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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2102/2004

New Delhi, this the 05th day of June, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Shri Gorey Lal
S/o Shri Kewal Ram
Ex. Switchman
Northern Railway
Ferozabad (U.P.)

...Applicant.

(By Advocate Shri B.S. Mainee)

VERSUS

Union of India : Through

1. The Secretary
Ministry of Railways
Rail Bhawan
New Delhi.
2. The General Manager
North Central Railway
Allahabad (U.P.)
3. The Divisional Railway Manager,
North Central Railway,
Allahabad (U.P.).

.... Respondents.

(By Advocate Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr. Mukesh Kumar Gupta:-

By present OA applicant challenges orders dated 10/11.10.2000 imposing punishment of dismissal, 27.8.2001 and 14.5.2004 upholding the said penalty by the appellate and revisional authorities respectively. Applicant also seeks reinstatement in service from the date he was dismissed from service with all consequential benefits, including back wages. Further relief is sought to quash the decision of disciplinary authority vide which his suspension period has been treated as "leave without pay".

2. Admitted facts of case are that there had been a devastating collision of 2801 UP Purushottam Express with the rear portion of 4023 UP Kalindi Express at 0250 hrs. on 20.8.1995, which resulted death of 309 passengers including

serious injuries to 152 passengers and simple injuries to 100 passengers besides loss of Railways property worth Rs.449 Lakhs. Applicant, Switchman, West Cabin, Ferozabad, who was on duty from one hour to nine hours, gave clearance of track up main line between up main line starter and advance starter signals, and was proceeded with major penalty proceedings vide memorandum dated 22.11.1995 under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968. Five different charges were levelled and since same were denied, an oral enquiry was held and after examining witnesses as well as documents in support of allegations made, enquiry officer vide report dated 04.3.1996 recorded findings of guilt against him holding all charges established. Disciplinary authority agreed with his findings, imposed punishment of dismissal, vide order dated 22.3.1996, which was thereafter confirmed by the appellate as well as revisional authorities respectively, which became the subject matter in OA No.1063/1997. Amongst other, one of the contentions raised was that punishment order had not been passed by competent authority as he was promoted to the post of Switchman in grade of Rs.260-400/- by Senior Divisional Personnel Officer on 20.8.1982 and further promoted as Senior Switchman in grade of Rs.330-560/- by said authority whereas the authority, who passed dismissal order was the Divisional Operating Manager (E), Northern Railway, who was a senior scale officer. After consideration of the matter, since records were not produced by respondents to establish the assertions made, said OA was allowed vide order dated 15.5.2000 holding that the authority who passed impugned order is lesser in status than the authority who appointed him which was against provisions of Article 311 (1) and therefore, the impugned orders passed by disciplinary, appellate as well as revisional authorities were set aside, and the matter was remanded back to respondents to pass fresh orders in accordance with law. Pending final order to be passed by competent authority, the Tribunal directed that applicant should be placed under deemed suspension and while passing final orders the competent authority would also determine how the suspension period was to be treated.

In compliance of aforesaid orders, matter was re-considered by respondents including applicant's representation dated 04.3.1996 and while

disagreeing with his contentions for the reasons enumerated vide Order dt. 10/11-10-2000 held the applicant fully responsible for extremely serious accident, he was dismissed from service with immediate effect. Period of suspension i.e. from 15.5.2000 to 11.12.2000, was also directed to be treated as "leave without pay." A statutory appeal filed on 09.7.2001, was rejected by Additional Divisional Railway Manager, Northern Railway, Allahabad vide communication dated 27.8.2001, which reads as follows:-

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"I have gone through the appeal of Shri Gorey Lal placed at Pages 126-134 of the file.

In as far as the sequence of events leading to the subject accident is concerned, the DA (Sr. DOM)'s reasoning in the NIP is quite clear and the appeal does not bring out anything new, except to cast doubts on the actual appeal of various signals and action taken by him and other Rly. staff all of which have already been established in the Enquiry and therefore, do not merit consideration.

Sri Gorey Lal has raised the subject of SWR being defective and non-availability of track circuits which, according to the appeal, would have caused the accident.

The SWR have been examined, and it is certified by competent personnel of Safety Branch to me that the SWR as existing at Firozabad on the day of the accident clearly laid down the duties, responsibility & sequence of working of each of the Rly. staff deputed at the station and have not been found defective or deficient by the commissioner of Rly. Safety who held the enquiry. Track circuiting adopted at Firozabad at stations in the aftermath of this accident, is nothing but a further aid to staff working at stations in having a clear picture of their station and ease their working. It is no case that lack of track circuiting did not allow station to be worked safely. The SWR took case of that.

