

Reserved

(on 23.01.2013)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 27th day of February 2013

Original Application No. 380 of 2007

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

K.C. Srivastava, S/o late Sri B.P. Srivastava, R/o D-72, Agra Cantt. Agra.

... Applicant

By Adv : Shri A. Srivastava

V E R S U S

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. The Chief Operating Manager, North Central Railway, Allahabad.
3. Divisional Railway Manager, Jhansi, North Central Railway, allahabad.
4. Sr. Divisional Operating Manager, Jhansi, North Central Railway, Allahabad.

... Respondents

By Adv: Shri Anil Kumar

O R D E R

By Hon'ble Ms. Jayati Chandra Member (A)

Instant OA has been filed by the applicant under Section 19 of the A.T. Act, 1985 for quashing the order dated 09.10.2000 by which he was given punishment of dismissal from service, order dated 29.12.2000 by which the Appellate Authority converted the earlier punishment order into punishment of compulsory retirement and order dated 06.09.2002 by which punishment of the Appellate Authority was modified by the Revision Authority to reduction to the pay grade of Rs. 5500 – 9000 at the initial stage.

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2. The OA has been filed on 08.04.2007 with the prayer for condonation of delay. The grounds of delay are explained as the applicant has engaged the services of Shri C.P. Srivastava, advocate in May, 2005. As nothing was heard from him the applicant enquired in the month of October, 2006 and he has come to know that the earlier advocate had expired in the interim period. Thereafter, he approached the new counsel and got the case prepared. Hence the delay has occurred. The objections to the delay were invited by order date 16.04.2007. However, the case was admitted by the order dated 04.05.2009. Hence, it would appear that the delay of about 2½ years has already been condoned.

3. The case of the applicant is that he was working as Dy. Chief Controller, when he was served with the Charge-sheet dated 21.12.1999 (Annexure A-5) pertaining to the period, when he was working as Section Controller (SCOR). The charge arose out of his alleged failure to stop 2615 Down G.T. Express at Farah station.

4. The incidence leading to the accident with G.T. Express in brief are that on 16.07.1999 a goods train had derailed between Farah and BAD stations, as a result of which the overhead equipment (OHE) had tripped. As per standard procedure in this case, the adjacent lines should have been closed so that trains could not run. The TPC who had to ensure the same had failed to do so. In case the train had entered the affected section before the same they were to proceed very slowly. The Dn 2615 G.T. Express had not been so warned entered the affected section and rammed into the goods train. A commission of Railway Safety (CRS)

J. Bhandarkar

enquiry was held and applicant was found prima-facie guilty. Following this the applicant was charge-sheeted on 21.12.1999 (Annexure A-5).

5. The technical requirement and the rule position related to working of trains on electrified section of Railway is enumerated in S.R. 17.03 – 10 : Sub Sections (1) & (2) of Working of Trains on Electrified Sections of Railways read as under:-

"S.R. 17.03 – 10. Special precautions by Controllers, Station Master and train crew on electrified sections when a section of OHE is found faulty.

(1) In electrified sections, in the event of OHE failure, the Traction Power Controller shall immediately locate the faulty section and isolate the same. Also, in the case of double and multiple line sections, he will isolate the healthy section on adjacent tracks on the same route length as the faulty section. The Traction Power Controller shall then advise the Section Controller of the section found faulty and the healthy section temporarily isolated by him.

(2) On receipt of advice from the Traction Power Controller the section Controller shall take action as under

a. Faulty Section.

The Section Controller shall, under exchange of private numbers advise the Station Masters of all stations who are concerned with the working of trains in the affected section to treat the faulty section as if the same is under emergency power block and taken action accordingly.

b. Healthy Section temporarily isolated.

The Section Controller shall check whether any train had entered any of the block sections in the faulty section before the faulty on OHE occurred. If not, he shall advise Traction Power Controller to re-energise the healthy section temporarily isolated. If, however, a train had entered a block section in the faulty section before the faulty on OHE occurred, the Section Controller shall immediately inform the Station Masters of all stations who are concerned with the working of trains in the faulty section and also in the section in which healthy OHE is temporarily isolated, under exchange of Private numbers, that they shall not allow any train to enter the concerned block section unless both the Driver and the Guard of the first train have been issued caution orders to the following effect.

