

Q.A.No.598 of 1988.

(Judgment of the Bench delivered by Hon'ble
Sri J.Narasimhamurty, Member (Judicial).
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Date of decision: 15-12-1989.

The Applicant who is a Permanent Way Inspector,
working at Bilmora (Broad gauge) in Bombay Division
aggrieved by the orders dated 29-2-1988 bearing No. E/E/308/3/2(87)
of the Senior Divisional Engineer(I), Bombay Central imposing
penalty for reduction in lower time scale of Rs.1400--2300
for a period of 3 years with effect of postponing future
increment and the order dated 16th August, 1988 bearing
No. E/E/308/3/2(87) of the Additional Divisional Manager(G)
Bombay Central reducing the penalty from reduction of lower
time scale for two years filed this application for quashing
the said orders and for placing the applicant in his original
position with consequential benefits.

The contents of the application briefly are as
follows:

The applicant joined the Railways in the year, 1972
as an Apprentice Permanent Way Inspector and from the
year, 1973 the applicant is working as regular Permanent Way
Inspector in the Western Railways. The applicant got
promotion for his satisfactory work and as per seniority.

The last promotion was given to the applicant by the Railway Manager in the year 1984 for the Permanent Way Inspector, Grade II in the scale of Rs.550--750.

The applicant states that during his entire tenure of service he has never been served even with a Memo nor any notice for any irregularity on his part. He states that he is not only the senior employee but he is the Divisional Organising Secretary of Western Railway Employees Union, Bombay Division and Branch Secretary of Bilimora Unit.

The applicant was posted at Bilimora Broad Gauge line. On 19--8--1987 the Deluxe Express dashed with Hand-push trolley near Bridge No.359 between Bilimora and Dungri stations. Due to the said accident which ~~was~~ occurred on 19--8--1987 there was no injury to anyone i.e., Trolleymen or to anyone else. There was ~~either~~ ^{to the} no damage to the Railway track or ~~train~~ etc. The only thing was that the train was detained at the site for 18 minutes and was then proceeded on the onward journey.

The applicant being a qualified person ^{was} put in-charge of Lorry or Trolley when ^{they were} on the line.

Before carrying any work on the track endangering the

safety of the track, the officer in charge has to obtain the permission or prior sanction from the concerned authority. These works shall be carried out during day time only. The Divisional Operating Superintendent shall notify the traffic staff concerned about the schedule of these works, time and duration of such blocks on each date. The official in-charge shall, however, not take any work in hand, unless he has obtained prior approval of the Divisional Operating Superintendent. Before taking the work ~~in~~ hand, the official-in-charge should issue a message to all concerned detailing the work for issue of caution orders and get their acknowledgments. Execution of works, issue of messages and caution orders will be on day-to-day basis and no traffic Working Order would be required to be issued. These works must be completed in one day only.

On 19---8---1987 he went to the Station Master Bilimora to obtain the permission for blocking the track from traffic for convenient and safety ~~of~~ operations between Bilimora and Dungri near Bridge No.359. At the same time four Trolleymen ~~who are~~ working under the applicant took away the hand-push trolley without the applicant's instructions by themselves and the trolley was on the

bridge as is shown in the map annexed to the application.

The applicant states that the trolley was taken away by the trolleymen without ~~his~~ permission and instructions and that he is not responsible for the negligence and the action of the trolleymen, and that he should not be penalised without any cogent proof of evidence therefor.

The applicant states that at the time of incident, he was not present at the site of incident. He was in the ^{obtaining} Station Master's Office for necessary permission and ~~x~~ sanction as per rules.

The applicant states that when the train was just on the turning, the driver might have noticed the trolley on the bridge. As mentioned by ~~the~~ ^{one} of the Trolleymen and ~~the~~ ^{one} of the Driver in the major joint inquiry and disciplinary proceedings, ~~one~~ of the Trolleymen had shown the one of the trolleymen had shown the red-flag to the Driver. However, the train ~~was~~ running with such a speed cannot be stopped abruptly and the driver did his best to stop the train and avert the accident by giving whistle. However, the trolley was not removed off the track by the trolleymen which may be due to short of time or they might have ^{got} frightened.

