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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. No. 56/1990

New Delhi this 21st Day of March 1995

Hon'ble Mr. Justice S.C. Mathur, Chairman  
Hon'ble Mr. P.T. Thiruvengadam, Member (A)

Shri Nafe Singh,  
S/o Shri Mangli,  
Cabinman,  
C/o G.F.O. (Diesel),  
Northern Railway,  
New Delhi.

... Applicant

(By Advocate: Shri B.S. Mainee)

Vs.

Union of India through

The Divisional Railway Manager,  
Northern Railway,  
State Entry Road,  
New Delhi.

... Respondent

(By Advocate : Shri O.P. Kshatriya)

ORDER (Oral)

Hon'ble Mr. Justice S.C. Mathur

Shri Nafe Singh who was a Cabinman in the railway administration has directed this Original Application against the punishment of reduction in rank to the post of Pointsman.

2. The allegation against the applicant was that he was negligent in the discharge of his duties which resulted in accident of 24 DN at Point No. 32 in ROK region. The charge as contained in the chargesheet reads as follows:

"The said Shri Nafe Singh, Cabinman, is responsible for not being vigilant and cautious to watch the safe movement of train No. 24 Down over Point No. 32 which was being manned by him inasmuch as failing to stop the movement of the train immediately after finding the padlock getting open and falling on the ground, resulting in derailment of 24 Down at ROK on 24.4.1989 at 1133 hrs due to Point No. 32 changing its position from loopline to main line. Thus he violated para 3(1)(ii) of the Railway Services Conduct Rules, 1966."

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3. The applicant denied the charge and stated that he was not negligent in the discharge of his duties. His case was that the padlock gave way on account of heavy vibrations caused by the movement of train for which he was not responsible. He further pleaded that as soon as he noticed the falling of padlock and its falling on the ground he gave instructions to the pointsman to show the 'red signal' to the driver of the train with a view to stop the movement of the train and he himself also tried to stop the train. On this basis, he asserted, no negligence in the discharge of duties could be attributed to him.

4. The enquiry officer did not accept the applicant's plea of innocence and found him guilty of negligence in the discharge of his duties. The disciplinary authority on the basis of the finding recorded by the enquiry officer imposed the punishment of reduction in rank for five years. This period of five years has been reduced by the appellate authority to two years. The applicant was not satisfied with partial success at the appellate stage and accordingly preferred the instant Original Application in this Tribunal.

5. The Original Application earlier came up for hearing before a Division Bench of the Tribunal which quashed the order of punishment on the ground that a copy of the report of the enquiry officer had not been supplied to the applicant before the order of punishment was passed. The Division Bench relied upon the Judgement of their Lordships of the Supreme Court in Union of India VS. Ramzan Khan Khan 1991 (1) SCC 588. Aggrieved by the judgement of the Tribunal, the railway administration preferred appeal before their Lordships of the Supreme

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Court. Their Lordships set aside the judgement of the Tribunal pointing out that Ramzan Khan's case had prospective operation and the Tribunal was in error in finding flaw in the impugned order of punishment which was made prior to the pronouncement of judgement in that case. This is how the matter has once again came up before this Division Bench.

6. Although in the Memo of Application, a number of grounds have been raised to challenge the order of punishment, The learned counsel for the applicant has, during the course of arguments, confined the challenge to three grounds - (1) the finding of guilt recorded by the enquiry officer and which is the basis of punishment is beyond the charge levelled in the chargesheet (2) the appellate order is non-speaking and (3) the enquiry officer could not be said to be an independent person inasmuch as he was lower in rank to the officers who conducted the accidental enquiry and found the applicant guilty of negligence.

Ground I

The disciplinary authority has in its order of punishment observed as follows:

"Shri Nafe Singh, Cabinman, was not alert at the time of watching the movement of 24 DN at Point No.032. He did not verify the work-ability of padlock and when applied in the point after setting for the reception of 24 DN. The padlock opened due to vibration of the train. He also did not take any precaution in stopping the train after knowing fully the padlock was opened. Had he taken immediate action atleast the derailment could not have taken place." The charge levelled against the

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applicant has been reproduced hereinabove. It does not contain any allegation to the effect that the applicant did not verify the workability of the padlock. In the appellate order it has been mentioned -

"Since he failed to check the padlock which was found subsequently defective, he is primarily responsible in this case. However, in view of the Sr. Divisional Safety Officer's recommendations the reversion period is reduced from five years to two years."

