

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 12th day of November 1994.

Original Application no. 1165 of 1988.

Hon'ble Mr. T.L. Verma, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member

S.K. Samadhia, S/o Shri L.D. Samadhia, R/O 37/213 B,
Teli Para, Loha Mandi, AGRA.

..... Applicant.

C/A Shri M.P. Gupta.

VERSUS

1. The Union of India through the General Manager,
Central Railway, Bombay. V.T.
2. The Additional Divisional Manager (TECH.),
Central Railway, Jhansi.

..... Respondents.

C/R Shri A.K. Gaur

ORDER

Hon'ble Mr. S. Dayal, Member 'A'

This is an application under section 19 of the Administrative Tribunal Act, 1985, requesting that order of removal dated 28.11.85 and appellate order dated 07.07.88 be quashed, that the applicant be reinstated with arrears of salary and allowances, ~~be awarded~~ that the costs of application be awarded, and that any other relief to which the applicant may be legally entitled be given.

2. The grounds on which relief is sought are that the appellate authority did not consider whether evidence on record was adequate to punish the applicant as directed by the tribunal, that the applicant has been made the scapegoat because 50 lives were lost, that the applicant did not enter the relay room after 1005 hrs and the accident took place at 1026 hrs that the appellate order was not a reasoned one because it does not consider applicants defence and why it is unacceptable and ~~defence~~ ^{the employer's} version is acceptable nor has the evidence been discussed on the basis of which the applicant was found guilty, that the enquiry officer was junior to Shri K.G. Sharma who was a prosecution witness, that copies of statement of witness recorded by the commissioner Railway Safety, were not given to the applicant even though he asked for them. It has also been stated that the removal order was passed on 28.11.85 while the enquiry officer submitted his report to disciplinary authority's office on 29.11.85 when the disciplinary authority was in Faridabad. The ADRM (T), Jahnsi, asked the applicant to come on 03.06.88. The applicant did not know the purpose why he was called and had not brought his ARE nor was he given time to do so which meant denial of opportunity of personal hearing.

3. The facts in brief as narrated in the application are that the applicant was working as Electrical Signal Maintainer in the day shift at Raja Ka Mandi Railway Station on 13.06.85 at 1030 hrs when a goods train collided with chathisgarh Express. After an enquiry, the applicant was charged with gross neglect of duty and careless working in getting work done on point on 102 B of replacing a sleeper without serving a disconnection memo and of clearing the starter signal

for Chattisgarh Express and clearing fault of point 102 flashing without ensuring correct setting of point and clamping and padlocking. The enquiry officer found him guilty of the ^{latter part of the} ~~second~~ charge and the disciplinary authority passed the removal order. The appellate authority later rejected his appeal. The applicant approached the Tribunal through OA 342 of 1986 which resulted in a direction that the appellate authority will hear and dispose of the appeal after hearing the applicant on merits by a reasoned order. The appellate order was passed on 07.07.88 (Annexure E) which has resulted in this application.

4. The learned counsel for the applicant was heard. He reiterated the points contained in his pleadings and cited the decision discussed subsequently. The learned counsel for the respondent Shri A.K. Gaure referred to the direction given in the judgement in O.A. no. 342 of 1986 and said that they had been complied with and reiterated the points made in the reply.

5. Since the Tribunal in its order dated 13.04.88 had set aside the order of the appellate authority only, it will be appropriate for us to consider whether the order of the appellate authority passed on 07.07.88 meets the requirements of law. The judgement of the other courts and the Supreme Court referred to the petitioner had already been considered by the Tribunal previously and are not repeated here. The ratio of ^{the} relevant cases cited are that the orders of the appellate authority should be speaking order passed after considering all aspects.

6. In his appeal the applicant had agitated the issue that since

issue that since the order was passed on 28.11.85 before submission of the enquiry officer's report on 29.11.85, it was a premeditated order regardless of the report and liable to cancellation. Secondly the charge sheet was issued by DME (T) and order of removal was passed by Sr. DME (T). He has also challenged the appointment of enquiry officer in his case by Sr. DME (T) as change of disciplinary authority. He has mentioned that the enquiry officer was junior to Shri K.G. Sharma, a ^{prosecution} ~~prosecution~~ witness. It is also stated that only summary of statements were given earlier and copies of statements were given on 25.11.85 and were unreadable because they were in small print. He has challenged the report of the enquiry officer as having been prepared by someone else as it does not match his calibre. He has mentioned that the prosecution witness said that they had nothing to prove either of the charges. The mention of report of Commissioner Railway Safety shows that the enquiry officer was influenced by the report and had not applied his mind.

7. Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968, require the appellate authority to consider whether procedure laid down in the Rules has been complied with, whether findings of the disciplinary authority are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or severe.

8. We find that the appellate authority has passed a detained order. The date of 28.11.85 on the order was found to be a typographical error and the

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order was actually passed on 29.11.85 because the disciplinary authority was found to have considered the report of the enquiry officer and held him guilty of the ^{latter part of the} ~~second~~ charge only as recommended by the Enquiry Officer. The appellate authority has rightly held that an authority higher than the appointing authority can pass an order of major penalty and the motives attributed were unacceptable. The appellate authority found that the applicant was held responsible for picking up of 102 WKR - 1 relay to clear the starter signal no. S - 3. The appellate authority's observation that there was no procedural flaw in enquiry officer recording statement of an officer senior to him ^{and it} is not violative of principles of natural justice ^{is inexceptionable}. He has also found that full opportunity was given to the delinquent employee to go through records and take extracts. This observation is further validated by the applicant's own admission in his appeal memo that he was given summaries of statements and was also furnished copies of statements before the enquiry report was submitted. The appellate authority has examined the technical aspects also and the applicant was found guilty. The order of the appellate authority makes it clear that the provisions of Rule 22 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968, have been complied with by it and we find that there is no flaw in the appellate order.

9. The issue of not having been informed of the purpose of calling the applicant by the appellate authority raised by the applicant has no merit. The applicant went to Jhansi to see the appellate authority

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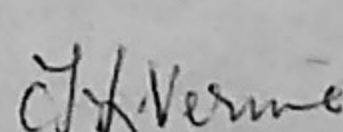
on 30.05.88 and 03.06.88. He has not shown ^{the manner} ~~that there~~
~~in which the~~ ^{was} ~~was two~~ information received by him that he was to meet
the A.D.R.M. (T) ^{and that intimation did not specify that it was} in connection with his appeal by
producing copies of intimations received by him or
contents of the message received by him. It is unlikely
that he did not ascertain as to the purpose on 30.05.88,
before going to the ADRM (T) again on 3-6-88.

10. The contention of the applicant that he should
have been permitted the assistance of the Railway
Servant to present his case in appeal is not based on
provisions of rules relating to discipline and appeal
of Railway Servants. The personal hearing has been
given to the applicant so that he can present his own
case in its totality and proper perspective before the
appellate authority and clarify and point on which the
appellate authority may seek information. Since no new
evidence is to be adduced in appeal, the assistance
of a fellow railway servant has not been considered necessary
at this stage either in rules or in ^{judicial pronouncements} ~~bench mark~~.

11. We find no reason to interfere with the order
of the appellate authority passed after the directions
were given by the Tribunal. The application is, therefore,
dismissed.

12. There shall be no order as to costs.


(S. Dayal)
Member A


(T.L. Verma)
Member-J

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