

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A 592 of 1992

New Delhi this the 1st day of July, 1996

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HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Reoti
S/o Shri Chhatri
R/o Village Sadikpur,
Post Hapur, District Ghaziabad. ..Applicant

By Advocate Shri Malik B.D. Thareja

Versus

1. Union of India through General Manager,
Northern Railway,
Baroda House,
Headquarter,
New Delhi.

2. Divisional Railway Manager,
Northern Railway,
Moradabad. ..Respondents

By Advocate Shri O.P. Kshatriya

ORDER

Hon'ble Mr. S.R. Adige, Member (A)

In this application Shri Reoti former Gatekeeper, Northern Railway, has impugned the action of the respondents in removing him from service.

2. The applicant was a Gatekeeper at the level crossing Gate No.37-C on Hapur Khurja section of the Northern Railway. As a result of an accident at this gate on 1.1.1982, a departmental enquiry was instituted against the applicant which led to his dismissal. The applicant then filed a Suit No.800 of 1983 on 22.8.1983 in the Court of the Senior Sub-Judge, Delhi for a permanent injunction restraining the

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defendants from removing him from service and adding a prayer in the alternative, if the Railway administration pleads otherwise, declaratory decree be passed declaring the order of removal from service as null and void. It appears that the plaint was returned to the applicant for representation after service of notice under Section 80 C.P.C. in the first instance, upon which, the applicant filed an amended plaint, in which it was prayed that the order dated 17.12.1983 removing the applicant from service be declared as null and void. This Suit was numbered as 219 of 1985 and upon the constitution of the Central Administrative Tribunal, it was transferred to the Tribunal and came to be renumbered as TA 432 of 1986.

3. This T.A. was heard in the presence of both parties and by the time, the respondents had filed their reply, it was noticed that no appeal had been filed against the order of removal dated 17.12.1983, and accordingly by judgment dated 8.4.1991, T.A. No. 432 of 1986 was disposed of, directing the applicant in the first instance to exhaust his statutory remedy of appeal making it clear that in case such an appeal is filed, it should not be dismissed on the grounds of limitation alone but should be disposed of on merits in accordance with law as expeditiously as possible and in any case within a period of six months from the date of filing of such an appeal.

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4. The applicant preferred his appeal on 5.6.1991, which was disposed of by order dated 5.2.1992 (Annexure A-F), whereby the penalty of removal was held as justified and valid, and the applicant's appeal was thereby rejected.

5. Meanwhile, it appears that ~~the~~^a criminal case was separately instituted against the applicant for his alleged acts of omission and commission, which led to the Railway accident. The applicant was convicted by the judgment dated 3.4.1987 against which, he preferred an appeal. The Appellate Court (Sub-Judge, Ghaziabad) by order dated 23.5.1988 remanded the case back to the Trial Court because, inter alia, the Learned Magistrate had not discussed the prosecution evidence at all and based his conviction simply on the statement of the accused prior to the charge. Thereupon, the Trial Court delivered judgment dated 29.6.1988 convicting the applicant under Section 304-A I.P.C. and sentencing him to undergo R.I. for two years and to pay a fine of Rs.5,000/- and in default of payment of fine, he was directed to further undergo R.I. for six months. In appeal, that judgment dated 29.6.1988 was set aside by the Sub-Judge, Ghaziabad, by his judgment dated 8.12.1988. The applicant's appeal was accordingly allowed.

6. The charge against the applicant in the DE is that on 1.1.1982 between 7-8 P.M., he was on duty as a Gate Keeper on the Railway

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crossing Indergarhi P.S. Hapur District, Ghaziabad.

It was his duty to close the Railway gate on the arrivvel of any train. He did not close the Railway gate at the time of the arrival of 6 K.M. passenger train and by his negligent act of not closing the gate, a truck loaded with vegetables and passengers, collided with the said train, as a result of which, six persons died (four at the spot and two on the way to the hospital) and six persons suffered serious injuries and one person received simple inujury. The applicant thus acted most negligently and violated GR 229.