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engine of the
Due to the above reasons, ultimately the train
dashed with the hand-push trolley. Immediately, thereafter,
on 20--8--1987 the applicant was placed under suspension
by ~~an order dated~~ the Senior Divisional Engineer(I)
Bombay Central. ~~xx~~ On 21--8--1987 an order
was issued by the Divisional Manager, Bombay Central
to hold Departmental Inquiry in the matter. In the
Departmental Enquiry nothing has been proved that the
applicant was ~~present~~ at the time of accident and/the
scene of incident. It is also not proved that the
trolleymen were instructed ~~or informed~~ by the Permanent
Way Inspector to take the hand-push trolley on the
track in his absence and without his permission.
The applicant states that in the Departmental Enquiry,
the Assistant Engineer made an observation that the
site of the incident requires to be notified as a
dangerous section.

Immediately after the Departmental Inquiry,
on 11--9--1987 the suspension of the applicant was
revoked. Thereafter, the applicant was working in
the same scale and grade ^{but} ~~and~~ on 22--9--1987 he was given
the charge-sheet. In the charge-sheet the applicant

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was charged for careless and negligent work, ~~and~~ which infringes the Railway Servants Conduct Rule No.3(i)(ii) of 1966. The applicant has denied all the charges framed against him. The applicant has given the names of the defence witnesses. Under Rule 9(2) of Railway Servants (D.A.) Rules of 1968 the Disciplinary Authority has to give the name of the Inquiry Officer. Without giving the name of the Enquiry Officer, the Disciplinary Authority ~~with~~ has dealt the case illegally and not as per rules.

The enquiry was commenced on 11-1-1988 and was concluded on 19-1-1988. In the entire Enquiry, no one has deposed that the applicant was responsible for the accident.

The Enquiry Officer ultimately forwarded the findings of the Disciplinary Authority. On the basis of the findings of the Enquiry Officer, the Disciplinary Authority has issued the order dated 29-2-1988 bearing No. E/E/308/3/2(87) imposing the penalty and against that penalty the applicant preferred an appeal to the A.D.R.M., on 12-4-1988. The Appellate Authority instead of deciding the appeal normally within 45 days has decided after four months. The applicant filed this application challenging the order stating that the

order is illegal and he is not liable to be punished under any circumstances and the order has to be set aside.

The respondents filed the written statement with the following contentions.

The respondents denied all the allegations that were made in the petition. They state that on 19--8--1987 when the applicant while working as Permanent Way Inspector Broad gauge section at Billimora Station sent ^{the} trolley in the section along with Trolleymen by themselves. While the trolley was being taken into the section, 26 UP Paschim Express Train came and dashed ~~against~~ ^{against} the trolley. The trolley was damaged and thrown into Bridge No.359. It is stated that the above accident was occurred due to carelessness and negligent work of the applicant. Therefore, the applicant was placed under suspension on 20--8--1987. Thereafter, a charge sheet was served on him for his careless and negligent act. Departmental enquiry was conducted. The Enquiry Officer who conducted the enquiry submitted a report to the Disciplinary Authority. The Disciplinary Authority after going through the findings of the Enquiry Officer imposed the penalty of reduction to

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to a lower time scale of Rs.1400--2300 ~~to~~ on a pay of Rs.1950/- for a period of 3 years with the effect of postponing ~~future~~ increment which was communicated to the applicant by an order dated 29--2--1988. The applicant has preferred an appeal on 12--4--1988 against the order of the Disciplinary Authority. After hearing the applicant, the Appellate Authority passed the order dated 16--8--1988 reducing the penalty of reduction to the lower time scale of Rs-1400--2300 for a period of 2 years with the effect of postponing ~~future~~ increments. The respondents state that by an oversight the standard Form No.7 of 11--9--1987 was issued without the name of the Enquiry Officer and that the said mistake was rectified and a fresh S.F.7 dated 14--10--1987 was issued. In response to the notices issued by the Enquiry Officer, the applicant has attended the enquiry and participated in the same along with his defence counsel. The respondents state that for filing an appeal against the order of Disciplinary Authority the time limit is 45 days and there is no time limit for the Appellate Authority to decide the appeal. According to the respondents, the punishment was imposed according to law and the petition has to be dismissed with costs.

We have heard Shri K.K.Shah, learned counsel for the Applicant and Sri R.M.Vin, learned counsel for the respondents.

The learned counsel for the applicant contends that the charges are not proved against the applicant as per the evidence on record. He states that this is enough to quash the impugned order on this aspect only.

