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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.36 of 1987

Anurudh Prasad SrivastavaApplicant

Versus

Union of India & Others Respondents.

Hon. Ajay Johri, A.M.

Hon. G.S. Sharma, J.M.

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

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

On 31.5.86 while 24 Dn Express train of North
Eastern Railway was coming to Lucknow station it
took the route of Loco Line instead of main line
while the signals were taken off for main line by
ASH West Cabin. This resulted in a derailment
of the engine and four coaches of this train. The
applicant who was working as Assistant Station Master
at Aishbagh was placed under suspension vide order
dated 4.9.1986 and the memorandum of chargesheet was
issued to him on 8.9.86 for alleged violation of
certain general and subsidiary rules. According to
the applicant the nature of violation did not attract
the provisions of the Railway Servants Discipline and
Appeal Rules 1968 and no disciplinary action could

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be taken against him for the alleged charge of violation of rules. According to him the entire disciplinary proceedings therefore are without jurisdiction and void. His representations to stop such illegal disciplinary proceedings have also been rejected. Aggrieved by these orders he has approached the Tribunal to quash/set aside/ the impugned orders of suspension dated 4.9.86, charge sheet dated 8.9.86 and order rejecting his appeal dated 12.12.86. He has placed them at Annexures 1,2 & 3 of his application. The applicant challenged these orders on the ground that he has been placed under suspension by an incompetent authority for some alleged action which cannot be taken against the applicant in the eye of law and that the chargesheet is vague and no specific allegation has been made against him. Further the disciplinary proceedings could not be instituted nor any chargesheet could be issued against him for the conduct which is an offence under the Indian Railways Act of 1890, that the impugned chargesheet does not show commission of any misconduct and therefore the departmental authorities cannot try the applicant for the alleged offence simultaneously when the matter has been reported to the police. Further grounds that he has taken are that the documents substantiating the charges levelled do not make out even a prima facie case and according to the enquiry conducted by the Commissioner of Railway Safety the cause of the

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accident was the defect in interlocking. The applicant has also alleged bias³² by the disciplinary authority and since his case was being tried by the Railway Ministry no departmental action could be taken against him. He is fearing dismissal from service because he has been a trade unionist. In conclusion he has said that he has not committed any misconduct or misbehaviour and therefore he has prayed for passing of appropriate orders directing the respondents to provide the applicant full benefits with arrears of salary and promotion taking it that no action can be taken against him.

2. In their reply the respondents have said that the applicant was placed under suspension for serious misconduct on his part when he was working as Assistant Station Master Aishbagh and when he failed to ensure correct setting of route for reception of 24 Dn Express at Lucknow junction. He was placed under suspension on telephonic order of Senior Divisional Safety Officer Lucknow who is a competent authority to place the petitioner under suspension and to ~~concern~~ initiate disciplinary proceedings against him. A chargesheet for major penalty issued on 8.7.86 was served on him at his residence. According to the respondents there was nothing wrong in simultaneous nomination of the Enquiry Officer. The enquiry can, however, only start

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after the disciplinary authority has considered the defence of the employee against the chargesheet.

The respondents have denied that they have relied on the report of the Commissioner of Railway Safety while issuing the chargesheet and therefore the applicant has no right to inspect the said report.

In respect of the defence counsel which was nominated by the applicant since he was a prosecution witness the applicant was asked to give a fresh nomination of a different person. The respondents have gone on to say that the applicant attended the enquiry on 26.10.86 and raised some objections which were not tenable. He was chargesheeted for misconduct in performance of his duties. On the other hand Section 101 of the Indian Railways Act provides only for the punishment to the staff for endangering the safety of persons. The proceedings under

Section 101 of the departmental proceedings are two separate things and there is no question of double jeopardy in his case. The applicant was chargesheeted for violation of general rules, subsidiary rules and Station working rules which of the Conduct Rules and amounted to violation of rules 3(1)(i)(iii) which can be looked into by the disciplinary authority as well as the court of law and no fetter could be placed on the discretion of the enquiry officer to look into the same. According to the respondents the charges against the petitioner are precise, specific and based on Railway rules. The applicant

