

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/40/2020

ORDER RESERVED ON 05.03.2021

DATE OF ORDER: 21.04.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Anay Kumar
Assistant Loco Pilot
Hubli Depot
South Western Railway
Hubbli-580 023.Applicant

(By Advocate Dr. S. Iqbal Ahamed)

Vs.

1. Union of India
Rep. by its General Manager
South Western Railway
Rail Soudha, Gadag Road
Hubballi-580 020.
2. Chief Operations Manager
General Manager' Office
South Western Railway
Rail Soudha, Gadag Road
Hubballi-580 020.
3. Divisional Railway Manager
South Western Railway
Hubballi Division
Keshwapur
Hubballi-580 020.
4. Sr. Divisional Mechanical Engineer/Power
Mechanical Branch
South Western Railway
Keshwapur
Hubballi-580 020.Respondents

(By Advocate Sri J. Bhaskar Reddy)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- i. To quash the Charge Memorandum no. H/M.348/I/SPAD/LP/NVD/FEB 2015/1538 dtd. 04.2.2015 Annexure-A-2 issued by Respondent No.4, as illegal, arbitrary, unjust.
- ii. Consequently, quash the Penalty order bearing no. H/M.348/I/SPAD/LP/NVD/FEB 2015/1538 dtd. 22.9.2015 (Annexure-A8) passed by the D.A., Respondent No.4 as illegal, arbitrary, unjust and in violation of principles of natural justice and laid down procedure.
- iii. Consequently, quash the Appeal Advice bearing no: H/T.90/VI/2015/AK/70 dtd.09.02.2015 (Annexure-A10) passed by the A.A, Respondent No.3, as illegal, arbitrary, unjust and in violation of principles of natural justice and laid down procedure.
- iv. Consequently, quash the order of the Revising Authority dtd.20.6.2017 No. SWR/P/HQ.227/AK/(UBL/SPAD) Annexure-A13 passed by the R.A, Respondent No.2, as illegal, arbitrary, unjust and in violation of principles of natural justice and laid down procedure.
- v. Consequently, quash the GM's endorsement intimated through letter dated 16.05.2019 bearing no. H/P.90/VI/2015/AK/70 Annexure-A15 passed by the General Manager/Respondent No.1, as illegal, arbitrary, unjust and in violation of principles of natural justice and laid down procedure.

2. The facts of the case as averred by the applicant are as follows:

- a. The applicant was appointed as Assistant Loco Pilot in Hubli Division of South Western Railway on 04.10.2006. On promotion, he was working as Loco Pilot/Goods since 23.02.2011. The applicant had a clear record of 9 years of unblemished, dedicated and immaculate service in South Western Railway till the impugned incident on 11.01.2015.
- b. On 11.01.2015, while working on Train No: MRH ER goods train from Gadag, the applicant while entering into road-3 at NVD station passed the un-commissioned and un-notified starter signal of road-3 at NVD station by about 6 metres at about 23.57 hrs (at about 11 hrs 42 mts of on duty). The applicant was relieved at NVD station.
- c. An Accident Enquiry Committee was constituted with respondent No.4 as the president, DSTE/UBL and DOM/UBL both as members. The said Accident Enquiry Committee conducted the fact-finding enquiry and submitted its report. (Annexure-A1)
- d. Based on the report of the Accident Enquiry Committee, charge memorandum dated 04.02.2015 was issued to the applicant (Annexure-A2). The applicant submitted explanation denying the charges. Inquiry Officer (IO) was nominated to conduct the inquiry under Rule 9 of Railway Servants (D&A) Rules, 1968. The IO conducted the enquiry and the enquiry was concluded on 06.06.2015 and the IO directed the applicant to submit his defence brief. However, after the conclusion of inquiry, the IO conducted one more day's sitting and examined the applicant without the presence of

the Defence Counsel/Helper on 20.06.2015 by force, though the applicant demanded the presence of the Defence Counsel/Helper. The applicant submitted his defence brief to IO. The IO in his report proved the articles of charges.

