

Reserved

IN THE SUPREME COURT OF INDIA

ALBANY PARK, NEW YORK, U.S.A.

OA 873 of 1989

DATE OF HEARING: 12.11.94

Shri Baba Nandan and Others PETITIONER

Shri G.D. Mukheji ADVOCATE FOR THE  
PETITIONER

V E R S U S

Union of India and Others RESPONDENTS

Shri A.K. Srivastava ADVOCATE FOR THE  
RESPONDENTS

PROGRAM

The Hon'ble Mr. T.L. Verma Member 'J'

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

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

ANNEXED

RESERVED

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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCHAllahabad this the 12<sup>th</sup> day of November 1994.Original Application no. 873 of 1989.Hon'ble Mr. T.L. Verma, Judicial Member  
Hon'ble Mr. S. Dayal, Administrative Member.

1. Shri Babu Nandan, S/O Shri Sukhar Singh, Ex. Driver 'B' Gonda Shed, R/O village Paharpur Post Office Amrour District Chupra, Bihar.
2. Shri Girja Shanker, S/o Shri Ram Pyare, Ex Diesel Assistant Gonda Shed, R/o Village Majhwa, Post Office Babhuni-Kanungo District Gonda, U.P.

..... Applicants.

C/A Shri G.D. Mukherji

Versus

1. Union of India through, General Manager, N.E. Rly Gorakhpur.
2. The Divisional Railway Manager(S), N.R. Rly, Lucknow.
3. The Senior Divisional Mechanical Engineer, N.E. Rly, Lucknow.
4. The Assistant Mechanical Engineer, N.E. Rly, Gonda.

..... Respondents

C/R Shri A.V. Srivastava.

O R D E RHon'ble Mr. S. Dayal, Member 'A'

The application has been filed under section 19 of the Administrative Tribunal's Act, 1985, seeking

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the setting aside of orders dated 07.06.85 passed by the Senior Divisional Mechanical Engineer, order dated 19.11.85 passed by the Divisional Railway Manager and the order dated 08.08.89 passed by General Manager, N.E Rly, Gorakhpur, direction to the respondents to the effect the applicant's should be reinstated to the original posts with seniority and all consequential benefits and payment of arrears of pay and allowances with costs of this application.

2. Grounds on which relief is sought are that only 6 out of 18 documents including statements recorded during investigation asked for were supplied denying responsible opportunity to defend, the continuance of the departmental enquiry inspite of allegation of bias and prejudice by the applicants against the enquiry officer, continuance of enquiry on ex-parte basis inspite of illness of the applicant's and in the absence of defence assistant which resulted in denial of opportunity to cross examine the prosecution witnesses, conducting the enquiry simultaneously along with criminal case, not taking the acquittal in criminal case into consideration and no appeal was preferred against acquittal, that the appellate authority did not go through the record and that the revisional authority neither considered the record nor passed a reasoned order in keeping with the direction of the Tribunal.

3. The brief facts of this case as given in the application are that the applicant no. 1 was driver and applicant no. 2 was the Diesel Assistant of the engine of the train running from Gonda to Gorakhpur when the train met with an accident, got derailed and some

constructions were damaged and some persons were killed on 08.01.85. The applicant's were placed under suspension from 08.01.85. A departmental enquiry was started with the service of the charge sheet on 16.02.85. The applicant's asked for 18 documents vide their application dated 12.03.85 and 18.03.85. The applicant's were supplied six documents on 28.03.85. The applicant's made an application dated 19.04.85 before the enquiry officer that he was prejudiced. The statements of prosecution witnesses were recorded on 18.04.85, 22.04.85 and 24.04.85 but no cross examination was done. The witnesses were produced for cross examination on 30.05.85 but both the applicant's were advised by the Railway Doctor. The removal order dated 07.06.85 was served on the applicants on 08.06.85. The appeal dated 09.07.85 was rejected on 19.11.85 and revision petition was rejected on 08.08.89.

44 The reply filed on 01.04.91 by the respondents objects to joint challenge to the order of removal as not permissible. It is stated that copies of all documents relied upon in the charge sheet (Annexure III of the charge sheet) were supplied by ~~the~~ letter dated 22.03.85 in response to applicant's letter dated 10.03.85 which was the only letter received and the applicants were asked to see the Assistant Mechanical Engineer for inspecting rest of the documents. It is stated that Hindi version of the documents was to be given on 12-04-85 but applicant no. 1 came and went away without taking the documents but on 19.04.85 the applicant took the English copies of all 7 documents without any objection. It is stated that only applicant no. 1 made application dated 19.04.85 and a type in land