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has violated the Safety Rules and thereby caused a serious accident resulting in 7 deaths. The Levers in the cabin were pulled by manipulation of combined efforts by Signal and Tele-communication staff. The contention of the applicant that the rules alleged to have been violated were not in use at all has been denied by the respondents. Thus there is no illegality in initiating departmental proceedings against the applicant. The accident had occurred due to negligence and misconduct on the part of the applicant. He had not observed the rules and there was no interlocking failure and therefore the petition being frivolous and vexatious is liable to be dismissed.

3. In his rejoinder the petitioner has reiterated what he has said in his application. He has stressed on the necessity of being given a copy of the Commissioner of Railway Safety's Report and according to him the respondents have not come before the Tribunal with clean hands. The right of the applicant to defend himself is also being jeopardized by denial of being given a copy of the Commissioner Railway Safety Report.

4. We have heard the learned counsel for both parties. Shri O.P.Srivastava, the learned counsel for the applicant came in for spirited defence of the applicant by his detailed arguments on the various points raised in the application. He summarized his

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contentions into the following three points :

- (i) On the question of validity of the chargesheet.
- (ii) On the question of jurisdiction of authorities, and
- (iii) On the vagueness and ~~undescriptive~~ ^{undescriptive} ~~undescriptive~~ nature of the charges in the chargesheet.

His contention was that the applicant had committed no misconduct according to Section 47 of the Indian Railways Act. The general and other rules have been framed in pursuance of the powers given under this Section. Violation of the Rules framed under the Indian Railways Act cannot be treated as a misconduct and it is an offence under Sections 99¹ of the Act and therefore such an offence can only be taken cognizance under the Criminal Procedure Code and not under the Discipline and Appeal Rules. Under Rule 14 of the Discipline and Appeal Rules, 1968 a person could be punished if he is convicted by a court of law. Violation of the general rules not being a misconduct and the mere narration that certain rules have been violated does not make a chargesheet specific and therefore the charges are vague. Not all the quoted violations are applicable because some of the rules quoted are not applicable to the Station where the applicant was working. Even the charge 'manipulation' is vague as it has not been said what manipulation has been done by the applicant. According to the learned counsel for the applicant the accident occurred due to equipment failure and

not due to any negligence on the part of the applicant. In the absence of the Commissioner of Railway Safety Report who has come to the conclusion on the cause of the accident it cannot be said that the applicant is in any way responsible. As a matter of fact, in his application the applicant has quoted from the Commissioner of Railway Report. The contentions of the learned counsel for the applicant were repelled by S/Shri A.K.Gaur and A.V. Srivastava, the learned counsel for the respondents on the point that misconduct is a question of fact and the action of the applicant resulted in lack of devotion to duty which tantamounts to violation of the conduct rules. The learned counsel for the applicant opposed these contentions on the point that they have failed to fix the responsibility of the various departments. They have not been able to lay down the factors dealing with the violation of the Conduct Rules and mere narration of this violation cannot be used as a noose to hang the applicant. He reiterated his contention that the respondents have no jurisdiction to take the applicant under the Discipline and Appeal Rules.

5. The applicant was placed under suspension on 4.9.86. He was given a memorandum of charges on 8.9.86. Statement of Article of charges framed

against the applicant reads as follows :-

" That the said Shri A.P.Srivastava, while functioning as ASM/West Cabin/ASH on 31.5.86 in 08.00 hrs to 16.00 hrs shift failed to ensure correct setting of route for reception of 24 DN Express train Ex.Amausi to Lucknow Jn as a result of which the train took the route of loco line instead of main line while the signals were taken off for main line by manipulation in West Cabin/ASH by the combined efforts of operating and Signal Staff causing derailment of train engine No.2581 YP with 4 coaches over diamond crossing No.101-101A(BG-MG). Thus, Shri A.P.Srivastava ASM violated GR 2.06(a), GR 3.68(1)(a), SR 3.68(1)(i), SR 3.68(2)(ii), SR 5.01(2) and SWR of Aishbagh Para 6(c)(iii) Page No.11, and Rule No.3(1)(ii) and (iii) of Railways Services (Conduct) Rules 1966 which tantamounts to misconduct on his part."

