

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 13th day of April 2011

Original Application No. 1352 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

1. Mahesh Singh, R/o Vill. & Post Paharpur, (Amnour) Chapra, Bihar.
2. Smt. Prabhawati Devi, W/o Shri Umesh Singh, R/o Vill. & Post Office Raja Patti, Bankathpur, Gopiganj, Bihar.
3. Smt. Umrawati Devi, W/o Shri Paras Nath, R/o Vill. Koreaya, Post Office, Jalalpur, Distt. Chapra, Bihar.
4. Km. Amirta, D/o Late Babu Nandan, R/o Vill. & Post Office, Paharpur, Distt. Chapra, Bihar.

..... Applicant

By Adv. : Shri Ashish Srivastava
Shri Sunil

V E R S U S

1. Union of India, through Member, Railway Board, Rail Bhawan, New Dlehi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Chief Operating Manager, O/o General Manager (karmik) North Eastern Railway, Gorakhpur.
4. Divisional Railway Manager, North Eastern Railway, Lucknow.
5. Senior Divisional Mechanical Engineer, North Eastern Railway, Lucknow.

..... Respondents

By Adv. : Shri K. P. Singh

ORDER

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

The applicants are the legal heirs of one Shri Babu Nandan, earlier working as Diesel Engine Driver in the North Eastern Railway. The said Babunandan was proceeded against on a charge of misconduct vide charge sheet dated 16-02-1985 which reads as under:-

ARTICLE-I

That the said Shri Babunandan while functioning on 8.1.85 as Driver on engine No.18551 WDM-2 of Dn.NBQ Special passed Dn. Starter Signal of line No.3 at Bbhnan station at danger at high speed and over shot the sande hump and thus violated GR 3.78 (i) (a), (b), (3), (4) along with SR 3.78 (i) (i) and (4), SR 3.78(6), 3-81(1) (2)(3), 4.10 (i) GR 4.40, SR 4.40(i) and (ii) and 4.42 (2) which tantamounts to Misconduct.

The relied upon documents included the statements of certain persons as under, who were also shown as witnesses:-

ANNEXURE III

List of documents by which the articles of charges framed against Shri Babunandan Driver/GD Shed are proposed to be sustained:

Finding of Addl. CSTE, Addl. COPS ©, Addl.CE(G) and Addl.CME(W)/GKP

1. Statement of Shri B.D. Gupta, SS/BV
2. Statement of Shri Mohd. Nasim RASM/Gaaur at BV
3. Statement of Shri Bunaley P.Man/BV
4. Statement of Shri Ram Manorath Hamal/BV

5. Statement of Shri P.R.Mishra, Guard/GD
6. Statement of Shri Shard Pd.Shukla, Gateman;
Gate No.2228/BV(Tfc)

Sd/
Sudhir Shah
Sr.Divl.Mech. Engineer

(L)

Lucknow

ANNEXURE IV

List of witnesses by whom the article of charge framed against Shri Babunandan Driver/GD Shed are proposed to be sustained:

1. Shri B.D.Gupta, SS/BV
2. Shri Mohd.Nasim, Rasm/Gaur at BV
3. Shru Bunaley, P <am/BV
4. Shri Ram Manorath, Hamal/BV
5. Shri P.R.Mishra, Guard/GD
6. Shri Sharda Pd. Shukla, Gateman (Tfc) Gate
No.222/B/BV (Tfc)

Sd/
Sudhir Shah
Sr.Divl. Mech.Engineer (L)
Lucknow


2. The said Babunandan was also proceeded against criminally as in the course of the accident, ten persons died. In the criminal case, however, the said Babu Nandan was acquitted due to lack of evidence.

3. When inquiry officer was appointed and the said Babunandan, Driver did not cooperate, the inquiry was



conducted ex parte. The witnesses who were examined in April, 1985 were all asked to be present on 30-05-1985 for cross examination but since the applicant or his defence counsel did not attend the inquiry on that day, cross examination did not take place. It was on 31st May 1985 that the inquiry officer held that the said Babu Nandan has violated the specified rules . On the basis of the inquiry report, the disciplinary authority, within 7 days i.e. 07-06-1985 removed the applicant from service by way of imposition of penalty.