letter was submitted by the applicant no. 1 for change of enquiry officer which was rejected by the competent authority as allegations levelled were incorrect. It is stated that accident took place because of dangerously high speed at the D.N. Starter Signal overshooting the sand lump, derailing, knocking down level crossing barrier, gate lodge and shops and stalls killing ten persons and injuring two grievously and three others with simple injuries. It is stated later that the applicant fled away on 26-03-85 without receiving documents from the enquiry officer. It is stated that the applicant's did not give the name of defence assistant although asked in writing on 01.04.85, nor did they appear on the first date of enquiry intimated to them which was on 08.04.85 and so the second date of 18.04.85 was fixed on which day statement of prosecution witness were recorded as the applicants did not appear but came at 5p.m. when they were asked to come the next day at 10 a.m.. But only applicant no. 1 came on 19.04.85 and gave the name of defence counsel and took the documents mentioned in Annexure III of the charge sheet without insisting on receiving 18 documents. The applicants appear on 24.04.85 without their defence assistant and refused to participate in the enquiry in the absence of their defence assistant. The next date fixed was 04.05.85. The applicant appeared on 04.05.85 with his defence assistant and asked for 15 days time for submitting his written brief but applicant no. 2 appeared without his defence counsel and refused to give his statement. He was given 06.05.85 when applicant no. 2 appeared without defence <sup>assistant</sup> counsel. He was given adjournment upto 15-05-85. He again appeared without his defence assistant. It was adjourned to

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20.05.85 when the applicant no. 2 appeared with his defence assistant and asked for opportunity to cross examine prosecution witnessess. He was given 30.05.85 as the date. On 30.05.85 the witnessess were present but both the applicants were absent. Hence enquiry was closed and enquiry report submitted on 31.05.85. The applicants gave no intimation to the enquiry officer regarding their illness and the applicant no. 1 only has annexed his medical certificate along with his application to the Tribunal. It is mentioned that the disciplinary authority had passed separate orders against both the applicants but the application challenges only the order passed with respect to applicant no. 1 and, therefore, applicant no. 2 is entitled to no relief. The applicants submitted separate appeals to the appellate authority and offer a personal hearing by the appellate authority on 15.11.85, their appeals were rejected. The revision petition was rejected by the competent authority on 30.01.86 and after challenge of this order and direction of the tribunal another order was passed and communicated on 08.08.89. It is stated that prosecution of the applicants in the criminal case was done by the state and not by railway authorities and that it is settled view of law that criminal prosecution and departmental proceedings both could be undertaken against the negligent staff simultaneously as the purpose of both was different.

5. The learned counsel for the applicant Shri G.D. Mukherji has been heard. He besides reiterating the points already made in the written pleadings referred to judgement in OA no. 123 of 1987 in which the revision authority was directed to give personal hearing to the applicants and, after going through grounds of appeal

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and grounds of revision, pass a reasoned order and the case of Ram Chandra Vs. Union of India decided by the Supreme Court. The learned counsel for the respondent Shri A.V. Srivastava reiterated the points already made in the written pleadings and said that the applicants had applied dilatory and non participating tactics in the enquiry and that the so called application for the change of Enquiry Officer was not actually an application for change but a request to conduct the proceedings in a sympathetic manner.

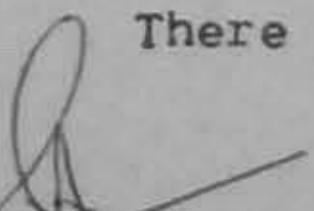
6. The applicants' counsel had sought to meet the objection of the respondents to joint application in cases of separate orders for major punishment in a case for departmental enquiry by moving civil miscellaneous application for permission to file a single application in this case. This miscellaneous application was permitted. Hence the objection of the respondents has been overruled and the application in its present form is to be considered.

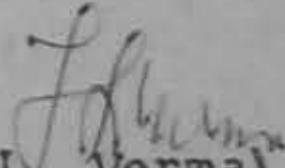
7. A perusal of annexure no. 7 which is the order of revisional authority communicated on 08.08.89 shows that it is not consistent with the direction given by the Tribunal in OA 123/87. The Tribunal had required the revisional authority to give a reasoned order after taking into consideration the appeal and revision memoranda of the applicants. The revisional authority has merely stated in its order. \* There is no justification for changing the decision of the appellate authority endorsing the punishment of removal.\* The revisional authority is normally expected to call for the records of any enquiry and may confirm, modify or

set aside the order. A scrutiny of the order of the disciplinary authority and the records of any enquiry would mean giving <sup>a</sup>relook to the issues considered in appeal and whether the appellate authority has or has not performed its role properly. The order of the revisional authority from this point of view is quite cryptic. The order of appellate authority is also inadequate as it does not deliberate explicity on complinace of procedure, validity of findings of the disciplinary authority in view of the evidence on record and whehter the penalty imposed is adequate or inadequate or severe. It does not meet the standards enuncited for the appellate authority in Ram Chander Vs. Union of India.

8. We, therefore, consider it necessary to quash the order of the appellate authority dated 09.11.85 and of the revisional authority dated 08.08.89. We direct the appellate authority to consider specifically the issues by the applicants in the memorandum of appeal and give detailed and reasoned findings on each point along with other issues required to be considered under Rule 22 (2) of the Railway Servents (Discipline and Appeal) Rules, 1968, and, if any lacumas are found in the enquiry, undertake the enquiry himself to remove them in the interest of expeditious disposal of the matter.

9. There shall be no order as to costs.

  
(S. Dayal)  
Member 'A'

  
(T.L. Verma)  
Member 'J'