

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 803/1991

New Delhi this the 22nd Day of September, 1995.

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

Hon'ble Mr. K. Muthukumar, Member (A)

Shri V.N. Saxena,
Son of late Shri Ram Narain Saxena,
Ex. Permanent Way Inspector,
ROSA.

Applicant

(By advocate: Shri B.S. Mainee)

Vs

Union of India :Through

- 1 The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

Respondents

(By Advocate: Shri Rajesh)

O R D E R

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

This is an application filed under Section 19 of the A.T. Act by Shri V.N. Saxena, Ex-Permanent Way Inspector, Northern Railway, Rosa challenging the legality, propriety and correctness of the order dated 18.9.1990 issued by the Divisional Superintending Engineer, Moradabad inflicting on him a penalty of removal from service and seeking a direction to the respondents to reinstate him in service with all consequential benefits. Shorn of details, the fact can be briefly stated thus :- The applicant who commenced his career in the year 1957, in a lower category was promoted to the post of Permanent Way Inspector on 12.7.1979. In the year 1990, he was posted as PWI (Special) at Rosa Junction. On 10.5.1990 at 23.26 hrs at Behta Gokul,

the Express train No. 4265 derailed and this derailment was found to be primarily on account of the cutting of the rail at the right side rail head at the backing of crossing of point No. BE at BEG and rail fracture. The venue of the accident came within the supervision of the Sectional PWI, AJI. The applicant was in-charge of Special work and had to perform the duties as directed by the PWI, Rosa, Shri R.K. Mukherjee. After a preliminary investigation by an Accident Enquiry Committee, the applicant was on 5.6.1990 served with a SF 5 chargesheet. The statement of mis-conduct/mis-behaviour in respect of the charge framed read as follows:

On 10.5.90 derailment of 4255 up express train took place at 23.26 hrs on the night of 10th May 1990 due to rail fracture and subsequent separation of small piece of rail measuring 4 and half inches near point BE East cabin Behta Gokul.

This rail fracture was avoidable in the sense that it was caused firstly because of cutting of the right side rail head at the backing of crossing of point No. BE at BEC by the contractor in an unauthorised manner and secondly even if the rail head was cut, PWI/Spl. Shri V.N. Saxena had full knowledge of the fact on the evening of 9th May 1990. He had full 30 hrs. at his disposal to take adequate safety and security measures which he has failed to avail.

He is responsible for the fracture and subsequent derailment of 4265 up express train at Behta Gokul on 10.5.90 at 23.26 hrs. as a result thereof, in as much as he failed to take necessary safety and security measures much in advance".

✓

In reply to the Memo of Charge the applicant submitted a statement in which he has stated that the derailment took place on a defective rail which was declared OBS at one end and OBSE on the other which was required to be changed by the PWI (Maintenance) Anjhi, that the rail was ordered to be cut by PWI (Maintenance) Anjhi, that it was his responsibility to have replaced the rail and that the applicant was not at all responsible. However, an enquiry was held and the Enquiry Officer submitted his report holding the applicant guilty of the charge. The disciplinary authority, the Divisional Superintendent Engineer agreeing with the finding of the Enquiry Officer held the applicant guilty and imposed on him the penalty of removal from service. Though the applicant submitted an appeal to the first respondent on 10.10.1990. Finding that this was not disposed of in spite of the reminder, the applicant has filed this application.

2. The impugned order is assailed by the applicant mainly on the following grounds:

- a) The charges levelled against the applicant itself are unjustified and baseless as he was working as a PWI (Special) and had nothing to do with the cut rail which was under the charge of PWI (Maintenance) Anjhi;
 - b) The most material and crucial witness one Shri Charan Singh Tyagi who in the preliminary enquiry had stated that the rail was got cut by him through his blacksmith under the instructions of Shri Mahilal, PWI (Maintenance) Anjhi has not been made available for examination, the entire disciplinary proceeding is vitiated;
- on

- c) The finding of the Enquiry Officer that the applicant is guilty is absolutely perverse, against the evidence on record and based on conjectures and surmises; and
- d) The disciplinary authority has not applied his mind to the evidence on record and has blindly accepted the findings of the Enquiry Officer thereby failing in his statutory duties.

3. The respondents have filed a reply to the O.A. in which they contend that the non-examination of Shri Charan Singh Tyagi was because he being a Contractor's Workman was discharged by the Contractor by the time the Enquiry was held, that this has not prejudiced the defence of the applicant and that the finding of the Enquiry Officer that the applicant was guilty which was accepted by the disciplinary authority is based on evidence.

