulative effect (A-1) passed by the (New Appellate Authority SUD-MOTO, without considering the appeal of the applicant submitted to the original appellate authority on 26.12.85, with all consequential benefits of promotion, pay fixation and redetermination and recal-culation of pension gratuity etc. and pay-ment of arrears resultant thereto.
- ii) in the alternative, direct/recommend/order respondents to consider the applicant for promotion to the selection grade Rs.700-900, Driver 'A' Special from the date his juniors were promoted with all consequential benefits prayed under para (i) above.

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iii) grant any other benefit deemed fit and proper by this Hon'ble Tribunal, in the facts and circumstances of the case in addition to the cost of the case in the interest of justice.

3. A notice was issued to the respondents who contested this application and stated in reply that the applicant was given adequate opportunity in the departmental enquiry to defend his case. The applicant and his defence helper adopted delay tactics by submitting private medical certificate and not participating in the enquiry. The applicant also refused to sign the statement recorded in his presence on the ground that his defence helper has not attended the enquiry. Inspite of warning letter dated 11.5.85, neither the applicant nor his defence helper attended the enquiry on 15.5.85 and as such there was no other option to proceed the enquiry ex parte. Only on the last sitting of the enquiry, the proceedings were held ex parte.

4. The applicant has also filed rejoinder dated 2.9.1994 and re-asserted the averments made in the original application stating that all the documents required by the delinquent were not supplied to him. Regarding the absence during the proceedings of the enquiry it is reiterated that the delinquent was under treatment in the Civil Hospital and has submitted the medical certificates. It is, therefore, urged that the Enquiry Officer has wrongly concluded enquiry on ex parte basis. It is, therefore, alleged

that the applicant has not been afforded reasonable opportunity to defend himself. The applicant, therefore, in the rejoinder also pressed that the order passed by the authorities imposing penalty is illegal and be quashed.

5. We heard the counsel for the parties at length; perused the record as well as the departmental file. From the record, it appears that the applicant has been wasting away the time and did not fully cooperate in the departmental disciplinary proceedings. The chargesheet was served on the applicant on 5th October, 1984. Shri Nasruddin was also appointed the defence Helper to the applicant and they were allowed inspection of documents on 28.11.1984 and 14.2.1985. When the date was fixed for holding enquiry on 21.2.1985 the applicant reported sick. He has submitted the medical certificate regarding his illness upto 9.3.1985 so 18th March, 1985 was fixed in the enquiry. The defence helper did not attend on that date. The date was again adjourned to 25.3.1985 when the defence helper was reported to be out. In April, 1985 applicant himself applied for voluntary retirement from service but his request could not be considered because of pending enquiry. The applicant took certain extracts from the documents which he desired for inspection on 4.4.1985. The enquiry commenced thereafter on 17.4.1985 and the statement of some of the witnesses were recorded. On adjournment date i.e. 25.4.1985 the defence helper of the applicant did not attend. The statement of the other witness was recorded

on 2nd & 3rd May, 1985 and the delinquent is also desired to examine Chhotey Lal Guard of 93. On the next date 7.5.85 the defence helper failed to attend the enquiry and the statement of the defence witness was recorded in the absence of the defence helper but the applicant refused to sign the statement of the Guard in token of the presence at the time of recording of the statement. On the next date i.e. 9.5.85 the delinquent submitted P.M.C. from Dr. Sabir of PBM Hospital, Bikaner stating that he was indoor patient and was likely to remain under treatment upto 13.5.85. The next date was, therefore, fixed on 15.5.85 but again he submitted PMC of Dr. Sabir on 14.5.85 recommending his leave from 14.5.85 to 31.5.85 Since the applicant failed to appear thereafter so the Inquiry Officer has completed the enquiry proceedings ex parte and the delinquent failed to appear on 15.5.85 inspite of warning note. In the above context, we have to see various grounds taken by the applicant to quash the punishment of penalty imposed upon him finally by the Appellate order dated 25.5.1990 whereby the punishment earlier imposed by the disciplinary authority of reducing the applicant to the grade of Driver-B Goods in the scale of Rs. 425-640/- at Rs. 640/- for one year to stoppage of increment for one year without having recurring effect.

