

CENTRAL ADMINISTRATIVE CIRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.949/90

New Delhi, this the 16th day of January, 1995

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

Shri Bhupinder Singh,
s/o late Shri Piyare Singh,
Ex-Diesel Assistant,
Northern Railway,
Shakur Basti, Delhi

C/o Loco Foreman
Northern Railway,
Bhatinda.
By Advocate: Shri B.S. Mainee

... Applicant

Vs.

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
New Delhi.

... Respondents

By Advocate: Shri U. Srivastava, Proxy
for Shri Shyam Moorjani

O R D E R (CRAL)

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

At the relevant time the applicant was working as Foreman. On 10.1.86, it is said that there was a foggy night and the visibility has lowered to such an extent that even at a short distance nothing could be seen. The applicant was alongwith Driver Ram Rattan in 60 DN. This train was running between AST and BGZ. Since the applicant working as Fireman according to rules has to inform the driver of the train, after looking to the outer signals whether signals are on position or off position, but the applicant, it is said, did not inform the driver and the driver himself too has not

for any reason whatsoever saw the actual position of the signals whether in or off position. As a result of this, the engine alongwith 2 bogies overshot after leaving ASE station while approaching BGZ station. A chargesheet was served on the applicant with an Article of charge which is as follows:-

"The said Shri Bhupinder Singh, F/Man 'A'/BTI while working 60 DN Exp. on 10.1.86 is held responsible for not being vigilant and cautious in as much as he failed to repeat correct aspect of signals while approaching and leaving ASE station and which approaching BGZ station, which resulted in driven of 60DN overshot the DN starter signal/ Dn advance starter signal of ASE station and DN outer signal of BGZ station by engine and two coaches in 'On' position. Thus he violated GR 3.83(i)(ii) of GCSR Book 1983. He is further responsible for concealing the facts and misleading the enquiry committee violating rule 3(i),(ii), (iii) of Railway Services Conduct Rule,1966."

Alongwith this article of charge, the applicant was also given imputation of misconduct, the documents to be relied upon against him and the witnesses to be examined by the administration in support of the article of charge.

2. The applicant denied the charge. Shri Gurubachan Singh, Loco Inspector, a class III was appointed as Inquiry Officer. The Inquiry Officer submitted its report holding the applicant guilty of the charge on which the disciplinary authority by the order dated 3.7.86 passed the order of removal from

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service of the applicant. The applicant filed an appeal and the appellate authority by the order dated 1.9.86 reduced the punishment imposed by the disciplinary authority to one of compulsory retirement from service. The applicant, therefore, filed this O.A. sometimes in May, 1990. Though he had in the meantime preferred a review under Rule 25 of the DAR. The Reviewing authority by the order dated 7.8.90 further modified this punishment of compulsory retirement by the order dated 7.8.90 imposing the penalty of reduction for two years as Second Fireman without affecting future promotions and the period of absence should be regularised against leave due. He was also directed to deposit back all the settlement dues received on the basis of the order of compulsory retirement passed by the appellate authority on 1.9.86. A copy of the Review Order is annexed as Annexure R-1 to the counter filed by the respondents.

3. The respondents contested this application opposing grant of the reliefs prayed for by the applicant. It may be stated that the applicant by virtue of amendment also assailed this order passed under review dated 7.8.90. In the reply, the respondents stated that the applicant has committed negligence in the discharge of duties inasmuch as he did not inform the driver of the train 60DN while approaching BGZ station about the position of the signals whether these are lowered or in the up position. The charges against the applicant have been proved on the basis of the evidence before the Inquiry Office and the Court cannot re-appreciate the evidence. The negligence in the performance of Diesel Assistant has been established and the

punishment imposed is removal from service which has been reviewed by the 'Reviewing authority, Sr. DME(OP), New Delhi. to reduction as Foreman, Gr. 'C' for two years.

