

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

(THIS THE 01st DAY of April, 2011)

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

Original Application No.1376 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Vijay Pratap Rai S/o Shri Ram Nidh Rai, aged bout 50 years,
Resident of Village: Harkanapur, Post & Thana: Bane, District:
Ghazipur.

..... Applicant

By Advocate: Shri S.S.Sharma

Versus

1. Union of India, through the General Manager, North Western Railway, Headquarters Office, Bikaner.
2. The Additional Divisional Railway Manger, North Western Railway, DRM Office, Bikaner.
3. The Senior Divisional Operating Manager, North Western Railway, DRM Office Bikaner.
4. The Traffic Inspector North Western Railway, Suratgarh.
(The Enquiry Officer).

..... Respondents

By Advocate: Shri A.K. Pandey

ORDER

(DELIVERED BY HON. DR. K.B.S. RAJAN, MEMBER-J)

1. The Applicant, appointment was proceeded with a DAR inquiry on account of an alleged misconduct as given in the charge sheet (Annexure A-3). The crux of it as under:-

“यह कि श्री विजयप्रताप राय कांटेवाला तलबाड़ा झील के पद पर दि 07/8.10.98 को 20 से 8 बजे की शिफ्ट में कार्य करते हुए 9712 अप एक्सप्रेस को ऑन ड्यूटी स0 स्टेशन मास्टर श्री सतवीर सिंह के निर्देशानुसार लय लाईन में रीसीव करनेके लिये सही रुट सेट करने, सन्मुख कांटो पर ताला लगाने और सही आगमन सिगनल झुकाने में विफल रहा जिसके परिणामस्वरूप 9712 अप एक्सप्रेस और 2एसएच सवारीगाड़ी के बीच “एवर्टिड कोलीजन” वर्ग की दुर्घटना घटित हुई।

कर्मचारी ने स. स्टेशन मास्टर की अनुमति के बिना स्टेशन मास्टर के अन्तर्यौशित बक्से से अपमैन होम सिगनल की चाबी सं. 23 निकाल कर 9712 एक्सप्रेस के लिए उप मेन होम सिगनल तथा उप आउटर मेन लाईन (लाईन सं01) के लिये ऑफ कर दिये जबकि मेन लाईन पर 2एसएच सवारीगाड़ी पहले से खड़ी थी।

इस प्रकार श्री विजय प्रताप राय कांटेवाला तलबाड़ा झील में अपने कर्तव्य का निष्ठापूर्वक पालन नहीं किया और तलबाड़ा झील स्टेशन के स्टेशन संचालन नियम के परिशिष्ट 'बी' के पैरा 5.2 (II) के रेल सेवा आचरण नियम 19 (I) के पैरा 3, I (II) का उल्लंघन किया।”

2. The Applicant has vide Annexure A-5 given statement on 09.10.1998 before Inquiry Officer, which reads as under;-

“मैं विजय का.वा.ए. तलबाड़ा झील अपनी डियूटी पर दिनांक 07.10.98 को 20 बजे दिनांक 08.10.98 को 8 बजे अपनी डियूटी पर अप साइड में था साथ में जगदीश का.वा.डाउन साइड में था व सत्यवीर सिंह ए.एस.एम. डियूटी पर थे हमारे स्टेशन पर 9712 Exp. 2SH का काश था हमने 2SH सवारी को लाईन नं0 एक में पूरी की पुरी लेने के बाद आगमन करवाया उसके बाद 9712 Exp. के लिए चाभी न. एक दो लाईन लगाने के लिए गया और गेट नं. C 21 बन्द करने के बाद जब लाईन न. दो लगा रहा था लेकिन काफी प्रयत्न करने के बाद भी लाईन नं02 नहीं लगपाई और लाईन नं0 एक के सिगनल

डाउन कर दिये गाड़ी आते देखकर मै भागकर ASM आफीस में आया और ASM को बताया गाड़ी लाइन न. एक में आ रही हैं हमने लाइन न0 एक में खड़ी 2SH पसिजर गाड़ी को 2 लाइन में बैक सीमा किया उसके बाद 9712 EXP को एक से चलाया उसके जाने के बाद 2 SH सवारी गाड़ी को लाइन न. एक में लीया फिर सरीका की ओर चला दिया।

विजय प्रताप राय ”

