

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.149 OF 2001

ALLAHABAD THIS THE 09/3 DAY OF MARCH, 2006

HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A

Jagdish Prakash. Sharma, S/o late Mijaji Lal Sharma, aged about 52 years, R/o 62/259-B Nagla Kachiyan Near Mustafa Quarters, Agra Cantt., District Agra.

.....Applicant

(By Advocate Shri B.L. Kulendra.)

V E R S U S

1. Union of India, through General Manager, Central Railway, Mumbai CST.
2. DRM, Central Railway Jhansi, U.P.
3. Sr. DEE (TRO), DRM's office Central Railway, Jhansi. U.P.
4. Loco Inspt (Mr. M.K. Srivastava), C. Railway, Agra. Cantt., Agra.

.....Respondents

(By Advocate: Sri D.C. Saxena.)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

"Lord Greene said in 1948 in the famous Wednesbury case (1948) 1 KB, 223 that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative

action. It is equally well known that in 1983, Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service* (called "CCSU case" 1985 AC 374) summarised the principles of judicial review of administrative action as based upon one or the other of the following viz. illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility"."

Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain, (2005) 10 SCC 84,

Referring to Wednesbury case, the Apex court in a very recent case of **V. Ramana v. A.P. SRTC, (2005) 7 SCC 338**, stated as under:-

"The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

2. Within the defined as well as confined jurisdiction of the Tribunal in deciding a matter relating to disciplinary proceedings as prescribed above, this case is viewed, for the purpose of which, a thumb nail sketch of the facts of the case are now narrated, as given in the O.A. and in the counter:-

3. Facts as in OA:-

(a) The applicant was appointed in Central Railway on 1.8.1972, On 19.12.1997 while the applicant was working 8478 up Utkal Express, he had passed the Up 1st loop started signal at 'ON' position due to

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sudden mechanical defect and an accident was caused.

(b) The Chief Safety Officer, Central Railway, Mumbai CST in his circular dated 12.6.1998 made a process of awarding punishment.

(c) The applicant in the reply of SF-5 dated 24.2.1998 submitted his explanation dated 10.3.1998. While providing the enquiry report, the applicant has not been given the copy of the statement of defence witness.

(d) In reply, applicant submitted his protest petition. The respondent no.3 imposed penalty of compulsory retirement. Applicant appealed to DRM Jhansi on 6.10.1998 which has been rejected by order dated 12.10.1998.

(e) The applicant submitted a representation dated a representation dated 22.12.1999 to the G.M., Central Railway, CST. The applicant has been discriminated the punishment awarded to the other drivers in similar type of cases is as under.

(i) Murari Lal Driver was awarded punishment of reversion as Asstt. Driver for one year.

(ii) Pooran Chandra Goods Driver was awarded punishment of reduction 3 stages below in the time scale of pay.

(f) The Enquiry Committee has also held secondary responsible the Asstt. Driver,

Guard and the Assistant Guard of the same train.

4. Retort as per C.A.

(a) It is not correct to allege that sudden mechanical defect was developed in the Loco Motive. The presumption of the Driver that it happened on account of sudden development of Mechanical defect is not correct.

5. Facts, by and large, being admitted, what is to be subjected to judicial scrutiny is the decision making process and also to see whether the penalty imposed is in accordance with law. It is to be made clear here that while referring to penalty, the adequacy or otherwise is not looked into. All that is seen is whether the imposition is as per the prescribed rules.

6. As regards decision making process, nothing illegal could be discerned, from the averments both of the applicants as well as that of respondents. That there shall be a charge sheet, that the relied upon documents are to be made available to the delinquent employee and principles of natural justice is to be adhered to, including at the time when the Inquiry report is furnished have all been correctly followed. In fact the applicant himself in his appeal has requested for only reduction of



penalty and nothing else. Hence, what is to be seen is with reference to penalty.

7. The respondents have contended that the applicant having accepted the penalty of compulsory retirement and also having enjoyed the consequences of such compulsory withdrawal cannot agitate against the same. The argument could go well in case there had been no appeal filed within time and the applicant in his leisure, after enjoying the terminal benefits, approached the appellate authority. His anxiety to have the order of compulsory retirement reviewed by the appellate authority is manifest from the fact that while the penalty order was dated 30-09-1998, the appeal preferred was dated 06-10-1998 i.e. within a week. And once his appeal was rejected on 12-10-1998, i.e. within six days of his filing he did not remain silent. He moved a further petition to the higher authority and on his not getting any response, he had filed this O.A. It is in the meantime that the applicant was paid the terminal benefits and it is understandable that once out of the job and nothing else to bank upon, in order to keep the body and soul together, the applicant had to necessarily take steps for that self preservation and one has, as held by the Apex Court in **Surjit Singh v. State of Punjab, (1996) 2 SCC 336** 'the right to take steps in self-preservation'. Hence, his having received the

terminal benefits cannot be said to be fatal to his seeking legal remedies against the penalty. Hence, his act of receiving the terminal benefit consequent to the compulsory retirement cannot under any circumstances be termed as one of waiver or acquiescence. This contention of the respondents should, therefore, be negatived.

8. Likewise, the applicant tried to contend that in other cases lesser penalties have been awarded and the applicant singled out. While normally it is expected that the disciplinary authority shall judiciously act and award penalty which is commensurate with the degree of misconduct and thus uniformity is maintained, for a comparison should be made, the same should be with reference to the same set of facts and not an entirely a different episode, unless in the latter case full facts are spelt out. In the cases cited by the applicant, full facts are not available. Hence, this contention of the applicant is to be negatived.