(i) Proceed at a speed not exceeding 10 KMPH subject to the observance of other speed restrictions, exercising great caution.

(ii) Keep a sharp lookout and be prepared to stop short of any obstruction which may be due to any infringement from the adjacent line/lines and also keep a sharp lookout on the adjacent line/lines to see if there are any OHE abnormalities and

T. Chandre

(iii) Immediately on reaching the next station in advance report whether or not the section over which they moved is safe for the movement of trains."

6. An Inquiry Officer was appointed who concluded his enquiry holding the applicant guilty of charge framed against him. The applicant has challenged the Enquiry Report on following grounds:

- a. According to the applicant although the OHE had tripped between Farah and BAD stations prior to 2.09 hrs he got incomplete information of the fault from TPC only at 2.09 hrs. He immediately tried to contact Station Master Farah for onward cautioning of 2615 GT Express, but the ASM Farah did not allow him to complete the conversation. Therefore, it is the Station Master Farah who failed in his duty to caution the train driver rather than his failure to issue the caution note. This is also proved by the interpolation made in the register of the time of the incident. The register revealed that there is overwriting in col. 10 & 11 recording the arrival and departure of 2615 Dn. G.T. Express. It appears that Assistant Station Master tried to fudge the time in order to show that he did not receive the caution from the applicant.
- b. The TPC gave an incomplete and incorrect memo to him at 2.09 hours in which it was not clear as to which line was faulty and which is healthy and that caution advise is to be given to UP or DN train. But he was sure that as per the SR no train could go towards Farah or from Farah as the entire section would have been isolated. He wanted to clarify the

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situation from the person who had brought the memo and then decided that he would just inform ASM Farah and then ASM BAD. As per informations from TPC, he wrote in chart that tripping happened at 2.07 hrs. But he never told TPC to reconnect or energised the line at 2.09 hrs till the time of the accident. This is borne out by the discrepancy in the statement of PW-3 Gurdas Lala TPC (Annexure A-9).

c. In order to prove his case he had requested for the following documents:

- (i) Control chart of Agra - Tuglakabad Sections 1 - 7 shifted 16.7.1999
- (ii) Computerized copy of OHE tripping and restoration 0 - 8 shift on 16.7.1999
- (iii) Copy of ASM diary and train signal register ASM FAR 0 - 8 16.7.1999.

While he was supplied the documents No. i & iii the most important document i.e. item No. ii which would for establishing exact time of tripping and restoration on 16.07.1999 was not provided to him on the ground of mechanical defect in the computer.

7. In the rejoinder affidavit he has further clarified that the BYC Special goods train had derailed between Farah and BAD Railway Stations at 1.54 hrs resulting in the OHE automatically tripping. The applicant was issued memo by TPC regarding tripping at 2.09 hrs and by 2.10 hrs the applicant communicated that the ASM over phone for issue of caution order to the incoming train. By that time 2615 G.T. Express had already entered the damage section without the requisite advice for proceeding @ 10 to 20

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KMPH. The Assistant Station Master in order to save himself from being charged with failure to stop the train falsified the train register.

8. It has also been stated in the rejoinder affidavit that as Shri K.M. Verma CTPC was charged for violating para 17.03 – 10 of G&SR rules arising out of the same cause of action i.e. accident of 2615 Dn. G.T. Express on 16.07.1999, in view of the near date of retirement of Shri K.M. Verma, he was given the punishment of only censure entry after converting major punishment into minor penalty. This is a clear-cut violation of equality of treatment to all charged persons (himself and Shri K.M. Verma).

9. The learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in the case of ***State of UP & Ors v. Raj Pal Singh – (2010) 2 SCC (L&S) 107*** wherein it has been held that different punishment of identical charges, delinquency and incident on the same day are unsustainable. Para 6 of the said judgment is very relevant and is quoted below:

"6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory....."

