

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1170 OF 2004

ALLAHABAD THIS THE ^{25th} DAY OF ^{May} 2007

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

HON'BLE MR. K. S. MENON, MEMBER-A

Mujibullah Son of Sri Faizan Ali,
Aged about 33 years R/O Village Chekua,
P.O. Gandhigram Sagarva,
Sant Kabeer Nagar.

.Applicant

By Advocate : Sri S. K. Om

Versus

1. Union of India
through the General Manager,
North Eastern Railway,
Gorakhpur.
2. Additional Divisional Railway Manager,
North Eastern Railway, Lucknow.
3. Sr. Divisional Operating Manager,
North Eastern Railway, Lucknow.
4. Assistant Operating Manager,
N.E. Railway, Lucknow.

.Respondents

By Advocate : Sri K. P. Singh

O R D E R

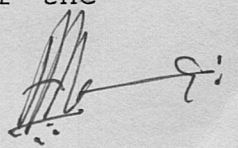
HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

This Original Application has been filed for quashing the impugned orders dated 11.11.2003, 26.12.2003 and 04.03.2004 passed by the respondents and for direction to the respondents to reinstate the applicant and other reliefs.

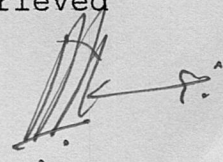
2. The brief facts of the case are that the applicant was working as Coupling Khalasi/Chainman in North Eastern Railway, Gorakhpur under the

respondents. It is stated that the post of couplling Khalasi belongs to operating cadre and as such the applicant is a operating staff. On 14.12.2003 when the accident took place at Gorakhpur Railway station between Train no.582 which ^{collided} ~~was~~ ~~clouted~~ with Train No.5707, thereafter immediately a preliminary enquiry was held wherein one Shri R. P. Shukla, TNC, B.M. Tripathi, ASM and Shri K. C. Pandey, Guard were found preliminary responsible for the cause of the accident. A perusal of the preliminary enquiry report would show that Shri Jaswant Singh, Kantawala, Shri Mohammad Mutin, TXR and Shiv Bachan, Shunter were found responsible at secondary level on the basis of the preliminary Enquiry report dated 29.12.2002 which is produced as Annexure 1. As the Assistant operating manager was not satisfied with the preliminary enquiry report another preliminary enquiry was held and the report was made on 19.2.2003 that included the name of the applicant. Copy is produced as Annexure-2.

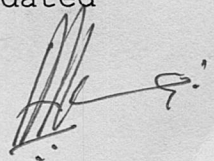
3. It is further stated that the applicant was not at all responsible for the accident in any manner as much as the said accident took place at about 2.00 A.M. on 14.12.2002, on that day, the applicant arrived for his duty late at about 2.20 P.M. i.e. much later the accident took place and further the applicant is not responsible for the accident as he is working as Chainman and duty of the applicant is merely to attach and detach the boogies from one wagon to another and the ~~same~~ has nothing to do with the shunting of the



train. As the accident took place during the shunting of Train No.582, during the course of shunting it hit the Train No.5707 from side. Under these circumstances, the applicant was issued a charge sheet on 27.03.2003 alleging that he is responsible for the accident during the course of setting of Train no.582. Further alleged that during the course of shunting of Train no.582 applicant should have conducted the setting by standing in front of train but he failed to perform his duty. Denying the same the applicant has stated that he is not supposed to stand either in rear or in front of train and his duty is only to attach and detach the wagons and, therefore, the applicant cannot be blamed for the accident as the applicant was not present at the time of the accident which took place at 2.00 P.M. as he arrived on duty at about 2.20 P.M. Applicant should not have responsible for the accident. He replied for the charges on 09.04.2003 and thereafter the enquiry officer was nominated, during the course of the enquiry the applicant requested for certain relied upon documents, but the same were not supplied by the respondents. During the course of enquiry the statement of Shri B. M. Tripathi and statement of Shri Kantwal and Shri Shiv Bachan and Shunter ultimately the Enquiry Officer on enquiry submitted his report and held that none of the charges leveled against the applicant are proved and, therefore, the applicant cannot be held responsible for the accident and he is liable to be exonerated. It is stated that initially respondent no.4 aggrieved