6. The contention of the learned counsel for the applicant is that the applicant was not supplied the copy of the main document relied by the Administration in proving the charges i.e. special report by DSO/BKN dated 11.9.84. However, the applicant himself

has given in writing on 28.11.84 that he inspected the certain documents which includes the copy of the special report. In this letter he has also requested that certain more documents be directed to be supplied to him which he has referred to in his letter dated 27.11.84. These includes the statement of Shri Radha Kishan, Guard and that of both Pointman on duty, the special report of senior subordinates available at site, TSR of LHU, PVZ and RMB Station, Guard journal of Train No. 92 Dn. and 93 Up Mail dated 29,30.7.84 and the list of damages as a result of this accident. There is nothing on record to show of the Inquiry Officer's file that these documents/made available to the applicant in order to meet his defence. However, the relevancy of these documents has not been referred to in the Original Application nor it was canvassed during the course of the argument by the learned counsel. These documents were not relied by the Administration and the applicant was free to summon these documents in his defence to establish that the charges levelled against him are not substantiated. However, that stage has not arisen because the applicant has submitted medical certificate showing his inability to participate in the proceedings on 15.5.85. It appears that the Inquiry Officer has also addressed a letter to Area Superintendent, Rewari on 17.4.85 for where Station Master PVZ to show these documents to Shri Omi Singh, ASM, IHP but inspite of that fact there is nothing on record to show that these documents were made available to the applicant. It is a fact that

the applicant was not cooperating in the enquiry and he has been submitting medical certificates. The applicant requested the Inquiry Officer by submitting an application on 9.5.85 enclosing sick certificate where he was advised rest till 13.5.85. The Inquiry Officer therefore fixed the date on 15.5.85 at Bikaner. The Inquiry Officer by his letter dated 10.5.85 has also written to DMO, Bikaner to examine Driver Alladin at P.B.M. Hospital intimating whether he is fit to attend D&AR enquiry at Bikaner on 15.5.85. The applicant on 13.5.85 has again requested the Inquiry Officer by writing application that he is still not feeling well and in support of the same, he has submitted sick certificate of the Medical Officer of Chikisha & Swaasthya Vibhag where in he was recommended by Dr. M. Sabir for rest till 31.5.85. When the applicant has applied for leave on medical grounds, the Inquiry Officer has not given finding that the applicant has feigned illness to avoid appearance before him. The action of the Inquiry Officer to proceed with the enquiry ex parte is not justified. The Defence helper also on 15.5.85 informed the Inquiry Officer regarding the illness of the applicant stating that the cross examination of the prosecution witnesses can be done only in presence of the applicant. However, the Inquiry Officer has taken the statement of the witness Shri Mai Chand, Diesel Assistant and not only this he has himself cross examined the witness. Thus, the Inquiry Officer has not followed the procedure laid

down under the relevant rules. In the report the Inquiry Officer only observed that the applicant was observing delaying tactics and so the statement of Diesel Assistant Shri Mal Chand was recorded and the enquiry was completed without the statement of Driver Shri Alladin on 15.5.85. Thus, in fact the applicant has not been allowed adequate opportunity to produce his defence to rebut the charges framed against him. The special report of the D.S.O. dated 11th September, 1994 is an ex parte report and the applicant at no stage was given opportunity to meet that report. That special report has been relied by the Inquiry Officer. The delinquent has his own case as he has said that though the warner was in on position but the home and outer signal was lowered on the reception line for the Train 92 Dn. As soon as he passed facing points, he saw one man with hand signal lamp coming towards him. This man was between token net and ganghuts. When he saw that no one is giving token, he immediately dropped the incoming token of RMB and tried to apply brake and inspite of all his efforts the train trailed through Up facing point No.K-6 and stopped after passing 5 bogies and the 6th was on the point. Thus, the applicant had to produce certain defence and he has been deprived of the same. The report of the Inquiry Officer therefore in said a circumstance should have been scrutinised by the disciplinary authority as well as by the appellate authority.