31/ The statement of imputation in support of the Article of charges reads as follows :-

" On 31.5.86 while 24 DN Express train was coming from Amausi to Lucknow Jn. Station it took the route of loco line instead of main line while the signals were taken off for main line by manipulation in ASH West Cabin by the combined efforts of Operating and Signal staff as a result of which the train engine No. 2581 YP with four coaches No.SLRMN 8707, SMN 7262, SMN 7290 and SMN 7202 got derailed over diamond crossing (BG-MG) No.101-101 A

due to wrong setting of route. Shri A.P. Srivastava, who was working as ASM/West Cabin/ASH failed to ensure correct setting of route and thus violated GR 2.06(a), GR 3.68(1)(a), SR 3.68(1)(i), SR 3.68(2)(ii), SR 5.01(2) and SWR of Aishbagh Para 6(c) (iii) Page No.11 and Rule No.3(1)(ii) and (iii) of Railway Services (Conduct) Rules 1966 which tantamounts to misconduct on his part."

In the statement of imputation of misconduct it has been said that the applicant who was working as Assistant Station Master West Cabin Aishbagh failed to ensure correct setting of route and thus violated the general rules, subsidiary rules and Station Working Rules. This failure of the applicant to ensure the correct setting of route has been spelled out in the chargesheet as misconduct. It is not a question of contravention of the said rules only. The charge is ~~3~~ that ³ that specific and the applicant had failed to ensure correct setting of the route. The rules that have been violated as mentioned in the statement of imputation of misconduct have been reproduced by the applicant on page 24, 25 and 26 of his Paper Book. General Rule 2.06 deals with the obedience to rules and order that every railway servant shall promptly observe and obey all rules and special instructions and all lawful orders given by his superiors. There is no doubt that the act of failing to ensure correct setting of route ~~may~~ may have resulted ⁱⁿ by the applicant not observing and obeying all the rules and special instructions but nothing specifically has been mentioned as to which

rule or special instruction or which lawful order given by the applicant's superior was not obeyed by the applicant. ^{or Similarly} ~~Simultaneously~~ general rules 3.68 deals with the action to be taken in case of a defective Signal. The subsidiary rule 3.68(i) lays down that signal shall only be lowered by their proper Levers and shall be treated as out of order if they do not respond to movement of their Levers. It is not to be taken off by pulling the wire by hand or by any other means. The subsidiary rules 3.68(ii) lays down that when interlocking fails or becomes defective the relevant signals shall be treated as defective. The imputation of misconduct was that the applicant failed to ensure correct setting of route. How he failed to set the route correctly should have been indicated and if the defendants felt that either the interlocking had failed or the ~~or~~ signals were not getting lowered by the pullings of Levers and were taken off by pulling of the wire they should have been specific in their charge and not vague that he failed to ensure correct setting of the route. Station working rules which the applicant has been alleged to have violated lay down that the Station Master is directly responsible for the working of the Signals and the Home Signal should not be taken off without the personal order of the Station Master on duty. When the Home Signal has been taken off the outer signal will then be taken off by the Railway servant deputed to work it. It

