

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 30th day of January, 2004.

QUORUM : HON. MR.JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 1271 of 1996

Deveshwar Prasad Chaudhary son of Shri Triveni Ram Chaudhary,
aged about 59 years, resident of 5/783, Vikas Khand, Lucknow.
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.....Applicant.

Counsel for applicant : Sri S.S. Sharma.

Versus

1. Union of India owning and representing Northern Railway,
notice to be served to the General Manager, Northern
Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, D.R.M.
Office, Lucknow.
3. The Additional Divisional Railway Manager, Northern
Railway, D.R.M. Office, Lucknow.
4. The Divisional Superintending Engineer (Co-ordination),
Northern Railway, D.R.M. Office, Lucknow.
5. The Assistant Engineer, Northern Railway, Prayag, Allahabad
.....

.....Respondents.

Counsel for respondents : Sri A.K. Gaur.

ORDER (ORAL)

B-Y HON. MR.JUSTICE S.R. SINGH, V.C.

Heard Sri S.S. Sharma, learned counsel for applicant,
Sri A.K. Gaur, learned counsel for respondents and perused
the pleadings.

2. By order dated 16.6.95, the Disciplinary Authority
namely Divisional Superintending Engineer (Co-ordination),
Northern Railway, Lucknow imposed the penalty ^{of reduction} to a lower
grade of PWI in the scale of Rs.1600-2660 from the scale of
Rs.2000-3200 for a period of one year with stipulation that
the grade of Rs.2000-3200 will be restored with future post-
poning increments after expiry of period of one year from

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the date of the order. The applicant preferred appeal. The Appellate Authority namely Addl. Divisional Railway Manager, Northern Railway, Lucknow by order dated 25.9.95 considered the penalty imposed by the Disciplinary Authority as not commensurate with the gravity of the offence and accordingly called upon the applicant to explain in writing as to why penalty of compulsory retirement should not be imposed upon him. The applicant submitted his reply vide letter dated 14.10.95 (Annexure A-14) to the show cause notice stating therein that Rule 25(Revision) relating to D & AR Rules, 1968, nowhere empowers the said authority to revise the penalty imposed by the Disciplinary Authority and accordingly requested the said authority to pass orders on the appeal according to law. The enhancement notice was, in fact, given by the Appellate Authority by giving personal hearing to the applicant. The Appellate Authority held that, "In this case, the fact that tongue rail was worn out and required replacement was known to Shri Chaudhary, well before the date of derailment. However, Shri Chaudhary, did not care to ensure timely change of the defective tongue rail, which resulted in the accident.

This is a case of gross negligence. Hence penalty of compulsory retirement is imposed on Shri Chaudhary with immediate effect."

3. Learned counsel for applicant submits that the Appellate Authority failed to consider the issue raised by the applicant in his memo of appeal (Annexure A-7) dated 7.7.1995 and enhanced the penalty without considering the points/issues raised by the applicant in his appeal. Learned counsel further submits that in his appeal, the applicant had submitted that the order of punishment was a non-speaking order; copy of the enquiry report was not given to the applicant; the Disciplinary Authority being a member of Fact Finding Enquiry Committee was disqualified to act as Disciplinary Authority; and the Enquiry Officer did not

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record any independent evidence and just relied on the findings recorded by the Fact Finding Committee; and, in the circumstances, proceed the submission, non-consideration of the issues raised by the applicant in his memo of appeal vitiates the order passed by the Appellate Authority. Learned counsel submits that under Rule 22(2) of the Disciplinary & Appeal Rules, 1968, the Appellate Authority was duty bound to consider : whether the procedure laid down in the said rule is applicable or not and if not whether such non-compliance remitted in the failure of justice; whether the findings of the Disciplinary Authority were warranted by the evidence on record; and whether the penalty or the enhanced penalty imposed was adequate, inadequate or severe and then pass orders either confirming, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction which may deem fit and proper in the circumstances of case.

4. We are of the view that the expression "the Appellate Authority shall consider" occurring in Rule 22(2) of Railway Servant Discipline & Appeal Rules, 1968 joins a mandatory duty on the Appellate Authority to advert itself to the points raised in the appeal and decide what it is required to decide under clause (a), (b) and (c) of Rule 22(2) of the Railway Servant Discipline & Appeal Rules, 1968. The Appellate Authority in the instant case, has, albit, held that applicant did not care to ensure timely change of the defective tongue rail, which resulted in the accident, but such a conclusion was arrived at without proper self direction to the points raised in the memo of appeal. In our opinion, this has resulted in miscarriage of justice and has vitiates the order. We are of the considered view that the appellate order deserves to be set aside and the matter remitted to the Appellate Authority to decide the appeal afresh in the light of observations made above.

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5. Accordingly the Original Application succeeds in part. The Appellate order is set aside. The Appellate Authority is directed to decide the appeal in accordance with law within a period of three months from the date of receipt of a copy of this order.

No order as to costs.

A.M.
A.M.

V.C.
V.C.

Asthana/