

23

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 24TH DAY OF JULY, 2003

Original Application No. 328 of 1996

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.D.R.TEWARI, MEMBER(A)

1. Mahesh Singh, R/o village & Post Paharpur, Chapra, Bihar.
2. Smt. Prabhawati Devi, wife of Shri Umesh singh, R/o village & P.O. Raja Patti Bankathpur, Gopiganj, Bihar.
3. Smt. Umrawati devi, W/o Shri Paras Nath, Village Koreaya, P.O. Jalalpur, district Chapra Bihar.
4. Km.Amirta, d/o late Babu nandan R/o Vill & P.O. Paharpur district Chapra, Bihar.

.. Applicants

(By Adv: Shri K.C.Sinha)

Versus

1. Union of India through General manager, N.E.Railway Gorakhpur.
2. Divisional Railway Manager N.E.Railway, Lucknow
3. Sr. Divisional Mechanical Engineer, N.E.Railway, Lucknow
4. Chief Mechanical Manager, (P.H.O.D/C.M.E) N.E.Railway Gorakhpur.

.. Respondents

(By Adv: Shri A.V.Srivastava)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

Applicant Babu Nandan filed this OA u/s 19 of A.T.Act 1985 challenging the order of punishment dated 7.6.1985 on conclusion of the disciplinary proceedings. The aforesaid order was challenged in appeal which was dismissed on 19.11.1985. The revision filed against the said

24

order was also dismissed on 8.8.1989 passed by General manager, N.E.Railway Gorakhpur. Applicant challenged the aforesaid orders by filing OA 873/89 in this Tribunal which was partly allowed on 12.11.1994 with the following direction:

"We, therefore, consider it necessary to quash the order of the appellate authority dated 09.11.1985 and of the revisional authority dated 8.8.89. We direct the appellate authority to consider specifically the issues by the applicants in the memorandum of appeal and give detailed and reasoned findings on each point alongwith other issues required to be considered under Rule 22(2) of the Railway Servants(Discipline and Appeal) Rules, 1968, and, if any lacunas are found in the enquiry, undertake the enquiry himself to remove them in the interest of expeditious disposal of the matter."

In pursuance of the direction of this Tribunal appeal had been decided by order dated 6.7.1995. The order of the punishment has been maintained.

Shri K.C.Sinha counsel for the applicant has placed before us the enquiry report and submitted that the Enquiry officer has not recorded any finding about the charge levelled against the applicant and as to how the charge has been proved by the witnesses. He has straight-away mentioned the conclusion in the last para of the report. This Tribunal by order dated 12.11.1994 gave a clear direction that if there is any lacuna in the enquiry it should be removed by the appellate authority himself. It is submitted by the counsel for the applicant that this aspect of the case has been totally ignored. It is submitted that even if the applicants did not contest the proceeding seriously, the department was not absolved of ^{its} obligation of proving the charge

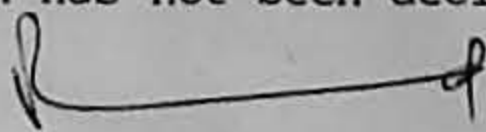
R

against the applicant by evidence. The appellate authority has not mentioned the charge and that how it has been proved by the witnesses.

Learned counsel for the applicant has further submitted that the criminal proceedings against the applicant were also continuing, simultaneously and there applicant was charged for offences u/ss 338/427/279/304-A IPC read with Sec.101 of Railways Act. It is submitted that the applicant was honourably acquitted by learned Judicial Magistrate, Gonda by order dated 19.1.1989. It is also submitted that the criminal prosecution, as well as the departmental proceedings were based on same allegations and same evidence and if the applicant has been acquitted by the criminal court the judgment of the criminal court shall prevail and the punishment awarded to the applicant is liable to be quashed on this ground. Learned counsel has placed reliance on the judgment of Hon'ble Supreme court in case 'Captain M. Paul Antony Vs Bharat Gold Mines Ltd and Anr, 1999 SCC(L&S) 810.

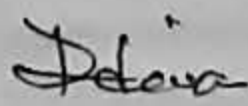
Shri A.V. Srivastava learned counsel for the respondents, on the other hand submitted that the appellate authority has considered in detail the serious accident which took place on 8.1.1985 in which ten persons were killed and two suffered grievous injuries and three received simple injuries. Learned cocounsel has further submitted that evidence has been discussed and the charge against applicant has been found proved. The order ~~has~~ concluded by findings of fact and does not call for interference by this Tribunal. It is further submitted that applicant Babu Nandan never filed any supplementary memo of appeal for raising the ground that he has been acquitted by criminal court on 19.1.1989 though he was alive at that time. It is submitted that the legality of the orders cannot be doubted now on the basis of the order passed by the criminal court.

Learned counsel for the applicant in rejoinder affidavit submitted that against the order of the appellate authority applicant filed revision petition u/s 25 of Railway servants (Discipline & Appeal) Rules 1968 in which this fact was raised that he has been acquitted by criminal court but revision has not been decided and is still pending.



He has placed reliance in para 10 & 11 of the memo of revision (Annexure 12).

We have carefully considered the submissions of the counsel for parties. In para 22 of the counter reply ~~it has been stated that~~ respondents have not denied that the revision was filed by the applicant. On the other hand, it has been stated that the revision was required to be addressed to the Chief Mechanical Engineer which caused the delay in the decision. It has been further stated that the revision is under consideration and the delay was on account of procedural administrative reasons. In the revision the applicant has already raised the plea based on his acquittal by the criminal court. In these circumstances, in our opinion, the ends of justice will be served if we direct Chief Operating Manager to decide the revision of the applicant by a reasoned order within four months and consider the plea of the applicant based on acquittal in criminal court alongwith other issues in the light of the judgment of Hon'ble Supreme court in the case of 'Capt. M. Paul Antony (Supra). This OA is accordingly disposed of finally with a direction to Chief Operating Manager to consider the revision of the applicant and pass a reasoned order in the light of the observations made above within a period of four months from the date a copy of this order is filed. It may be mentioned that applicant died during pendency of this OA and heirs have been substituted. The applicants may file copy of this order alongwith memo of revision for expeditious disposal of the case. No Order as to costs.


MEMBER(A)


VICE CHAIRMAN

ed: 24th July, 2003