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also lays down in Rule 6(c)(iii) that the Assistant Station Master on the West Cabin will inform the Gateman of level crossing and the Cabinman of the Loco Cabin giving them the Train No., description and exchange of private number for closing and locking of gates. It has not been mentioned in the chargesheet ^{or what} whether the applicant had violated or in what way he violated the rules. The general statement that he violated a rule will definitely tilt towards being vague rather than specific. We therefore do feel that the statement of imputation of misconduct has not been happily worded and is vague and not specific. Where the charges framed against the delinquent are vague, the enquiry based on such charges would stand vitiated being not fair as it does not give him adequate opportunity to face the charges which have been levelled against him. A fair reading of the statement of imputation of misconduct would give an impression that the charge was ^{or also} not clear in the sense how the applicant was alleged to have manipulated the setting of the route or lowering off ^{or staff of} the signals alongwith ^{other} sister departments and it will be difficult for the applicant to meet a charge of this nature. If these charges are sought to be proved by the evidence of the witnesses a clear mention should have been made as to how the charge ^{or meant to be} or on what the charge was based ^{or} is established. Charges involving consequences of termination of service have to be specific. Though a departmental enquiry cannot be equated to a criminal trial and it cannot be said that an offence is not

established unless it is proved beyond doubt but an enquiry which entails consequences like the loss of a job which means loss of livelihood needs to have fair play in action in respect of an offence which may have penal consequences against the employee.

In K.L.Tripathi Versus State Bank of India (1984(1) SCC 62) the Hon'ble Supreme Court had made the following observations :

" Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic Govt. cannot exist, beyond all rules and procedures that is the Sine Qua Non."

Therefore having regard to the consequences with which the applicant is faced, It is all the more essential that the charges which the applicant has been made to face should have been specific and not vague and we therefore agree ^{3/} ~~that~~ with the contention of the learned counsel for the applicant in this regard.

6. On the question of jurisdiction of the authorities, as far as the allegation of incompetency of the authority issuing the order of suspension is concerned it has been repelled by the learned counsel for the defendants on the point that his suspension was made under the orders of the Divisional Safety Officer who was competent to suspend and to take disciplinary action against the applicant. The contention of the learned counsel for the applicant that the suspension order was bad in law because it

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was issued by the authority which was not competent is therefore not sustained. This averment made by the learned counsel for the defendants has also not been contested by the applicant or his learned counsel.

7. A third contention has been raised on the validity of the chargesheet. The statement of imputation of misconduct says that the applicant failed to ensure correct setting of the route. If the applicant violated any of the general rules or the subsidiary rules or the Station working rules he did act in a manner which was unbecoming of a Govt. servant. It is not a question ~~whether~~ where his integrity is being doubted but what is being challenged is the action performed by him which resulted in the accident to take place. Unless it is established, that there ^{2 were} ~~was~~ ² circumstances which were beyond the control of the applicant it will be natural for an opinion being formed that he must have acted in a manner, may be by ignoring certain instructions or certain rules or irresponsibly, that an action was performed which could normally not have been possible if the rules and procedures were strictly followed. This is however a subject which can only be concluded upon and proved after a thorough enquiry is conducted but there would be nothing wrong

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in the defendants forming a opinion that the applicant had acted in a way which may have involved lack of devotion to duty or which may have been unbecoming of the applicant. Therefore besides the provisions of Section 101 of the Indian Railways Act which lays down that when a railway servant endangers the safety of person by disobeying a general rule or by disobeying any rules which is not inconsistent that such general rule or by any rash and negligent act or omission he shall be punished with an imprisonment for a term which may extend to two years or with a fine which may extend to Rs.500/- or with both, ^{or fine} can also be taken up simultaneously under the Discipline and Appeal Rules for lack of devotion to duty which may have resulted in the accident to take place. The very act of disobedience of any rule can be termed as lack of devotion to duty.

