

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.1350 OF 1999

WITH

ORIGINAL APPLICATION NO. 554 OF 1997 (D)

ALLAHABAD THIS THE 20th DAY OF March OF 2008.

Hon'ble Mr. Justice Khem Karan, Vice Chairman.

Hon'ble Mr. K.S. Menon, Member-A

Subedar son of Pahunchi Lal,
(Ex-Gangman under Permanent Way Inspector, Mainpuri)
Resident of Village Karmullapur, P.O. Prempur, District
Kannauj (Farrukhabad), U.P.

.....Applicant

(By Advocate: Shri A.K. Dave/Shri K.N Katiyar)

Versus.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Allahabad.
3. The Divisional Superintending Engineer-III, Northern Railway, Allahabad.

.....Respondents

(By Advocate: Shri P. Mathur)

ORDER

By Justice Khem Karan, Vice Chairman.

Aggrieved of orders dated 22.9.1982, 24.10.1983, 1.1.1985, 7.11.1996 and 14.9.1999, applicant has filed this O.A, praying for quashing the same with consequential benefits.

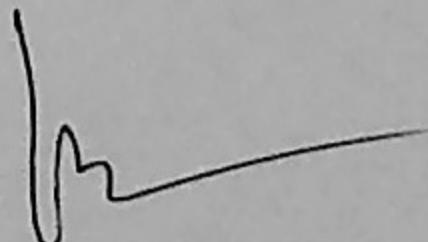
2. While the applicant a Gangman, was discharging duties of Gatekeeper at level crossing gate NO.2-B between stations Shikohabad and Kosma, from 18.00 hours of 28.03.1980 to 6.00 hours of 29.03.1980, an accident took place between Bus NO.

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P.N.C 9981 and passenger Train No. 2 ATF at 20.20 hours of 28.03.1980. He was served with a major penalty chargesheet dated 4.6.1980, saying that:

- (a) *he left the leaves of the gate keeper open to road traffic, contrary to Gate Keeper Rules.*
- (b) *That he was not burning gate-lamp and;*
- (c) *That he was found absconding from duty.*

3. The applicant denied the charges, projecting fault on others. According to him, he being a Gangman, was hurriedly picked up on the same day, for discharging the functions of Gatekeeper; that after the first accident at 2.30 hrs at the same gate, the lock was badly damaged and no proper steps were taken to get the same repaired; that others were also responsible; that he was obstructed in discharge of the duties, by an ^{insane} ~~nuisance~~ ^{and} person, while he was managing to close the gate, the train came in high speed and accident took place. After necessary enquiry, the Inquiry Officer Shri G.K. Agrawal submitted his report, holding him guilty on all the three counts. In turn the Disciplinary Authority namely Senior Divisional Engineer passed the removal order dated 22.9.1982. Appeal was also dismissed. A criminal case under sections 279, 304A, 337, 338 of I.P.C. was also launched against the applicant, based upon the said incident. That criminal case ended in acquittal of applicant, on 14.2.1995 and armed with that he sent representation to Divisional Railway Manager and others for re-consideration of his case. The Divisional Railway Manager, Allahabad wrote a letter dated 7.11.1996 (A-IV) informing him, that after departmental orders became final, no further action was possible. Then he filed O.A. NO. 554 of 1997 before this Bench, praying for quashing of orders dated 22.9.1982, 24.10.1983 and 1.1.1985. The same was disposed of vide order dated 7.10.1998, giving liberty to the applicant to represent for review, in the light of letter dated 7.6.1995 and directing the respondents to reconsider



the case, and pass a speaking order. Impugned order dated 14.9.1999 (A-1) has been passed, in compliance of those directions dated 7.10.1998. Thereafter this O.A was filed challenging not only this last order dated 14.9.1999 (A-1) passed in compliance of Tribunal's order dated 7.10.1998, but also punishment order of 1982, appellate order of 1983, review/revision order of 1985. He says, order of punishment is bad, for want of reasonable opportunity of hearing, and also for the reason that Inquiry Officer was biased and pre-occupied. It is also said that finding of guilt is perverse as the circumstance that applicant being Gangman could not have been deputed to work as Gateman without imparting necessary training and that other relevant such as driver of the Train were also responsible, was not well appreciated. He goes on to state that Senior Divisional Engineer did not apply his mind and his order of removal is not speaking. He submits the appellate order is not as per requirement of Rule 22 of the Rules of 1968 and is also bad for want of giving opportunity of personal hearing. He says since criminal trial as well as departmental proceedings, were based on identical facts and since he was honourably acquitted by competent Criminal Court, in Feb. 1995, so orders passed in departmental proceedings should be reviewed, as provided in RBE NO. 54 of 1995 No. E (D&A) 95 RG 6-4 dated 7.6.1995, but the authority concerned failed to appreciate the matter.

