

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.722 OF 1998

ALLAHABAD THIS THE 15th DAY OF october, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

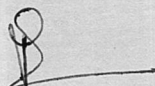
Suresh Kumar Pathak,
S/o Shri Shitla Prasad Pathak,
aged about 40 years,
resident of Railway Colony,
Shankargarh, District-Allahabad.

. Applicant

(By Advocate Shri S.S. Sharma)

Versus

1. Union of India owning and representing,
North Central Railway, Jhansi, notice to be
served to The General Manager, N.C.R.,
Headquarters Office, Allahabad.
2. The Chief Engineer, Central Railway,
Headquarters Office, Allahabad
3. The Divisional Railway Manager,
Central Railway, D.R.M. Office,
Jhansi. (The Revising Authority).
4. The Senior Divisional Engineer (Co-ordination),
Central Railway, D.R.M. Office, Jhansi.
(Appellate Authority).
5. The Divisional Engineer (North),
Central Railway, D.R.M. Office, Jhansi,



(Disciplinary Authority).

. Respondents

(By Advocate Shri G.P. Agrawal)

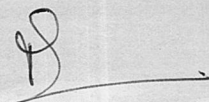
O R D E R

By this O.A., applicant has challenged memorandum of charges dated 09.04.1996 (Page 40) order dated 15.7.1996, Appellate order dated 15.11.1996 and appellate order dated 29.7.1998. He has further prayed that respondents be directed to refund back the amount of penalty already recovered with 18% interest.

2. The brief facts as alleged by applicant are that while working as Permanent Way Inspector at Shankergarh, the applicant was served with a memorandum of charges for major penalty by the Divisional Engineer (North) Central Railway, Jabalpur, bearing no.JBP/W/staff, DAR/G-1/SKP/3 dated 09.04.1996 due to a derailment of down JSME Special Goods Train at Madaraha Railway Station in loop line in yard at about 17.07.hrs. between Satna and Allahabad Section of Jabalpur Division.(Annexure-3). The allegation against applicant was that he failed to maintain the track to the proper standard due to which On JSME Spl Goods Train derailed at MFX Station on 18.3.1996 due to stock gauge coupled with loose track fittings at the fish plate joint and excessive twist in the track coupled with loose packing at the fish plated joint.



3. Applicant gave his reply in defence vide letter dated 24.08.1996 (Annexure-4). He submitted that as per readings/track measurements recorded on 18.3.1996 by the Senior Subordinates Committee, there was no slack gauge found beyond permissible limit. So it could not be the reason for derailment. As per track measurement recorded on 18.3.1996 by the Senior Subordinates Committee, Annexure A-5, it is evident that there is no excessive twist as alleged. As per track measurement the excessive twist to the maximum extent was 6.3mm per metre whereas according to R.O.S.O. letter No.CRA/501 dated 29.4.1983 the permissible twist on such track is 10mm per metre. So this was not the reason for the said derailment. That different type of sleepers were used in this loop line due to non-availability of sufficient materials for its maintenance. Further for the last more than 5-6 years proposal for renewal of this track is being submitted regularly and the Disciplinary Authority himself knows it very well that sanction for the same has not been given so far. In this respect his attention was drawn to Divisional Railway Manager (W)/Jabalpur's letter No.JBP.W.553.DB.T.84/29 dated 23/24.6.1994 addressed to the General Manager(W)/Bombay V.T. for according sanction for complete track renewal of loop line at Madaraha Railway Station as condition of track is really deplorable and needs secondary relaying on priority.



Attention of Disciplinary Authority was also drawn to his Motor Trolley Inspection on the section on 28.4.1994. Thus the applicant was not responsible for such condition of track.

4. He further submitted the work of this Gang is highly ^{un}satisfactory due to which they were punished several times and the applicant also made several complaints about them and recorded their unsatisfactory working in site order book but no action was taken by any of the higher authority in this respect. So the applicant can not be held responsible for any short coming in the maintenance of the track. The applicant was put to work in Naini Yard on top priority important track circuit work as per orders of his superior ~~and~~ officers. So he was continuously on duty at Naini since 24.2.1996 and the supervision for maintenance of this track was not under him during that period upto the date of derailment on 18.3.1996. So the applicant cannot be held responsible in any way in this respect. Goods Train trailing load of 4500 T, consisting 58 BOXN/45 BOX wagon was not permissible to run on this track and the Goods Train derailed was of 58 BOXN Wagon and 4800 T multiple Engine which was not permissible on this track.

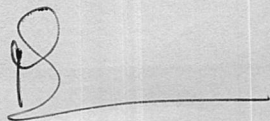
5. In spite of detailed reply, the disciplinary authority imposed penalty of with-holding increment for a period of 6 months vide his order No.JBP/W/Staff/DAR/



C-1/SKP/32 dated 15.7.1996 without holding any detailed enquiry in the matter and also without verification of the facts as mentioned in the written statement of applicant. It is submitted by applicant that the order passed by disciplinary ~~auth~~ authority is non-speaking order which shows total non application of mind. Being aggrieved he filed appeal which too was rejected by a non speaking order dated 15.11.1996 (page 55). Thereafter D.R.M. (Jabalpur) gave him show cause notice dated 4.4.1997 as to why his penalty should not be enhanced as he failed to get the work done properly from the employees working under him (Page 56).