with the findings of the enquiry officer, and he simply sent the copy of the Enquiry report dated 22.07.2003 for applicant's reply. It is applicant duly replies for the Enquiry report on 09.04.2003. However, later on the respondent no.4 vide his letter dated 09.09.2003 disagreed with the findings of the Enquiry Officer and gave his dissenting note. A copy of the same is produced as Annexure-7. It is stated that the same is non speaking and absolutely no reasons have been assigned as to on what point the report of the Enquiry Officer is incorrect. Agreeing with the findings of the Enquiry Officer with regard to applicant's duty on the ground that attaching and detaching the bogies is merely, "Shabdik duty" and the same is not, 'Vastavik' and, therefore, the view taken by the respondent no.4 is wholly incorrect and arbitrary as there cannot be two different duties Shabdik and Vastavik. It is stated that the detaching note would further show that respondent no.4 after taking the statement of Shri Jashwant Singh and Shri B. M. Tripathi, ASM who have admitted in their statement that he was present at the time of shunting and he was actually supervising the shunting even then respondent no.4 was held that he has so many other works to do and he was present at the time of accident, and on wholly irrelevant grounds the respondent no.4 disagreed with the findings of the Enquiry Officer with regard to arrival of the applicant at the duty place. The applicant has replied on 7.11.2003 for the detaching note dated




09.09.03 and thereafter the respondent no.4 by the order dated 11.11.2003 removed the applicant from service. The copy of the same is marked as Annexure no.9. Against the said order of removal the applicant preferred an appeal before the respondent no.3 on 28.11.2003. The said appeal was rejected vide order dated 26.12.2003. Against the said order of the dismissal of the appeal the applicant preferred revision to the respondent no.2 and the same was rejected by the order dated 04.03.2004. The applicant aggrieved by the aforesaid order has preferred this application contending that the removal order passed by the respondents, and the Appellate order and the Revision order are all erroneous, without based on any proper findings on the materials placed in the absence of the same they are arbitrarily rejected the contention of the applicant put forth before the Appellate Authority as well as before the Revisional Authority and seeks for setting aside the same and for the relief claimed as above.

4. On notice the respondents have appeared and filed the counter affidavit and stated that applicant was on duty and has put his signature in which there was no mention of last arrival. The duty of Chainman is to attach and detach Coaches/wagons but he may be require to participate in shunting operations if required, though the duty of the Chainman is to attach and detach coach/wagons but administration can utilize his service for other related activities of the train

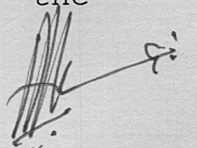


setting also as the applicant was on duty corroborated by his attendants without late arrival remark. That all the staff including Chainman should know the composition of the train though it does not exempt other staff namely Guard, Driver, TXR etc. who are more responsible to know the above and further stated that the disciplinary authority to decide the quantum of punishment according to the responsibility of concern staff. The respondents have further stated that the responsibility of confirmation of point setting, clearance of fouling, observing shunt signals, is of the staff engaged/interested at that end as the applicant was at the other hand he cannot be held responsible for any out of omission or commission at the other end and the action taken by the respondents is in conformity with the rules and the necessary orders are passed by application of mind by the authorities concerned and in view of these circumstances prays for the dismissal of the OA.

5. The applicant has filed Rejoinder Affidavit to the Counter Affidavit and stated that the duties of the applicant is to attach and detach to coaches and he is not competent to give signals during the shunting as the applicant was never directed to do the shunting job and therefore, in any view of the matter, he cannot be held responsible for lapses during the shunting of the fateful train and reiterated the grounds taken in the OA.



6. We have heard the learned counsel for the parties and perused the pleadings and the materials on record. The learned counsel for the applicant mainly contended that the accident took place on 14.12.2003 for the same the preliminary enquiry was held and the report was submitted dated 29.12.2002, in that the name of the applicant was not found and thereafter second preliminary enquiry report was submitted dated 19.2.2003 by the Assistant Operator Manager in which the name of the applicant was included and therefore the subsequent enquiry report is not correct and further submitted that the accident took place at 2.00 P.M. as the applicant arrived on that day late at 2.20 PM, therefore the applicant was not present at the time of accident i.e. at 2 PM., with regard to respondent no.4 disagreed note no reasons how preliminary enquiry report is incorrect and the supporting ground for the same and further submitted that one of the persons involved in the accident, the punishment imposed against him is not severe in nature, and the punishment imposed on the applicant is shocking one of dismissal. On the other hand the learned counsel for he respondents submits that having regard to the nature of the accident took place and in view of the circumstances as the persons employed should be more cautious then the reasonable man if any lapse on their part in discharging their duties will result in serious consequences of accident and damages and thereby it results in great loss and damage to the department, for having taken into consideration the