The charges framed against the Applicant are:

- 1) That Shri Jhonny Tharial, PWI(BG)BIM during the period is charged with careless and negligent working and has infringed Railway Service Conduct Rules No.3(i)(ii) of 1966 leading to serious misconduct
- 2) On 19-8-1987 while working as PWI (BG)BIM Shri Jhonny T. sent trolley in the section along with Trolleymen who were not authorised to take the trolley by themselves in the section, 26 UP came and collided with the trolley. The trolley was damaged and thrown into bridge No.359. He is therefore charged with careless and negligent working.

These are the charges framed against the applicant.

The Applicant as P.W.I., ~~was~~ is working at Bilimora

(Broad Gauge), ^{on} Before carrying any work on the track

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infringing the safety ~~yx~~ of the Railway Trac, the officer-in-charge has to obtain permission or prior sanction from the concerned authority. In this case, the applicant is a qualified person put in-charge of the ~~Lorry or Trolley~~ ^{it is} when on the line. ^{has} ~~He~~ got the valid certificate from the Divisional Engineer, Bombay Central. Before carrying any work on the track ^{out} endangering the safety of the track, the officer-in-charge has to obtain the prior sanction from the concerned authority. A trolley must not be placed on the line in such a manner or at such time as will interfere with the passage of trains. It is obligatory for the official-in-charge to ascertain the whereabouts of trains that are likely to be encountered in the section before starting the journey. Such information should be sent for and obtained from the Station Master in writing.

On 19--8--1987 the applicant went to the Station Master Bilimora to obtain the permission for blocking the Railway Track from traffic for carrying on safety operations between Bilimora and Dungri Stations near the Bridge No.359. He did not instruct the Trolleymen to take out the trolley which was at his office; but the Trolleymen took-away the hand-push trolley

without the permission and instructions of the applicant.

While the trolley was on the bridge the train 26 UP came and dashed against the trolley. At that time the applicant was ~~in~~ with the Station Master who went there to obtain his permission to take the trolley to the Section.

Though one of the trolleymen was showing the red flag to the Driver of the Train, the Train which was running ~~with~~ ~~in~~ high speed could not be stopped by the driver inspite of his best efforts. The train suddenly dashed against the trolley. No damage was caused either to the Train or the lives. The train was delayed only for 18 minutes.

A little damage was caused to the Trolley. The applicant was suspended on account of the accident and an enquiry was conducted. In the enquiry, the Station Master and the Trolleyman, Sri Rajpal Rameshar were examined. The Station Master stated that at the time the accident took place, the applicant was in his office. The trolleyman, Sri Rajpal Rameshar stated before the Enquiry Officer, that the applicant did not ask the Trolleymen to take the trolley to the Section. The trolleymen of their own accord took the trolley without the ~~prior~~ permission of the applicant. Perhaps, they might have thought that

the applicant went to obtain the permission of the Station Master and ~~when~~^{by} the comes nearer to the spot, they can proceed from there to the workspot with the permission. With that intention, the Trolleymen took the trolley to the Section without obtaining the permission of the petitioner. ~~to the~~ ~~spot~~. The applicant never anticipated that the trolleymen would take away the trolley to the work-spot without his permission and green signal. The applicant had now no knowledge of the trolleymen taking the trolley on the line when the accident took place.

The applicant is an experienced person and he knows when the trolley has to be allowed to put on the line and for that purpose he went to the Station Master to obtain his permission, keeping the trolley at his office. In his absence, the trolleymen brought it on the line without his instructions. So, the evidence on record, clearly establishes that the applicant has not instructed the trolleymen to take the trolley on the line and without his instructions, they brought the trolley on the line with the result the accident occurred. Therefore, the applicant cannot be attributed with careless and negligent working in discharging his duties.

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It is the high-handed action of the trolleymen. The Enquiry Officer held that the applicant is indirectly responsible for the careless and negligent working for not giving proper instructions to the trolleymen. It is not known to the applicant about taking the trolley on the line by the trolleymen. Previously, they used to take out the trolley on the specific instructions of the applicant only. This time, without his instructions, they brought the trolley on the line. Therefore, the trolley people acted carelessly, negligently and ~~high~~handedly. They are directly responsible for the accident. The Enquiry Officer correctly held that the trolleymen are directly responsible for the accident by taking the trolley without obtaining the instructions from the applicant.

Sri Rajpal Rameshar, one of the Trolleymen has stated before the Enquiry Officer that the applicant did not give any instructions about taking the trolley on the line. When the Trolleymen took the trolley to the Section of their own accord and met with the accident in the absence of the instructions from the applicant, how the applicant is indirectly held responsible for the accident?