4. We have perused the pleadings on record as also the file relating to disciplinary proceedings made available for our perusal by the learned counsel for the respondents. We have also heard at length the arguments of the counsel on either side.

5. Shri Rajesh, the learned counsel for the respondents raised a preliminary objection that the application is premature inasmuch as the same was filed before the appellate authority had disposed of the appeal. The appeal as stated in the application was filed on 10.10.1990. The O.A. was filed on 2.4.1991. Normally the application is to be filed if the appeal was not disposed of within a period of six months. Going by the date of submission of the

m

appeal, the O.A. was filed after the expiry of a period of short by 8 days for six months, but considering the circumstances of the case, the Division Bench by its order dated 5.4.1991 admitted the application. Once the application is admitted by the Tribunal in its discretion then the fact that the applicant did not wait for full six months before filing the application loses its significance. The application has, therefore, to be considered and disposed of on merits.

6. The graveman of the charge against the applicant is that the applicant while working as PWI (Special) RAC was responsible for negligence leading to rail fracture and subsequent derailment of 4265 express train at BEG on 10.5.1990. The rail fracture according to the charge was avoidable which was caused due to cutting of rail head of North side rail at the back of crossing point No. BE of East Cabin BEG and the applicant had full 30 hrs. to take adequate safety measures to protect the track but still he failed to do so leading to the accident and this violated GR 15.02 of General and Subsidiary Rule Book of 1983. The first point raised by Shri B.S. Mainee, the learned counsel for the applicant is that as the applicant was not the PWI (Maintenance) in-charge of the length of the rail, in question, and as there was not even an allegation in the chargesheet that the length of rail in question was entrusted to him for any work, there is absolutely no basis for the charge that the applicant had violated the G.R 15.02 of General and Subsidiary Rule Book of 1983 which reads as follows:

"Maintenance of line - Each Inspector of way and work shall:-

- a) See that his length of line or works in his charge are efficiently maintained". (Emphasis added).

It is not disputed that Shri Mahilal who was examined as one of the witnesses in support of the charge against the applicant was the Sectional PWI (Maintenance) Anjhi and that the length of rail where the accident took place was under his charge. It is also not in dispute that during the period when the derailment occurred the applicant was deputed to work on special work as per the instructions issued by PWI, RAC from time to time. This PWI, RAC Mr. R.K. Mukherjee was examined as a witness in the disciplinary proceedings. In answer to Question Nos. 10 and 11, Shri Mukherjee has stated as follows:

"On 4.5.1990 Shri V.N. Saxena was at RAC for changing straight switch by curve switch. I was also with him at the site.

"On 5/5 & 6/5 he worked at RAC in the the above turn out to fish the residual work. On 7/5 & 8/5 as there was no contractors labour and 8/5 there was DRM's insp. in RAC yard. So he was deputed for the other Misc. work. On 9/5 he worked at TDP stn.".

It is evident from the testimony of Mr. Mukherjee that the applicant was not assigned any work on the rail at the accident spot on any dates immediately preceding the accident. In the statement of imputation attached to the Memo of Charge, there is no averment ^{that} the line in question was either under

applicant's charge or that the applicant was put in-charge of that rail for the purpose of any work. Therefore, there is considerable force in the ^{arguments of the} learned counsel of the applicant that the charge that the applicant violated the provisions contained in GR 15.02 of the General and Subsidiary Rules Book of 1983 is without any basis. The learned counsel of the respondents, on the other hand, argued that even if Shri Mahilal the Sectional PWI was ^{the} person in whose charge the rail was, as admittedly the applicant had knowledge of the rail cutting and as he had not taken adequate measures to safeguard the track and to avoid the accident, he cannot escape the liability, whether the applicant had really failed in his duty and thereby attracted disciplinary proceedings will be considered later. As there is no allegation that the length of line where the accident occurred was either under his charge or under his work at the time when the accident occurred, and as the evidence on this score is to the contrary, we find ^{no} basis for the charge that the applicant violated the provisions of GR 15.02 of the General and Subsidiary Rules Book of 1983. Coming to the next point Shri B.S. Mainee, the learned counsel of the applicant argued that the non-examination of Shri Charan Singh Tyagi, the most material witness in this case was intentional and that this has vitiated the entire disciplinary proceedings including the finding that the applicant is guilty. Shri Mainee invited our attention to the fact that in the application at Paragraph 4.15 the applicant ^{had} extracted the statement made by Shri Charan Singh Tyagi before the Enquiry Officer and that it