In view of the above reasons, I do not consider the appeal fit for consideration as regards relief to the employee, vis-à-vis the punishment already imposed.

Appeal is rejected." (emphasis supplied).

3. Further revision petition filed against said appellate order also came to be rejected vide communication dated 14.5.2004 (Annexure A-3) holding that there was no valid reason for reviewing punishment already imposed.

4. In present OA, basically three contentions have been raised:-

- a) Charges levelled were vague, false and baseless. Traffic Inspector, Group-C employee, nominated as enquiry officer, was not expected to act fairly and justly as the preliminary enquiry was held by official holding rank of Additional Secretary who had held him guilty. Submissions made & contentions raised by him during the enquiry

proceedings were not appreciated by the enquiry officer and he did not act in accordance with rules & law.

- b) Disciplinary Authority failed to issue any show cause notice before inflicting penalty of dismissal from service and also committed serious & grave irregularities including the one in treating period of suspension as "leave without pay", which was contrary to rules contained in Indian Railway Establishment Code paras 1342 to 1344.
- c) Appellate authority as well as revisional authority rejected his appeal as well as revision respectively without application of mind by passing non-speaking and non-reasoned order and, therefore, he is entitled to relief as prayed for.

5. Shri B.S. Maine, learned counsel for applicant drew our attention to paras 1342 and 1343 (7) of I.R.E.C. Vol.-II to contend that applicant was entitled to subsistence allowance during period of deemed suspension and, therefore, order passed by said authority in derogation of the mandate of said rule is liable to be interfered. Reliance was also placed on ATR 1986 (2) SC 252 **[Ram Chander vs. Union of India & Ors.]** to contend that Rule 22(2) of Railway Servants (Discipline & Appeal) Rules, 1968 has been breached in present case in as much as order passed by appellate authority did not comply with the requirement of afore-said rule. Moreover, applicant was entitled to personal hearing before taking such action, which was not afforded.

6. Respondents per contra resisted the claim laid stating that present OA is pre-mature and not maintainable in as much as applicant did not submit revision petition before General Manager in terms of Rule 24 of Rules in vogue as held by this Tribunal in **Ram Avtar Gupta vs. Union of India & Ors.** [OA No. 1057/2001] decided on 16.9.2002 that revision is one of the alternative remedy available and unless delinquent official availed of all alternative remedies available under rules, an application under Section 19 of A.T. Act is not maintainable. Further technical objection was raised regarding mis-joinder of parties by impleading Secretary, Ministry of Railways against whom no relief has been sought. Since applicant is

Group-C employee, General Manager of Zonal Railways and officers working under him are competent to redress his grievances.

7. On merits, it was stated that applicant was held fully responsible for extremely serious accident, which resulted in death of 309 passengers besides serious injuries to several other passengers. There was no necessity to issue any show cause notice as penalty order dated 11.10.2000 was passed in compliance of judgment of this Tribunal. It is only the period of deemed suspension, which has been regularized as leave without pay. The very fact that full-fledged enquiry had been conducted under Railway Servants (Discipline & Appeal) Rules, 1968, preliminary enquiry held only to find out whether disciplinary authority should be initiated against delinquent or not, has lost its relevance. Orders passed by appellate authority as well as revisional authority are detailed, reasoned and analytical orders passed in accordance with rules, which require no interference in judicial review by this Tribunal. All reasonable opportunities were afforded to defend himself in disciplinary proceedings. He had not taken any safety measures, which required to be fulfilled; he failed to make entries in Log Register before giving clearance, which had been established during the course of enquiry. All relied upon documents were supplied to charged official. He had not taken any step to prevent accident rather after collision he left the cabin and ran away from site of incident without informing to any senior official. Considering the gravity of accident and loss of life involved, punishment imposed upon applicant is just and reasonable, which requires no interference.

8. Applicant by filing rejoinder contested the plea raised, while reiterating contentions so raised vide OA.

9. We heard learned counsel for parties at length and perused pleadings carefully.

10. As far as first contention that charges levelled were false and baseless and procedure adopted by enquiry officer was not fair etc. is concerned, we may

note that five different charges were levelled namely that he gave clearance of Up main line between Up main line starter and advance starter signals without ensuring its clearance through physical observation; he did not ensure complete passage of 4023 Up Kalindi Express beyond Up Advanced starter signal; he gave clearance of track of his zone of responsibility without putting back the departure signals in 'ON' position, violating para 6.7.7. of Station Working Rules; he released slot for reception of train No.2801 Up Purushottam Express on up Main line without physically ensuring the conditions for releasing slot, and, he made false entry of "Train out of section" report of 4023 Up Kalindi Express in the Train signal Register.

