

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
A L L A H A B A D

O.A./T.N. No. 107 of 89

DATE OF DECISION 28.1.96.

K. G. Sherms - - - - - PETITIONER(S)

S. C. Bhattacharya - - - - - ADVOCATE FOR  
THE PETITIONER(S)

VERSUS

UOI - EON - - - - - RESPONDENTS

S. P. Agarwal - - - - - ADVOCATE FOR THE  
RESPONDENT(S)

COURT AM:-

The Hon'ble Mr. S. Das Gupta Member (A)  
The Hon'ble Mr. T. L. Verma Member (J)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?

  
(SIGNATURE)

VKF/-

CENTRAL ADMINISTRATIVE TRIBUNAL, ~~ALAHABAD~~ BENCH.

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ORIGINAL APPLICATION NO. 187 OF 1989.

Dated: This the 29<sup>th</sup> day of January, 1996.

QUORUM. :

Hon'ble Mr S.Das Gupta, A.M.

Hon'ble Mr T. L. Verma, J.M.

(By counsel Sri G.C.Bhattacharya)

## Versus

1. Union of India, through Chairman, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, Central Railway, Bombay V.T.
3. Chief Signal and Telecommunication Engineer, Central Railway, Bombay V.T.

(By counsel Sri G.P.Agrawal)

ORDER

By Hon'ble Mr T. L. Verma, Member (J)

In 1985, while the applicant was posted as Senior Signal Inspector, Grade I, at Agra Cantt, 138 UP Chhatisgarh Express collided with Down Special Goods Train at 10.25 AM at Rajmandi Station of the Central Railway, Agra, on 13.6.85. He was subjected to departmental proceeding on the allegation that he had been negligent in discharge of his duties which resulted in the collision of the aforesaid trains. *h.s.*

Cont'd.

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Charge Sheet dated 22.10.1985 for major penalty was served on him by Senior DSTE(M) Jhansi. The applicant submitted his written statement of defence denying the charges. The officer appointed to hold inquiry in the disciplinary proceeding submitted his report on 26.11.1985 holding the applicant guilty of the charges framed against him. DSTE(M) agreeing with the findings of the Inquiry Officer, awarded the punishment of removal from service. The appeal preferred against the punishment was rejected. The punishment awarded by the DSTE(M) and confirmed by the appellate authority was challenged by filing OA No.117/86 before this Bench of the Tribunal.

2. The Tribunal by its order dated 10.3.1988 held that the proceedings taken against the applicant upto the stage of submitting inquiry report by the Inquiry Officer was valid. It was further held that the punishment of removal from service could be passed according to the schedule only by the appointing authority or the authority higher in rank than the appointing authority, who in this case was C.P.O. Central Railway Bombay. Accordingly the application was allowed in part. Impugned orders dated 29.11.1985 and 11.2.1986 passed by the respondents No.5 and 4 respectively were quashed, and the respondents were directed to place the report of the Inquiry against the applicant before the C.P.O. Bombay or any other competent authority equal or higher in rank to pass the final order on the said report under Rule 10 of the D.A.RULES, within a period of 3 months from the date of the order. Thereafter, the Chief Signal and Telecommunication Engineer, Northern Railway, Bombay V.T. passed order dated 20.5.1988 (Annexure-2) and removed the applicant from service on the basis of the inquiry report submitted in the earlier proceeding. This

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application has been filed for setting aside the impugned order dated 20.5.1988 removing the applicant from service and for issuing a direction to the respondents to treat the applicant in service throughout without any break and to pay back salary, allowances and other dues.

3. The impugned order has been assailed inter alia on the ground that the findings of the Tribunal recorded in OA No. 117/86 that the proceedings taken in the inquiry against the applicant upto the stage of the report is erroneous and suffers from lack of jurisdiction. It is stated that the disciplinary proceeding was initiated by an officer who is not appointing authority of the applicant, charge sheet was issued under his orders and the Inquiry Officer was also appointed by him. The initiation of the proceeding by issuing charge sheet and appointing Inquiry authority also, it is alleged, was without jurisdiction and as such no punishment on the basis of the inquiry held by an incompetent officer can legally be imposed. The further case of the applicant is that the authority who passed impugned order of removal of the applicant from service has not considered various technicalities and factual objections raised by the applicant in the OA No.117 of 1986 disposed of on 10.3.1988. Hence the impugned order is vitiated.

