

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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original Application No. 945 of 2000.

this the 24th day of August 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

P.K. Gupta, aged about 55 years, S/o late Sri R.S. Gupta,
R/o 17-E, Diwanka Bazar, Moradabad.

Applicant.

By Advocate : Sri T.S. Pandey.

Versus.

1. Union of India through General, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad
Division, Moradabad.
3. Additional Divisional Railway Manager, N. Rly., Morada-
bad Division, Moradabad.
4. Senior Divisional Operating Manager, Moradabad Division,
Northern Railway, Moradabad.

Respondents.

By Advocate : Sri P. Mathur.

O R D E R

The applicant-P.K. Gupta, while working as Guard 'A' at Northern Railway, Moradabad, was served with a chargesheet dated 26.2.1999 on Form II as per the statement of imputation, it was alleged that the applicant while supervising shunting at D.A.M. on 28.10.98 acted in a most careless and irresponsible manner in so far that he started shunting and back the train without obtaining proper shunting order causing derailment of VPU (E) CR-375 on trap point no. 9-E which was in open condition, which showed gross negligence on the part of the applicant. The applicant was, therefore, considered responsible for failing to maintain devotion of duty. After considering the reply submitted by the applicant against the aforesaid chargesheet

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on 22.5.1999, the applicant was awarded the punishment of stopping his annual increment for a period of two years vide order dated 3.8.1999 passed by the Senior Divisional Operating Manager, Moradabad (respondent no.4). The appeal filed by the applicant against the aforesaid punishment order has been partly allowed and punishment has been reduced from the period of two years to the period of one and half years passed by the appellate authority vide order dated 8.3.2000. By means of this O.A., the applicant has challenged the validity of these two orders.

2. According to the applicant, punishment orders have been passed without affording any opportunity of being heard to him or to cross examination or examining the driver for driving the train on the alleged date of accident. The applicant has also stated that, on receipt of chargesheet, he had submitted an application on 18.3.1999 to supply him the relied-upon documents in the chargesheet to enable him to submit a proper reply. However, vide order dated 12.5.1999 the request of the applicant was rejected. It is further stated that the applicant made an attempt to submit his appeal before the D.R.M., Northern Railway, Moradabad (respondent no.2), but the applicant was directed to file the same before the Additional D.R.M., Northern Railway, Moradabad (respondent no.3). The applicant claims that the respondent no.3 is not an appellate authority, hence not competent to pass any order on his appeal. The applicant further claims that the provisions contained under Section 501 to 526 of the Railway Accident Rules 1973 contemplates the procedure and mode of enquiries in respect of railway accident, which have not been followed in the present case, hence the chargesheet is illegal. Since the documents relied-upon has not been supplied to him in terms of the Railway Board's circular letter dated 4.4.1996, the punishment order is liable to be quashed.

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3. I have heard the learned counsel for the parties and have perused the pleadings on record.

4. It is evident from the facts of the present case that the applicant has been proceeded under the provisions of Rule 11 of Railway Servants (Discipline & Appeal) Rules 1968 (D.A.R. 1968) in short) which prescribes procedure for imposing the minor punishment on the railway servant. One of the grievances of the applicant is that he was not supplied the copy of the relied-upon documents by the disciplinary authority. It is, however, seen from the perusal of the Memorandum of charges as well as the statement of imputation, copies of which are available on record, the disciplinary authority had not mentioned any document to be relied-upon by him in the aforesaid chargesheet. The applicant has also not filed a copy of his application dated 18.3.1999 requesting the disciplinary authority to supply a copy of the alleged relied-upon document in the chargesheet. It is, thus, not clear the copy of which document was demanded by the applicant. The applicant has not even disclosed in the O.A. the nature of such documents. Under the facts and circumstances, I do not find any irregularity in the action of the disciplinary authority for refusing to give a copy of the alleged relied-upon documents.

5. It has next been contended that the Additional D.R.M. (respondent no.3) is not an appellate authority of the applicant, hence not competent to pass any order on his appeal. In support of his argument, the learned counsel for the applicant has referred to a decision dated 24.2.1995 of the Principal Bench of this Tribunal given in O.A. no. 2747/90 in re. Sri Harish Chandra vs. Union of India & Others in which it was held that the Additional D.R.M. was not competent to issue a chargesheet and to pass punishment order of compulsory retirement on the applicant, who was holding a post of Group 'C' in the railway administration. It was also observed that very limited authority was given to the Additional D.R.M. by the

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General Manager. The learned counsel for the respondents has, on the other hand, submitted that in the present case the applicant has been awarded only the minor punishment by the competent disciplinary authority and under D.A.R. 1968 the Additional D.R.M. has been given the power of appellate authority alongwith D.R.M. In this context, he has referred to the revised D.A.R. Schedule-II in which Additional D.R.M. has also been mentioned as the appellate authority of Group 'C' staff working under him. Since the Additional D.R.M. has been given the same powers as of D.R.M. in respect of departments attached to him in the Schedule of D.A.R. 1968, it cannot be argued that the Additional D.R.M. is not an appellate authority in the case of the applicant. It has also not been disputed that the department of the applicant is not attached to the Additional D.R.M. concerned. I, therefore, find no force in the arguments of the learned counsel for the applicant that the appellate order has not been passed by the competent authority.

6. Lastly, it has been contended that before proceeding against the applicant under DAR 1968, it was necessary to the respondents to make an enquiry under the provisions of Railway Accident Rules. This argument is devoid of any merit because the accident as defined under Railway Act can be enquired into under the Railway Accident Rules. It appears that an accident which attended with loss of any human life, or with grievous hurt, or with such serious injury to property or collision between trains of which one is a train carrying passengers or the derailment of any train carrying passengers or any accident of any other description which the Central Government may notify in this behalf in the Official Gazette, are the subject matters of the Railway Accident Rules. However, there is no provision prohibiting any action against a railway employee under DAR 1968 fixing his liability in respect of some negligence etc. causing derailment of the nature mentioned in the charge levelled against the applicant. I find in the present case that while taking action against the

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provisions of Rule 11, full opportunity was given to him to explain his case. The applicant was also given a personal hearing by the appellate authority. The respondents have proceeded against the applicant as per the procedure mentioned in Rule 11 of DAR 1968. The enquiry was properly conducted namely the charges framed against the applicant is specific and statement of allegations was also supplied to him in which the details of the accident was duly mentioned. The applicant was asked to submit his explanation, which was not found satisfactory by the disciplinary authority. There is no scope to interfere with the findings of the disciplinary authority as well as that of appellate authority.

7. For the reasons stated above, the O.A. has no merit and the same is liable to be dismissed and is dismissed. There shall be no order as to costs.

D. Girish
MEMBER (J)

GIRISH/-