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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.144 of 1986

Madan Mohan Srivastava ..... Plaintiff Appellant

Versus

Union of India & Another ....Defendants/Respondents

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

Civil Appeal No. 266 of 1985 has been received on transfer from the Court of District Judge Varanasi under Section 29 of the Administrative Tribunals Act XIII of 1985. The appeal arises out of the decree and judgement of the learned Ist Munsif Varanasi dismissing Suit No. 613 of 1983 Madan Mohan Srivastava Versus Union of India and Others on 19.8.1985. According to the plaintiff appellant the impugned orders of 12.5.83 and 20.10.83 which was the subject matter of the suit was established as illegal and void for non compliance of mandatory requirements of departmental procedure and Article 311 (2) of the Constitution and the Enquiry file which could reflect on this illegality was not produced by the defendant respondents and no adverse inference was drawn by the learned Trial Court on its non production. The plaintiff appellant has

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further stated that the punishment of withholding increments for 3 years with cumulative effect was passed without opportunity of hearing having been given to him. Also the orders of 12.5.83 and 20.10.83 are non speaking orders and therefore they are void and the Trial Court has committed an error in giving a finding on Issue No.3 in negative. The appellant has therefore prayed that the decree and judgement of the learned Trial Court be set aside and the suit be decreed in favour of the plaintiff appellant with costs throughout so that justice is done.

2. The case of the plaintiff appellant is that he was working as a Training Examiner at Dehri on Sone on Mughalsarai Division of the Eastern Railway. On 5.9.82, at Jakhim station, there was a train collision and he was served with the chargesheet on 23.12.82 holding him responsible for the train accident. He replied to the Chargesheet. An enquiry was held by the Carriage and Wagon Supdt. and during the course of enquiry he was not supplied with the documents relied upon as well as those which he had demanded subsequently. According to the Pltff. appellant neither the charges were proved nor was he given an opportunity to lead, evidence or cross examine the witnesses and therefore the entire departmental proceedings vitiated the principles of natural justice. The plaintiff appellant has

further said that the Enquiry Officer did not actually find any fault with the plaintiff appellant yet he recorded adversely and the punishing authority without affording a hearing to the plaintiff appellant and without assigning reasons supported the surmises and conjectures and issued the punishment order by a non speaking order. Aggrieved by this order the appellant had appealed to the Divisional Railway Manager who also summarily rejected the same by yet another non speaking order on 20.10.83. He had therefore prayed in the suit that the punishment order of the D.M.E. Carriage and Wagon dt. 12.5.83 alongwith D.R.M's order on the appeal dated 20.10.83 be declared illegal and the defendant respondents be restrained from implementing and enforcing those orders.

3. The defendant respondents' case is that the plaintiff appellant was the train examiner responsible for examining the train which collided with another causing serious loss of property to the railway. For his neglect of duty he was served with major penalty chargesheet and an enquiry was conducted as per Discipline & Appeal Rules. The documents relied upon were supplied to the plaintiff appellant and all reasonable opportunities were given to him. Hence the charge that the punishing authority did not apply his mind was baseless and there was enough material to hold the plaintiff appellant guilty of the offence for which he was charged.

The appellate authority had also given due consideration to the whole case and issued orders after he was satisfied that the plaintiff appellant was guilty and the punishment had been correctly imposed. According to the defendant respondents an administrative order cannot be challenged in a court of law therefore they submitted that the Civil Court has no jurisdiction to try the case and the impugned orders were passed after affording all the reasonable facilities to the plaintiff appellant and after due application of the mind. There was nothing wrong with the orders and therefore the suit was liable to be dismissed.

The learned Trial Court had framed proper Issues. Issue No.1 was whether the orders dated 12.5.83 and 20.10.83 was void, illegal and ineffective. Issue No.2 was whether the plaintiff appellant was entitled to any relief claimed and Issue No.3 was whether the plaintiff appellant had any cause of action and the suit was premature. On Issue No.1 & 2 the learned Munsif had dwelt on the point raised by the plaintiff appellant that he was not given proper papers. The learned Munsif held that the prosecution witness Madan Mohan (plaintiff appellant) has said that the relevant papers were given alongwith the chargesheet. According to him the Enquiry Officer

also did not find the plaintiff appellant guilty. On the Enquiry Officer's report the disciplinary authority issued a punishment order dated 12.5.83 stopping increments for 3 years with future effect. There is no doubt that the plaintiff appellant was not given any hearing before the imposition of this order. The learned Munsif had further observed that a perusal of the papers indicates that a defence helper was provided to the plaintiff appellant and that a shou cause notice was given before the imposition of the penalty. The plaintiff appellant had also appealed against the punishment order which was dismissed on 12.5.83. It was therefore held by the learned Munsif that the relevant papers were given to the plaintiff appellant before the enquiry was started and he had full opportunities available to cross examine the witnesses etc. during the course of enquiry and therefore the punishment order issued as a result of the enquiry was not illegal. Regarding the orders being non speaking the learned Munsif held that the order dated 12.5.83 was a speaking order while a copy of the order dated 20.10.83 had not been submitted and therefore the Court could not examine the same. On the basis of these observations the learned Munsif decided the issues No.1 & 2 against the plaintiff appellant. On Issue No.3 the learned