4. The respondents have contested this application and have filed counter affidavit. In the Counter-Affidavit, filed on behalf of the respondents, it has been stated legality or otherwise of the proceedings upto the stage of submitting inquiry report has already been upheld by a bench of this Tribunal in its order dated 10.3.1988

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passed in OA no. 117 of 1986 and as such this issue cannot be re-agitated in this O.A. The applicant, according to the respondents, was given adequate opportunity to defend himself and that relevant documents were either supplied to him or made available for his inspection and that there has been no ~~infraction~~ of rules as may warrant ~~in the finance~~ by this Tribunal.

5. We have heard the learned counsels for the parties and perused the record. We are inclined to agree with the contention of the learned counsel for the respondents that the proceedings taken in the inquiry against the applicant upto the stage of submitting report has been upheld by this Tribunal and as such the same cannot be re-agitated in this O.A. It was open to the applicant to have gone to the Supreme Court if he felt aggrieved with the said finding of the Tribunal.

6. It was next argued that the Inquiry Officer has held that the applicant was not responsible for negligence or lack of supervision which contributed to the accident. Whether or not the applicant has been absolved by the Inquiry Officer of the charges of negligence and lack of supervision on his part could have been ascertained from the Inquiry Report which the applicant has chosen not to file. There is, thus, no material before us to support this argument of the learned counsel for the applicant.

7. In view of the foregoing conclusion, we now address ourselves to the argument that the finding of the Inquiry Officer and the order passed by the disciplinary authority is based on no evidence. It is not in dispute that 138 Up Chhattishgarh Express Train colluded with down Special Goods train at 10.25 A.M. at Rajamandi Station at Central



Railway, Aligarh on 13.6.1985. The aforesaid accident had taken place for the reason that the clearing starter signal for 138-Up Chhattishgarh Train was given without ensuring correct setting of points and clamping and impadlocking. From the averments made in para 8 of the application, it appears that the Inquiry Officer had recorded a finding that the aforesaid fault had occurred due to negligence and lack of supervision on the part of the applicant. This argument of the learned counsel for the applicant, therefore, can not be sustained.

8. It was next argued that the Inquiry Officer did not consider the evidence which was led in course of inquiry. It is stated that statement of S.I.-III Sri A.K. Gupta, <sup>who</sup> had worked at Track No. 205-T from 8.45 to 9.45 hours, <sup>with the applicant</sup> has not been considered but the statement of Sri Krishna Narain was accepted because it suited the Inquiry Officer for giving his pre-planned verdict. The Statement of Sri A.K. Gupta, who is said to have worked with the applicant between 8.45 to 9.45 hours, is not before us but, the fact remains that Sri Krishna Narain gave evidence before the Inquiry Officer which he has accepted. As, no malafide has been attributed to the Inquiry Officer we have no reason to believe that he has recorded a biased finding. The learned counsel for the applicant has miserably failed to show that there was no evidence on the record as may have led a reasonable person to the conclusion that the applicant had not contributed to the causing of the accident by his negligence and lack of supervision on his part. We are, therefore, unable to accept the contention

of the learned counsel for the applicant that the impugned orders are based on no evidence.

9. We now come to the argument of the learned counsel for the applicant that adequate opportunity was not afforded to the applicant to defend himself. It has been stated that vital documents were denied to him without giving ~~any~~ reasons in violation of rule 9-B (15) of the Discipline and Appeals Rules. He was also denied the services of defence counsel of his choice on 4.11.1985 and fixed 7.11.1985 ~~as~~ the date ~~for~~ of the inquiry in violation of rule 9(6) of the Railway Servants (Discipline & Appeal) Rules, and Inquiry Officer was appointed without waiting for the reply of the applicant in violation of rule 9(1) of the Railway Servants (Discipline and Appeal) Rules. The aforesaid averments have been made in para 9 of the application. The reply to the aforesaid averments are contained in para 9(iii) of the counter-affidavit.