4. The applicant has also filed the rejoinder reiterating the facts stated in the O.A.

5. The applicant has also moved M.P.No.1173/92 for obtaining an interim direction that the respondents be restrained from implementing the order dated 26.1.92 whereby the respondents have levied the recovery of an amount of Rs.45,662/- from the applicant. This recovery has been on account of the fact that the applicant was removed from the service from 5.7.86 due to over shooting case and later on taken on duty with punishment of reduction as Foreman, Grade 'C' but he not only failed to vacate the Railway Quarter No. L-376, Bhatinda but also failed to get its retention from the competent authority and became an unauthorised occupant upto the vacation on 21.9.90 for which the damage charge has been levied. So the charges have been levied from 5.7.86 to 21.9.90. This was stayed by an interim order dated 27.4.92.

6. We have heard Shri B.S. Mainee for the applicant. Shri U. Srivastava appears as Proxy for Shri Shyam Moorjani for the respondents. The learned counsel for the applicant argued that since preliminary enquiry in this case was held by the Senior Scale officer and Junior administrative grade officer who were immediate superior to the Enquiry Officer Shri Gurubachan Singh, who was only class III employee, a Loco Inspector as such the appointment of Enquiry Officer immediate subordinate to the officer who held the preliminary enquiry is against the principles of natural justice. We asked the learned counsel for

the applicant whether there is any statutory rules in the DAR 1968 as to in such a situation where the Inquiry Officer should be a particular designated authority. But no such rule has been pointed out nor any such rule exists in the DAR 1968. In fact the preliminary enquiry's finding give an indication to the disciplinary or competent authority whether a regular disciplinary enquiry is practicable on the basis of the decision arrived at in the preliminary enquiry. The preliminary enquiry itself is not taken as a proof of guilt of the delinquent and he has given an opportunity in a regular departmental enquiry. Further in this case issue was not raised by the applicant at any time before the disciplinary authority. In view of this fact, we do not find any legality or irregularity in the conduct of this enquiry. However, we do find that the ultimate authority i.e. the Review authority, Sr.DME (O.P.), New Delhi has considered all these aspects and has taken the most lenient view as the negligence and carelessness established against the applicant could be resulted in the loss of human lives as well as of the railway property because engine and 2 bogies of 6ODN have overshot due to his negligence. Due intimation whether the signals are lowered has not been given by the applicant to the driver Ram Rattan.

7. The other point argued by the learned counsel for the applicant that the order of removal has been passed by the authority not competent to do so. In fact, we are not going into the issue because the order

of removal has been substituted by an order of compulsory retirement by the competent authority and further modified by the Reviewing authority to the reduction for 2 years as Second Fireman without affecting future promotions. This point also has no basis.

8. The learned counsel for the applicant also argued that in the case of Ram Rattan, Driver, the order was passed on 10.8.88 vide Annexure A-4 while in the case of the applicant the reasons whatsoever the order of the Reviewing authority was passed in August, 1990 and therefore the applicant remained out of job from 1986 to 1990. The applicant himself appears to be at his fault as he has rushed to the Tribunal when his Review application was pending before the administration. Thus, we cannot find any fault on this account also.

9. The learned counsel for the applicant also argued that the retention of the quarter by the applicant at Bhatinda has been treated as unauthorised occupation from the date of removal till September, 1990 and the respondents on the basis of certain rules levied penal rent to the tune of Rs. 45,652/-. Since the Reviewing authority has passed an order modifying the order of removal and the period of absence of duty has been treated as period spent on any kind of leave, the retention of the quarter by the applicant should not be termed as unauthorised ^{or not has to be determined.} The applicant has not got the original application amended nor he has introduced any relief in that regard. Though

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the amendment of the O. A. was made only to incorporate a relief with respect to assailing the order of the Reviewing authority dated 7.8.90 but the applicant did not get any amendment with respect to realisation of penal rate of rent of the occupied quarter for the period the applicant was out of service. By virtue of the order of removal or by the modified order of the appellate authority of compulsory retirement from service, no relief can be granted therefore in this application. However, it shall be open to the applicant to assail the grievance by filing a proper representation before the administration if so advised according to law. The Original application is dismissed as devoid of merit with liberty to the applicant to assail the grievance about the realisation of penal rate of rent if need arises according to law, if so advised.

(B.K. SINGH)
MEMBER (A)

Sharma
(J.P. SHARMA)
MEMBER (J)

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