11. It is in-disputed that detailed oral enquiry was held & as per his request made at the end of enquiry to summon Section Controller and Dy. CHC (Punctuality) on duty on 20.8.1995, the said officials were examined, and enquiry officer vide his detailed report returned findings holding guilty of all five articles of charge proved & established. In our considered view, particularly on perusal of articles of charge vide memorandum dated 22.11.1995, we are of the view that such contention raised is baseless and untenable. For the contention that preliminary enquiry was held by Sr. Officer while Junior Officer had been appointed as enquiry officer in the departmental enquiry, therefore, enquiry officer was not expected to act fairly, we may note that respondents have rightly relied upon ***N.D. Ramteerthekkar vs. State of Maharashtra [SLJ 1997 (2) SC 91]***, wherein it has been held that preliminary enquiry loses relevance after full-fledged enquiry under rules in vogue is held. On bestowing our careful consideration to this aspect of the matter, we are of the view that said judgment is aptly applicable in the facts and circumstances of the present case and, therefore, the said contention also cannot be countenance.

12. As far as the second and third contentions, noticed hereinabove in para-4 are concerned, we may note at the outset that the earlier penalty as well as appellate & revisional orders were quashed by this Tribunal vide order dated

15.5.2000 holding that they were not passed by the competent authority. It would be expedient at this stage to notice the directions issued there-under:-

"8. In the circumstances, the impugned orders of the disciplinary authority as well as the appellate, and reviewing authority are set aside. The matter is remanded back to the respondents to be placed before the competent disciplinary authority to pass fresh orders in accordance with law, within two months from the date of receipt of a copy of this order. Pending final order to be passed by the competent authority, applicant shall be deemed to be under suspension and while passing the final orders the competent authority will also determine how the suspension period is to be treated." (emphasis supplied)

On perusal of penalty order passed in compliance of aforesaid directions vide order dated 10/11.10.2000 (A-1) it is noticed that the disciplinary authority considered applicant's representation dated 14.3.1996 in reply to show cause memorandum dated 08.3.1996 but the contentions raised therein were not found to be satisfactory due to detailed & analytical reasons detailed therein. We find no justification in the contention raised that the disciplinary authority failed to issue any show cause notice before effecting punishment of dismissal. Similarly we find no justification in the applicant's contention that he ought to have been afforded an oral enquiry before passing the appellate order.

13. On perusal of Rule 22 of Railway Servants (Disciplinary & Appeal Rules, 1968, we find that there is no such mandate of the rule that the delinquent officer must be afforded an opportunity of personal hearing by the appellate authority. The reliance placed on Ram Chander (supra), which is alleged to have been breached as per the applicant's contention, in our considered view, is distinguishable as recently in 2005 (1) SCC 13 [Ganesh Santa Ram Sirur vs. State Bank of India and Anr.], it has been held that: "*principles of natural justice cannot be reduced to any hard and fast formulae and as said in Russell v Duke of Norfolk, these principles cannot be put in a straitjacket. Their applicability depends upon the context and the facts and circumstances of each case. The objective is to ensure a fair hearing and a fair deal to a person whose rights are going to be affected. In our opinion, the approach and test adopted in Karunakar case should govern all cases where the complaint is not that there was no hearing, no notice, no opportunity and no hearing but one of not affording a*

proper hearing that is adequate or a full hearing or violation of a procedural rule or requirement governing the enquiry."

Similarly, it is well settled that the disciplinary authority and the appellate authority while agreeing with the findings of the enquiry officer and disciplinary authority respectively need not to write a detailed order like a judgment as observed in **State of UP vs Harendra Kumar**, 2004 (13) SCC 17. Applicant's contention that the disciplinary authority, appellate authority and revisional authority passed non-speaking order is also not justified and tenable for the reasons that all the concerned authorities have passed speaking, detailed and analytical orders, which is amply established on reading of the said orders. In our considered view a reading of the orders passed by each of such authorities go to show that such authorities had thoroughly considered the detailed submissions made by the applicant and there was total application of mind in arriving at the conclusion in regard to punishment too, besides the procedure adopted by the enquiry officer & other authorities. We may note at this stage the speaking order passed by the revisional authority, relevant excerpts of which reads as under:-

