

RESERVED ON 04.03.2013

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 8th of ~~April~~^{*****} 2013)

Hon'ble Mr. Justice S.S. Tiwari, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Original Application No. 1242 of 2002.

(U/S 19, Administrative Tribunal Act, 1985)

Lallan Pandey, Son of Shri Mahanand, posted as Cabinman at Khairahy Station Northern Railway.

.....Applicant
Versus.

1. Union of India through its General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Rail Manager (Parichalan) Northern Railway, Allahabad.
3. Senior Divisional Operating Manager, Northern Railway, Allahabad.
4. Additional Divisional Rail Manager, Northern Railway, Allahabad.
5. Divisional Operating Manager, Northern Railway, Allahabad.

Respondents

Present for Applicants : Shri V.K. Srivastava

Present for Respondents : Shri A.K. Pandey

ORDER
DELIVERED BY Hon'ble Ms. Jayati Chandra, AM

By means of present O.A. filed under Section 19 of Administrative Tribunals Act 1985, the applicant seeks following relief(s):-

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"(a) That by means of suitable order or direction in the nature of certiorari quashing the impugned removal order dated 27.2.2001 passed by Divisional Operating Manager- respondent No.5, Order of Appellate Authority dated 25.4.2001 passed by Senior Divisional Operating Manager – respondent NO.3, Revisional Order dated 19.7.2001 passed by Additional Divisional Rail Manager, respondent No. 4 and order dated 13.12.2001 passed by Divisional Rail Manager – respondent NO.2 (Annexure 5, 6A and 10 to the Compilation A).

(b) That by means of suitable order or direction in the nature of mandamus commanding the respondents to reinstate the applicant to the post of Cabinman and provide the benefit of post and pay scale and further direct the respondents to make the payment of salary since the date of removal till date as are admissible under rule and arrears thereof with interest.

(c) To issue any suitable order or direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

(d) To award cost of the application to the applicant".

2. Facts of the case are that the applicant was posted as Cabinman at Khairahy. He was chargesheeted on 19.10.2000 (Annexure A-1) in which he was charged with the following charges:-

श्री लल्लन पाण्डेय, केबिनमैन खैराही के विलद्व विरचित आरोपों के अनुच्छेदों का विवरण:
अनुच्छेद

श्री लल्लन पाण्डेय, केबिनमैन जोकि दिनांक 3.10.2000 को खैराही स्टेशन में कार्यरत थे, एक के बाद एक लगातार गल्ती करते गये जैसे सहायक स्टेशन मास्टर कार्यालय के चाभी वापस से स्वयं ही गलत चाभी का निकालना तथा बाधित लाईन के लिये सिगनल की चाभी निकालना और आने वाली 8101 अप के लिये बाधित लाईन के सिगनल को लोअर करना, जिसके कारण 8101 अप मुरी एक्सप्रेस लाईन सं 1 में पहले ही खड़ी 4270 डा० त्रिवेणी एक्सप्रेस से समय 6 बजे टकराते -2 बच गयी।

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इस प्रकार इन्होने स्टेशन संचालन नियम के पैरा 6.4.1 तथा 6.2.1 एवं साधारण नियम 3.40 एवं 3.38/1 बी का उल्लंघन किया।

आर एस चौहान
मण्डल परिचालन प्रबन्धक/उ० र० इलाहाबाद

आरोप के प्रत्तेक अनुच्छेद के समर्थन के अवचार या कदाचार के लॉछनो का विवरण।

दिनांक 03.10.2000 को 8101 अप मुरी एक्सप्रेस राबटसर्गंज स्टेशन से 5 बजकर 24 मिनट पर प्रस्थान की खैराही स्टेशन का अप होम सिग्नल लाल होने के कारण गाड़ी होम सिग्नल पर 5.50 बजे खड़ी हुयी। इसी बीच कैबिनमैन श्री लल्लन पाण्डेय ने 5/55 बजे अप होम सिग्नल लाईन सं 01 लोअर कर दिया जिसके कारण 8101 अप लाईन सं 1 में रिसीव हुयी एवं पहले से खड़ी 4270 डाउन ट्रिवेणी एक्सप्रेस से समय 6 बजे, टकराते -2 बच गयी।

इस प्रकार श्री लल्लन पाण्डेय, कैबिनमैन खैराही ने स्टेशन नियम के पैरा 6.4.1 तथा 6.2.1 एवं साधारण नियम 3.40 एवं 3.38/1 बी का उल्लंघन किया एवं इनके विरुद्ध प्राउमाफेसी आधार पर अनुशासनात्मक कार्यवाही की जाती है।

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मण्डल परिचालन प्रबन्धक/उ० र० इलाहाबाद"