- e. The Disciplinary Authority (DA) by his impugned penalty order dated 22.09.2015 imposed a penalty of removal from service with immediate effect without compassionate allowance. The applicant preferred an appeal before the Appellate Authority (AA)(DRM/Hubli Division/ South Western Railway). The Appellate Authority vide order dated 09.02.2016 reduced the penalty of “removal from service” to “reduction from the post of Loco Pilot in pay band Rs.9300-34800 GP 4200 to ALP in pay band 5200-20000 GP 1900 for a period of 5 years with entry pay of Rs.5830+GP 1900 = 7730, with loss of seniority without any restoration and with the effect of postponing further increments. The intervening period from the date of removal to reinstatement is treated as dies non.” The applicant was reinstated as ALP vide memorandum dated 19.02.2016 and posted to work under CCC/UBL.
- f. The applicant submitted revision petition to the Revising Authority (RA) (Chief Operations Manager, South Western Railway, Hubli). The Revising Authority vide order dated 20.06.2017 upheld the order of AA. Further the applicant submitted a review petition dated 20.02.2019 to the General Manager to review the penalty and render justice. However, the General Manager rejected the review petition on the ground that “*the applicant had*

been imposed a penalty of removal from service due to SPAD (Signal Passing at Danger) case. On appeal, he was reinstated in service with reduction in grade and pay with cumulative effect. The same was upheld on revision. The employee has exhausted all the options under DAR. In view of the above, the case is treated as closed".

3. The applicant has assailed the orders of DA, AA and RA on the following grounds:

- a. The alleged starter signal at NVD station was non-existing in law since all the existing signals had been dismantled and new signals installed as per the Railway Boards letter by extending the starters by ten meters, but permission of Commission for Railway Safety (CRS) had not been obtained which is mandatory. Hence, DN road-3 start signal was not commissioned as per rules. The Loco Pilots and all the train passing staff are only bound by the signals which are legally commissioned and not any non-commissioned signals. Hence the article of charge that the applicant has passed road-3 start signal No.5 of NVD station at 'on' without proper authority is ex-facie void ab initio. The fact that the signal was not commissioned has not been taken into account by the disciplinary authority, appellate authority and revisionary authority.
- b. As per the Accident Manual for South Western Railway – 2006, the untoward incidents including accidents and SPAD cases are governed by 'Accident Manual for South Western Railway – 2006'. The Accident Enquiry Committee which has to be constituted as per the instructions

contained in para 10.04 and clause (vii) of para 10.04 lays down that all cases of indicative accidents shall be inquired into by a committee of senior or junior officers with DRM as the Accepting Authority except all cases of train passing signal at danger (SPAD) cases, which shall be enquired into by a JA Grade committee of officers at Divisional level with senior DSO/DSO as one of the members. In violation of these instructions the Accident Enquiry Committee was constituted with Sr. DME/P/UBL as President, and DSTE and DOM/UBL as members. Except Sr. DME/P/UBL, the other two members are not JA Grade officers (they are senior scale officers, lower grade than prescribed JA Grade). Further the rule mandates the presence of Sr.DSO/DSO as one of the members of the committee. Hence, the constitution of the committee being in violation of the rules is illegal. The entire penal action was based on this committee's report, which is cited as relied upon document in the charge memorandum and is void ab initio.

- c. The Accident Enquiry Committee did not bring the material evidence of Non-Commissioning of the alleged starter signal in its report.
- d. The Sr. DME/P/UBL (Shri Gurunath C. Betgeri) was the President of the 'Accident Enquiry Committee' whose report is the basis for the impugned charge memorandum. The same Sr. DME/P/UBL has also issued the charge memorandum and imposed the penalty as disciplinary authority. Hence, he is acting as judge in his own cause which is impermissible being contrary to the principles of natural justice.