From the appellate order, it appears that the failure to check the workability of the padlock was the primary factor which operated in maintaining the finding of guilt against the applicant. It also appears from the appellate order that the appellate authority reduced the period of punishment merely on the recommendation of the Sr. Divisional Safety Officer. It thus appears that the appellate authority did not apply his independent discretion. The appellate authority was exercising quasi-judicial function. While exercising such a function it was obligatory on the part of the appellate authority to exercise its own discretion and not to act merely on the recommendations of others.

7. From the applicant's reply to the chargesheet it appears that the applicant's case was that he had issued directions to the Pointsman to give the Red Signal. No observation has been made in respect of this defence either by the disciplinary authority or by the appellate authority. In the circumstances the finding of guilt recorded by the disciplinary authority and maintained by the appellate authority cannot be sustained. It has been held by a Division

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of the Tribunal in Ram Pal Vs. Union of India and ors. 1993(1) ATJ 54 that the disciplinary authority cannot go beyond the charge in awarding punishment. We are in respectful agreement with the view taken in the case.

Impartiality of the enquiry officer

It is true that the person who conducted the enquiry was lower in rank than the officers who conducted the accident enquiry, but it is not the case of the applicant that during trial the enquiry officer did not conduct himself fairly and did not allow the oral evidence to be adduced or he unduly interpreted in the recording of the statements of the witnesses. The disciplinary authority was higher in rank than the officers who conducted the accident enquiry. Further the applicant does not claim to have made <sup>any</sup> prayers for change of the enquiry officer. Accordingly it has not been established that the applicant has suffered any prejudice on account of the enquiry officer being lower in rank than the officers who conducted the accident enquiry. Shri Mainee, learned counsel for the applicant, had submitted that the enquiry officer was directly subordinate to the officers who conducted the accident enquiry. Even this argument of the learned counsel does not improve the case of the applicant for the reasons already stated.

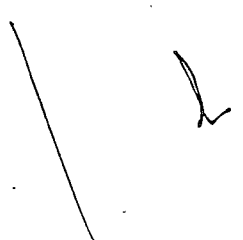
Appellate order - Non-speaking

The learned counsel for the applicant has submitted that the applicant had raised a number of grounds in his Memo of Appeal but they have not been dealt with by the appellate authority and the order of that authority is non-speaking. In support of the proposition that the appellate authority was required to pass a speaking order, the learned counsel has cited the decision of a Division Bench of Tribunal in Mahesh Kumar Singh Vs. Union of India and ors. 1995(1) SLJ CAT 62. It was also submitted by the learned counsel that

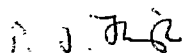
the applicant was entitled to personal hearing before the appellate authority which was not granted. It is not the case of the applicant that he sought personal hearing before the appellate authority. In the case cited by the learned counsel the concerned employee had sought personal hearing but the same was not granted. This case is accordingly distinguishable on facts.

8. In the State Bank of Patiala Vs. Mahendra Kumar Singhal 1994(27) ATC 832, it has been held by their Lordships of the Supreme Court that the appellate authority would be obliged to grant personal hearing, if there is a rule to that effect and in the absence of a rule there is no obligation to grant personal hearing. It has been observed in para 3 that the principles of natural justice do not necessarily in all cases confer a right of audience at the appellate stage.

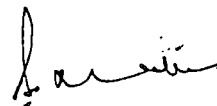
9. In Rule 24 of the Railway Servants (Disciplinary Appeal) Rules 1968 it is provided that the appellate authority may at its discretion and if it considers it necessary, give the non-gazetted Railway servant a personal hearing, before disposing of the appeal. This rule confers a discretion on the appellate authority. In the case on hand, in our opinion, there is no violation of this rule as the applicant himself did not seek any personal hearing and no occasion arose for the appellate authority to consider whether a personal hearing was actually needed in the present case. It needs to be pointed out that the order of the appellate authority is one of affirmance so far as the finding of guilt is concerned. To the extent it is at variance with the order passed by the disciplinary authority, it is beneficial to the applicant and not adverse to him.



10. In view of the above, the Original Application is allowed and the order of punishment dated 8.8.1989 passed by the disciplinary authority and the appellate order dated 24.10.1989 are hereby quashed. In our opinion for the small fault if there was any the applicant has suffered sufficiently by litigating before this Tribunal and defending appeal in the Supreme Court. Accordingly, we are of the view that no further proceedings should be taken against the applicant in respect of the alleged misconduct. There shall be no order as to costs.



(P.T. Thiruvengadam)  
Member (A)



(S.C. Mathur)  
Chairman

\*Mittal\*