

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 29th day of September 1995.

Original Application no. 984 of 1988.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Nathoo Lal II S/o Sri Churni Lal, R/o Radha Kishan
Agarwal Bhawan, Tapeswar Nath Mander, Subhas Nagar
Bareilly.

... Applicant.

C/A Sri Beva Sharma.

Versus

1. Union of India, through General Manager, Northern Railway, Barauda House, New Delhi.
2. Senior Divisional Mechanical Engineer, Northern Railway, Moradabad.
3. The Divisional Railway Manager, Northern Railway, Moradabad.

... Respondents.

C/R Sri Amit Sthalekar.

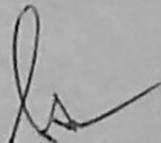
ORDER

HON'ble Mr. S. Dayal, Member-A

In this O.A. under section 19 of the Administrative Tribunal Act, 1985, the applicant seeks following relief:-

- i. Quashing of order no. 70-T/2/23/86-TA dated 26.02.88 imposing the penalty of reversion from the post of Driver to the post of Shunter and reduction of pay from Rs. 1560 to Rs. 1350.

Compared by
Piyush



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- ii. Order of appellate authority no. 79-T/2/23/86 TA dated 10.05.88 be also quashed.
- iii. Direction to the respondents to treat the period of suspension from 23.07.86 to 06.08.86 as duty for all purposes.
2. The relief has been asked for on the following grounds:-
- i. The Disciplinary and Appellate authorities ^{failed} have failed to pass self contained, speaking and reasoned order and thus violated the instructions of the Govt. of India.
- ii. A Copy of enquiry report was not supplied to the applicant before imposing the penalty.
- iii. Non supply of the copy of documents relied upon by the respondents and other documents asked for the applicant.
- vi. Non communication of the order of appointment of the enquiry officer.
- v. Charges were not explained and denial was not obtained and General Manager warning was not given.
- vi. The enquiry officer who was proved biased was not charged.
- vii. The facts finding enquiry was conducted by C.C.R.S. Lucknow and was relief upon by appellate authority although no copy of the report were supplied to the applicant.
- viii. Enquiry was conducted by an Inspector against Railway Board's letter dated 10.04.62.
- ix. Joint enquiry against two delinquents can not be ordered.
- x. The charge sheet was not issued after the complaint of the fact finding enquiry on 30.06.86 within three months and it took more than one year to do so.

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- xii. Delinquents should not have ^{been} cross examined by enquiry officer and by doing so has acted as a prosecution officer.
- xiii. Defence witnesses having high position in Society were not believed.
- xiv. Down log register of west cabin and up log register of west central cabin of Lucknow show that Gomti Special Goods Train entered Lucknow yard on 14.06.86 without line clear and that 377 UP passenger, worked by the petitioner started after signal no. 66-54 were lowered.
- xv. The applicant was subjected to double jeopardy by imposing two punishment on the petitioner simultaneously.
- xvi. The order of appellate authority was void because the appeal was rejected on the basis of contents in the report of CCRS which was not relied upon document and a copy of which was not supplied to the applicant.
- xvii. The report of enquiry officer was biased .

3. The respondents have mentioned in their counter reply that the applicant was driver of 377 UP passenger train and pass the signal no. 54 in 'ON' position whereby causing collision between 377 UP Passenger Train and DN Gomti Goods Special Train at Lucknow on 14.06.80 at 12.16 hrs. The respondents have denied that signal no. 66 and 54 were in any-thing other than 'ON' position. They have stated that the A.S.M. West Central Cabin did not get a slot from A.S.M. West Cabin to lower signal no 66 and 54 which were both interlocked signals.

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The applicant should have stopped the train at signal no. 66 but overshot first signal no. 66 and then signal no. 54. They have stated that the A.S.M. of West Central Cabin did not give line clear to 377 UP passenger train because the A.S.M. of West Cabin had given line clear to Gomti Special Goods Train which was to make a cross section near signal no. 54. The respondents have stated that the articles of charges do not mention signal no. 66 because the side collision took place immediately after overshooting signal no. 54 which was in 'ON' position. They have stated that since it was mid-day, the applicant ought to have ^{seen} with with average vigilance Down Gomti Special Goods Train crossing his track at common point no. 24 R which is 180 meter from signal no. 54. They have stated that 377 UP Passenger train should have stopped at signal no. 66 after advancing from platform. They have stated that the station working rule of Lucknow was valid only if there was conflicting movement of trains. They have also stated that the the train should not be made to wait at station platform indefinitely because several trains come simultaneously to Lucknow Junction from all directions. The practice is to move trains standing at the platform up to intermediate starter in order to vacate the platform and onwards movement of trains after leaving the platform was controlled by other signals on the way. They have stated that Gomti Goods Special Train were given line clear and private no. 32/2565 were exchanged, in case of 377 UP Passenger train also advancing instructions were given and private no. 5066/4873 were exchanged. They have denied that isolation could be provided in block sections because ~~no to no @@@@@@@@@@@@@~~