e. The Appellate Authority (DRM) acted both as Approving Authority of the Accident Enquiry Report and also an Appellate Authority. The report of the Accident Enquiry Committee was accepted and approved by the DRM, the respondent No.3. This report is the basis for the charge memorandum. Subsequently, the DRM has also acted as Appellate Authority. Since he could not have differed while disposing the applicant's appeal from his own findings on the Accident Enquiry Report, hence, acting both as approving authority of the Accident Enquiry report and Appellate Authority is against the principles of natural justice.

f. The inquiry was concluded on 06.06.2015 and the IO directed the applicant to submit his defence brief within 10 days. However, after the conclusion of the inquiry, the IO has compelled the applicant and conducted the examination of the applicant without notice to and presence of the Defence counsel/helper on 20.06.2015. Thus, the IO has denied him the opportunity of presenting himself as witness in his own case and examining himself as provided under Rule 9 sub-rule 20 of RS (D&A) Rules, 1968.

g. The Appellate Authority has included new evidence which is based on data logger which had not been provided to the applicant. This data was not introduced at any stage by the Accident Enquiry Committee. Hence, relying on new material and without giving a copy of the same to the applicant is also against the prescribed procedure.

h. The DRM was the accepting authority of the Committee's report. He is also the reporting authority of the DA in the matter of Annual Confidential Reports. Hence, the DA could not take the risk of going against the committee's report which was accepted and approved by the DRM. More so, the DA being the author of the report himself, which is the basis for the charge memorandum, could not have acted against himself. The penalty imposed by the DA was without free application of mind since he was under pressure not to take risk of going against the DRM's accepted report and also his own report. This is in complete violation of principles of natural justice.

i. The Revising Authority should have considered the following points:

- i) Whether there was any denial of reasonable opportunity to the applicant at any stage of the Disciplinary Proceedings.
- ii) whether there was any violation of the basic principles of natural justice.
- iii) whether there was any system failure.

j. However, the Revising Authority did not consider any of these material issues.

k. The Revising Authority was also the Chief Operations Manager. He was empowered to issue instructions or to do any other thing for the safe working of the Railways. In this case a serious unsafe practice of use of non-commissioned and non-notified signals, in utter violation of the safety rules, came to his notice. This was required to be probed and responsibility of the

staff fixed for use of such non-commissioned signals. However, instead of this, he has, by a non-speaking order, simply upheld the orders of the Appellate Authority.

1. The applicant had submitted a review petition expecting justice by the General Manager under special provisions. The DA, AA and the RA had not considered the fundamental fact that a Non-Commissioned starter signal was put to use even without notifying the same violating GR 3.26 of G&S Rules, which is a serious matter. General Manager, ought to have probed the system failure, in terms of putting into use a signal which was without the sanction of the CRS, how the schedule overdue locos are allowed to work, whether the Accident Enquiry Committee has been constituted as per rules, and whether there is any violation of principles of natural justice. However, the General Manager ordered to close the issue without even looking in the matter.

4. The Respondents, in their reply have averred as follows:

a. The OA is barred by limitation since the cause of action arises from the order of Revising Authority dated 20.6.2017 and not from 16.05.2019 which is the General Manager's endorsement of the order of the Revising Authority. The D&AR Rules 1968 provide for two appeals i.e Appeal against the orders of Disciplinary authority to the Appellate Authority and thereafter appeal on the orders of Appellate Authority to the Revising Authority. There is no provision for review by the next higher authority

under the rules. The endorsement by the General Manager cannot, in any case, be construed as extending the time for limitation under Section 21 of the Central Administrative Tribunal Act 1985. The applicant even without filing a Condonation of delay application for Condonation of Limitation period, has sought to get the orders of DA, AA and RA quashed. The applicant has not shown any valid reason for not filing the OA within the limitation period of one year from the orders of the Revising Authority i.e from 20.6.2017. It was clearly advised to the applicant that the applicant has exhausted all the options under the D&A rules1968, and hence the case is to be treated as closed. The OA in the present form is neither maintainable in law nor on facts and deserves to be dismissed in limine.