m

could be seen from the statement that the rail was got cut by Shri Charan Singh Tyagi through his blacksmith at the instructions of Shri Mahilal, Sectional PWI, AJI that the applicant who saw the rail being cut complained about it and had instructed him to provide joint fish plate with clamps and also with wooden blocks under the rail. This allegation in the application has not been controverted by the respondents in the reply statement filed by them. The file relating to the Enquiry proceedings also shows that Shri Charan Singh Tyagi has given the statement before the Accident Enquiry Committee on the basis of whose report the charge against the applicant was framed. As the derailment occurred as a result of cutting of the rail and rail fracture in order to ascertain who is responsible for the causing of the rail fracture the only independent evidence available was that of Shri Charan Singh Tyagi. Shri Mahilal was examined as a witness in the Enquiry in support of the charge but as Shri Mahilal being the Sectional PWI who would normally be responsible for any failure in safe maintenance of the length of line under his charge his testimony cannot be considered to be disinterested. Shri Mahilal has thrown the entire blame on the applicant though there is not even an averment that at least for the time being for execution of certain work the length of line was put under the charge of the applicant in the Memo of Charge or in the Statement of Imputation or even in the evidence adduced through the witness in support of the charge. Since everybody who would be in the normal circumstances liable for failure of the proper maintenance of the length of line under his charge

would be anxious to escape the liability, it is highly important that the independent evidence if available should be adduced in the Enquiry. Shri Tyagi who had admittedly stated before the Accident Enquiry Committee that the rail was cut by him through his blacksmith under instructions from Shri Mahilal, the Sectional PWI, Anjhi, the Enquiry Officer should have seen that this witness is made available for examination at the enquiry so that his evidence would be available for reaching a just and proper conclusion. It is evident from the report of the enquiry, the proceedings relating to the enquiry as also from the reply statement filed by the respondents to the O.A. that no effective measure was taken to ensure the presence of the witness of Shri Charan Singh Tyagi at the departmental enquiry. The sole reason stated by the Enquiry Officer in the report as also by the respondents in the reply statement for non-examination of Shri Charan Singh Tyagi is that by the time the enquiry began the contractor had informed the department that Shri Charan Singh Tyagi was discharged by him. For figuring as a witness in a departmental enquiry it was not necessary that Shri Charan Singh Tyagi should have continued in the service of the contractor. Even if discharged by the contractor Shri Charan Singh Tyagi was an individual with an identity and address. The enquiry authority should have got the address of Shri Charan Singh Tyagi from the contractor and issued process for securing the presence of Shri Charan Singh Tyagi in the enquiry. The failure on the part of the Enquiry Officer to do so has consequently prejudiced the defence and for that reason ^{we} alone are of the considered view that the

✓

finding that the applicant is guilty is vitiated. Our basis for saying so is that Shri Charan Singh Tyagi had in his statement given to the Accident Enquiry Committee stated that the rail was cut at the instructions of Shri Mahilal, the PWI, Anjhi. If that was so then the responsibility to have the rail properly replaced and guarded against any fracture lay exclusively with Shri Mahilal, the Sectional PWI and the applicant who was totally unconnected with the length of rail could not be penalised for the failure and misconduct of the Sectional PWI, Shri Mahilal.

7. Shri B.S. Mainee, the learned counsel of the applicant argued that with the evidences available on record, it would not have been possible for any reasonable person to conclude that the applicant was guilty of the misconduct and that the finding is therefore perverse. He also argued that the disciplinary authority has mechanically accepted the findings of the Enquiry Officer without any application of mind and that therefore the findings of the disciplinary authority are also perverse and unsustainable. A mere reading of the Enquiry Report as also the orders of the disciplinary authority which is challenged in this application would disclose that this argument of Shri Mainee is absolutely correct. Though the Enquiry Officer found the question raised by the defence about the person at whose instructions the rail was cut to be pertinent, he held that there was no proper evidence to come to a finding as to who ordered the cutting of

the rail. This observation of the Enquiry Officer is against the observation made by him in the earlier part of his report. We shall profitably extract the said observation also:

"Shri Janki Keyman G.No. 15 in his statement has mentioned (Page 131) that the rail head in question was cut by the Constractor's blacksmith on 03.05.1990 and he informed that fact to Shri Mahilal P.W.I/AJI on 04.05.1990. However in his statement in preliminary enquiry he had mentijoned the rail was cut on 09.05.1990. The black smith of the Contractor and Shri Charan Singh represenative of the Contractor could not be available for statements".