7. The E.O. in his findings held the charges proved against the applicant, and accepting the E.O's findings, the disciplinary authority by his order dated 17.12.1983 ordered the removal of the applicant from service w.e.f. 18.12.1983, and the said order passed by the disciplinary authority was upheld in appeal, against which the applicant has now come to the Tribunal.

8. The applicant's case is that while posted as a Gate Keeper on 31.12.1981 at 6 P.M. and after performing fixed 12 hours duty, he went off at 6 A.M. on 1.1.1982 and was relieved by a temporary Gate keeper Shiv Raj Singh, who was working vice the second permanent Gate Keeper Shri Kishan Lal, who was absent for sometime past. The applicant stated that he was supposed to return to duty at 6 P.M. the same day and relieve Shiv Raj Singh, but

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as no residential accommodation was provided for the Gate Keepers at the level crossing and he had been working there for the last many years, he had been permitted under rules to go to his village situated at a distance of 3 Kms. and from there also visited other places/villages in pursuant of his normal life. His contention is that on 1.1.1982 he went from his village to another village Churhiala where his daughter had been married and there he unexpectedly fell seriously ill and was taken to some doctor by his relatives and thus he failed to return to duty at 6 P.M. on 2.1.1982. His contention is that Shri Shiv Raj Singh left the place of duty before being relieved by the applicant in violation of the Railway Rules, leaving the level crossing gates unlocked and, therefore, he himself is in no way responsible for leaving the level/crossing gates unlocked, which lead to the Railway accident. In this connection, the applicant seeks support from the counter-affidavit filed by the respondents to the applicant's petition in SLP (Civil) No.12668 of 1991 - Reoti Vs. Union of India, in paragraph E(ii) of which, the respondents have stated that on 1.1.1982 at 6 P.M., the applicant was required to turn up on duty and take over from Shri Shiv Raj Singh, who left the gate at 6 P.M. assuming that the applicant would come on duty as usual and in the absence of a Gateman, the accident

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occurred. The applicant contends that this averment of the respondents in thier reply shows that the accident occurred, in his absence and, therefore, he could not be blamed for the same. The applicant also relies upon the judgement of the Spl. Judge, Ghaziabad dated 8.12.1988, delivered in appeal, setting aside his conviction the charge of causing death by rash and negligent act, (Section 304-A IPC) and the applicant has pointedly referred to the findings of Spl. Judge that there is absolutely no evidence on the record to hold that the accused was on duty as Gate Keeper at the relevant time, and on this basis, the applicant contends that he cannot be held guilty or responsible for the accident.

9. There are a whole catena of judgements, which lay down that the quantum of proof required to bring home the guilt of a delinquent in a departmental enquiry, is not of the same order as is required in a criminal case. In a criminal prosecution, it is well settled that the guilt of the accused person has to be proved beyond all reasonable doubt, whereas in a domestic enquiry it is sufficient if the preponderance of probability points to the guilt of the delinquent. It is also well settled that the Tribunal cannot reappreciate the evidence, and while exercising jurisdiction akin to the High Court under Article 226 of the Constitution, it is required to confine itself _____ to _____ ensuring _____ that

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the impugned order is not arbitrary, illegal, perverse or based upon no evidence.

