

Reserved

Central Administrative Tribunal, Allahabad.

Registration no. 84 of 1986.

Chandra Bhan Singh Applicant
Vs.

K.K.Srivastava, Chief Traction
Foreman, Northern Railway,
Allahabad and 2 others. Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This application under section 19 of the Administrative Tribunals Act XIII of 1985 has been moved by the applicant for setting aside the order dated 30.8.1982 passed by the respondent no. 1 and order dated 15.7.1985 passed by respondent no.2 and the orders dated 6.11.1985 and 13.9.1985 respectively dismissing the appeals against the said orders by the Assistant Electrical Engineer (TR-D), Northern Railway, Allahabad- respondent no. 3 in departmental proceedings under rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the D.A. Rules). The applicant has also sought a declaration that the respondent nos. 1 and 2 were not competent to issue charge sheets to class III and class IV employees.

2. The case of the applicant is that he is a Line Man under the control of the respondents but on account of his being a trade union leader, he has been wrongly penalised by the respondents in this case. It is alleged that he as well as respondent nos. 1 and 2 are class III employees. 26.5.1985 and 9.6.1985 were Sundays and as such rest days of the applicant and he was not supposed to be called on duty on those days nor was he ever informed to remain on duty on those days

by the respondents. It is also alleged that whenever the workers are directed to perform any duty on rest days, they are given compensatory rest for performing such duty and on being required to perform any duty on rest day, the workers are informed through whistle (siron), pasting notice on the Notice Board of the office or by sending message to the individual worker. The applicant was wrongly charge sheeted by the respondent no. 1 on 10.7.1985 vide Annexure 1 for not reporting for duty on 26.5.1985 despite information. In reply (Annexure 3), the applicant had submitted that he returned at 9.15 p.m. on 25.5.1985 from break-down and on seeing the Notice Board, did not find any information for being booked for duty on 26.5.1985. Upto 12 noon of 26.5.1985, the applicant was in his house and till that time he neither heard any siren nor received any information from any messenger for being called on duty and as such he was not guilty for not reporting on duty on the rest day. The respondent no. 1 did not feel satisfied with the reply and vide his order dated 30.8.1985 (Annexure 4), imposed the penalty of withholding 3 sets of privilege passes and 6 sets of privilege tickets. He preferred an appeal (Annexure 5) against that order to the respondent no. 3 but vide his order dated 6.11.1985 (Annexure 6), he reduced the penalty regarding the withholding of 6 sets of privilege tickets. Similarly respondent no. 2 issued a charge sheet (Annexure 7) to the applicant on 21.6.1985 for not reporting on duty on the rest day falling on 9.6.1985. In his reply (Annexure 9) the applicant had stated that on 9.6.1985, he had left for a bath in the river Ganges at 5 a.m. with other members of his family and ^{by} that

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time, he did not hear any siron for reporting on duty and as it was a rest day and he was not on emergency duty, he was not supposed to remain available at his house. He returned from the Ganga bath at ^{10.00 a.m.}~~1.10 p.m.~~ and thereafter did not receive any call for reporting on duty. The respondent no. 2 also did not feel satisfied with this reply and a similar penalty was imposed by him vide his order dated 15.7.1985 (Annexure 10) and on appeal, the respondent no.3 reduced the penalty regarding the withholding of 6 sets of privilege tickets vide Annexure 12. The case of the applicant is that the respondent nos. 1 and 2 could not issue charge sheets to him and he was not bound to report on duty in the absence of any prior information on Sundays or other rest days and he was wrongly penalised by them.

3. The application has been contested on behalf of the respondents and in the reply filed on their behalf, it was pleaded that the applicant is attached with the emergency staff to attend the break down; of the Railway Traction and he draws the break-down allowance, food allowance and railway accommodation to facilitate him to attend the emergency work. In accordance with the terms of paragraph no.1702 of AC Traction Mannual the break down involved in traction installation and Electric Rolling stock should be normally attended to by the maintenance gangs. It further provides ^{that} adequate number~~s~~ of selected, ^{and} experienced traction staff of all categories should be housed in Railway quarters close to traction installations, loco-shed, etc. so that their services can be utilised for dealing with the break downs and accidents