b. In the case of *BC Chaturvedi vs UOI & Others*, a three-judge bench of the Supreme Court held that the power of Judicial review is not an appeal for decision but review of a manner in which decision is made. Power of Judicial review is meant to ensure that the individual receives a fair treatment and not to see that the conclusions which the authority reaches are necessarily correct in the eyes of the court. The Court/ Tribunal in its power of Judicial review, does not act as an Appellate Authority to reappreciate the evidence to arrive at its own independent findings on the evidence. The Honourable Apex Court also held that the DA is the sole judge of the facts. Where appeal is presented, the AA and RA have coextensive powers to reappreciate the evidence of the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on

that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In this case the applicant is putting his own story and seeking this Tribunal to reappreciate the evidence which is not permissible in law. The applicant is dwelling upon his own evidence to arrive at a different Conclusion and misleading this Tribunal.

- c. The allegation of the applicant that the enquiry officer conducted extra sitting and examined the applicant without the presence of the Defence helper on 20.06. 2015 by force, though the applicant demanded for the presence of Defence counsel is false and baseless and the applicant is put to strict proof for the same. It is submitted that the applicant utilised the opportunity of presenting his case through the defence helper and the applicant has not made any application/objection before the IO regarding these allegations. It is a matter of an afterthought that the applicant is making the said allegations.
- d. The applicant is trying to interpolate new facts. The applicant had ample opportunities to raise these issues before the enquiry officer. At this stage, the applicant cannot take a U-turn and say that some other factors need to be considered. The applicant having participated in the disciplinary proceedings without raising any objections, cannot now say that the Accident Enquiry Committee is not valid. The penalty imposed by the DA is as per the rules. The Accident Enquiry Committee is a fact-finding committee and in the disciplinary proceedings, opportunity was given to the applicant to rebut the

findings of the Accident Enquiry Committee which the applicant chose not to do. Hence there is no violation of principles of natural justice as alleged by the applicant.

e. The order of the Appellate Authority is a well-reasoned one, and the Appellate Authority did not speak the words of the DA. The Appellate Authority, in this case, has modified the penalty and has reinstated the applicant into the service. It is to submit that only when the penalty is enhanced, then the Appellate Authority needs to pass a detailed order and not otherwise.

5. The learned counsel for the applicant in his arguments, has further contended as follows:

a. The applicant being a group C employee for whom special provisions have been made under rules 24 and 25 of Railway Servants (Discipline and Appeal)Rules 1968, has the right and as such preferred the review application to the General Manager, on whom the power to review has been vested. The specific rule 24(2) specifies that *a group C Railway servant who has been Dismissed, Removed or Compulsorily Retired from service may, after his appeal to the appropriate appellate authority has been disposed of, and within 45 days thereafter, apply to the General Manager for a revision of the penalty imposed upon him. Provided that the procedure mentioned in the sub rule shall not apply in cases where the General Manager or the Railway Board are the Appellate Authority. Provided*

further that where a revision application has been disposed of by the General Manager under this sub rule, no further revision shall lie under rule 25.

b. In this case the revision application was disposed of by the Respondent Number 2 (Chief Operations Manager) and not by the Respondent Number 2 (General Manager). Hence, the applicant has a right and as such preferred the review application to the General Manager on whom the power to review has been vested. The General Manager has disposed of the review on 16.05.2019 and this OA was filed on 16-1-2020 well within the time limits prescribed in the Administrative Tribunal Act.

c. The Jabalpur bench of this Tribunal in its judgement dated 4th August 2011, in *Sandeep Srivastava vs. Union of India and others*, has held that “as the language of rule 24 ibid itself reveals that said provision has been inserted as a Special provision for non-gazetted staff, the remedy provided therein is not only statutory but equally efficacious and effective in nature. We further hold that the remedy of revision as prescribed under Rules 24 and 25 of Railway Servants (D&A) rules, 1968 for group C and D, is a mandatory requirement and not an optional remedy, and non-exhausting of the said remedy would stand in the way in approaching this Tribunal”. The applicant has availed the said statutory remedy before approaching this Honourable Tribunal by review petition to the General Manager who has disposed of the petition with a non speaking order. Thus, the limitation for the purpose of Section 21 of the Administrative Tribunals Act 1985, starts only from the

date of disposal of the review petition by the GM on 16.05.2019, and the applicant filed the present OA on 16.1.2020 which is well within the prescribed time limits specified in Sections 20/21 of the Act.