4. Shri Babunandan's appeal to the Appellate Authority and Revision petition to the Revisional Authority were not successful. As such he had filed OA 123/87 before the Tribunal which, by its order directed the revisional authority to decide the revision petition after the decision of criminal case and after giving opportunity of personal hearing to the said Babunandan. The criminal case No.910/85 tried by the court of Judicial Magistrate North Eastern Railway Gonda was decided on 19.1.1989 whereby the applicant was acquitted (Annexure A-12 refers). Thus the said Babunandan approached the revisional authority with the copy of the judgement and requested to decide the revision petition in the light of the judgement in the aforesaid criminal case. The said revision petition was rejected.



5. Babunandan along with another co-accused person filed OA 873/89 challenging the penalty order, appellate order and the rejection by the revision authority of revision petition. The Tribunal by its order dated 12.11.1994 quashed the appellate and revisional orders and directed the respondents to consider the appeal as per the requirement under Rule 22 (ii) of the Railway Servants (D&A) Appeal Rules, 1968. Once again the appellate authority only rejected the appeal and revision petition filed by Babunandan under Rule 25 also was rejected (Annexure A-14 refers). The said Babunandan attained the age of superannuation on 30.6.1989. The said Babunandan filed OA 328/96 challenging the penalty order and subsequent orders. On 13.5.2001 as the said Babunandan expired his legal heirs stepped into the shoes of Babunandan and OA 328/96 was decided on 24.7.2003. The operative portion of the said order is as under:-

"We have carefully considered the submissions of the counsel for the parties. In para 22 of the counter reply 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 applicant based on acquittal in criminal court along with other issues in the light of the judgement of Hon'ble Supreme court in the case of 'Capt.M.Paul Antony(supra). This OA is accordingly disposed of

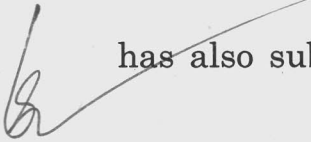
finally with a direction to Chief Operating Manager to consider the revision of the applicant and pass a reasoned order in the light of the observations made above within a period of four months from the date a copy of this order is filed. It may be mentioned that applicant died during pendency of this OA and heirs have been substituted. The applicants may filed copy of this order along with memo of revision for expeditious disposal of the case. No order as to costs."

6. It is in response to the aforesaid order that the respondents have passed the impugned order dated 10.12.2003 which is sought to be challenged in this OA along with the penalty and appellate authority's orders.

7. The respondents have contested the OA. They have stated that the criminal case was decided from an entirely different angle while the disciplinary proceedings were conducted on the basis of the relevant service rules. They have justified the imposition of penalty.

8. The applicants have filed their rejoinder reiterating their stand as contained in the OA.

9. Counsel for the applicant took us through the impugned orders and the enquiry report. He has argued that provisions of the Railway Servants (D&A) Rules have been violated while deciding the charge sheet against late Babunandan. The counsel has also submitted that in the criminal case the criminal court



has fully appreciated all the evidences and held that there has absolutely no negligence on the part of the engine staff and accordingly Babunndan was honourably acquitted. Under such circumstances the revisional authority who was directed to dispose of the revision petition after the judgement in criminal court was published, had committed a grave error in not taking into account the fact that the criminal court had acquitted the said Babunandan.

10. Counsel for the respondents on his part justified the penalty order.

11. Arguments were heard and the documents perused. The DA proceedings are not an empty formality - the charges should be unambiguous and specific and sufficient time should be given to the delinquent hands to prefer proper representation. Further requirement in respect of conduct of enquiry proceedings are succinctly given are here under with supporting decisions of the Apex court:-

a) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities. (State of Uttaranchal vs Kharak Singh (2008) 8 SCC 236) Inquiry to be strictly in accordance with rules, charges should be specific and definite giving details of the incident which formed the basis of charges - has to be conducted fairly, objectively and not subjectively - **Union of India and Others vs Gyan Chand Chattar - (2009) 12 SCC 78**

(b) Ample opportunities have been given in order to enable to effectively participate in the proceedings;