7. It also appears from the record that the appeal of the applicant dated 26.12.85 which he has preferred was not put up before the appellate authority. The applicant was directed that the appeal be addressed to COPS, New Delhi. In view of this the applicant has further made representation on 2.11.88 but that too was not disposed of as also the appeal. Revised Disciplinary Appeal Rules issued by the Railway Board under letter dated 13.6.85 were prospective and the punishment imposed on the applicant by the disciplinary authority is dated 4.6.85 and as such the Revised Disciplinary Appeal Rules were not applicable in the case of the applicant. After this controversy was going on the appeal was disposed of by COPS and it is observed in the order dated 18.5.90 as follows:-

" I have considered the appeal and the DAR case. This case has been very badly dealt with on Bikaner Division and suffers from serious procedural lacunae. I find from the case that the appeal has remained undisposed of on the Division for almost three years and even when the Driver put up a review petition on 2.11.88, the case has been forwarded by the Division to Headquarter only on 11.9.89 i.e. after lapse of almost 10 months. This feature may be brought to the notice of DRM/BKN.

Notwithstanding the lacunae in the disciplinary and appeal case, on going through the file as well as the enquiry report alongwith the facts of the case, it is clear that the accident could have taken place if the Driver had been vigilant and had taken care to apply the

brakes in time. The very fact that he was unable to stop the train and therefore burst the trailing points which were set against his train, does indicate negligence as well as late reaction to the signals, leading to late application of brakes. The plea taken by the Appellant that the brake power was weak "On run" is also not acceptable since he had enough opportunity for testing the brake power of the train and he should have been fully aware of the same.

Under the circumstances, he cannot be totally absolved of his responsibility for the accident. Since the Driver had already retired from service about four years ago, re-opening the DAR case perhaps would not serve any effective purpose. Keeping this feature in view and purely on compassionate grounds, dealing with the case suo-moto I have decided to reduce the punishment to stoppage of increment for one year without having recurring effect."

8. The Appellate Authority has not considered the fact that the Inquiry Officer has proceeded ex parte at a time when the applicant was reported sick by a State Hospital and further that the defence of the applicant was not taken into account. Though the appellate authority in the first para of the above noted order observed that the case has been very badly dealt with on Bikaner Division, and suffers from serious procedural lacunae. In view of the above facts and circumstances the report of the Inquiry Officer affirmed by the disciplinary authority and the appellate authority regarding proving of the charges cannot be sustained.

The report of the Inquiry Officer has therefore to be struck down and the applicant has to be allowed to cross examination the witness examined *ex parte* Shri Mal Chand and also to produce his defence. The applicant has since retired on 31.8.86 and more than 7 years have passed no useful purpose can be served in remanding the case back to the disciplinary authority for continuing enquiry proceedings from the stage of cross examination of the witness Shri Mal Chand and for giving an opportunity to the applicant to produce his defence. Thus, the punishment imposed on the applicant has to be set aside.

9. The learned counsel for the applicant has also prayed that the applicant be promoted to the higher grade as he was already on the panel. But since we are not remanding the case to the disciplinary authority for continuing the enquiry so in any case the applicant cannot be said to have been exonerated of the charges framed against him. It is because of his retirement on 31.8.86 and the delay caused in disposal of the appeal that the applicant preferred in time are to be considered and the enquiry shall deem to be pending on the date when the applicant retired. But in the interest of justice we are not ordering the continuance of the departmental proceedings against the applicant so the applicant cannot claim any promotion to the higher post.

10. The application is therefore partly allowed and the punishment imposed upon the applicant by the disciplinary authority by the order dated 4.6.85 and modified by the Appellate Authority by the order dated 18.5.90 are set aside. With-held increments shall also be given to him in the ^{'A'} grade/pay of Driver on which he was working and he shall be given the benefit of the arrears of pay and in ^{any} that event this revised pension/benefit including DCRG etc. shall be re-fixed and paid to him within 3 months from the date of receipt of the copy of the order. The rest of the reliefs prayed are disallowed. In the circumstances the parties are left to bear their own cost.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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