d. It is a settled legal principle held by the Honourable Supreme Court in a plethora of cases that “Principles of Natural Justice” is the Cardinal and Governing Principle of Law in quasi-judicial matters. Applicant has already submitted how the principles of natural justice have been violated in this case by the respondents. It is a well settled principle of law that “Judicial review”, “rule of law” and “the principles of natural justice” are part of the basic structure of the Constitution of India. Hence, any penal action shall be according to the rule of law duly following the laid procedure and the principles of natural justice, which are liable for Judicial review. Hence the argument that this Honourable Tribunal has no jurisdiction does not hold water and is not tenable in law.

6. Heard learned counsels for the parties.

7. The applicant had initially been imposed a penalty of “removal from service”. Rule 24 provides for special provisions for non-gazetted staff, who in such cases, are entitled to submit a subsequent revision application to the General Manager, if the RA was not the GM. In this case the Revising Authority was the Chief Operations Manager. Hence, the applicant was entitled to seek a review petition before the GM in this particular case. The question of limitation, raised by the respondents, does not arise, once the

period is counted from the date of rejection of his review application by the General Manager. Hence the contention of the respondents regarding limitation, being devoid of merit, is rejected. The case would be examined on merits.

8. After hearing the learned counsels for both the parties as well as going through the pleadings made by them, the following facts have emerged:

- a) There was an SPAD (Signal Passing At Danger) incident on 11.01.2015 at around 23:57 hrs where the train passed the starter signal at 'ON' position of NVD station and crossed the signal by about 6 metres before coming to a stop. This was detected by the Station Master and the Railway Authorities at the station and the train was subsequently taken back by the Loco Pilot to clear the fouling marks. The fouling mark was cleared at 00:30 hrs i.e after about half an hour of the SPAD event. There was no further incident or accident caused due to this SPAD event.
- b) The Accident Enquiry Committee held the applicant Shri Anay Kumar (Loco Pilot) along with Shri Parashuram M. Naik, Assistant Loco Pilot as the staff responsible for this incident. The Enquiry Committee came to the conclusion that the SPAD happened due to misjudging the breaking distance/poor enginemanagement by the loco pilots of the Train.
- c) Subsequent to the accident enquiry report, a charge memo was issued against the applicant by the Disciplinary Authority (DA) and an enquiry was conducted. The Inquiry Officer (IO) was Shri M. Devakumar, CLI/UBL who came to the conclusion that the charges framed against Shri Anay Kumar (applicant) stand proved.
- d) Subsequently, on the basis of the report of the IO, the DA imposed the punishment on the applicant of 'removal from service' with immediate effect, with him being not eligible for any compassionate allowance.
- e) This order was appealed against by the applicant before the Appellate Authority (AA)(DRM/UBL). The Appellate Authority on consideration reduced the penalty from "removal from service" to "reduction from the post of Loco Pilot in pay band Rs.9300-34800 with Grade Pay Rs.4200 to Assistant Loco Pilot (ALP) in pay band Rs.5200-20000 with Grade Pay Rs.1900 for a period of five years with entry pay of Rs.5830 + GP 1900 = 7730, with loss of seniority/without any restoration and with the effect of

postponing future increments. The intervening period from the date of removal to reinstatement is treated as dies non'.

- f) This order of AA was appealed against through a revision petition by the applicant. The Revising Authority (RA) (Chief Operations Manager, South Western Railway), however, upheld the order of the Appellate Authority and accordingly, the penalty of reduction to the post of ALP was upheld.
- g) Against this, the applicant preferred a representation before the General Manager, South Western Railway, which was rejected on the grounds that the employee had already exhausted all the options under the DAR.