Munsif held that the plaintiff appellant had no cause of action because the orders dated 12.5.83 and 20.10.83 could not be termed as illegal.

4. We have heard the learned counsel for both parties. The main arguments by the learned counsel for the plaintiff appellant were that the charge No.1 was not intelligently worded and that against charge No.2 which was failure in providing adequate brake power the Driver and Guard were satisfied with the 71.4% of the brake power available and the vacuum certificates have certified the continuity of the vacuum which was trusted by the Driver and the Guard and therefore there was no misconduct or misbehaviour. Every mistake could not be termed as misconduct. Nothing else was pressed before us. We had sent for the original file dealing with the disciplinary proceedings against the plaintiff appellant (File No.GA/RB/NJS/82/8 dated 25.12.82). At page 78 of this file is an order dated 20.10.83 on the appeal submitted by the plaintiff appellant against the stoppage of increment for 3 years with cumulative effect. This order reads :-

" Your appeal dated 2.7.83 was put up to DRM he after due consideration has passed the following orders :-

" HE HAS BEEN CORRECTLY PUNISHED. THE PUNISHMENT SHOULD STAND."

The appeal made by the plaintiff appellant is placed

at page 74 wherein he has requested for cancellation of the punishment and for grant of personal hearing to explain his case in detail alongwith his defence helper. On this appeal the Divisional Railway Manager had remarked on page 75 of the file " He has been correctly punished. The punishment should stand." The D.M.E. (C&W) had referred to the notice on page 65 while putting the papers to the Divisional Railway Manager. On page 67 he had remarked that against charge No.1 the continuity of the vacuum had been certified by the Guard. He had also certified the correct level of vacuum in the brake Van. He also exchanged signals with the Driver regarding continuity of vacuum. The driver reduced the speed of the train at SEB and also tested the brake power and found the same to be satisfactory. From the above he concluded that at the time of starting the mouse had not completely choked the vacuum pipes. The mouse was evidently live and was somewhere in the train pipe of the train. But even with this type of moving obstruction, the vacuum level at the brake Van must have shown erratic increase and the TXR by virtue of his experience should have been able to detect the same. Therefore though the TXR did his duty upto the satisfaction of the Driver and Guard, he should have shown more allertness and intelligence. On charge No.2 the D.M.E. remarked that the Brake of power was adequate and the charge did not merit serious consideration.

On charge No.3 the D.M.E. had remarked that though the Mechanical V5 showed the brake power of the train as 88%, the undamaged portion of the train was found to have a brake power 71.4% which is not inadequate to stop the train within braking distance. The brake power was not actually recorded on the form Mech V5. The D.M.E. after concluding his remarks said that the charges proved against the TXR are of less serious nature. However he has not discharged his duties with responsibility and he recommended stoppage of increments for 3 years, which he had imposed vide his order dated 10.4.83.

5. We do not find anything wrong in the punishment order. It is a speaking order and is rightly held by the learned Trial Court. However, as far as the appellate order is concerned we find that there is no indication on the file to show that the D.R.M. had applied his own mind before coming to the conclusion to reject the appeal. He had been guided by the remarks given by the DME (C&W) on page 66 & 67 of the disciplinary proceedings file of the plaintiff appellant and therefore the appellate order contravenes the requirements of the Discipline & Appeal Rules as laid down in para 22 of the Railway Servants Disciplinary & Appeal Rules, 1968 which lays down the procedure for

consideration of the appeal. In terms of this para it has not been commented by the Divisional Railway Manager whether the procedure laid down has been complied with, whether the findings are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or severe. An increment which is held for 3 years or more permanently is a severe punishment and therefore it should have been in the fitness of the things that the delinquents requests for being heard should also have been acceded to.

6. In view of what has been stated above, we remit the case back to the appellate authority to consider the appeal in accordance with the rules and give a revised well considered speaking order after giving him personal hearing on the appeal made by the plaintiff appellant. The appellate order of 20.10.83 is quashed. The Civil Appeal No. 266 of 1985 is disposed of accordingly. Parties will bear their own costs.

Vice Chairman

Member (A)

Dated the 8th July, 1987

RKM