

Mahendra P.  
AC Driver Grade B  
Baroda Division,  
Western Railway,  
Baroda.

(6) 83  
: Applicant

Versus

1. Union of India  
Through:  
General Manager, W.Railway,  
Churchgate,  
Bombay.
2. Divisional Railway Manager,  
Western Railway,  
Pratapnagar,  
Baroda.

: Respondents

Coram : Hon'ble Mr. P.H. Trivedi

: Vice Chairman

Hon'ble Mr. G.S. Nair

: Vice Chairman

O.A. 291/88

O R A L   O R D E R

Date: 16/3/1990

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

: Vice Chairman

In O.A./291/88 the petitioner under Section 19 of the Administrative Tribunals Act 1985 has challenged the orders dated 24.6.1985 and 23.9.1985 by which the petitioner was removed from service and his appeal was rejected and the orders of removal were confirmed respectively. An inquiry was made against the petitioner under Rule 9 of the Railway Servants Discipline and Appeal) the Rule imputing misconduct or misbehaviour when he was working as a driver on 22.11.1984 for which he was, for accident. The petitioner had objected Shri Amarsingh being made an Enquiry Officer on the ground Shri Amarsingh had accompanied Shri Babulal the driver of the engine at the time of taking the engine back and that his defence was that the engine was defective and he wanted to examine Shri Amarsingh for establishing this plea. However, Shri Amarsingh was appointed as an Enquiry Officer and the petitioner's plea was rejected on the narrow technical ground that Shri Amarsingh had not witnessed the accident at the time when it took place.

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The appellate authority on confirming the disciplinary authority's order based upon an inquiry report was not obliged to ~~due~~ <sup>With its order</sup> ~~hear~~ separately a speaking order.

2. We have heard Mr. K. K. Shah and Mr. N. S. Shevde, learned advocates for the applicant and the respondents, respectively.

3. The grounds pressed before us <sup>are</sup> that the appellate authority has not given a reasoned speaking order and that the inquiry has been materially vitiated by the appointment of Shri Amarsingh who was a witness to the incident as Enquiry Officer. About his appointment objection was taken by letter dated 24.5.1985 in which the petitioner had asked for Shri Amarsingh to be examined and cross examined and by letter dated 4.6.1985 objection was taken by him that Shri Amarsingh has been directly involved in this case and he had cited him as a witness before his appointment as an inquiry officer. These objections were considered by the respondents and disposed of by a letter dated 4.6.1985 in which it was stated that Shri Amarsingh was not a witness to the incidents and therefore there was no reason why he should not be made Enquiry Officer. The fact that Shri Amarsingh had accompanied Shri Babubhai the driver when taking the engine back is not disputed and in the circumstances when he was cited as a witness there was reason to believe that he would be a material witness to be examined by the petitioner and the fact that he only accompanied Shri Babubhai and did not witness the <sup>Accident</sup> cross, was not a sufficient ground to reject the objection of the petitioner. The petitioner has stated <sup>of</sup> some length that the accident occurred on account of mechanical fault. However, this point had to be gone into and the petitioner might have developed his case with reference to the examination or cross examination of Shri Amarsingh who was with the driver when the engine was taken back and technical failure of the engine could have been a matter in which

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the testimony of Shri Amarsingh might have been relevant and useful. In any case it is plain to us that when a witness is cited and there is enough reason to believe that his evidence would be material whether given in examination or cross examination, it is not justified to appoint such a persons as Inquiry Officer as that would be violation of natural justice. Learned advocate for the respondents stated that there was no reason why the petitioner could not have asked for the examination of the inquiry officer as a defence witness and if he had done so the inquiry officer could have stepped down and could have been examined by him. This proceeding also appears to us to be totally unacceptable because on the stepping down of an inquiry officer as a witness will not make the disciplinary proceedings credible just. If the inquiry officer is likely to be a material witness, whose testimony is subject to cross examination, his fairness and objectivity are bround to be questioned by one of the parties .

4. There is, therefore, force in the petitioner's plea that the decision of the disciplinary authority and the appellee authorities' orders confirming the same are vitiated. The petitioner has already retired from the service.

5. It has been urged that the appellate authorities' orders are also not speaking order and do not deal with the objections raised by the petitioner appellant and unit on this ground alone, the appellate authorities' orders are required to be strucked out.

6. In the result, we find that the petition has merit and the impugned orders are quashed and set aside.

As the petitioner has already retired, consequential financial benefits may be calculated in terms of the above order and paid to him within a period of four months from the date of this order.

~~16/10/68~~  
(G.S.Nair)  
Vice Chairman

~~16/10/68~~  
(P.M.Trivedi)  
Vice Chairman

a.a.bhatt