

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Registration No. 1596 of 1986(I)  
(Civil Appeal No. 353 of 1984 )

Union of India through General  
Manager, Northern Railway, New  
Delhi, and others ... ... APPLICANTS  
(Defendants)

versus

Sri Sadho Lal ... ... RESPONDENT (Plaintiff)

connected with

Registration No. 617 of 1986  
Sri Sadho Lal ... ... APPLICANT

versus

Union of India and others ... RESPONDENTS

Hon. Justice S.Zaheer Hasan, Vice Chairman  
Hon. Ajay Johri, Member (A)

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

Civil Appeal No. 353 of 1984 has been  
transferred to this Tribunal from the court of  
V Addl. District Judge, Allahabad, under section 29  
of the Administrative Tribunals Act, 1985.

On 18.2.1974 plaintiff Sadho Lal was  
working as driver on Pilot Engine No. 9947 WG at  
Prayag station for shunting a train. Ram Krishna,  
shunting porter, was deputed by Station Master to  
help in the shunting of the train. The porter had a  
hand signal for shunting purposes. Sri S.P.Yadav  
Guard was to look after the shunting operation and to  
keep vigil in the rear danger signal whenever he  
apprehended any foul play or danger. According to

According to the plaintiff it was the duty of the Guard and Shunting Jamadar to take every caution for proper shunting of train but they did not comply with the directions. Consequently engine No. 54386 which was attached with shunting train was automatically disconnected due to defective coupling and collided with the Allahabad-Faizabad train which was coming from the side of Allahabad junction. The plaintiff in this connection filed a case under section 101 of the Indian Railways Act against the Shunting Jamadar and the Guard.

On 15.4.1974 a charge sheet for major penalty was issued against the plaintiff. During the pendency of the enquiry the plaintiff was arrested on 24.11.1974 in connection with the aforesaid accident and was released on bail the same day. On 21.2.1975 the plaintiff moved an application before the Enquiry Officer bringing to his notice the pendency of the criminal case and praying for stay of the disciplinary proceedings in view of the provisions contained in rule 320 of the Accidents Manual. The Enquiry Officer did not stay the proceedings and an ex parte order was passed on 23.2.1974 holding the plaintiff guilty. In this way reasonable opportunity to defend himself was denied to the plaintiff. On 14.3.1975 the Senior Divisional Mechanical Engineer issued show cause notice proposing the penalty of reduction in rank and scale from the post of driver Grade 'C' for two years affecting seniority and future increments on restoration. On 10.4.1975 the plaintiff submitted his reply, but the disciplinary authority imposed the penalty as mentioned above on 3.7.1975. This order was not communicated to him, so he filed suit no. 206

of 1975 in the court of Munsif West, Allahabad, for restraining the defendants from reducing him in rank. During the pendency of the suit the order was communicated. So he has challenged this order by means of the present suit on three grounds, viz.,

- (a) the disciplinary proceedings were ex parte, and no opportunity was given to the plaintiff;
- (b) in view of the pendency of the criminal proceedings the departmental proceedings should have been stayed;
- (3) the plaintiff was acquitted on 9.9.1981 of the charge under sec. 101 of the Indian Railways Act.

It was prayed on the aforesaid three grounds that the impugned order should be set aside.

The defence was that the disciplinary proceedings were independent of the criminal case and they could not be stayed. The plaintiff deliberately absented himself, so the authorities were compelled to take action ex parte.

The learned Munsif decreed the suit. The Union of India filed Civil Appeal No. 353 of 1984, which has been transferred to this Tribunal.

On 23.10.1986 the applicant (plaintiff) moved this Tribunal under section 19 of the Administrative Tribunals Act, 1985, (vide Registration No. 617 of 1986) making the following prayers:

- (1) The opposite parties be directed to submit
  - (a) all relevant records for the disposal of this case;
  - (b) order of the appellate authority respondents nos. 2 and 3 for salary of 'B' grade drivers;
  - (c) the list of the juniors who were promoted and got salary upto 'A' grade driver as Baldeo Rai was promoted and posted with

applicant for 'B' grade driver in June, 1973;

(d) at what time these promotees were posted in 'A' grade.

(2) Directions may be issued -

(i) for paying all the arrears including emoluments and benefits upto 'A' grade when the applicants became entitled for the same;

(ii) for paying suitable interest over the arrears if ten times of the deducted pay or arrears could not be paid;

(iii) for fixing pension and other emoluments of unrevised or revised pay scale of 'A' grade driver by paying the due enhanced pensions and other emoluments with interest over the arrears of the same;

(iv) for paying any other relief as this Tribunal may deem fit and proper.

These prayers can be looked into provided the order of removal is set aside. This point is involved in the aforesaid civil appeal, so we are dealing with the appeal first.