Apart from Shri Janki, Shri Noor Bux, hot weather patroller and Shri Hira Lal, night security patroller who are admittedly working under Shri Mahilal, PWI, Aji have been witnesses to the fact that the rail was cut on 03.05.1990 and that it was with the knowledge of the Sectional PWI, Anjhi, Shri Mahilal. Though these persons were examined as defence witnesses, they were persons working directly under Shri Mahilal, the Sectional PWI, AJI. If the Enquiry Officer has had refused to accept their versions for any reason, we would not have had anything to say on that, but it is strange that the Enquiry Officer while ^{has} not stated anything about the veracity of the testimony of these witnessess held that there is no proper evidence ^{as to} at whose instructions the rail was cut. Though the Enquiry Officer would say in his report that the applicant was guilty for the reason that having had full 30 hours, he did not take adequate precaution either by properly repairing the

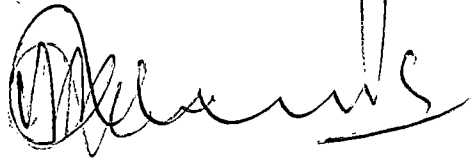
rail or by imposing speed restrictions or informing the night patrolman, he had not considered whether it was within the responsibility of the applicant to do so or whether it was within the responsibility of the Sectional PWI who had as it appears from the testimony of the witnesses much more than 30 hrs to have the rail renewed and under whose charge the rail was . The finding of the ~~disciplinary~~ Enquiry Officer, therefore, is absolutely perverse. Though the Enquiry Officer poses himself certain questions as to how the OBSE rail continued without imposing of speed restrictions and as to how the maintenance department could leave the rail in a bad condition and when he himself states that there was no proper evidence as to who instructed the cutting of the rail, the Enquiry Officer could not have reasonably come to the conclusion that the applicant was guilty of violates of the provisions of General and Subsidiary Rule 15.02. The impugned order at Annexure A-I reveals total non-application of mind. We are of the view that it is very difficult to find another order which is so cryptic as the impugned order. It is only stated that the findings of the Enquiry Officer are accepted and the applicant was held responsible for negligence ^{which} led to rail fracture and subsequent derailment of . . . express train No. 4265 Janta Express on 10.5.1995 at BEG Stn. The rail fracture was avoidable since it was caused firstly because of cutting of the rail head at site by the Contractor in an unauthorised manner and ^{the applicant} had full knowledge of this fact 30 hrs, before, still he failed to take adequate safety & security measures to avoid accident. ^{according to the disciplinary authority.} There is no discussion as to what is the charge against the applicant and how the charge

is established. The disciplinary authority has failed to consider whether the length of rail was at all under the charge or work of the applicant at the relevant time before finding him guilty of violation of Rule 15.02 of General and Subsidiary Rule Book of 1983. What is stated in the impugned order is simply a reproduction of what is stated in the Statement of Imputation. The disciplinary authority who is competent to award the penalty of removal from service to an officer is expected to discharge this statutory function after applying his mind to the report of the enquiry as also the evidence recorded at the enquiry in the light of particulars of imputation forming the basis of charge against the employee who is facing disciplinary proceedings. A perusal of the impugned order at Annexure I makes it abundantly clear that such an exercise has not been gone into by the disciplinary authority before he imposed on the applicant the penalty of removal from service. Had the disciplinary authority taken care to discharge his statutory functions properly, applying his mind to the evidences, facts and circumstances of the case, we are of the considered view that he could not have reached the conclusion that he did in this case. We find that as there is no evidence at all to support the charge that he had failed in his duties for the proper maintenance of the length of line in question, which was not in his charge, we are of the considered view that there is no material which can reasonably support the conclusion that the officer is guilty. The finding of the Enquiry Officer as also of the disciplinary authority that the applicant is guilty is therefore perverse for want of evidence and bad for non-application of mind.

8. In the light of what is stated above, we are of the considered view that the impugned order dated 18.9.1990 of the Divisional Superintendent Engineer, Northern Railway removing the applicant from service is unsustainable in law. At the time when the application was filed in the year 1990, the

applicant had already put in a service of more than 33 years. We are not told as to what is the date of superannuation of the applicant. In the result the application is allowed and the impugned order dated 18.9.1990 of the Divisional Superintendent Engineer, Northern Railway, Moradabad removing the applicant from service is set aside. If the date of the applicant's superannuation is not reached the respondents are directed to reinstate the applicant in service forthwith at any rate within a period of one month from the date of communication of copy of this order. If by this time the applicant has already reached the age of superannuation, the respondents are directed to treat that the applicant despite the impugned order continued in service till the date of superannuation and thereafter retired on superannuation and to pay to him full back wages for the period he was kept out of service and to fix his pension and their retiral benefits as if he continued in service till the date of superannuation. The arrears of pay and allowances/pension and retiral benefits as the case may be shall be disbursed to the applicant within a period of 3 months from the date of communication of the copy of this order. There is no order as to costs.


(K. Muthukumar)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

Mittal