4. In their reply, the respondents have tried to say that the criminal case ^{was} ~~as~~ not exactly on the identical charges and moreover an employee can be punished, even after acquittal. According to them misconduct was well proved and punishment of removal was justified.

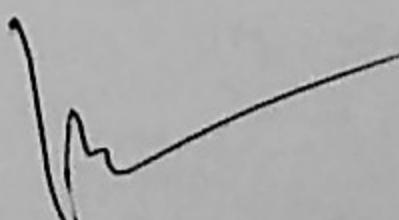
5. Both the sides have placed on record their written arguments. We have gone through these written arguments as well as through the entire material on record.

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6. We are of the view that we cannot go into the correctness or otherwise of the punishment order, appellate order and revisional order for the simple reason that challenge to them in earlier O.A. of 1997, resulted in direction for reviewing the matter in the light of Board's letter dated 7.6.1995 and order of acquittal. That O.A. of 1997, was filed after more than 12 years of the revisional order of 1985. The application for Condonation of delay in filing that O.A. was not allowed in express words. What the Tribunal thought fit was to ask the authority concerned to reconsider the matter in the light of acquittal. Since Tribunal's order dated 7.10.1998 in earlier O.A. of 1997, directing the review of the matter in the light of letter dated 7.6.1995 and the order of acquittal, has become final, so none of the parties, can be allowed to go beyond the same. In other words, subject to the result of such review as ordered by the Tribunal in earlier O.A., those orders of 1982, 1983 and 1985 have become final.

7. We do not want to go into the question as to whether the orders that have become final, can be reviewed, on the basis of Board's letter dated 7.6.1995 and the order of acquittal in a criminal case. But since the Tribunal has asked for considering the representation of the applicant for reviewing the punishment order in the light of acquittal, so we have to see whether the same has been done.

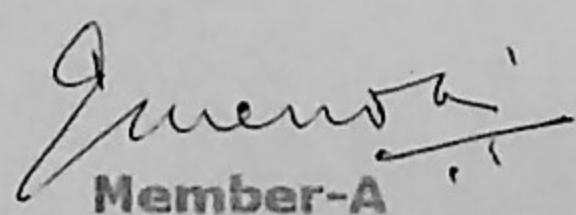
8. All that the authority concerned had to see was (a) whether the charges in the departmental enquiry were based on the facts, identical to the charges in the criminal case (b) whether acquittal of the applicant in the criminal case was honourable one and not on any technical ground or benefit of doubt etc. It would be useful to reproduce para 3 of the said letter dated 7.6.1995. It reads as under:-

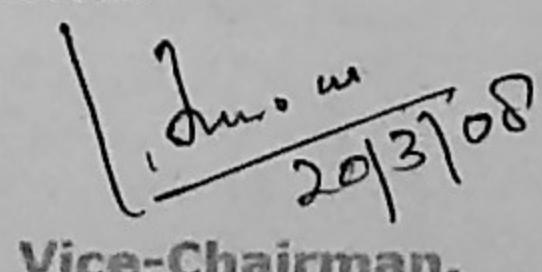


"However, if the facts, circumstances and the charges in the departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated/acquitted in the criminal case on merits (without benefit of doubt or on technical grounds), then departmental case may be reviewed if the employee concerned makes a representation in this regard".

9. A perusal of impugned order dated 14.9.1999 (A-1) passed by A.D.R.M, would show that ~~he~~ ^{authorily} did not advert to the questions mentioned above. Perhaps he could not understand the directions dated 7.10.1998 of this Tribunal in earlier O.A. of 1997 and cared least to follow the directions, contained in Board's letter dated 7.6.1995. Had he examined the matter in the light of above instructions, this Tribunal would have been in a position to see whether there is need for interference. Perhaps we will not be justified to undertake the task, which was to be performed by the Authority concerned, We do realize that the case is old one, but we have no option that to ask the Divisional Railway Manager concerned to pass orders afresh, on the representation of the applicant dated 4.11.1998 (A-XI), in the light of Board's letter dated 7.6.1995, and Tribunal's directions dated 7.10.1998 in earlier O.A. of 1997.

10. In the result, the impugned order dated 14.9.1999 (A-1) is quashed and the respondent NO.2 is directed to pass fresh speaking orders, on representation dated 4.11.1998 (A-XI) of the applicant, in the light of Board's letter dated 7.6.1995 and Tribunal's directions dated 7.10.1998, within a period of three months, from the date ^{certified} copy of this order together with the copy of said representation is so produced before him. The O.A. stands disposed of accordingly. No order as to costs.


Member-A


20/3/08
Vice-Chairman.

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