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(B)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 274 of 1987

Munni Lal

....

Applicant.

Versus

Union of India & others ...

Respondents.

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

(Delivered by Hon. Ajay Johri, A.M.)

In this application received under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant, Munni Lal, who was working as a permanent Way Mistri in the Central Railway, has challenged the orders dated 3.2.1987, 5.12.1986 and 20.1.1986 passed by the Divisional Railway Manager (DRM), Additional Divisional Railway Manager (ADRM) and Senior Divisional Engineer (SDE), Jhansi by which a penalty of compulsory retirement has been converted into reappointment of the applicant on the same post as a new entrant.

2. On 6.9.1985 the Engine of 107 DN train derailed between Chitrakoot Dham and Bihampurwa Railway ^{Stations} ~~By stations~~. A fact finding enquiry was conducted in which P.W.I., Chitrakoot Dham was held responsible. A departmental enquiry was conducted against P.W.I. Simultaneously another charge-sheet was issued to the applicant on 28.11.1985 charging him with negligence of duty and carelessness in his work, ^{in so much} so that he failed to maintain the track properly which resulted in the derailment of the Engine of the down train whereby he was taken up for

violating General Rule 15-14A. The applicant denied the charges on the basis of the statements made by the relied on witnesses. According to the applicant it was held that there was no track diffect and, therefore, in the enquiry against P.W.I. he was exonerated of the charges, but in the enquiry against the applicant the findings were given against the applicant. The applicant says that he was not supplied copies of certain documents which he had requested during the course of the enquiry neither was he allowed to inspect these documents. The General Rule 15-14 according to him, was not applicable in his case as he was working on track renewal and the aforesaid rule applies only to employees who are maintaining the track. One of the witnesses had stated in the enquiry that the derailment had occured due to obstruction coming into contact of the leading wheel of the ^{38 tender} ~~locomotive~~ of the Engine and not at all because of bad maintenance. Moreover the whole of the train had passed safely at normal speed and, therefore, it is evident that the track had been maintained properly and there was nothing wrong in it. According to the applicant even ³ ~~before~~ ^{after} the alleged derailment more than 200 trains have passed over the aforesaid point in the next nine days safely. The applicant had attended to the track on 28.8.1985 while the accident took place on 6.9.1985. The petitioner has claimed that his appeal was rejected by a non-speaking order. In the review petition filed by him the penalty of compulsory retirement has been reduced to his reappointment as a new entrant. Thus his previous services from 27.2.1960 to the date of his reappointment stands washed of and he will not be entitled for any pension, gratuity and other allowances. Thus the order

passed on 3.2.1987 by DRM is a harsh order though it has been said that it has been passed on compassionate grounds. The petitioner has, therefore, prayed that the order dated 3.2.1987 and the punishment order as well as the appellate order may be declared null and void and the respondents may be directed to consider the applicant in continuous service as a Permanent Way Mistri and he may be given full arrears of pay and other allowances.

3. The respondents' case is that the derailment took place on account of negligence of the applicant, who had attended the track at the place of derailment on 26.8.1985. The ^{34 Cause of} derailment has concluded by the fact finding enquiry committee ^{34 It} occurred due to defective track and since the applicant had worked on this track earlier he violated the General Rule 15-14. The report submitted by the enquiry officer in the charges against the P.W.I. was not accepted by the disciplinary authority and a penalty for reduction to lowest grade of pay was imposed on P.W.I. The applicant has wrongly mentioned that P.W.I. was exonerated. The correct facts are that he was punished. The enquiry officer had recorded findings against the applicant. It is the Permanent Way Mistri who maintains the track through his gang and the applicant was holding that post and he was responsible for the maintenance of the track in a fit condition. The documents referred to in his application were shown to the applicant and his counsel. The findings of the Fact Finding Enquiry Committee were that there was a defect in the track which had been attended to by a gang under the applicant prior to the accident. The variation of the cross level of the track at the point of derailment were excessive. Thus the track had not been maintained properly by the

applicant. The wheel that detailed was the first wheel of the tender. The matter has been carefully considered by the technical officers and the findings are based on evidence. The impugned order passed by DRM on 3.2.1987 has not exonerated the applicant. However, DRM on compassionate ground has directed that the applicant may be taken back in service as a new entrant. There has been no discrimination.

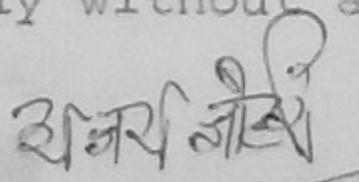
2/ 4. We have heard the learned counsel for the applicant and have perused the case file. The main contentions raised before us were that the derailment took place nine days after the track was maintained by the applicant and during this period more than 200 trains had passed over the same track and no mishap had taken place and, therefore, the responsibility fixed on the applicant for poor maintenance of the track was not correct and in any case the punishment which takes away all his previous services of nearly 27 years is excessive.

5. After the derailment a fact finding enquiry was done by three officers, who came to the conclusion that the derailment of the four wheels of the front trolley of the tender was due to defective track and prima facie they have held the responsibility on P.W.I., who was responsible for the maintenance of the track. Subsequently a proper enquiry has been conducted and the applicant has participated in the same and the plea taken by the applicant of some obstruction of track was rejected by the enquiry officer. After rejecting the other possibilities of Engine defect, etc. the enquiry officer had come to a conclusion that the applicant was responsible for the charges levelled against him.

6. We do not find that there has been any lacuna in the enquiry proceedings and that they are vitiated by any mala fide or illegality. We also do not appraise the findings of the enquiry committee which we do not find are based on mere conjectures or surmises, thus there is no lack of evidence also in arriving in the enquiry findings. Under the circumstances we do not think it necessary to interfere in the normal course of the conclusion of the enquiry and the disciplinary action against the applicant.

7. On the quantum of punishment we do feel that it is rather excessive because ^{it} ~~they~~ takes away all the previous services rendered by the applicant from 27.2.1960 onwards. Having worked already for nearly 25 years the order given by DRM after taking ^{3/58} ~~compa~~ ^{ss} ~~xion~~ on the applicant for his appointment as a new entrant hits the applicant very severely. On this short point we would have remanded the case back to DRM, who has reviewed the case for imposing some other punishment ^{instead} ~~in respect~~ of taking away the entire services ² of the applicant by implementation of his order of fresh appointment. To cut short the litigation we would like to replace this punishment by a punishment of reduction to the lowest scale of the Permanent Way Mistri for a period of two years. He will stand restored to the present position after expiry of this period.

8. In view of above the petition is disposed of accordingly without any order as to costs.


Member (A).


Vice-Chairman.

Dated: February 29, 1988.