3. The preliminary inquiry, vide Annexure A-13 gave the following points:-

“2-2 उनसे ठीक काम कर रहे कॉटा नम्बर के-1 को विफल घोषित किया 2 एसएच सवारी गाड़ी को लाइन नम्बर दो डिस्पैच किया, किन्तु कन्टर्ल को उसका लाइन नम्बर एक से डिस्पैच होना बताया। पूछताछ के दौरान भी वह यही कहता रहा। इस प्रकार उसने अपने कर्तव्य का निष्ठापूर्वक पालन नहीं किया और रेलवे सेवा आधर सहिता के अनुच्छेद 3. 1 (1) का उल्लंघन किया।

4. Regular inquiry was conducted in which the Applicant denied the charges and also retracted his earlier statement. However, on the basis of evidence the Inquiry Officer vide Annexure A-19 rendered his finding as under:-

“*Finding: After the careful examination of PW-1 Shri Satveer Singh, PW-2 Shri C.L. Parmar and CO Shri Vijay Pratap Rai it is concluded that the charges contained in the Annexure -I and II of the SF No.6A/4/98 dated 29.10.98 and proved.*”

5. The Applicant has filed his written submission and the Disciplinary Authority had imposed the penalty of removal

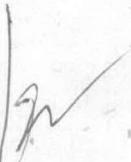
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from service vide Annexure A-1 order dated 04.11.1999 (impugned).

6. The Applicant filed his Appeal dated 17.11.1999 (Annexure A-21) which was rejected by Annexure A-22 order dated 17.01.2002.

7. Revision filed by the Applicant was also dismissed and thereafter, the Applicant moved the Tribunal in O.A. No.148 of 2001 which was decided on 31.01.2005 whereby the Appellate Order and Revisional Order were quashed and set aside and the Appeal was directed to be decided afresh. By the impugned order dated 07.06.2005 (Annexure A-2) the Appellate Authority had passed the self same order and hence this O.A.

8. Respondents have contested the O.A.. They have justified the imposition of penalty. In respect of the contention of the Applicant vide Para 4.27 and 29 whereby the Applicant contended that Assistant Station Master Shri Satveer Singh was also equally responsible as per the inquiry report. The Respondents have stated that the said Satveer Singh was also removed from service (Para 20 of the counter affidavit).



9. The applicant has filed his Rejoinder Affidavit reiterating the contention as contained in the original application.

10. Counsel for the Applicant argued that the Applicant was on weekly rest on the relevant date which is evident from the Attendance Register. He had under duress only given statement on 08.01.1998 and at the immediate available opportunity, during regular inquiry denied the charges and also stated that his earlier statement was not correct. It was the Pointsman on duty, who was responsible and not the applicant, who was on rest. He has also stated that the Assistant Station Master, Sri Satveer Singh, was equally responsible and the Applicant reliably understand that the said Assistant Station Master has been let-out with minor penalty or some penalty other than removal or dismissal as he is still serving. He has invited the attention of the Tribunal to the Railway Manual wherein equal responsibility has been attached both the Pointsman as well as Assistant Station Master. The relevant portion is as under:-

“कांटेवाले द्वारा दिखाए गये हरे सिगनल को देख कर और कॉटो की चाभियॉ प्राप्त हो जाने पर कार्यरत स्टेशन मास्टर व्यक्तिगत रूप से तसल्ली करेगा कि जिस लाइन पर गाड़ी को लिया जाना है, वह साफ और बाधा रहित है, काटे सही तौर पर सेट है। जैसाकि कॉटा संकेतक बताता है। ताला बन्द है। जैसा कि उसके पास रखी चाभियॉ बताती है। और आगमन सिगनलों को आदेश करने की का पालन पूरी तरह से किया गया है। तब वह कांटेवाला के हरे हाथ सिगनलों की पावती देगा और चाबी बक्से से सम्बन्धित होम सिंगनल की चाबी

निकाल कर परिशिष्ट 'बी' पैरा 5 में यथा निर्दिष्ट दोहरे लीदर ताले में कांटों तथा सिगनलों की चाबियों को लगा कर सम्बन्धित होम सिगनल को आँफ करने का प्रबन्ध करेगा। उसके बाद आउटर सिगनल को आफ किया जाएगा। कार्यरत सॉस्टेशन मास्टर तथा कॉटेवाला की यह सुनिश्चित करने की निजी जिम्मेदारी होगा कि जिस लाइन पर गाड़ी को लेना है उसके लिए सहीं सिगनल को ठीक प्रकार से डाउन किया गया है।”

11. Counsel for the Respondents stated that it is not correctly known whether Shri Satveer Singh has been reinstated in service in any event the Applicant cannot escape himself from his responsibility.

