

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO. 539 OF 2003

ALLAHABAD, THIS THE 13<sup>th</sup> DAY OF ~~FEBRUARY~~ <sup>March</sup>, 2007

**CORAM :**

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

**HON'BLE MR. M. JAYARAMAN, ADMINISTRATIVE MEMBER**

Vijay Kumar Pandey, aged about 45 years,  
Son of Sri S. S. Pandey,  
Resident of Mill Road Aish Bagh,  
Mawaiyya Lucknow,  
Posted as Asstt. Station Master  
(North Central Railway),  
Earlier Northern Railway, Kanpur.

..... Applicant

By Advocate : Shri K. Agarwal

Versus

1. Union of India,  
through the General Manager,  
North Central Railway,  
Allahabad.
2. The Divisional Operating Manager,  
Northern Railway (North Central Railway)  
Allahabad.
3. The Senior Divisional Operating Manager,  
Northern Railway (Presently North Central Railway),  
Allahabad.
4. The Additional Divisional Railway Manager,  
Northern Railway (Presently North Central Railway),  
Allahabad.
5. The Divisional Railway Manager,  
Northern Railway (Presently North Central Railway),  
Allahabad.

6. The Chief Operating Manager,  
Northern Railway, Baroda House,  
New Delhi.

..... Respondents

By Advocate : Shri S.N. Gaur.

**ORDER**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

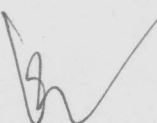
Challenge in this OA is against the order dated 22-02-2001 (Annexure A-4) of the disciplinary authority, order dated 03-04-2001 (Annexure A-3) of the appellate authority and order dated 27-07-2001 (Annexure A-2) of the revisional authority. Challenge is also made to the order dated 06-12-2001 of the ADRM regarding treatment of the period of suspension and the period from the date of removal till the date of reinstatement consequent to the modification of penalty by the Revisional authority.

2. The facts of the case are as under:-

3. When the applicant was serving as Asst. Station Master, ~~he~~ ~~applicant~~ was placed under suspension on 03-10-2000 and on 09<sup>th</sup> October, 2000, he was served with a Memorandum of Charges (Annexure A-5) stating that he had committed an error in giving line clearance to Moorie Express on line where Triveni Express was already running and this could have resulted in a serious mishap, but was actually ~~averted~~ ~~by~~ the driver. Applicant having denied the charges, inquiry was held in which the applicant participated and

after closure of the prosecution witnesses, his statement was also obtained by the I.O. The I.O. later on submitted his report, holding the applicant guilty of the misconduct alleged in the charge sheet and the applicant filed his representation against the same. Agreeing with the findings of the Inquiry Officer, the Disciplinary authority had imposed the penalty of removal from service, vide Annexure A-4. Being aggrieved, the applicant filed appeal which was dismissed by the appellate authority, vide Annexure A-3. Revision petition filed by the applicant gave some respite in that the order of removal was modified to one of reduction in grade i.e. from the scale of Rs. 5000 - 8000 to that of Rs. 4500 - 7000 with fixed pay at the minimum of Rs. 4,500/- permanently. Annexure A-2 refers.

4. The applicant contended in this OA that the preliminary inquiry conducted threw the entire blame upon one Lallan Pandey, the Cabin man and another porter and in the said report, as regards the applicant the finding was only negligence. However, the I.O. held the applicant as guilty of misconduct as levelled in the charge sheet stating that the applicant was responsible to the incident that he did not hand over the keys to Lallan Pandey, Cabin man personally and the applicant was not alert in his duties. According to the applicant, the finding recorded by the I.O. was perverse and it is highly improper to have held the applicant guilty of the charge. According to the applicant, the finding that the applicant should be more vigilant cannot be said to be 'misconduct' in any manner what so ever.



Reliance was placed upon the decision of the Apex Court in the case of ***State of Punjab v. Ex-Constable Ram Singh, (1992) 4 SCC 54***, wherein the Apex Court has observed as under:-

**"5. Misconduct has been defined in Blacks Law Dictionary, Sixth Edition at page 999 thus:**

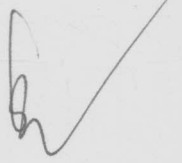
*A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.*

*Misconduct in office has been defined as:*

*Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.*

*P. Ramanatha Aiyars Law Lexicon, Reprint Edition 1987 at page 821 defines misconduct thus:*

*The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.*



6. Thus it could be seen that the word misconduct though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

5. Reliance was also placed upon the decision of the Apex Court in the case of ***Union of India v. J. Ahmed, (1979) 2 SCC 286***, wherein the Apex Court has held:

*"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.*

*But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."*

6. Respondents have contested the OA. They have stated that the applicant has rightly been charge sheeted and it is wrong to say that no liability can be fastened on the applicant. Though Lallan Pandey, the Cabin man was to a great extent responsible, the applicant was also to a lesser extent responsible for the incident in question and he has been rightly



punished to the extent of his misconducts and acts of omission and commission.

7. The applicant has filed his rejoinder reiterating the contentions as raised in the OA.

8. Counsel for the applicant submitted during hearing that the incident had happened due to the misconduct committed by the cabin man and in so far his responsibility is concerned, though the keys ought to be with the duty A.S.M., as there was no locking system to secure the keys, it was impossible to hold control through out and this having been appreciated by the Revisional Authority, and the applicant could at best be said to have been negligent, the same does not constitute misconduct within the meaning of the Disciplinary Rules, as held by the Apex Court in the case of ex-constable Ram Singh and J. Ahmed (*supra*).


9. Counsel for the respondent submitted that the applicant cannot absolve himself from the responsibility of securing the signal keys as held by the inquiry officer and the penalty was commensurate with the gravity of the misconduct, as is evident from the observation by the Revisional authority and reduction by him of the penalty originally awarded to the applicant.

10. Arguments were heard and documents perused. The applicant has



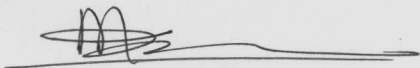
not been able to prove that there has been any legal lacuna in holding the inquiry. All that he pleaded is that the cabin man having been held to be responsible the applicant could not have been penalized. This can be hardly accepted. According to the I.O. Rule 6.4.1 enjoins upon the applicant in his capacity as ASM to advise the cabinman regarding the train No. , line No. in which the train has to be received. After the route is set, the route key will be sent by cabinman through porter to the S.M. S.M. after verifying the setting of correct route will release the home signal key and hand over to cabinman. Cabinman will take off the relevant approach signal. The Applicant admitted that though key should be in his personal custody but due to non provision of lock and key it is not secured and that he did not report to any body about this lapse. Thus, the I.O. held that the applicant is guilty of misconduct by violating the provisions of Rule 6.4.1 and 6.2.1. SWR.

11. It has been held by the Apex Court in the case of V. Ramana vs A.P.S.T.C. (2005) 7 SCC 338 the court should not interfere with the administrators decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial



review is limited to the deficiency in decision-making process and not the decision. (This has been affirmed in the decision in ***State of U.P. v. Sheo Shanker Lal Srivastava***, (2006) 3 SCC 276,)

12. In view of the above the OA is devoid of merits and is, therefore, dismissed. No costs.



**M. JAYARAMAN**

**ADMINISTRATIVE MEMBER**



**Dr. K B S RAJAN**

**JUDICIAL MEMBER**