proper enquiry was held and the action is taken by the respondents cannot be find fault with. In view of the submission made by learned counsel for both the sides to consider the contention of the applicant it is clear from the admitted facts that the accident took place on 14.12.2003 and the preliminary enquiry was held, it is clear from the Annexure -6, the translated copy of the same given by the learned counsel for the applicant it is held that the charges leveled against the applicant are not proved and the employee is not guilty. The relevant portion of the translated copy of the said report are as follows:-

"5. A. Reasons for Conclusion:- Allegation against the delinquent in paragraph 1 of the chargsheet is that during the course of shunting delinquent should have assisted the shunting by standing in front but he failed to do so. Sri Mujibullah, Chainman/Gorakhpur was on duty in the shift of 14-22.00 shift and the moment he came for duty, he was called by Shri S. M. Tripathi at the cross over and he was assigned duty of detaching and adjusting the rake of 582Dn from engine. Since Station Master was personally present and was conducting the shunting, therefore, it was the responsibility of Shri Tripathi to depute the Shunting Staff in the front side (towards west) and towards fouling mark and it was his responsibility to see whether the fouling mark is clear or not but he failed to do so.

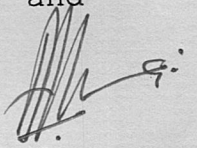
B. According to para 14 of chapter 9 of Operating Manual the duty of shuntman/Coupling Khalasi/Chainman is to loose or light the wagons (detaching or attaching wagons) from the engine and to obey the instruction of the shunting supervisor. To see as to whether fouling mark is clear or not, is the responsibility of Pointsman and Station Master and is not the responsibility of Chainman.

C. Secondly, the true facts that the accident between trains had already happened when Sri Mujibullah came for duty but it has not been mentioned in the charge sheet. This fact is clearly established from the question no.14 of the statement made by Sri B. M. Tripathi, S.M., outdoor and from the answer to the question No.1 made of Sri Jaswant Singh Kantawala and from the


reply of Sri B. M. Tripathi to question No.11 of DH that delinquent connected the power and pulled the power, forward side, therefore, Sri Mujibullah, was standing on the Eastern side of engine. Sri Tripathi in his reply to question of 14 has also clarified that Sri Mujibullah came on duty at about 14.10hrs. whereas the time of accident was 14.05 meaning thereby at the time of accident, Sri Mujibullah was not present. After coming for duty, at 14.10 charged employee remained on cross over, i.e. eastern side of the engine. This fact has also been examined in the cross examination of the enquiry conducted by officials that Mujibullah was standing towards engine side."

Thereafter the second enquiry was held and considered the enquiry report dated 22.7.2003 along with the representation of the applicant dated 1.9.2003 after considering the same disagreeing with the enquiry report proceeded to hold an enquiry against the applicant. It is necessary to state here itself that the grounds for disagreeing with the Enquiry report dated 22.7.2003 it is stated that the applicant was working in such a manner as if nothing has happen this cannot be believed for this is there is not reason forthcoming and so also with regard to the timing of the arrival of the applicant that he came at 14.10 hours it is stated on the analysis of the situation it is clear that he has arrived before 14.10 and the accident has taken place after his arrival and not before, for this also on what basis the analysis was made by him is not forthcoming. With regard to his presence that the applicant was present at the cross over at the time of accident is not possible it may be possible that he was there after the accident but his presence before the accident is unnatural because outdoor station master is having

responsibility of shunting at several places and with regard to his duty is only to attach and detach the train, is only literal duty and not practical because to detach and the coupling and tightening of the same is also come under shunting work and at the time of what signal has been given is also material. The other reasons given with regard to defence statement and the knowledge of Shri Tripathi nor anybody else that the train consists of 14-28 load Shri Tripathi is directed to adjust 1-2 load of train no.582 because one coach was causing jam on the cross over. On going through the preliminary report submitted initially and subsequently by the other authority based on the same facts and circumstances has given dissenting opinion with regard to earlier report for which prima facie we are not satisfied with the reasons given contrary to the facts initially available and based on evidence and therefore the dissenting report which is not based on materials with clarificatory records and the evidence with regard to the nature of the duties and the functions particularly with reference to the applicant presence is concerned which goes to the root of the enquiry proceedings for the alleged misconduct on the part of the applicant and others. As the applicant has stated that he is supposed to stand either in railway or in front of train and his duty is only to attach and detach the wagons and he was not present at the time of the accident took place at 2.00 PM. This contention of the applicant was considered by the preliminary enquiry based on the evidence and