Failure to avail the opportunity by the charged officer would not mean that principles of natural justice have been violated. - **Union of India and others vs G. Annadurai CA 2829 of 2009 decided on April 27, 2009.**

© (a) An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. **State of U.P. v. Saroj Kumar Sinha,(2010) 2 SCC 772 :**

(d) And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? (**Kashinath Dikshita vs Union of India (1986) 3 SCC 229**) It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same. (**Union of India vs S.K. Kapoor, CA No. 5341 of 2006 decided on 16-03-2011**)

(e) a document not confronted to the delinquent cannot be relied upon for establishing the fact that the delinquent is guilty of a misconduct (see **Nicks (India) Tool vs Ram Surat, (2004) 8 SCC 222 at page 227.**)

(f) summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi-judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice. **Union of India v. Prakash Kumar Tandon,(2009) 2 SCC 541 :**

(g) The mandatory requirement of the inquiry officer asking the questions on the circumstances appearing

against the charged officer after the prosecution closes its evidence when the charged officer himself does not enter the witness box, vide Rule 14(18) of the CCS(CC&A) rules, 1965 and corresponding provisions in the Railway Servants (Department and Appeal) Rules, has to be properly should be fulfilled to in strict sense. (**Moni Shankar v. Union of India,(2008) 3 SCC 484, wherein the Apex Court has held -**

20. The enquiry officer had put the following questions to the appellant:

“Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the enquiry?”

21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.)

(h) Principles of natural justice cannot be put into a straitjacket formula and its observance would depend upon the fact situation of each case. Therefore, the application of the principles of natural justice has to be understood with reference to the relevant facts and circumstances of a particular case. **Union of India v. Bishamber Das Dogra,(2009) 13 SCC 102**

(i) Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. The enquiry officer cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot enquire into the allegations with which the delinquent officer had not been charged with. (**M.V. Bijlani vs Union of India (2006) 5 SCC 88**)

(j) Inquiry Report to be sent to the delinquent beforehand (**ECIL v. B. Karunakar, (1993) 4 SCC 727**) **(Also relevant Rules) Adequate time should be granted to make representation against the inquiry report, in case the same goes against the delinquent official.**

(k) The Disciplinary authority shall record reasons while passing an order adversely affecting an individual: (**G. Vallikumari v. Andhra Education Society,(2010) 2 SCC 497**):

(l) The appellate authority shall apply his mind to the entire case and ascertain to consider (1) whether the

procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same. **Ram Chander v. Union of India, (1986) 3 SCC 103 , Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713 Apparel Export Promotion Council v. A.K. Chopra**

(m) Judicial review is a review of the manner in which the decision is made. to ensure that the individual receives fair treatment The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case **(B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749)**

In Union of India v. G. Ganayutham, (1997) 7 SCC 463 the Apex court has held as under:-

To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(n) Judicial intervention on the quantum of penalty imposed is minimum. unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed. **(Union of India v. K.G. Soni,(2006) 6 SCC 794)**

12. It is on the above touch stone that the case of the applicants herein with reference to the charge sheet issued to Babunndan has to be analyzed and decision arrived at. **Principles of natural justice warrant notice at each important stage of the proceedings even where an exparte hearing takes place. (Vide E(D&A) 90 RG 6-4 of 18-04-1990 it has been stated that the record of day to day proceedings of the inquiry and notices of hearing should be sent to the delinquent regularly, this enables him to join the proceedings at any stage).** after the prosecution case was over, the delinquent official shall have to be informed of the next date for cross examination and also sufficient time should be given for presenting defence case. At the time of presentation of defence case, if the delinquent official does not enter the witness box the mandatory questions explaining the circumstances appearing against the individual should be posed by the Enquiry officer if due notice is served but the



opportunity is not availed of by the delinquent official, the Enquiry officer may act ahead in furnishing the enquiry report.

In the instant case the findings of the Enquiry Officer read as under:-

Shri Babunandan, Driver who demanded some time was given and the date was fixed on 21.5.85 in which he has stated that due to unavoidable circumstances he was not in a position to give his brief statement and also demanded cross examination of defence prosecution witnesses for which 30.5.85 date was fixed. He too along with his defence counsel did not attend the enquiry. All the prosecution witnesses were present for cross examination on 30.5.85.