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common points have to be made. They have stated that between signal no. 66 which was at west central cabin and signal no. 54 which was at west cabin, there was a sharp curve in the track and signal no. 54 and common point no. 24-R were not visible ^{to} by A.S.M. Sri K.K. Srivastava and he could not see ^{down} Gomti Goods Special Train crossing point no. 24-R. They have denied that it had been admitted in the chargesheet that signal no. 66 was lowered for 377 UP train. They have stated that signal no. 66 was overshoot by the applicant. The respondents have also mentioned that appointment of Sri G.P. Bharti a enquiry officer was communicated to the applicant through loco foreman, Bareilly and was served on him. They have stated that the enquiry report was given to the applicant alongwith a copy of statement recorded by E.O. were supplied to him.

4. The applicant in his rejoinder affidavit has stated that the trains cannot arrive or leave station without line clear, and when the staff on duty ^{at the station} are negligent, accident do occur because the train either leave or arrive ^{at} the station without ^a line clear. In this case he claims that intermediate starter no. 66 and 54 were in 'OFF' position and that the Down Gomti Special Goods train was allowed to enter the section without a line clear, and the accident took place. He stated that Sri K.K. Srivastava in his reply of question no. 24, 27 and 28 of cross examination admitted that Down Gomti Special Goods train entered without line clear and that he had followed the prescribe procedure and started 377 UP passenger after obtaining slot from the west cabin.

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He has stated that there were eye witnesses to the fact that signal no. 66 and 54 were in 'OFF' position. He has reiterated that according to station working rule no UP passenger train can be started from Lucknow Station to west cabin when on the same South Line Gomti Special train was being received. He has also reiterated that intermediate starter no. 66 was in 'OFF' position and signal no. 66 and 54 were interlocked and both were in 'OFF' position. He has stated that private no. 32 had already been exchanged while, obtaining line clear for 6 down Mail and the same number was not available for exchange in respect of any other train being received at Lucknow. Therefore, the entry of private no. 32 is a fake entry. He has stated that the relevant columns from 13 to 16 were vacant in register and no. private no. were exchanged for reception of down Gomti Goods Special Train which entered the section without line clear. He has mentioned that question no. 10, 24, 27 and 28 were put to A.S.M. Sri K.K. Srivastava prove his point. He has stated that since the ~~applicant~~ applicant was considered guilty on passing signal no. 54 in 'ON' position.

5. It can be seen from the issue raised by the applicant are the ones which should have been considered by the appellate authority. A perusal of the order of appellate authority reads as follows:-

"Nathoo Lal Driver/BE met me on 18.04.88 along with his defence Helper. The main contention of the Defence was that the passenger train

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came on proper signals and no signals were lowered for Goods Train. I have gone through the C.R.S Enquiry Report and I agree with the C.R.S that collision occurred due to 377 UP Passenger passing the signal no. 54 in 'ON' position.

Considering the gravity of the offence I am of the opinion that the punishment imposed by Sr. D.M.E is adequate. The appeal is rejected.*

6. Annexure 3 to the chargesheet which is annexed as A-1 to the O.A. does not include the report of C.C.R.S in the list of documents relied upon by the Disciplinary Authority for purpose of enquiry against the applicant.
7. The rule 22 of Railway Service Disciplinary and Appeal Rule, 1968 requires the appellate authority to consider whether the procedure laid down in the rule has been complied with, whether the non-compliance has ~~been~~ resulted in violation of any provision of the Constitution of India or in failure of justice, whether findings of disciplinary authority are warranted by evidence on the record. It is also to consider the adequacy, inadequacy or severity of the penalty.
8. It is not necessary to go into other issues raised by the applicant. The order of the appellate authority is based on the report of C.R.S. a copy of which was not made available to the applicant during enquiry. The report was also not a document mentioned as one of which the employer placed reliance for providing the charge against the applicant. The order of disciplinary authority dated 26.02.88 and of the appellate authority no. 79 T/2/23/86 TA dated 10.05.88 is, therefore, set aside. The disciplinary authority ~~shall be~~ ^{may} ~~be~~
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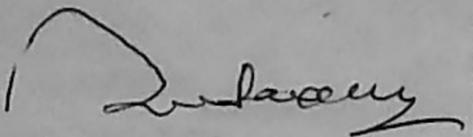
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issue a fresh charge sheet citing the report of C.R.S as one of the documents relied upon in the list of evidence and furnishing a copy of the same to the applicant and conduct a departmental enquiry afresh.

9. There shall be no order as to costs.


Member - A


Member - J

/pc/

Compaired by
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