

CAT/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1369 of 1990
T.A. No.

199

DATE OF DECISION 2/9/1993

Hari Singh **Petitioner**
Shri B.S. Mainee **Advocate for the Petitioner(s)**
Versus
Union of India & Others **Respondent**
Shri N.K. Aggarwal **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr. J.P. Sharma, Member (Judl.)

The Hon'ble Mr. B.K. Singh, Member (Admn.)

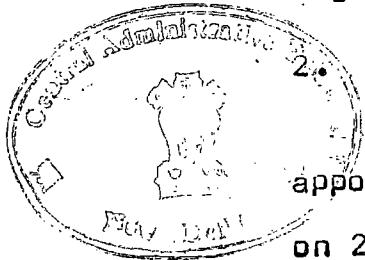
1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Mr. B.K. Singh, Member (Admn.))

been

This O.A. No. 1369 of 1990 has filed u/s. 25 by
Shri Hari Singh against order No. 446-T/2/20/87/TA dated
19-9-1989 passed by the Senior Divisional Mechanical
Engineer, Northern Railway, Moradabad.



2. Brief facts of the case : The applicant
Shri Hari Singh, was
appointed as a cleaner on the rolls of Northern Railway
on 24-6-1952. The applicant was promoted as a Driver
Grade 'A' Scale Rs.550-750/Rs.1600-266 (revised) with
effect from 15-7-1986. While driving the passenger
train on 24th August, 1987 he over shot routing home
signal No. 15/ West Central Cabin. It was just a
coincidence that no damage was caused to the passengers
travelling by the train. There was failure on the part of

the applicant to observe the correct aspect of signal even after the train stopped short of routing signal at Moradabad. Another Express Train 148 Dn. was also on way to Moradabad on the same date. The technical inquiry found him responsible for not observing the 'on' aspect of the routing home signal and passing the same in danger being position and being negligent while working on the said train. This resulted in violation of GR-3-80 and 3-78 Rules made for the safety and security of the passengers travelling by train.

3. For these serious lapses the applicant was served with a charge sheet marked as Annexure A-2. The applicant sent his show-cause on 7-3-1988 in which he denied the allegations. This is annexed A-3. The Divisional Mechanical Engineer who, vide his letter dated 30-3-88 had issued a chargesheet for minor penalty, cancelled the same and issued a charge sheet having imputation for a major penalty. This is Annexure A-4. This is dated 30-3-88 and is a virtual reproduction of the main penalty chargesheet. This is annexed A-5. To the fresh major penalty charge-sheet the applicant submitted his show cause on 14-5-1988. This is annexure A-6. The petitioner denied the charges, stating that he was not guilty of overshooting the routing home signal. The Senior Divisional Mechanical Engineer, Northern Railway, Moradabad, on receipt of the applicant's reply imposed the penalty of withholding of increments for a period of one year without cumulative effect. A copy of this order is marked as Annexure A-7. Against this order the applicant preferred an appeal to D.R.M. on 23-8-1988 to set aside the punishment order awarded by Senior Divisional Mechanical Engineer on 23-6-88. A copy of this appeal is marked as Annexure A-8.

4. In response to his appeal, the applicant was informed by Senior Divisional Mechanical Engineer on 13-2-88 that the DRM had ordered fresh inquiry into the matter. This is marked as Annexure -9. The applicant submitted a representation against the said order. This is marked as Annexure-A-10. The applicant protested against order of DRM for a fresh inquiry since he had already undergone punishment inflicted on him withholding one increment without cumularive effect.

4.1 DRM nominated an inquiry officer. The applicant wanted a copy of previous inquiry report with all other relevant documents to defend himself.

5. The Inquiry Officer did not get the co-operation of the applicant and an ex parte report was submitted to Sr.D.M.E. holding the charges proved and recommending appropriate penalty. The Senior Divisional Mechanical Engineer imposed upon the applicant the penalty of compulsory retirement vide his order dated 14-9-1989. This is marked as Annexure AA-1 which is the impugned order against which this Original Application has been filed. The applicant protested against this penalty imposed on him without supplying a copy of inquiry report and show cause notice before imposing on him this major penalty. This is marked as Annexure A-11. As a result of the applicant's protest a copy of the inquiry report was supplied to him, this is marked as Annexure A-12. On receipt of the order of compulsory retirement, the applicant submitted an appeal to D.R.M. on 8-1-1990, marked as Annexure A-12. The reliefs sought are quashing of the disciplinary proceedings and the order of compulsory retirement treating him in service till the date of

his actual superannuation and to direct the respondents to give him due promotion as Driver Grade 'A' from the date his junior was promoted and also quash the order of withholding of one increment e.e.f. 1-6-1988 without cumulative effect, also allowing him reimbursement of costs involved in fighting this legal battle.

6. We had heard the learned counsels at length and carefully perused the record of this case. No formal inquiry seems to have been made while inflicting the penalty of withholding one increment without cumulative effect. What was the evidence on the basis of which Senior Divisional Mechanical Engineer, based his findings is not on record. The one clear charge levelled against the applicant in the Counter relates to negligence and carelessness thus violating safety standards as prescribed in the Rules CR-3-80 and 3-78. Even to prove this, there should have been examination of some eye-witnesses including some of the passengers travelling in the passenger train to Moradabad on 24th August, 1987. Since no loss to life and property occurred it was not felt necessary to order an inquiry by safety Commissioner or his subordinates. An accident is an accident and may occur due to fatigue, poor visibility, colour blindness total or partial, error of judgement due to intoxication etc. There should have been some sort of technical inquiry into the causes of this minor accident. No mens-reas or motive is involved in accidents. If there was over shooting of routing home signal what ^{led} to this has not been indicated. Was it due to internal factors such as fatigue, poor eye-sight or colour-blindness or intoxication and error of judgement or was it due to external factors such as poor visibility, fog or some other technical reasons.