3. The applicant denied the charges. The Inquiry Officer was appointed. Inquiry Officer submitted enquiry report (Annexure A-3). In the enquiry report, Inquiry Officer failed to consider the facts that there was no proof to show that the applicant had taken the key himself from the office of the Assistant Station Master, Khairahy and lowered the signal giving clearance to the Train No. 8101 UP on a line which was already occupied by Train No. 4270 Down thereby creating a condition of near collision. Further, he has averred that near collision was due to the negligence and careless working of Assistant Station Master. Moreover, both the Assistant Station Master and the

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applicant were charged on grounds of dereliction of duty resulting into near collusion of the two trains but while the Disciplinary Authority passed the impugned order dated 27.02.2001, removing him service and the same was upheld by appellate order dated 25.4.2001 and revisional order dated 19.7.2001. In the case of Assistant Station Master, the termination order was changed by the Revisional Authority to reduction of pay from the existing pay scale of Rs.5000-8000 to the bottom grade of Assistant Station Master i.e. Rs.4500-7000. This is against the principle of natural justice and violation of Article 311 of Constitution of India as both officers were chargesheeted on similar grounds arising out of the same event. The applicant has filed the several documents in his favour.

4. The respondents have stated in the counter affidavit that the applicant while working as a Cabinman failed to observe the provisions of General Station Rule No. 6.4.1 and as such he was accordingly charged. They have quoted the provision of General Station Rule 6.4.1:-

*"6.4 Conditions for Taking off approach Signals
6.4.1: When a train has to be received, the Station Master on duty will advise the Leverman on duty about the train number, its description and the line*

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on which it is to be received. The Leverman will first physically check the clearance of concerned line, set the necessary route and send the relevant route key to the Station Master through the Porter. The Station Master on duty after verifying that the correct route key related to the nominated line has been sent to him, will apply it in his key box to release the Home Signal key. The Station Master on duty will then take out the relevant Home Signal key and will take the followings actions:-

- (a) In case of Down trains, he will handover the key of Home Signal (Home Signal Key NO. 24) to the Leverman who will release the Home Signal lever by applying the key and take off the relevant approach signals.
- (b) In case of Up Trains, he will handover the key of Home Signal Key No. 23 to the Leverman who will release the Home Signal lever using key No. 23 and take off the relevant Home Signal.
- (c) Before handing over the Home Signal key to the leverman, the Station Master must ensure that the resetting handle/Auxiliary lever is in its box duly padlocked and sealed.
- (d) After arrival of the train, the Station Master on duty shall ensure the complete arrival of train in the manner as detailed in para 6.6 and take back the key of Home Signal's lever from the Leverman".

5. As per aforesaid Rule, the route setting and receiving the trains on a particular line is the ultimate responsibility of the applicant and unless the applicant lowered the signals, it was not possible for any train to come on a line. The signal can be lowered only through the insertion of the route key. The facts are undoubted that a near collision between two important passenger trains was narrowly averted though the vigilance of the train driver who stopped the train when he saw that the line to which he was cleared was already occupied.

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The second train i.e. Train No. 8101 could only come on the same line on which the Train No. 4270 was already standing only after lowering the signal.

6. The Inquiry Officer has conducted the enquiry in accordance with all the Rules, Regulations and Procedure. The applicant was given a list of witnesses and the documents which were to be relied upon. Witnesses were examined and cross examined by the applicant on 21.11.2000 and 11.1.2001. The charge Officer (CO) given his statement on 12.01.2001 and defence statement was submitted on 31.1.2001. The applicant in his averment has not pointed to any kind of procedural irregularity or prejudice. He was given full opportunity. He has challenged the enquiry only on the grounds that Inquiry Officer failed to believe his story. It is clear from the statement and cross examination of the witnesses and documentary evidence etc. that key was taken by the applicant without informing the Station Master. The respondents have provided extract of General Station Working Rules No. 6.2.1, 3.40 and SR 3.38/1 (b) etc. to show that the primary responsibility of route setting etc. and final act of lowering the signal was that of Cabinman i.e. the applicant.

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7. Initially the ASM was also removed from service. However, the Revisional Authority had applied his mind to the representation of the both applicant and Assistant Station Master. It is very clear from his order dated 19.7.2001 that level of responsibility being different. Revisional Authority awarded different punishment to the two charged persons. The Revisional Authority in his order has stated that he had personally interviewed with the applicant and the Assistant Station Master. Thereafter he has recorded the following:-

"I also have no doubt, that this is a case deserving severe and deterrent punishment. However, I find that there is difference in the level of responsibility of the Cabinman and the ASM on duty. While one has actually "caused" the accident, the other has only failed to check him from causing it. While the ASM on duty, being the de-facto incharge of the operation of the station cannot escape responsibility, the accident is actually caused due to the irresponsible and unlawful working of the Cabinman, who, as has been clearly brought-out in the D&AR enquiry, single handedly short circuited the entire working system by taking over the key from the ASM's Box on his own and wrongfully lowered the Reception Signal of 8101 leading to the potential accident situation. ASM is clearly inclined to believe that the situation of an unlocked key Box in the station would be continuing in all the shifts for which other ASMs and the SS also need to share the responsibility for allowing this situation at their station".