The purposes of two proceedings are quite different. The object of departmental proceedings is to ascertain if the officer concerned is a fit person to be retained in service or to be given any punishment departmentally, while the object of the criminal proceedings is to find out if the ingredients of the offence as defined in the penal statute have been made out. It is within the absolute discretion of the departmental authority to proceed either departmentally or to launch prosecution. The State has a perfect right to hold a departmental enquiry, and it cannot be said that because the prosecution was launched it should not have held departmental enquiry. The State is also within its rights to launch a prosecution on the conclusion of the departmental enquiry and after

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necessary departmental action being taken against the civil servant for the same offence.

It may further be added that the departmental proceedings and criminal proceedings operate in different fields and they have different objectives. The material or evidence in the two proceedings may or may not be the same, and in some cases at least material or evidence which would be relevant and open for consideration in the departmental proceedings may be absolute taboo in the criminal proceedings. Rules relating to appreciation of evidence in the two enquiries may also be different. As already indicated the scope of the enquiry in a criminal trial is to determine whether an offence against the law of the land has taken place, and if so to punish the person who has been guilty of that offence. The scope of a departmental enquiry is to determine whether a public servant has committed misconduct etc. and further to consider the question whether he deserves to be retained in service, to be reverted, to be reduced in rank etc. The degree of proof which is necessary to record an order of conviction is different from the degree of proof which is necessary to record a commission of delinquency. In short, there is no bar to departmental as well as criminal proceedings being started simultaneously. Departmental proceedings need not be stayed pending disposal of criminal trial. Of course, in cases of grave nature it would be advisable to await the decision of the court, so that the defence of the employee in criminal case may not be prejudiced by anything taking place in the departmental proceedings. So there was no illegality in the order of the enquiry

officer dated 21.2.1975 in which he stated that departmental enquiry can be continued even if the case is being tried in the court of law, as ordered by the superior officer. With these observations the plaintiff was ordered to attend the enquiry. The plaintiff moved an application on 21.2.1975 for staying the enquiry with the allegation that the criminal case was pending. On this application the aforesaid order was passed. The plaintiff refused to attend the enquiry and went away along with his defence ~~helper~~ <sup>helper</sup> ~~complaint~~ <sup>complaint</sup>. He was himself to blame for the ex parte proceedings. In case he was not satisfied with that order he could bring the same to the notice of the higher authorities. In any case he should have attended the departmental proceedings, and at the relevant stage could have stated that he would not make any statement because his defence in the criminal case would be prejudiced. He did nothing like that, and walked away from the office refusing to attend the proceedings. <sup>ultimately he was acquitted</sup>

In these circumstances the authorities were compelled to proceed ex parte. No procedural defect or illegality <sup>can</sup> ~~can~~ be pointed out in the procedure adopted during the departmental proceedings. We do not sit in appeal over the findings of fact recorded by a competent authority in a properly conducted departmental enquiry unless it is shown that the impugned findings are not supported by any evidence. We cannot consider the adequacy of that evidence to sustain the charge. So long as there is some evidence, however meagre it may be, to support the findings of the disciplinary authority it would not be proper for us to set aside the same

and to substitute our own finding. There was evidence on the basis of which a finding of guilt could be recorded by the enquiry officer.

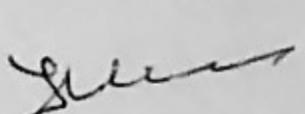
So far as the acquittal dated 9.9.1981 is concerned, it would suffice to say that the learned Magistrate acquitted the accused person mainly on the ground that during the pendency of the case (about five years) the prosecution could produce only one witness and he too was declared hostile. So it cannot be said that the acquittal is of such a type that the case should be re-opened and the order passed during the departmental proceedings should be set aside.

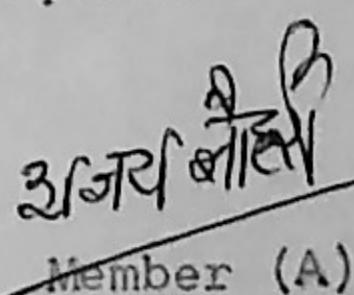
No other point was pressed.

So civil appeal 353 of 1984 is allowed and the judgment and decree passed by the learned Munsif are set aside and the suit is dismissed. Parties shall bear their own costs throughout.

Since the suit has been dismissed and the plaintiff could not succeed in challenging the order of dismissal, his application under section 19 of the Act, viz., Registration No. 617 of 1986, given separately is infructuous and is hereby rejected with costs on parties.

A copy of this order be placed in the file of Registration No. 617 of 1986.

  
Vice Chairman

  
Member (A)

Dated: 27-2-87.

AAK