6. Applicant gave the reply vide his letter dated 07.05.1997 to revising authority. However, without considering the applicant's reply revising authority enhanced the penalty of withholding increment from six months to three years without cumulative effect vide order dated 11.06.1997 (Page 26).

7. It is submitted by applicant that the Divisional Railway Manager, Central Railway, Jabalpur, respondent no.3, was not competent to revise penalty order No.JBL/W/Staff/DAR/G-1/SKP/32 dated 15.7.1996 under Rule 25 of the Railway Servants (D & A) Rules 1968. Therefore, the revision order is without authority and competence and so the same is void and nonest in the eyes of law and liable to be set aside



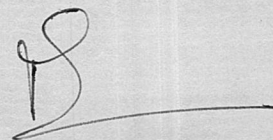
outrightly. Being aggrieved he filed appeal against the order dated 11.6.1997 to the Chief Engineer. The same was not decided within one month so he filed this O.A. During the pendency of the O.A. appellate order dated 29.7.1998 has been passed, therefore, applicant amended O.A. to challenge the said order also.

8. Applicant has challenged these orders on the following grounds:-

1. The orders are not speaking orders.
2. Rule 22(2) of Railway Servants (D&A) Rules has been violated.
3. DRM was not competent to act as revisionary authority.
4. D.R.M. Gave show cause notice on new grounds.

9. Applicant was derailed elsewhere when detailment took place. Since he was not even in section for maintainance, he cannot be blamed for derailment.

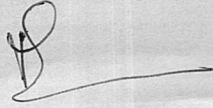
10. Respondents have opposed this O.A., They have submitted that Tribunal cannot sit in appeal and substitute its own findings because Hon'ble Supreme Court has repeatedly held that courts should not interfere in disciplinary matters except if there is some material irregularity in the holding of inquiry or it is a case of no evidence.



11. They have submitted, though chargesheet was issued for major penalty but he was awarded minor penalty only, therefore, there was no need to hold an enquiry. They have submitted that D.R.M. Jabalpur is fully competent to revise the penalty as per rule 25 because disciplinary authority was DEN, Appellate authority was & Junior DEN. Thereafter DORM and DRM are the next authorities.

12. They have explained that as a PWI it is duty of applicant to see that the persons under him work properly. Applicant cannot ^{absolve B} ~~absolve~~ himself from the responsibility bestowed upon him and himself admitted ^{he B} that gang under him was not working satisfactorily. All the points raised by him were duly considered and then reasoned orders were passed by the authorities, therefore, no case for interference has been made out by the applicant.

13. I have heard both the counsel and perused the pleadings. Counsel for the applicant was showing the measurement of lack gauge and that twist was within permissible limit but these are absolutely technical things ~~out~~ of which I have no ~~idea~~. These things can be appreciated only by experts on the subject or the officers who deal with these things. Even otherwise & it is well settled that Tribunal cannot appreciate the evidence, therefore, to that extent the arguments of applicant's counsel have to be rejected. I also




do not find force in other arguments advanced by the counsel for the applicant. Admittedly DRM is higher authority than the SDRM and as per Rule 25(iv) the DRM was very much empowered to issue show cause notice for enhancing the punishment. However, there is one aspect which needs to be looked into, counsel for the applicant x invited my attention to the findings recorded in PE wherein it was clearly mentioned that it was Engineering department which was responsible for derailment (page 43). Counsel for the applicant also invited my attention to the letter written by DRM to the General Manager (west) Bombay on 23.4.1994 (Page 45), wherein he had clearly written that the condition of track was really deplorable and needs secondary relaying on priority basis with 2nd quality sleepers 52Kg SCC so that sleepers may be renewed.

14. The fact that tie bars are broken and WMR plates are required to be replaced immediately was reflected even in the report submitted by DEN (Page 49). In fact in his written statement he has taken number of technical grounds but none of them have been dealt with by the authorities but they have conveniently picked up one sentence from his statement wherein applicant had stated that the gangman working under him were found to be not satisfactory. Authorities have also not taken it into consideration that admittedly the entire track was in a bad condition



therefore, authorities were required to apply their mind to this aspect while issuing orders. Since in none of the orders as referred to above these technical points have been considered, I feel this case needs to be reconsidered specially keeping in view the fact that admittedly at the relevant time applicant was deputed on special works in the yard so naturally he couldn't have been available for maintenance of track. It is stated categorically by applicant that the punishment awarded by disciplinary authority was already given effect to. Therefore, the orders passed by DRM and Chief Track Engineer are quashed and set aside. The matter is remitted back to the DRM to keep in mind the technical grounds taken by the applicant and then to pass ^{speaking B} orders after hearing the applicant.

15. With the above directions, this O.A. is disposed off with no order as to costs.


Member-J

/ns/