Thereafter the Assistant Station Master was given the following punishment:-

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".....ASM on duty - Shri V.K. Pandey from "Removal from Service" to "Reduction from the existing pay scale of Rs.5000-8000 to the bottom most grade of ASM i.e. 4500-7000 with pay fixed at the minimum of the pay scale i.e. Rs. 4500/- permanently" i.e. he will now continue to earn his increment from this level. Further, he should be booked for Refresher Course before being put back on duty and after completion of the refresher training, he should not be posted back to Chopan, Chunai Section (but to some other area) since he seems to have worked only here throughout his career".

8. The applicant has filed the Rejoinder Affidavit by which he has denied all the contentions of the respondents without saying anything new.

9. We have heard counsels for the parties and perused the records.

10. We have gone through the evidence and enquiry report. It is not the case of the applicant that he was given not ample opportunity to either cross examine the witnesses or that he was not heard. There was no allegation of any kind of introduction of extraneous evidence. The sum and substance of his averments are two. First, he has stated that no one could prove that he has taken the key from the office of Assistant Station Master but he has failed to satisfactorily prove that the train No.8101 entered the occupied route without the reception signal being lowered or that

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someone else lowered the signal when he was the sole Incharge. We, therefore, place reliance on the pronouncements made by the Hon'ble Supreme Court in **Kuldeep Singh Vs. State of Punjab and Ors., 1996 (74) FLR 2378** in which Hon'ble Supreme Court has observed as follows:-

"whereas in criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceedings preponderance of probability would serve the purpose".

In fact in the case of Departmental action, the preponderance of probability is a greater practice is to be adopted rather than accepting and rejecting of strict evidence".

11. Moreover, the applicant has spun a long story that he had left his cabin to answer natural call for 2 to 8 minutes during which time somebody may have lowered the signal. There is nothing to prove that story is correct and nor is it acceptable the Cabinman should leave his Cabin unattended. It is prove from the various Rules and Regulations quoted above that no train can come into line unless the signal is lowered and signal can be lowered only by Cabinman on duty.

12. We also place reliance on the observations made by Hon'ble Supreme Court in the case of **State Bank**

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of Patiala Vs. S.K. Sharma (1996) 3 SCC 364, in

which the Hon'ble Supreme Court has made an elaborate observation regarding the scope of review of the inquiry proceedings. The Hon'ble Supreme Court has held that:-

"A two Judge Bench of the Supreme Court, after an elaborate discussion (nothing leading authorities), has summarized the position in relation to disciplinary proceedings as follows:

We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have

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resulted therefrom, it is obvious, no interference is called for."

In this case there is no averment to the effect that the applicant was given "no notice, no opportunity or no hearing". He has simply stated that the Inquiry Officer, Disciplinary Authority, Appellate Authority and Revisional Authority failed to appreciated his explanation.

13. Learned counsel for the respondents has also urged that ordinarily the Tribunal should not interfere with the punishment awarded by the departmental authorities if it is based on evidence and proper opportunity of hearing has been given to the applicant. Reliance has been placed on the observations made by the Hon'ble Apex Court in the case of "**Union of India Vs. Parma Nanda (Civil Appeal No. 1709 of 1988) with Parma Nanda Vs. State of Haryana and others (Special Leave Petition (Civil) No. 6998 of 1988) (1989) 10 Administrative Tribunals Cases 30**", the Hon'ble Apex Court has observed as follows:-

"The jurisdiction of the Tribunal to interfere with the disciplinary matters of punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If

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there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the Competent Authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter".

Therefore, we find no reason to interfere with decisions of Disciplinary Authority, Appellate Authority and Revisional Authority on this ground.

14. In so far as difference of punishment given to the applicant and Assistant Station Master are concerned, it is seen from the Revisional Authority's order dated 19.07.2001 that Assistant Station Master has a different set of duties than from the Cabinman. It is also borne out by various Rules and Regulations quoted above. Therefore, we find no reason to interfere with the order which awards different punishment to two different persons based on different levels of responsibility. The Hon'ble Supreme Court in the case of **UT of Dadra & Nagar haveli Vs. Gulabhai M. Lad, (2010) 5 SCC 775** supports the difference in punishment if the levels of responsibility are different as the quantum of punishment, which depends upon

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many factors. The relevant portion of aforesaid decision reads:-

"15. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make a difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination".

15. Therefore, there is no justification to interfere with the impugned orders. O.A. is dismissed. No costs.

S. Chaudhary

Member (A)

S. Chaudhary
Member (J)

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