7. If the appointing and competent authority on the basis of his findings imposed the penalty of withholding one increment without cumulative effect why was this decision already communicated charged by the appellate authority is not clear. He should have recorded cogent reasons if he differed with the findings of the disciplinary authority. Nothing is available on record to explain the ordering of a *de novo* inquiry for major penalty. There should have been a very comprehensive and self-contained reasons for not sustaining the findings and decision of the disciplinary authority. On the same charges there is no provision for holding two sets of inquiries unless it is shown that the disciplinary authority was lenient or the penalty imposed was not commensurate with the culpability of the delinquent employee or that there was an element of favouritism due to subjective consideration. A fresh inquiry in the absence of the aforesaid findings by the appellate authority is not in keeping with the prescribed procedures. A guilty person cannot be punished twice on the same articles of charges as has been done in the case of the applicant. It amounts to double punishment which is bad in law.

8. When disciplinary proceedings are started for major penalty a formal inquiry is a must. A formal inquiry should first notify the inquiry/conducting Officer and presenting Officer. The list of charges on which the inquiry officer is going to rely upon must be formally served on the delinquent employee. List of witnesses on whose evidence the inquiry/conducting Officer is going to rely upon should also be notified and a copy of this be given to the employee concerned. A copy of the list of documents which are going to be used during the course of inquiry should also be given to the employee against whom the inquiry is going to be conducted.

The procedure which the Conducting Officer is going to follow should also be notified. The inquiry must follow the principles of natural justice and afford all reasonable opportunity to the charged employee to defend himself. He should be afforded full opportunity to cross-examine witness either himself or engage any other person to do this including an advocate. The evidence adduced has to be recorded and furnished to the charged employee to verify its veracity. On the conclusion of the inquiry the conducting officer must certify that the employee had been given all opportunity to defend himself as per classification, control and discipline rules. After this the Inquiry Officer must do a proper appraisal of the evidence analysing the facts and circumstances and then record his findings, regarding charges proved, partially proved or not proved. The entire record of proceedings must be submitted to the disciplinary authority with the findings of the Inquiry/Conducting Officer. The disciplinary authority must apply his mind, weigh the evidence for and against and come to a definite conclusion regarding award of punishment. The quantum of punishment must be commensurate with culpability. It should neither be too harsh or excessive nor too lenient.

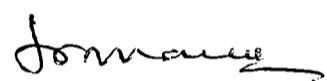
9. Where the charge-sheeted employee is not co-operating, the inquiry officer must categorically record this and proceed with the inquiry ex parte but in this case since there is no opportunity availed of by the employee to cross-examine the evidence adduced by the witnesses must be recorded. An objective assessment on the basis of documents, facts and circumstances must be made, findings recorded about various charges and the report submitted to the disciplinary authority.

10. The principles of natural justice are meant to prevent miscarriage of justice and these are applicable to all inquiries and administrative proceedings (A.K. Kraipak Vs. Union of India (1969 2 SCC 262-(1970) 15 SCR 457 - (AIR 1970 S.C. 150). The 1965 CCS (CCA) Rules are applicable when disciplinary proceedings are taken. The rules framed by the Railway authorities are in consonance with these rules. The obligation to follow the procedure for punishment laid down in the rules flows from the provisions of Article 311 of the Constitution. These rules merely lay down procedure for matter covered by Article 311 of the Constitution. The present applicant is entitled to the protection of Article 311 and disciplinary proceedings should have been conducted against him as a holder of the post of Driver Grade II. Since disciplinary proceedings for major penalty are initiated against the applicant as a holder of the post, the 1965 rules coupled with Railway Control and discipline rules will apply and will govern the procedure for punishments to be imposed. The C.C.S.(C.C.A.)Rules 1965 deal principally with procedure for disciplinary proceedings and penalties and appeals and reviews against orders passed under these rules. These rules merely lay down procedure for matter covered by Article 311 of the Constitution.

11. Since the procedures have not been followed in the case of this applicant, Shri Hari Singh, the learned counsel has assailed non-compliance of 1965 rules coupled with Railway ^{read with Indian Railway Est. code} 'Control & discipline' rules/and as such the protection of Article 311(2) is available to this applicant. Therefore, this application must succeed. Consequently we allow the application and set aside the order of compulsory retirement. The disciplinary proceedings being totally flawed are also quashed. Since the applicant has already retired from service there is no question of reinstating him or considering

his promotion to grade-I Driver. The respondents will be at liberty to initiate fresh disciplinary proceedings and conclude it within a period of six months from the date of communication of this order following strictly the rules and principles of natural justice giving all reasonable opportunity to the applicant to defend himself. The punishment should not be excessive or too harsh. It should be commensurate with the culpability of the applicant. If the respondents do not take a final decision within six months the applicant would be entitled to full backwages including his pay and allowances from the date of compulsory retirement to the date of actual superannuation. With these observations O.A. No.1369 of 1990 is disposed of. There will be no order as to costs.


(B. K. SINGH)
Member (Admn.)


(J. P. SHARMA) 2/91/93
Member (Jud)

Dated: 2nd Oct/1993, New Delhi.


(tgk)