10. Rule 9(7) of the D.A. Rules provides that the disciplinary authority shall deliver or cause to be delivered documents by which the ~~referring~~ <sup>each article</sup> of charge is proposed to be sustained. The respondents have, in para 9(iii) of the Counter-affidavit, ~~stated~~ stated that the applicant had demanded copy of 30 items ~~and was~~ mentioned in his application dated 22.10.1985 and 1.11.1985. According to the disciplinary authority, documents mentioned at Item No. 3, 6, 7, 10, 12, 13 and 16 were not relevant and therefore, were refused. The applicant was advised by letter dated 7.11.1985 to inspect the remaining documents in the office of Senior Divisional

Commercial Officer on 9.11.1985. He had thus been given sufficient opportunity to inspect the documents which according to the disciplinary authority were relevant for the purposes of defence of the applicant.

11. For holding that non-supply of documents had at Item No.3, 6, 10, 12, 13 and 16 has caused prejudice to the accused, it was incumbent upon the applicant to indicate the <sup>relevance</sup> ~~existence~~ of the documents which have not been supplied to him, and how the non-supply of the documents has caused prejudice to him. The learned counsel for the applicant has neither been able to satisfy us as to how the aforesaid documents were relevant for the defence of the applicant ~~nor~~ how their non-supply has prejudiced the applicant in his defence. We are, therefore, unable to accept the contention of the learned counsel for the applicant that non-supply of the documents at Item Nos. 3, 6, 10, 12, 13 and 16 of his applications dated 22.10.1985 and 1.11.1985 has caused such prejudice to the applicant as would result in vitiating the entire proceedings.

12. The other contention of the learned counsel of the applicant is that the applicant was not allowed to nominate an Assistant to assist him in his defence <sup>that</sup> ~~and thus~~ has also caused substantial prejudice to him.

In para 9(iii)(i) of the counter-affidavit, it has been stated that the applicant had nominated his ARE who was an employee of Foreign Railway. The disciplinary authority did not agree to such an appointment and accordingly asked the applicant ~~to~~ by his letter dated 7. 11.1985 to furnish the consent of ~~some other~~ ARE who may be serving in the same railway in which the

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applicant was serving. Rule 9(13)(a) of the D.A. Rules provides that the railway servant may present his case with the assistance of any other Railway servant including the official of a recognised Railway Trade Union. The rule require that the defence assistant who is to be nominated by the delinquent employee has to be the employee of same railway in which the applicant is serving. The person nominated by the applicant belongs to a Foreign Railway has not been controverted by the applicant in the rejoinder-affidavit. The bald reply to the averments of Para 9 of the counter-affidavit is that the contents of Para 9 of the counter-reply are wrong and denied. It is, thus, clear from the averments made in the counter-affidavit that the applicant had been given opportunity to nominate an employee of the Railway to ~~which~~ he belonged and to inspect the documents which, according to the disciplinary authority, were relevant for the purposes of the defence. If the applicant did not avail the opportunity given to him, he was himself to be blamed. In view of this we are unable to accept the contention of the learned counsel for the applicant that the applicant was not given adequate opportunity to defend himself at the enquiries.

13. It was next argued that by order dated 4.11.85, D.R.inquiry was ordered to be fixed for hearing on 7.11.1985 in violation of extant rules. According to the extant rules at least 10 working days time should intervene between the date of knowledge of date of inquiry and the inquiry. The notice of inquiry was given on 4.11.85 and the date of inquiry was fixed on 7.11.85. The gap between the two dates is only of two days which is in violation <sup>have</sup> of the extant rules. The respondents, though not denied

that by order dated 4.11.85 date of inquiry was fixed as 7.11.85 ~~but~~, have averred in para 9(iii)(c) <sup>that</sup> though the date of inquiry was fixed as 7.11.85 but no inquiry was held on that date. The inquiry in question was in fact held during the period from 18.11.85 to 24.11.85. Purpose of giving sufficient gap between the date of notice and the inquiry, in our opinion, is to allow the delinquent employee sufficient time to prepare for his defence. The applicant does not seem to have been prejudiced <sup>on account</sup> because of the initial short adjournment-firstly because no inquiry was held on 7.11.85 and secondly because he did not object to holding of inquiry on short interval on the ground that he <sup>did</sup> ~~could~~ not <sup>get sufficient time to</sup> effectively cross-examine the witnesses examined in the inquiry, ~~for that~~. We, therefore, find no substance in this argument of the learned counsel for the applicant.

