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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

1996

O.A. No. 351 OF 1988

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DATE OF DECISION 24-06-1988.

Shri Jitendra U. Acharya Petitioner

Shri D. P. Padhya Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri R.P. Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI : VICE CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

JUDGMENT

(9)

OA/351/86

24-6-1988

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

The petitioner was punished by the order dated 18-6-1985 with the stoppage of increments for two years without cumulative effect for defect having developed in an engine which was attended to by him. The petitioner is admittedly working as a Fitter. The engine was brought to loco shed at Mehsana where it was attended by group including the petitioner on 28-12-1983. After 22 days i.e. from 6-12-1983 when it was attended by the petitioner, it developed some trouble and failed due to "Chalk testing of the Engine Motion Parts." The petitioner was suspended from 29-12-1983 to 2-1-1984. The petitioner demanded the C.M.T. report but according to him it was never supplied to him. He was also not given copies of the departmental enquiry proceedings to enable him to appeal against the order. The petitioner contends that in terms of the circular dated 25-8-1984 the responsibility for Chalk testing of the Engine parts is fixed on the graded chargeman. The fitter in charge in the grade of Rs.550-750 is personally responsible. The petitioner states that he is not graded chargeman but only a fitter in-charge in the grade of Rs.330-480. He also states that the defect has not been proved but only presumed and that as the defect has developed after 22 days of its being attended to, he has been punished by fixing the responsibility on him unfairly. The petitioner appealed against the order of punishment but no response has been received so far although he has reminded twice.

2. The respondents' contention is that the petitioner failed to properly check the Chalk marking. The departmental enquiry was conducted and the period of suspension was treated as not spent on duty by memo dated 24-7-1986 which has not been produced. The enquiry

was held by Loco Inspector (Maintenance) Rajkot. The respondents state that the applicant has never demanded C.M.T. report as may be seen from the enquiry report and in answer to question 18, the applicant has stated that he was satisfied with all the documents supplied to him. The applicant has only made vague statements about the documents not supplied nor the copies given to him. But the respondents contend that all the copies of the statement recorded during the enquiry have been given to him. The respondents' contention is that for engine examination Supervisor along with staff including the applicant was nominated but the fact remains that had the applicant Chalk marked engine parts, the Supervisor in his routine checking would have inspected it properly. The respondents state that because the applicant is a Fitter Grade II he cannot disown the liability for examination of the locos which is his primary duty. The respondents state that the failure of the engine was due to progressive type of fatigue developed during service and that after failure of the engine, the joint examination revealed 50% old flow inside road and such type of flow cannot develop all of a sudden. The respondents, therefore, have good reason to conclude that the engine was not attended to adequately.

3. After hearing the learned advocates Mr. Padhya and Mr. R.P. Bhatt for the petitioner and the respondents respectively we must comment upon certain features of the enquiry and the manner in which the petitioners' case has been dealt with, which strike us as unsatisfactory and unfair. The parties have not produced the enquiry report. It is, however, not established that C.M.T. report was not asked for and not given and that other documents were also not given because not asked for, that the petitioner was one of the persons in the group which attended the engine and that the duty of Chalk Marking the engine and examining it, was cast on the Supervisor along with the staff. Whether the Physical Chalk marking was left to the fitter or not as a working arrangement is not clear but the respondents' plea that the applicant by chalk marking the engine was responsible for the defect does not throw any light on why the respondents' administration allowed the Supervisor to omit the check expected of him. Admittedly the

examination of the engine is regarded as too responsible a job to be left to the Fitter and for that purpose some one else, possibly the Supervisor or as the respondents state in para 3 (F) of their written submissions or the graded chargeman in the scale of Rs.550-750 as the petitioner states in para 6 (6) of his plaint, was responsible for this task. The respondents cannot have it both ways. If they regard this to be the duty of the Supervisor or Fitter chargemen, the mere fact that the fitter has chalked marked cannot make him responsible for the defect. He cannot be allowed to escape the responsibility for his part of the work but it could not have been foisted on him which belongs elsewhere. The fact that the engine developed trouble and that the nature of the trouble leads to the conclusion that the attending of the engine was defective or done negligently are technical matters which presumably have been established. What is not established is how the responsibility has been fixed on the petitioner when the chalk marking was required to be done by someone else. The petitioners' appeal has not been disposed of inspite of two reminders dated 26-10-1985 and 10-1-1986. He has taken the ground that the responsibility for chalk testing was of fitter chargeman. He has not taken the ground of C.M.T. report and other documents referred to in the appeal petition not being supplied to him.

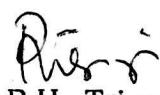
4. The punishment of stoppage of two increments without further effect cannot be regarded as disproportionate if the petitioner has been rightly held to be guilty of the charges.

5. In the circumstances of this case, therefore, the following directions will meet the ends of justice. The appellate authority i.e. D.R.M. Rajkot is directed to dispose of the appeal after giving an opportunity to the petitioner to be heard within a period of three months of the date of this order and in doing so he should ascertain whether C.M.T. report and other documents had been furnished to the petitioner in the course of the departmental enquiry and whether he was given adequate opportunity to present his case. The appellate authority should also duly consider whether in the circumstances of the case the disciplinary authority has erred in fixing the whole or disproportionate

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share of the responsibility for the defect in the engine on the petitioner. The order disposing of the appeal should be a speaking order covering inter alia the above ~~facts~~ ^{points} and in the light of its conclusions pass such orders as are appropriate regarding redressal of the grievances of the petitioner made in this petition. The petitioner is at liberty to pursue his cause if any survives in the forum of the Tribunal thereafter.


(P.H. Trivedi)
Vice Chairman.

Contempt Application No. 72/88

(13)

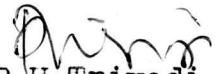
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O.A./351/86

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. P.M. Joshi .. Judicial Member

11/01/1989

Learned advocates Mr. D.P. Padhya and Mr. B.R. Kyada for the petitioner and respondents respectively present. Issue notice on the respondents to reply why the contempt proceedings should not be started. The matter be posted on 27th February, 1989 for orders.


(P H Trivedi)
Vice Chairman


(P M Joshi)
Judicial Member

*Mogera