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8. Alfred Avins in his book 'Employees Misconduct' has said that " in analyzing the m a s s of conflicting cases of disabling conduct, two guiding principles must always be kept in mind. The law of Industrial Discipline never punishes damage without fault, and it never immunizes fault which creates a risk because no damages materializes." Therefore the seriousness of a conduct is viewed not from any moral or social point of view but from the point of view of its effect. There are various types of misconduct. It may be violence, it may be villifying officers and co-employees, it may be tampering or damaging goods, ~~or~~ it may be

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misconduct affecting production, it may be insubordination and disobedience of orders of his superior, it may be an act which endangers the safety of co-employees or the property of the employer, it may be misconduct involving dishonesty etc. Whether there has been ^{& any} misconduct will depend upon the facts of each case. Misconduct in ordinary parlance would mean bad management or mismanagement or culpable neglect of his official ^{& duty} in regard to his office. Normally for an act of misconduct there must be a greater degree of wrong than is required for negligence. A negligent act by itself cannot be counted as misconduct. Thus misconduct is something more than ~~@@@~~ mere negligence. It is the intentional doing of something which the doer knows to be wrong or which he does ^{or} recklessly. It is a willful neglect amounting to malfeasance. Misconduct will literally mean wrong or improper conduct that is [&] conduct in violation of a definite rule of action. It ordinarily means failure to ~~@@@~~ do what is required of a person to be done. An omission to do what is required of a person to do may therefore constitute misconduct, even though the person has not acted willfully or maliciously. Some kind of negligence may also amount to misconduct. There can be misconduct only if some rules are violated and therefore if the general rules are proved to be violated the applicant cannot say that he is not guilty of misconduct and therefore

he cannot be taken up departmentally. Simultaneous to the action to be taken against him under Section 101 of the Indian Railways Act, the contention of the learned counsel for the applicant, that no disciplinary action can be taken against him, can therefore, not be accepted. There would be nothing wrong in the defendants taking up the applicant under the Disciplinary Appeal Rules for the violation of the rules which he is supposed to follow.

9. The applicant has prayed that the suspension order, chargesheet and order rejecting his appeal may be quashed. The trend of arguments in the application have been that the applicant may not be subjected to the enquiry consequent to the issue of a chargesheet, on account of the charges being vague and the challenge of the applicant that he cannot be taken up under the Discipline and Appeal Rules. We have already repelled this contention of the applicant. He can be taken up under the Discipline and Appeal Rules. Regarding the chargesheet, we have held above that it is vague. We accordingly direct that the respondents will suitably amend it so as to make it more specific and after affording a reasonable opportunity to the applicant in respect of the amendments made in the chargesheet, the inquiry may be concluded according to the rules and it is not necessary to quash the charge sheet altogether. Regarding the grievance of the applicant that he has not been

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given the report of the Commissioner of Railway Safety for his defence, we feel that the applicant has already quoted extensively from the said report in his petition and he seems to be aware of the whole report. He can rely on the relevant extracts in his defence and in case the respondents dispute the correctness of the said extracts, they shall supply either the whole report of the Commissioner of Railway Safety or atleast its relevant extracts to the applicant before the arguments before the inquiry officer in the disciplinary inquiry are concluded. No other interference is called for in this case.

The petition is disposed of accordingly and the parties are directed to bear their own costs.

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J.M.

Dated the 16 April, 1987

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Review Application No. 94 of 1987

IN

Registration (O.A.) No. 36 of 1987

Anurudh Prasad Srivastava Applicant.

Versus

Union of India & others Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

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

Review Application No. 94 of 1987 has been filed seeking review of our orders passed in Registration (O.A.) No. 36 of 1987, Anurudh Prasad Srivastava v. Union of India & others, on 16.4.1987. This application has been received on 9.6.1987. The applicant has mentioned that when he did not receive any intimation of the copy of the judgment in the above noted case for a long time he contacted the office of this Tribunal on 15.5.1987 through his counsel and came to know that the judgment and order has been pronounced. He received a copy of the judgment dated 16.4.1987 through his counsel on 15.5.1987. The applicant thereafter submitted it to the respondents for the compliance of the judgment.

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2. We had delivered the judgment on 16.4.1987. The applicant collected it on 15.5.1987 and he filed the review application on 9.6.1987. According to Rule 17 of the Administrative Tribunals (Procedure) Rules, 1985 a review application must be filed within 30