10. The applicant has filed copy of charge memo, copy of written statement dated 05.06.2000, copy of enquiry report, copy of show cause notice dated 15.06.2000, copy of statement of Sri Gurdas Lal DW-3, copy of train register dated 15.07.1999, copy of the statement of Shri G.P. Meena ASM Farah, copy of memo issued by TPC, copy of defence note of Shri K.K. Pandey, copy of written submission, copy of statement of

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applicant recorded before the Inquiry Officer, copy of the statement of Shri S.C. Chaudhari, copy of appeal dated 09.11.2000, copy of revision petition dated 22.01.2001, copy of revision petition dated 22.01.2001 and copy of mercy appeal dated 04.09.2001. However, he has failed to produce report of the Commission of Railway Safety, which is the basis of the enquiry. He has not clarified whether only the applicant and Shri K.M. Verma CTPC were charge sheeted for the accident of 2615 Dn. G.T. Express, or there were others also.

11. The respondents in their counter affidavit have denied all the averments made. They have stated that no rules and regulations with regard to conduct of enquiry have been violated. They have admitted that while out of the 03 documents, one document sought i.e. computer print out, was not given to the applicant, but in the enquiry of CRS the applicant was primarily found responsible for the said incidence. Thereafter, the departmental enquiry was held as per procedure laid down in Railway Servants (Discipline and Appeal) Rules, 1968 and charges against the applicant have been found to be proved. They have also denied that the averment made by the applicant that the Enquiry Report is based on conjectures and suppositions. Moreover, the applicant has made successive representations to the Appellate Authority and the Revisional Authority and his major penalty of termination of services was reduced to compulsory retirement and finally to reduction in pay grade of Rs. 5500 – 9000. His mercy appeal was rejected as there is no provision of any mercy appeal. However, they have not controverted or reverted the averments made in the rejoinder affidavit. The respondents have also not provided the CRS report or clarified that disciplinary proceeding was initiated against the TPC and the Station Master also.

J. Chaudhary

12. We have heard Shri A. Srivastava, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents and also seen all the records. Learned counsel for the applicant has contended that the primary responsibility of preventing accident in the event of OHE failure in Electrified Section of the Railways lies with the TPC. A perusal of SR 17.03 – 10 Section 1 & 2 produced by the learned counsel for the applicant shows that both the TPC and the SCOR are responsible for ensuring safety of the Railways. The scope of the present OA is not to see whether other persons such as TPC or Station Master were charge-sheeted and what were the consequences. This OA has been filed by the applicant against memorandum dated 09.10.2000 and the subsequent penalty orders.

13. The scope of the current judicial review is, therefore, limited to the case of the applicant. It is to be seen that the decision of the Disciplinary Authority is in accordance with the procedure laid down in the Railway Servant (Disciplinary and Appeal) Rules, 1968 and that there is no manifestation of any kind of bias or malafide.

14. It is not the case of the applicant that there has been any violation of principle of natural justice or that the Inquiry Officer has gone behind his back. His preliminary case is that the Inquiry Officer has failed to fully appreciate the role of the ASM Farah and the TPC. He has pointed to the interpolation of the train register and the discrepancies in the statement of Gurdas Lala, TPC. Judicial review cannot be substituted for an interpretation of records and evidences unless they are such as are arbitrary or capricious. This does not appear to be so. There is one case

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where a sought for document i.e. computerized record of arrival and departure was not made available to the applicant. However, the Enquiry Report is based on assessment of other materials.

15. We have also proceeded to examine the various impugned orders in the light of the punishment given to the applicant, particularly to see that the punishment awarded is not disproportionate to the charge-sheet. In this case what is of great significance is that a major accident occurred. The 2615 G.T. Express carrying large number of passengers rammed into a goods train. The accident occurred due to some negligence/lapse of the person/s responsible for safety of the passengers and the public property. Therefore, in terms of the original punishment of removal from duty does not appear to be disproportionate to the point of shocking the conscience. This punishment too was successively reduced by Appellate Authority and Revisional Authority. It is significant that the report of the Commission Railway Safety has not been produced by the applicant. Therefore, we are not in a position to know what was the primary basis for charge-sheeting the applicant. It is also not known whether other persons were charge-sheeted or not. The applicant in his deposition had named (a) Shri M.C. Chaudhary – Dy. TPC Agc, (b) Shri Gurudas Lala - TPC Agc & (c) Shri Vinod Verma - Hd TNC agc C.T.O. He has also not clarified whether any or all of the named persons were charge-sheeted alongwith him. The applicant for the first time has stated that Shri K.M. Verma, CTPC/TD/Control GC was charge-sheeted alongwith him. Their charge-sheets are reproduced below:

Charge sheet of the applicant

"Shri K.C. Srivastava Dy. CHC AGC, while functioning as SCOR on 16.7.1999 has failed to stop 2615 Dn. G.T. Express at FAR Station out of turn for issue of caution order before restoration of power on down line as per

provision in SR 10.03-10(2) of G&SR Edition 1999 and as a result of which 2615 Dn. Express collided with the derailed and infringing wagons of up BYC Spl. between FAR & BAD Station."

Charge sheet of Shri K.M. Verma

"1. Shri K.M. Verma, while performing his duties as CTPC.TD/Control GC on 16/17-7-1999 failed to work according to GR 2.03 & 2.06 and SR 17.3.10 of G & SR edition - 1999

Shri K.M. Verma failed to secure advise from SCOR on duty that all necessary precautions vide SR - 17 - 3 - 10 have been taken before feed to the healthy section is restored i.e. FRA/SSP to BAD/JSP on Dn. Line on 16.7.1999 which assaulted collision of 2615 Dn. GT Express with the derailed wagon of Up BYC special Goods and has violated SR17 - 03 - 10 & GR 2.03 & 2.06.

2. Shri K.M. Verma, while stating before CRS regarding accident on 16/17 - 7 - 1999 misled the information of his arrival to TD control during the questioner of CRS. This too violation of Rly. Conduct rule 3 (ii) of 1966."

16. The comparison shows that the charge-sheets were not absolutely identical. The applicant has been charged with failure to issue caution note in accordance with SR 10.03 (2) of G&SR for which Shri K.M. Verma has been charged for violation of GR 2.03, 2.06 & SR 17.03 - 10. The second charge also points to his supervisory role in that he fudged the time of his arrival to the TD control. The designation of Shri Verma is as evident from Charge-sheet is CTPC.TD/Control GC during the period of accident on 16.07.1999. SR 17.03 - 10.1 lays down the primary responsibility on TPC and the SCOR. From the designation it would appear that the said Shri K.M. Verma was not functioning as TPC. In the defence memo produced by the applicant before Inquiry Officer (Annexure A-6) he himself had spoken about the role of TPC, Dy. TPC and the Station Master Farah. He had not mentioned involvement of Shri K.M. Verma in either his representation dated 09.11.2000 before the Appellate Authority or in his revision petition dated 04.09.2001 (Annexure A-19). It has been held by the Hon'ble Supreme Court in the case of **Indian Oil Corporation Ltd. v. Ashok Kumar Arora - JT 1997 (2) SC 367 : (1998) 2 SCC**

407 : AIR 1997 SC 1030 that if one of the persons involved was "main actor" and a harsher punishment has been given to him while some other lesser punishment is given to others who were entrusted with lesser responsibility then there is no discrimination.

17. It is by no means clear from the designations whether the levels of responsibility were the same. In-fact the inference from the penalty order of Shri K.M. Verma could appear be that they are vastly different. The penalty order reads:-

"I have gone through the complete case file of Shri K.M. Verma. The statements of the witnesses and the Inquiry report of the Enquiry Officer Shri Nayak is accepted. However, in view of the retirement of Shri Verma in July 07 and also in view of the fact that he as C.T.P.C. was not directly involved in the sequence of events that took place on the date of incident, and hence is indirectly responsible for the same, therefore, taking a lenient view I convert Major Penalty Charge Sheet to Minor Penalty & I hereby impose upon Shri Verma a minor penalty of "CENSURE."

Moreover, at various stages the Appellate Authority and the Reversionary Authority have taken cognisance of the representations given by the applicant and have successively reduced the punishment.

18. In view of the above observation the OA lacks merit and the same is dismissed. No cost.

J. Khanda

Member (A)

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J.

Member (J)