9. In the written argument, the following is the contention on behalf of the respondents:


(a) The crossing of the Danger signal is a serious matter and for such lapse the minimum punishment is as under :-

- (i) Dismissal
- (ii) Removal

(iii) Compulsory Retirement

(b) The payment has been accepted by the petitioner without any protest whatsoever. All the retiral benefits, in question, have been received by the petitioner without any protest and this being so the petitioner is stopped under the law from challenging the correctness of the impugned order.

(c) One J. Pinto serving as Mail Train Driver in Central Railway, Jhansi similarly crossed Danger Signal and for that lapse he was removed from service. The removal order was upheld by the Appellate authority.

(d) The following decisions have been cited by the counsel for respondents:-

(i) *Sanat Kumar Dwivedi, Vs. Dhar Zila Sahakari Bhoomi Vikas Bank reported in (2001) 9 SCC 402.*

(ii) *State of Punjab Vs. Krishna Niwas reported in 1997 (9) SCC 31.*"

10. And the imposition of compulsory retirement as penalty goes in tandem with the above contention of the Respondents. What is to be seen is whether the same is as per rule.

11. The applicant has annexed a copy of DO letter dated 12-06-1998 from the Chief Safety Officer which prescribes various degrees of penalties for various misconducts and in so far as misconduct of

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"Passing signal ON" is concerned, the following are the extent of penalties:-

- (a) Primary - Removal from Service.
- (b) Secondary - Reduction in stage of the Grade for 3 yrs(CE)
- (c) Blameworthy - withholding of increment for 1 year.

12. The purpose of prescription of penalty for different degrees or gravity of misconduct is not only to ensure that the penalty imposed is commensurate with the gravity of misconduct but also to ensure that for like misconduct, like penalty is imposed.

13. If the above prescribed penalty is contrasted with that on the basis of which the respondents have imposed the penalty of compulsory retirement, it would go to show that the respondents have totally kept aside the abovementioned prescription of penalty. For, compulsory retirement has not been prescribed as a penalty at all in respect of Passing signal at ON. Again, we have to analyze the Inquiry Report as to under what heading the I.O. has attributed the misconduct of the applicant - i.e. primary or secondary or blameworthy.

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14. The exact words of the finding are as contained in Annexure 9 is quoted below:

Carriage staff on NR which has done examination of 8478 Up rake and issued HP certificate and primarily responsible. As no staff has attended enquiry despite timely message to Sr. DME/C&W/NIILS NR, CWS NZ NR. Names of staff held responsible and their service particulars can not be furnished.

2. *Driver Asstt. Driver Guard Asstt Guard of 8478 Up who worked the train 8478 up on 19.12.1997 ex NZM to KSV are also responsible to cause over shooting of starter signal in Up 1st loop line at Kosi Kalan station at ON position. Their names are appended below.:*

*Driver : Sri J.P. Sharma Ist Driver 'A' AGC
 Guard Swami Prashad Guard Mail AGC
 Asstt. Driver Sh. Bas Dev Sharma Asstt. Driver 527 AGC
 Asstt Guard Durga Dass Asstt. Guard AGC"*

15. Two aspects are to be seen. Bifurcation of the findings into two paragraphs, (first carriage staff being held responsible and next the applicant and other running staff as 'also responsible') has its own significance. First one belongs to the Primary category and the same has been unequivocally spelt out and the second, only 'Secondary'. Again, as extracted above, the word "primarily" is conspicuously missing in para 2, wherein the name of the applicant figures. Thus, the applicant's misconduct comes within the category of "Secondary" for which the penalty is reduction in stage in the grade for three years (CE). As such, the disciplinary authority and the appellate authority have clean forgotten to take into account the

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prescription of penalty as mentioned above. It may be that the said prescription emanating from the Chief Safety Officer cannot be equated to a Rule. But as long as certain administrative decision, with a purpose is taken, the same has to be compliance by following and not by defying.

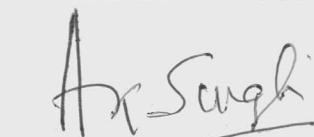
16. It is not the case that the disciplinary authority has disagreed with the finding of the Inquiry Authority in so far as the nature of misconduct is concerned. He has fully accepted the report, in which event; the disciplinary authority was expected to award penalty only to the extent as admissible for secondary degree of misconduct.

17. Hence, the O.A. succeeds to the limited extent that the order of compulsory retirement being not the one as is normally imposed for the type and gravity of misconduct as is evident from the DO letter dated 12-06-1998, the impugned order dated 30-09-1998 is hereby quashed and set aside. This would tangentially mean that the appellate order of dismissing the appeal also gets quashed as a logical corollary. The applicant is entitled to reinstatement, subject however, to the refund of the GP Fund if any drawn by him as a part of the terminal benefits. If commutation has been already made, the same shall be refunded in one lump sum,

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within a reasonable period from the date of reinstatement. The period from the date of compulsory retirement till the date of reinstatement shall be treated as period of suspension for which the applicant shall be entitled to the subsistence allowance as per rules and the amount of pension drawn by him during the period shall be duly adjusted and any amount in excess of subsistence allowance shall be recoverable from the applicant's future salary in installments. It is however; open to the respondents to consider imposing the penalty as prescribed for secondary level of misconduct in respect of Passing signal ON as contained in the DO letter dated 12-06-1998.

11. The above drill shall be performed within a period of six months from the date of communication of this order. Under the circumstances, no cost.


Arvind Singh
MEMBER-A
Girish
MEMBER-J

GIRISH/-