FINDING

With detail examination of the case and attitude and avoiding policy of party charged Sri Babunandan, Dr.B and Sri Girja Shanker, Dsl.Asstt. Gonda Shed it is evidently clear that they have made up their mind to delay the enquiry proceedings. The statements of witnesses evidently clear that Driver Babunandan has violated the Rule GR3.78 (1)(a), (b),(3), (4) along with SR 3.78 (i) and (4), SR 3.78 (6), 3.81 (1) (2) (3), 4.10(1), 4.40,SR4.40(i) and (ii), 4.42 (2) and Sri Girja Shanker, Dsl.Asstt.GD Shed is also responsible for violating of GR 3.83, 4.40, SR 4.40 (i) and (ii).

Sd/
S.D.P.Srivastava
Enquiry Officer
AME/I-GD
31.5.85

13. From the above it is seen that the requirement under the disciplinary proceedings rules has been satisfactorily fulfilled by the enquiry authority. The next stage is communication of enquiry report to the delinquent official with an opportunity to call for his representation. It does not appear from the record that this part has not been

fulfilled by the disciplinary authority which passed the order of removal from service of the applicant within 7 days from the date of enquiry report. (Vide rule 10(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, such a notice is essential. The Rule states as under:-

(2) the Disciplinary authority –

(a) shall forward or cause to be forwarded a copy of the report of inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any held under sub-rule (1) (a) together with its own tentative reasons for disagreement, if any, with finding of the inquiring authority on any article of charge to the Railway servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within 15 days, irrespective of whether the report is favourable to the Railway Servant;

(b) shall consider the representation, if any submitted by the Railway servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5).

14. Thus, the legal lacuna commences from this stage. The imposition of penalty without following the above has vitiated the penalty. Babu Nandan had filed an appeal which was rejected. As the copy of the appeal is not available on records, it is not known whether a specific ground has been taken in regard to non supply of the copy of the inquiry report or non grant of time to represent against the enquiry report. Nevertheless, it is the duty of the appellate authority to deal with the case in such a fashion that the appellate authority has to ensure that the legal

requirements have been completed fully. In this regard, the decision of the apex court in the case of **Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713** is relevant and the same reads as under:-

37. Consideration of appeals .(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

* * *

32. The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that



there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

34. In *Apparel Export Promotion Council v. A.K. Chopra* which has heavily been relied upon by Mr Gupta, this Court stated:

16 . The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. (emphasis supplied)

35. The Appellate Authority, therefore, could not ignore to exercise the said power.

36The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression consider is of some significance. In the context of the Rules, the **Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.**

15. The Revisional authority has also mechanically followed the order of the Disciplinary authority. When the Tribunal directed the Revisional Authority to consider the acquittal of the said Babu Nandan, the same has not been considered in its

6

proper perspective. The incident has been the same and the criminal court has acquitted the accused stating that there is no negligence. The Revisional authority maintained that the two aspects are different and hence, the decision is justified. This is not so. If an act is independent and exclusive to the rule position then the same could be proceeded against. In the instant case, every aspect has been so intertwined with the accident about which the Criminal court has fully analyzed and arrived at a conclusion. In any event, the above deficiencies as pointed out would suffice to hold that the inquiry is vitiated.

16. In view of the above, the OA succeeds. Penalty orders and revisional orders impugned herein are quashed and set aside. It is declared that the said Babu Nandan would be deemed to have served the department till the date he would have attained his superannuation. His entitlement to pension and family pension would thus, remain intact. Respondents shall calculate the last pay drawn on the basis of his pay scale and the pay drawn until his removal from service duly incremented by the annual increment and the last pay would form the basis for calculation of his terminal benefits and the extent of pension and family pension. The pension and other terminal benefits would be disbursed in accordance with law to the legal heirs as per the service book and as per succession certificate (if necessary). Family pension would also be afforded in accordance with law.

17. This order be complied with, within a period of six months from the date of receipt of copy of this order.

No cost.



(S.N. Shukla)
Member-A



(Dr. K.B.S. Rajan)
Member-J

UV/-