"In his review petition Shri Gorey Lal has not brought out any new material of facts except to repeat his earlier contention nor he had anything further to state during the personal hearing before me. The issues raised in the revision petition have been addressed adequately during the enquiry and subsequent stages. The offence of Shri Gorey Lal, former Switchman Firozabad has been established at various levels and at different times. From the evidence on record it has been conclusively established that he cleared signal aspect for reception and dispatch of Purushottam Express for run through passage wrongly when he took off up starter signal although it was in his knowledge that Kalindi Express ahead had not cleared the advance starter. The plea that he had not taken off the Up main starter for the subsequent train and that it is the Driver of Purushottam Express who overshot the Up main starter is neither substantiated nor can be so inferred by the sequence of events and the evidence of record. If it had been so then since the driver of Purushottam Express would have seen regulatory aspect of reception signals right after inner distance signal, the speed of the train would not have been such so as to result in such devastating damages. The evidence of ASM that at the time of exchange of alight signals with the crew of Purushottam Express, up starter was green proves that it was again taken off after releasing the slot for reception of Purushottam Express and for which Shri Gorey Lal alone is to be blamed as this was exclusively in his control.

The statement of Section Controller to state his response to communication of run through timings of Purushottam Express by

ASM Firozabad further corroborates this. The crux of the matter is that in the face of the admitted knowledge of Kalindi Express having stopped short of advance starter, all the subsequent actions of Shri Gorey Lal were against the block working rules resulting in collision of the said trains.

Considering the gravity of the accident and loss of the lives involved, the punishment imposed by Sr.DOM/Allhabad of dismissing him from service and decision of ADRM/Allahabad in rejecting his appeal, after holding a proper enquiry and giving him full opportunity to defend his case, is fully in order.

The revision petition submitted by Shri Gorey Lal against the punishment of dismissal from service is, therefore, rejected." (emphasis supplied)

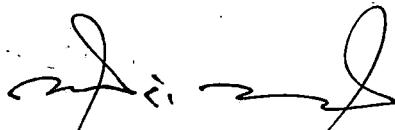
14. We have already noticed the appellate order in para-2 hereinabove. A cumulative reading of aforesaid would leave to an inescapable conclusion that the applicant's contention that appellate authority as well as revisional authority rejected his appeal by passing a non-speaking, bald and cryptic order, is without any substance. Said contentions are accordingly over-ruled.

15. As far as the contention raised that the disciplinary authority was not justified to treat the period of deemed suspension as leave without pay is concerned, we may note that this Tribunal while remanding the matter vide order dated 15.5.2000 specifically observed that the applicants "shall be deemed to be under suspension and while passing the final orders the competent authority will also determine how the suspension period is to be treated." He was placed under deemed suspension in compliance of aforesaid order and with the passing of impugned penalty order dated 10/11.10.2000, the said deemed suspension was treated as leave without pay. Strong reliance placed by applicant on paras 1342-1344 of IREC no doubt indeed provides that the Government servant would be entitled to subsistence allowance (not being the whole of pay and allowances) to which he would have been entitled to, being not dismissed, removed, retired or suspended prior to such penalty orders passed, as may be determined by the competent authority after issuing notice to the concerned railway servant. Admittedly, such course of action had not been followed and, therefore, in our considered view, applicant would be entitled to subsistence allowance not the whole of the pay and allowances to which he would have been entitled to for the

period i.e. 15.5.2000 to 10/11.10.2000. However, the applicant's contention that non-payment of such subsistence allowance would render the impugned action void and *ab initio*, in our considered view, is not justified as the test of severability would be applicable in such circumstances.

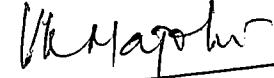
16. In view of the discussion made hereinabove though we find no illegality, arbitrariness, irregularity or infraction of principle of natural justice, in imposing the penalty of dismissal, as upheld by the appellate authority as well as revisional authority, we uphold the orders passed by these concerned authorities except to the extent of holding that the applicant would be entitled for subsistence allowance for the period as noticed hereinabove. Accordingly, respondents are directed to make the payment of subsistence allowance, which is 50% of pay and allowances. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Accordingly, OA is disposed of.

No costs.



(Mukesh Kumar Gupta)
Member (J)

/gkk/



(V.K. Majotra) 5/6/06
Vice-Chairman (A)