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whenever required. In case of emergency, the traction employees are to be informed through hooting of siron (whistle) or special messengers. The applicant was booked along with other staff on 25.5.1985 to attend the break down caused near Naini on 26.5.1985 but the applicant did not turn up on that day despite the instructions and his allegation to the contrary is not correct. The explanation given by him for not reporting on duty on 26.5.1985 was not found to be satisfactory and he was, therefore, rightly punished by respondent no.1 but in appeal the penalty was reduced by respondent no.3. There was a sudden break down on 9.6.1985 and the applicant did not report on duty despite hooting of siron and he could not be contacted on being sent a special messenger at his house and as such he deliberately failed to report on duty and on not finding his explanation satisfactory, he was punished by the respondent no.2 for this negligence and lapse and the penalty so imposed was reduced by the respondent no.3 in appeal. It was denied by the respondents that the applicant could not be required to report on duty on the rest days or he could not be charge sheeted by the respondent nos. 1 and 2. The respondent nos. 1 and 2 are in the grade of Rs.840-1040 and Rs.700-900 respectively while the applicant was in the Artison grade of Rs.260-400 only. The procedure laid down by paragraph 1704 and 1705 of AC Traction Manual for calling the emergency staff was followed by the respondent nos.1 and 2 and the applicant was not punished for any other consideration. In his rejoinder, the applicant admitted the mode of calling the emergency staff in the case of any break-down but alleged that only the selected experienced traction staff has to attend the break-down and the applicant being in the general gang, could not be

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required to attend the break-down on rest days. He further alleged that on 25.5.1985, he had attended the break-down near Naini and the same was corrected that very day and the staff was returned to the headquarters and there was no work or other break-down to be attended on 26.5.1985 otherwise the staff could not return to the headquarters. The staff instructed to attend the urgent work on 26.5.1985 vide notice Annexure 2 to the rejoinder did not include the name of the applicant; and by 5 a.m. of ^{9/}21.6.1985 when the applicant had left for bath in Ganga with other members of the family, he had not received any call for attending emergency duty and thus he was wrongly punished. It was reiterated that the respondent nos. 1 and 2 were not controlling officers of the applicant and were not competent to issue charge sheets to him.

4. We have heard the learned counsel for the parties in this case. The first question which arises for determination in this case is whether the respondent nos. 1 and 2 themselves being Class III employees could issue the charge sheets to the applicant. Schedule 1 to the D.A.Rules prescribes the authorities empowered to impose penalty. Respondent nos. 1 and 2 have not been specified in this schedule. Thereafter there is schedule II laying down the disciplinary powers of different grades of Railway officers and supervisors in respect of non-gazetted staff. Column no.1 of this schedule lays down that Senior Supervisors in the grade of Rs.425-700 and above can exercise such powers in respect of group 'D' and 'C' staff who are 3 grades below and lower than

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the Disciplinary Authority. This is also laid down that the Railway administration will notify list of supervisors incharge for the above purpose. None on behalf of the parties either produced any such list before us nor contended that respondent nos. 1 and 2 have not been notified for the purpose of schedule II. The only contention of the applicant in this regard is that the respondent nos. 1 and 2 being class III employees like him could not exercise disciplinary powers against him. This contention is not correct. He has admitted in para 6 (i) of the application that the applicant has been working as Lineman under the supervision of respondent nos. 1 and 2. In his replies, copies Annexures 3 and 9 submitted by the applicant to the charge sheets issued by respondent nos. 1 and 2 in this case, he did not object to the powers and authority of the respondent nos. 1 and 2 to initiate the disciplinary proceedings against him. He also did not raise this point in his appeals, copies Annexures 5 and 11 preferred by him against the penalties imposed by respondent nos. 1 and 2 against him. We are, therefore of the view that as the respondent nos. 1 and 2 are undoubtedly in the grade of Rs.840-1040 and Rs.700-900 respectively and the applicant is in the grade of Rs.260-400 only, they were duly empowered to initiate disciplinary proceedings against the applicant in accordance with schedule II.