12. Counsel for the Applicant has relied upon the following decisions:-

- (a) 2004 SCC (L&S) 863 UOI & Ors. Vs. Mohd. Ibrahim
- (b) 2008 (3) CAT SLJ Bharat Singh Vs. UOI & Ors.
- (c) 1997 SCC (L&S) 152 Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and Ors.
- (d) 2006 SCC (L&S) 1486 Anand Regional Coop. Oil Seedsgrowers' Union Ltd v. Shaileshkum Harshadbhai Shah
- (e) 2008 (12) SCC 331 Man Singh v. State of Haryana & Ors.
- (f) (1995) 30 ATC 365 V.N. Bhaskaran v. Director CIF (Ernk)
- (g) 1987 (5) ATC 426 Salter Sheriff v. UOI & Ors.

(h) 1986 SCC (L&S) 383 Ram Chander vs. UOI & ors.

13. Arguments were heard documents perused.

14. The applicant contends that under duress only he had submitted his statement immediately on the occurrence of averted accident but he had denied the same during inquiry. This has to be rejected for, it is seen from the records that the initial statement was dated 08.07.1998 and he had attended the preliminary inquiry on 15.10.1998. If he was under duress on the date of occurrence of the accident, nothing prevented him from disclosing the actual facts before the fact finding inquiry committee. It is understandable if at a particular juncture under duress the statement is given but it is not conceivable that when opportunity was available to disclose the fact of duress to an independent preliminary inquiry committee, the Applicant would not inform the Committee accordingly. Thus his denying he charges during inquiry is a clear after thought. Again it cannot be stated that the findings of the inquiry officer were entirely based on preliminary inquiry report or on the basis of the confession statement. It was after a full fledged inquiry and on the basis of evidence that the findings were arrived at. Thus there cannot be any legal flaw in finding the Applicant guilty of misconduct.

b/

15. Coming to the next issue, namely, discrimination in imposition of punishment when identical charges were framed, the Rule position as extracted above imposes equal responsibility upon the Assistant Station Master and the Pointman. As such, when the averted accident took place both of them ought to be blame and if the averments of the Applicant that the Assistant Station Master was let with minor penalty is true (see para 4.77 of the O.A., which has not been disputed except a bald denial) then on the basis of the judgment relied upon by the Applicant, penalty in respect of the Applicant should also have been comparable.

The Apex Court in the case of *State of U.P. v. Raj Pal Singh*, (2010) 5 SCC 783, has held as under:

5. in the case in hand, the High Court appears to have considered the nature of charges levelled against the five employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasoning given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees.

6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory.

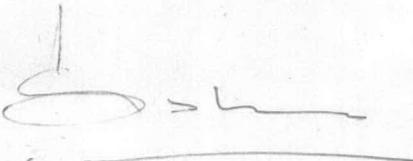
16. The above decision clearly fits in the case of the Applicant. As such, his case deserves to be reconsidered so far as quantum of penalty is concerned.

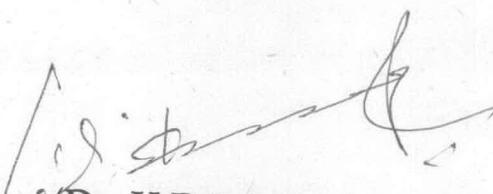
17. In view of the above, this O.A. is disposed of with the direction to the Respondents to verify from the record as to the extent of charges that have been proved against Shri Satveer Singh Assistant Station Master and the quantum of penalty. If the gravity of the charge which has been proved in respect of Satveer Singh is comparable to that in the case of the Applicant, then corresponding comparison over penalty be made by the Appellate Authority, namely and the Appellate Authority may consider imposing a suitable penalty accordingly. While, passing this order, the Tribunal is conscious on limited scope of judicial review in interfering with the quantum of penalty except when the penalty is shockingly disproportionate in the accident case hostile discrimination. In the instant case, judicial interference is not on the basis of any other aspect save that when identical charges are there and the extent of responsibility is identical and the incident involved is one and the same, awarding different penalty (that too with a wider gap) is impermissible as per the above decision of the Apex Court. Again, the Tribunal itself does not suggest any

penalty, but leave it to the discretion of the Appellate Authority to decide the same.

18. The Appellate Authority may arrive at a judicious decision within a period of three months. In case, it is decided to reinstate the Applicant the period of absence from the date of removal till the date of reinstatement shall be treated in accordance with the provisions contained in the relevant Rule of the Railway (Service and Disciplinary Appeal) Rules, 1968.

19. Under the circumstances, there shall be no order as to costs.


(S.N. Shukla)
Member-A


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

Sushil