10. Viewing the case within the parameters as noted above, we find that the Enquiry Officer in his report has referred to the statement of Shri Shiv Raj Singh that he had been relieved by the applicant at 6 P.M. on 1.1.1982 and furthermore, in the morning of the same day, neither the applicant had given him any application nor had the applicant informed him that he would not come on duty in the After-Noon. Sectional PWI had also denied that any leave application of the applicant had been given to him by Shri Shiv Raj Singh or any verbal request was conveyed to him during the day. Shri Rasheed, PWI in whose beat the level crossing fell had also stated that neither the applicant nor Shri Shiv Raj Singh had given any leave application or conveyed any verbal request for leave or for making any relief arrangement for making available for duty at 6 P.M. on 1.1.82 to 6 A.M. on 2.1.82. The statement of Shri Shiv Raj Singh is on record in which he had stated that he has given charge of the level crossing to the applicant at 6 P.M. on 1.1.1982, and also admits having marked the attendance of the applicant on his coming for duty on the evening of 1.1.1982 in the Column marked for 2.1.1982. He states that as the applicant came on duty at 6 P.M. on 1.1.1982 and was to remain on duty till 6 A.M. on 2.1.1982, hence he marked his attendance in the column for 2.1.1982 and further

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stated that he marked the applicant's attendance because the applicant himself was an illiterate.

11. The respondents in their reply have taken the stand that the applicant after taking over charge from Shri Shiv Raj Singh on 1.1.1982 at 6 P.M. for duty from that point of time till 6 A.M. on 2.1.1982 absconded and left his place unauthorisedly and left the gate open due to which the accident took place. They have denied that there is no accommodation at the level crossing and state that gate lodge is provided at every level crossing to the Gateman on duty and he is supposed to remain at his duty place throughout his roster duty hours and cannot leave the gate without the permission of his in-charge. They state that the applicant had taken over charge from Shri Shiv Raj Singh, left the site and reported sick only to save himself from the consequence of the accident. They state that the story of sickness is a made up one and is an after thought and had he been sick, he should have reported to the Railway doctor at Hapur but instead, he submitted a medical certificate from a private doctor. They state further that if he at all fell sick on duty, he should have closed the gate and should have arranged for a proper relief and should have reported sick to the nearest Railway doctor.

12. We have heard the applicant's counsel Shri Malik B.D. Thareja and the respondents

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counsel Shri O.P. Kshatriya. We have also perused the material and record and given the matter our careful consideration.

13. Even upon the applicant's own admission, as contained in paragraph 4 (c) of his amended O.A., he was supposed to have returned for duty at the Railway crossing at 6 P.M. on 1.1.1982 and relieved Shri Shiv Raj Singh from duty. The applicant cannot plead in his defence that because, according to him, he failed to perform his duty at 6 P.M. on 1.1.1982 by relieving Shri Shiv Raj Singh, he is not responsible for the accident. It was his duty to relieve Shri Shiv Raj Singh on 1.1.1982, and the applicant has failed to produce any material to show that he was permitted to abstain from performing his duty and was allowed to go to his village that evening and also to visit other places, in what he terms "pursuant of his normal life". The applicant's duty was at the level crossing at 6 P.M. on 1.1.1982, and if he failed to present himself there, and ensure that the gates were closed when the train passed, it must be held that this failure directly led to the serious Railway accident, which resulted in loss of many lives and injury to others, for which the applicant cannot escape responsibility.

14. As stated above, we have to confine ourselves in our view to ensuring that the impugned order does not suffer from the vires

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of arbitrariness, illegality, mala fides, perversity or absence of evidence, and manifestly the discussion ^{on the noted} above ~~the~~ points clearly lead us to the conclusion that the impugned order of removal from service suffers from none of the above infirmities.

15. In this connection, it may be recalled that the Hon'ble Supreme Court in U.O.I. and Others vs. Upendra Singh (1994) 27 ATC 200 as observed that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution and the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. Quoting the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal vs. Gopi Nath and Sons, 1992 (Suppl.2) SCC 312, their Lordships have been pleased to affirm the following principle:-

" Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual received fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself".

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16. In the present case, the applicant was given every opportunity to defend himself and it cannot be said that the applicant has not received fair treatment. Under the circumstances, the impugned orders do not warrant our judicial interference.

17. O.A. fails and is dismissed. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)

MEMBER (J)

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(S.R. ADIGE)
MEMBER (A)

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