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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 140 of 1986

Radhey Shyam ..... Applicant.

Versus

General Manager, Western Railway,  
Church Gate, Bombay & others ..... Respondents.

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Hon'ble S. Zaheer Hasan, V.C.  
Hon'ble D.S. Misra, A.M.

(Delivered by Hon. S. Zaheer Hasan, V.C.)

This is an application under Section 19 of  
the Administrative Tribunals Act XIII of 1985.

2. The applicant, Radhey Shyam, was working  
as Driver, Fauran Singh as Guard, Mazhar Mohammad  
as 1st Fireman and Mool Chand as second Fireman  
in the Goods Train which consisted of 76 wagons.  
On 8/9.8.1981 between Railway Stations Roopbas and  
Banshi Paharpur there was upgradient of the ratio  
of 1/200 so the engine could not move onward inspite  
of best efforts. The applicant (Driver) applied the  
brake and gave the code whistle to the Guard that  
the engine was unable to start and carry all the  
wagons. The second Fireman Mool Chand was sent to  
Guard. In the meantime the Guard had also started  
moving towards engine. He was apprised of the  
situation. The Guard assured the driver that he had  
pinned down the brakes of the brake van while coming

A3  
2

(3)

- 2 -

towards the engine, and had checked for leakage in wagons but there was none. The Guard gave permission in writing to take rest of the wagons. The driver handed over the Tablet to the Guard. The second Fireman Mool Chand was placed at the disposal of the Guard. The second Fireman and the Guard uncoupled the train. Twentytwo wagons were taken away by the engine. At Banshi Paharpur the driver informed the Station Master Shri Khandelwal about the incident who granted him permission to bring back the remaining wagons left behind. Shri Khandelwal made endorsement on the memo. Thereafter the driver came back to the spot where he had left rest of the wagons and found them missing. The Guard and Mool Chand told him that the remaining wagons rolled back. The driver moved the engine towards Roopbas station and was informed that the wagons which had rolled down collided with a train. Thereafter he had to take Doctors, Nurses etc. to the site of the accident. In the confusion of the moment the driver lost the written permission. On 24.3.1982, a chargesheet was submitted against the driver in the following words :-

" He while working as Driver of Up KTT special on 8.8.81 when stalled for upgradient between RBS - BIS, wanted the train to split into two portions, but failed to ensure that the hand brakes of the rear portion of his train were adequately pinned

A3  
3

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- 3 -

down before uncoupling. He also failed to obtain the written permission of the Guard before detaching his engine from the train after it stalled in mid-section and on a grade. He, thus violated Rules GR-163 (a)(i)(b)(iii)(iv) and GR 129/and SR 129. This resulted into rear portion of his train rolled towards RBS, passed RBS station, entered in blocked section RBS - FTS and collided with 82 UP passenger.

He also left the site of accident without giving his preliminary statements, although ordered to do so.

He is thus held responsible for inefficient working, violation of Rules GR.163(a)(i)(b)(iii)(iv) and GR 129 and SR 129 and disregarded orders."

3. The Charge No.3 relating to leaving the spot without giving preliminary statements was held to be not proved by the Inquiry Officer. As regards the Charge that he did not ensure that the hand brakes of the rear portion were adequately pinned down and not taking written permission before decoupling, B.D.Agarwal, ASM, P.C. Sharma, SM, K.C.Khandelwal, ASM, Fauran Singh, Guard, Mool Chand and Mazhar Ali were examined as witnesses. The applicant (Driver) denied the charges. The Inquiry Officer held that these two charges were proved. The disciplinary authority passed an order of removal. The appellate authority observed that no primary responsibility has been fixed on the driver and ~~and~~ except that accident his record has been 'very good' so he

A3  
4

(10)

- 4 -

set aside the order of removal and the applicant was reduced as Fireman grade 'B' in the scale of 260 - 350 at the lowest of the scale i.e. Rs.260/- per month for a period of five years with future effect. The General Manager rejected the review petition hence the present application. In ~~an~~ appeal it was held that it was not the primary responsibility of the driver. The first charge is that the driver failed to ensure that the hand brakes of the rear portion of the train were adequately pinned down before uncoupling. The Inquiry Officer has held that the responsibility of pinning down the hand brakes lies with the Guard. Rule 170 lays down that 'when a train, stopped between stations, has to be divided in consequent of an accident or the inability of the engine to take the whole train forward, the Guard in charge of the train shall immediately take steps to protect the rear portion of his train in accordance with Rule 166. If the engine is capable of proceeding either with or without vehicles, the Guard shall, after taking action as stated above and before uncoupling, put down the brakes and shall, if necessary, otherwise carefully secure the rear portion of the train to ensure its remaining stationary! B.D.Agarwal, ASM has also admitted that the driver is not responsible on this score. So the charge No.1 of securing the brakes as stated above has not been made out against the applicant(Driver). It is not mentioned in the

A3  
5

(11)

- 5 -

charge that the applicant was not present at the time of uncoupling. The accident did not take place due to some defective uncoupling but due to unsatisfactory pinning down of the brakes. Similarly there is no charge regarding Rule 170(d) as mentioned by the Inquiry Officer. As already mentioned nothing happened due to uncoupling and it was not the duty of the driver to pin down the brakes and that it was the responsibility of the Guard to ensure that the brakes were properly pinned down before uncoupling. We are left with the charge of not obtaining permission of the Guard before uncoupling. The applicant's version is that he obtained the permission but in confusion of the moment it was lost. As regards Tablet Mazhar Ali has stated that the driver went with the Tablet to the Guard and when he returned the Tablet was not with him. Mool Chand has stated that the driver gave the Tablet to the Guard and the Guard told the driver that he had pinned down the brakes while coming towards the engine. B.D.Agarwal, ASM has stated that the Guard did not complain to him that the driver went away with the engine without taking his permission. The Guard was also chargesheeted in this connection. He has given two contradictory versions as it appears from the statement made before the Inquiry Officer. His defence is that it was a case of accidental uncoupling and after the detachment

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A3  
6

(V)

-6-

the driver moved onward with some wagons leaving the remaining on that slope, and that he tried to apply brake and stop the remaining wagons but he failed and they rolled down ultimately causing accident. He never informed the Asstt. Station Master that it was a case of accidental uncoupling. The Guard has stated that the Tablet was with the Fireman and one Fireman was left with him. It clearly suggests that both driver and Guard met and one Fireman Mool Chand was left with the Guard. So it is clear that the Guard and the driver both met and it does not stand to reason that the Guard would have permitted him to move with the engine onward with some wagons against his wishes. It is further improbable that the driver went back to the spot where decoupling took place without permission. The Guard never made a complaint that no written permission was obtained from him. So from the evidence and attending circumstances it appears that the written permission was taken and the Tablet was left with the Guard. Mazhar Ali, Mool Chand and Fauran Singh, Guard only are eye witnesses in this case. None of them have implicated the driver. So to our mind, it is a case of no evidence regarding negligence. The findings arrived at by the Inquiry Officer are manifestly incorrect. So the impugned orders of punishment are quashed. Parties to bear their own costs.

Wm 25.2.88  
Member (A).

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Vice-Chairman.

Dated: February 27, 1988.  
RKM/PG.