9. SPAD (Signal Passing At Danger) is considered as an extremely serious incident by the Railways since it can result in a grave accident. This incident has been attributable to the applicant's mistake apparently because of mismanagement/poor enginemanagement while operating the train. The applicant, on the other hand, has raised the issue that the signal which he has crossed was unauthorized by the Commissioner of Railway Safety since the starter signals at NVD station were dismantled and new signals had been installed at new locations prior to the alleged incident i.e. on 11.01.2015. According to him, this aspect had not been taken into consideration by the Disciplinary Authority while imposing the penalty. Moreover, he has pointed out that the Accident Enquiry Committee was headed by the same person who ultimately imposed the penalty on him as Disciplinary Authority. The applicant has also challenged the constitution of the Accident Enquiry Committee, since it was not comprising of officers of the requisite seniority as prescribed under the rules.

10. A careful perusal of the Master Circular on important points to be kept in view by the Disciplinary/Appellate Authorities and Inquiry Officers while handling disciplinary cases, issued by the Railway Board, vide their circular dated 23.12.2019, includes the following provisions:

Authority who has acted as a member or Chairman of a Fact-Finding Inquiry or Accident Inquiry should not act as Disciplinary Authority because the Charged employee would apprehend that the officer having expressed earlier an opinion would not, as a Disciplinary Authority, depart from his own earlier finding. He may not thus get justice. However, if the report does not indicate a final opinion but only a view, prima facie, he can act as a Disciplinary Authority. A member or chairman of the Fact-Finding Inquiry or Accident Inquiry cannot, however act as an Inquiry Officer in that case since the Inquiry Officer should be an authority who should not have prejudged the guilt, even provisionally at an early stage.

(Board's letter Nos. E(D&A)63.RG6-16 dt.23.12.68 read with letter dt.23.5.69)

11. In this particular case, the Accident Enquiry Committee was headed by Shri Gurunath C. Betgeri, Sr.DME (Power/UBL), who held the applicant primarily responsible for the SPAD and attributed this to misjudging the breaking distance/poor enginemanship of engine crew. The same person i.e. Shri Gurunath C. Betgeri, acting in his capacity as the Disciplinary Authority, issued the Charge Memorandum and, after receipt of the Inquiry report from the IO (Shri M. Devakumar), issued the penalty order of 'removal from service' on the applicant.

12. The same person was, in this case, the head of the Accident Enquiry Committee, and subsequently, as a Disciplinary Authority, he has imposed the penalty of "removal from service" on the applicant. This is in complete

violation of the principles of natural justice, as well as the advisory given in the Master Circular issued by the Railway Authorities themselves. The Disciplinary Authority, in his capacity as President of the Accident Enquiry Committee, has already come to a specific conclusion holding the applicant responsible for the SPAD incident. He should not have, in the interest of justice, subsequently, also in his capacity as the Disciplinary Authority, imposed the punishment. The penalty order, imposed by him, accordingly, being in violation of the principles of natural justice, cannot be accepted and deserves to be quashed.

13. Accordingly, the O.A. is allowed and the order no. H/M.348/I/SPAD/LP/NVD/FEB 2015/1538 dtd. 22.9.2015 (Annexure-A8) passed by the Disciplinary Authority, is quashed. Consequently, the subsequent orders passed by the Appellate Authority (dated 09.02.2015), the Revising Authority (dated 20.6.2017), and the GM's endorsement dated 16.05.2019 are also quashed.

14. A further direction is issued that the proceedings against the applicant shall be conducted *denovo* from the stage of submission of the enquiry report by the Inquiry Officer to the Disciplinary Authority. The Disciplinary authority, in this case shall be a person of equivalent rank, who was not involved in the conduct of enquiry or any other proceedings during this entire process, so that he can take an independent and unbiased decision, without suffering from any preconceived notions or bias which the present Disciplinary

Authority may have had, being the President of the Accident Enquiry Committee. He shall also provide an opportunity of personal hearing to the applicant before passing any orders in this case.

15. There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ps/