the materials on record at the earlier stage held that the charges are not proved against the applicant. In our opinion as the view taken by the respondent no.4 is arbitrary as the statement of Shri Jashwant Singh And Shri B. M. Tripathi, ASM who have admitted in their statement that he was present at the time of shunting even then the respondent no.4 held that as he has so many other works to do he was present at the time of accident, this is not based on any materials to give a disagreed findings and therefore, it has led to the miscarriage of justice. As stated by the respondents also that the duty of chainman is to attach and detach coaches/wagons but he may be require to participate in the shunting operations if required, though the duty of the chainman is to attach and detach coach/wagons but the authorities can utilize his services for other related activities of the train also which corroborate by his attendants without late arrival remark all the staff including chainman should known the composition of the train though it does not exempt other staff who are more responsible is the contention of the respondents cannot be accepted having regard to the fact that when the charges are framed specifically with regard to the alleged short comings while considering the same the general proposition and saying for the same to connect and to fix for the alleged incidents on the applicant cannot be accepted unless it is warranted in a specific manner in a particular case, when the materials on record clearly goes to show that the duties and

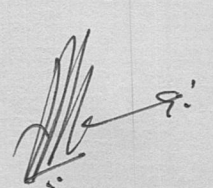


functions of the applicant and other staffs only the question is with regard to any lapse on the part of the charged official contrary to the duties entrusted to him. In the instant case it is clear that the duties of the applicant are different but the respondents want to bring within the framework of the findings given by the Enquiry Officer on the basis of the general administrative work etc. to be carried out by all the staff concern, it is in the general nature in the interest of the administration at large, that by itself cannot be a ground to punish a person for the specific charges leveled against him based on the general statement and the opinions, and therefore we are of the considered opinion that the findings recorded by the Enquiry Officer against the applicant with regard to the charges are not based on acceptable materials and evidence on record, and therefore the enquiry held against the applicant cannot be held to be fair, just, and proper, on the other hand the similarly placed persons who are charged with regard to the same incident taken place the respondent authorities have taken a lenient view and considered the matter disparately without recourse to the contention put forward against the applicant in the present case.

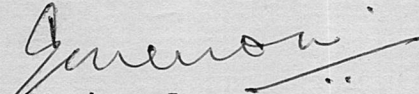
7. We are of the view, that the dissent note given to hold the enquiry as well as the enquiry proceedings held against the applicant without appreciating evidence and the materials on record in a proper



prospective with reference to the duty attached to the applicant and to discipline the contentions of the applicant there is no proper reasons and the explanations on record, on the other hand the reasons given are general in nature without considering the case in specific, proper and fair manner is not acceptable one. On the other grounds and the materials which are not relevant for the charge framed against and, therefore, the enquiry held and the findings given by the Enquiry Officer are unsustainable in law, consequently the punishment imposed on the said report is not legal and the same is not sustainable in law. The Appellate Authority has not considered the case of the applicant in a proper prospective with reference to the grounds raised and the contentions taken in the appeal memorandum, and failed to consider the appeal by appreciating the evidence and the materials on record in a proper and reasonable way, and as such the findings recorded approving the Disciplinary Authority action in punishing the applicant cannot be said to be legal and so also the Revisional Authority has ~~been~~ failed to consider the case of the applicant in the manner in which it has to be considered, and for the reasons given in the preceding paragraphs of the judgment, we hold that the applicant has made out case for grant of relief claimed and as such rejecting the contentions of the respondents we pass the following orders:-



1. The Original Application is allowed. The impugned orders dated 11.11.2003, 26.12.2003 and 04.03.2004 are hereby quashed and set aside.
2. The respondents are directed to reinstate the applicant with all consequential benefits.
8. There shall be no order as to costs.


Member-A


Member-J

/ns/