14. The learned counsel for the applicant Sri G.C. Bhattacharya very vehemently argued that the respondents have failed to comply with the direction of this Tribunal given in O.A. No.117/86 inasmuch as the disciplinary authority has not considered the technical and factual objection raised by the applicant in the proceeding. The disciplinary authority, it is true, has not given detailed reasons for his accepting the report of the Inquiry Officer, but, from the perusal of the impugned order dated 20.5.88 it is quite clear that disciplinary authority had perused the inquiry report and other material on the inquiry proceeding. Since the disciplinary authority agreed with the finding of the inquiry Officer we consider that the disciplinary authority was not required to repeat reasons given by the

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Inquiry Officer while recording its finding. It is only in case where disciplinary authority does not agree with the finding recorded by the Inquiry Officer, he is required to record his reasons for doing so. The defence statement, filed by the applicant before the Inquiry Officer indicating the factual, legal and technical pleas raised, has not been filed as Annexure in this application to enable us to ascertain the pleas, the applicant had taken before the Inquiry Officer and have remained unanswered. The applicant has however, filed the copy of the appeal addressed to the General Manager, Central Railway, Bombay, preferred against the order dated 20.5.88 removing him from service(Annexure-4). The respondents have, in Para 10 of the counter-affidavit, stated that the appeal stated to have been filed before the General Manager Central Railway, Bombay has not been received in that office. The applicant has filed Acknowledgement Receipts (Annexures-5 and 6) in proof of his appeal having been received by the General Manager, Central Railway, Bombay. The respondents have not denied to have received the registered letter vide Annexure-5 and 6 the acknowledgement receipts. The respondents have not also come out with an explanation as to what was received by the respondents in the aforesaid registered letters. Be that as it may, the fact remains that the appeal stated to have been filed by the applicant has remained undecided till date.

15. From the perusal of the appeal(Annexure-4) it appears that the applicant has raised legal and technical pleas regarding appreciation of evidence recorded in course of inquiry by Inquiry Officer and Disciplinary Authority. Since the applicant has neither filed copies of the statement of witnesses recorded in inquiry nor documents including the

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fact finding inquiry as to the cause of the accident we are unable to appreciate the argument of the learned counsel for the applicant that the finding of the Disciplinary Authority and that of the Inquiry Officer are based on no evidence. The reference to ~~evidence~~, <sup>evidence</sup> ~~where~~ and ~~there~~, made in the application, however, indicates that there was evidence before the Inquiry Officer and the Disciplinary Authority on the basis of which conclusion as to the reason for accident could have been taken and also the responsibility for the same could have been fixed.

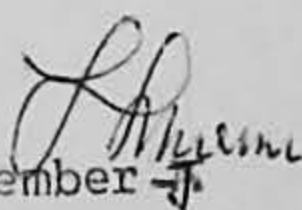
16. After examining the procedure followed in conducting the inquiry we come to the conclusion that there has been no procedural irregularity in holding the inquiry. We are, therefore, unable to persuade ourselves to hold that the disciplinary proceeding suffers from legal defects. It is for the appellate authority to re-assess the evidence and hold whether a different conclusion on the evidence recorded in course of inquiry can be arrived at. All that this Tribunal in its review jurisdiction can examine <sup>is</sup> whether rules of natural justice are violated and whether the authority competent to hold the inquiry has faulted the procedure prescribed in that behalf.

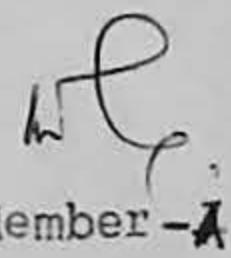
17. We have already noticed above that the inquiry <sup>has been</sup> held by the ~~Inquiry~~ Officer who is competent to do so and that the authority which has passed the impugned order of removal of the applicant from service is competent to pass the same and that there is evidences which supports the conclusions arrived at by the disciplinary authority that the applicant was the guilty of the charges framed against him. In this view of the matter, we find that no case for

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our interference with the order passed by the disciplinary authority has been made out.

18. For the reasons stated above, we find no merit in this application and dismiss the same leaving the parties to bear their own costs. This will however, not preclude the appellate authority from disposing of the appeal stated to have been filed and received by the respondents under registered cover on 20.7.1988 in accordance with rules. In case the aforesaid appeal is not traceable in the office of the respondents, the applicant may be permitted to file copy of the appeal dated 12.7.88 (Annexure-4 to the application). It is expected that the appellate authority will strictly comply with the provisions of rule 22 of the Discipline and Appeal Rule while disposing of the aforesaid appeal of the applicant.

  
Member-B

  
Member-A