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5. Now coming to the merits of the case we find that the applicant was separately charge sheeted for his not attending the emergency call to correct

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some break down on rest days. The first charge was in respect of not attending the call on 26.5.1985 for which he was charge sheeted by respondent no.1. The applicant is alleged to have been required to report on duty on 26.5.1985 to correct some break down near Naini and some work in that connection had also taken place on 25.5.1985 and the staff employed on duty had returned to the headquarters at 9.15 p.m. The applicant has admitted in his reply, copy Annexure 3 that he had returned at 9.15 p.m. on 25.5.1985 after attending the break down near Naini and at that time he did not see any information on the Notice Board for doing any work on 26.5.1985. Along with his rejoinder, he has filed the copy of order dated 27/7 perhaps by someone of the office of the Traction Foreman, Subedargaj stating that 9 persons named thereunder were called on duty on 26.5.1985 but they did not turn up and remained absent. The order further recites that they will have compensatory rest on 28.5-1985 and there was no need to report on duty on the next day. The name of the applicant does not figure in the list of 9 persons in this Annexure 1 to the rejoinder. In our opinion, there is some mistake in this rejoinder. Its first part states that the following 9 persons did not report on duty and its second part states that on 28.5.85 they will have compensatory rest. The name of the authority issuing this order has not been mentioned. The date 22/7 also appears to be incorrect. This Annexure 1 has not been certified to be a true copy by the applicant and as such we feel inclined to ignore it.

6. It is clear from the pleadings of the applicant himself that the workers going on emergency duty to correct some break down on 25.5.1985 had returned to

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the headquarters at 9.15 p.m. and some workers were required to do the remaining work on the next day. The statement of charges Annexure 2 regarding this date is also worded similarly and Annexure 2 states that on return from the place of break down at 9.15 p.m. on 25.5.1985, the applicant and other employees were required to do the urgent work on 26.5.1985 but the applicant deliberately remained absent and did not report on duty. In the order of appeal against the penalty imposed by respondent no.1 for this lapse, the respondent no.3 has mentioned in his order dated 6.11.1985 copy Annexure 6 that the applicant had indirectly admitted his mistake. Reading between the lines it appears that the applicant did have the information that he was required to do some work of urgent nature on 26.5.1985 but he deliberately did not go because it was Sunday and rest day.

7. The case of the applicant is that he does not belong to break down gang and as he belonged to ordinary gang of Linemen, he could not be called on duty on rest days. His this stand is again inconsistent with his own conduct. In his replies, Annexures 3 and 9, the applicant did not take this plea that he could not be called on duty on rest days. On the other hand, in paragraph 8 of Annexure 3, he mentioned 9 rest days on which he had attended the break down work and his only plea was that he could not get information in the prescribed manner for his duty of 26.5.1985.

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We, therefore, conclude that as the applicant was attending the break down duty even on rest days, ^{in the past} his this plea is not correct and it does not stand to scrutiny. He was, therefore, rightly found guilty for not attending the break down duty on 26.5.1985.

8. Regarding his absence from break down duty on 9.6.1985, for which he was charge sheeted by respondent no. 2, it is stated in the statement of charge, copy Annexure 8 that the call to the Linemen for attending the office for break down duty was given at 6.25 A.M. on 9.6.1985 by hooting the siron and a person of the depot was also sent to the quarter of the applicant but he was not available. Being aware of this fact, the applicant had taken the plea in his reply Annexure 9 that on 9.6.1985, he had left his house at 5 a.m. with his family to have a bath in river Ganga and on his return at 10 a.m., he remained in his house and did not get any information. This was his self serving explanation. This has not been disputed in this case that in the case of emergency, the information is sent ^{to the Linemen} by hooting the siron, by posting a notice on the Notice Board and by special messengers. In this case, two of the three modes permissible for break down duty were followed by respondent no.2 and the applicant, even if he had left his quarter at 5 a.m., did not inform anybody so that he could be called, if required for any emergency duty. He was, therefore, rightly found guilty for his absence on 9.6.85 and all the contentions raised as above are devoid of any force.

9. We further find that the penalty awarded to the applicant in this case is of very trivial nature. The appellate authority respondent no.3 has reduced the

of emergency, the in-
by posting a notice on
passengers. In this case,
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no. 2 and the applicant,
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penalty and has maintained the penalty only in respect of withholding of 3 sets of privilege passes in respect of each fault. It did apply its mind to the points involved in both the enquiries and also exercised ^{his} discretion in reducing the penalty and as such no interference is called for in this case on any count.

10. The application is accordingly dismissed. We, however, pass no order as to costs.

[Signature]
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Member (A)

[Signature]
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Member (J)

Dated 7. 10. 1986
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