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There is no evidence that the applicant has instructed the Trolley people to take the trolley to the spot, and there is no corroborated evidence that the applicant was with the Station Master and in the absence of the instructions from the applicant, the trolleymen took the trolley on the track. In view of this, the applicant cannot be found guilty of the charges for careless and negligent working. Moreover, the Disciplinary Authority has not explained, how the applicant is indirectly responsible for the accident. They simply framed the charges and served on the applicant stating that he is indirectly responsible for the accident. But the evidence on record clearly shows that the applicant is not directly or indirectly responsible for the accident and therefore the charges cannot be held proved against the applicant.

The learned counsel for the applicant contends that the Disciplinary Authority has not properly appreciated the evidence on record, and they simply held that the applicant is responsible for the accident and imposed against him the penalty of reduction in lower time scale of Rs.1400-2300(RP) on a pay of

Rs.1950/- for a period of three years with the effect of postponing future increment. // The learned counsel states that the order of the Disciplinary Authority is not a speaking order. The Disciplinary Authority did not give any reasons or properly explain how the applicant is indirectly responsible for the accident.

The Appellate Authority also did not evince any interest to verify the evidence on record and simply carried away by the findings of the Disciplinary Authority and reduced the penalty from reduction of lower time scale for two years. The Appellate Authority also did not peruse the evidence as to how the applicant is indirectly responsible for the accident.

The learned counsel for the respondents argued that this Tribunal cannot go into the evidence, and if there is any irregularity in the procedure, and then only the Tribunal can interfere. He further states that there is no need to discuss the evidence at length to come to a conclusion. The Disciplinary Authority agreed with the findings of the Enquiry Officer and the Appellate Authority also agreed with the findings of the Disciplinary Authority. So there is no need to pass any speaking order.

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He also pointed out that the petitioner in his evidence

stated that there was a communication gap on his part.

So, there is a lacuna on his part. He may not be able to communicate to his persons on this aspect.

In this connection, it is relevant to read the contents of the Railway Board's letter No. E (D&A) 71 .RG 6-36 dated 6-6-1974 which reads as under:

"It has been observed that in some of the disciplinary cases, there is an omission on the part of the disciplinary authority while imposing any of the penalties as laid down in the Railway Servants (Discipline and Appeal) Rules, 1968 to pass "Speaking Order" indicating the reasons for imposing a particular penalty. In respect of some orders of this nature, civil courts have upheld the plea that they not being 'speaking order', were not in accordance with the provisions of the RS (D&A) Rules. The Central Vigilance Commission, in the disciplinary cases referred to them have also taken a similar view.

The Railway Ministry, therefore, desire that in all disciplinary cases the disciplinary authority should invariably pass "speaking orders" indicating the reasons for the conclusion arrived at. The same procedure should also be adopted by the appellate authority while passing orders on the appeals of the railway servants."

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The Railway Board in the above letter made it so clear that the Disciplinary Authority as well as the Appellate Authority has to pass a speaking order and the argument advanced by the learned counsel for the Railway is contrary to the instructions contained in the above referred to letter of the Railway Board.

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So far as the answer to a question in the Departmental enquiry by the Applicant "that there was a communication gap", how it is advantageous to the case of the respondents, the learned counsel for the Railways was not able to explain properly. It was not clearly stated how and in what connection this communication gap ^{is used} ~~exists~~. There is no proper explanation by the respondents. The petitioner in so clear terms stated that he did not ask the trolleymen to get the trolley to the spot or on the line.

One of the Trolleymen Sri Rajesh Rameshwar also stated

that the applicant ^{them} did not ask ~~him~~ to get the trolley

on to the line. Moreover, the applicant was with the

Station Master. He went there to obtain the permission

of the Station Master to work on the line and he was

sitting with the Station Master at the time of the

accident. He never expected that the Trolleymen

would take the trolley without his permission to the track.

Otherwise, he would have asked them not to get the trolley on the line without his permission. It is only on account of ~~the~~ action of the trolleymen, the accident occurred. The argument advanced by the learned counsel for the Respondents cannot therefore be appreciated. *When the evidence is so clear there is no need to rely upon air splitting inferences.*

In this case, neither the Disciplinary Authority nor the Appellate Authority discussed the evidence. The learned Counsel argues that this tribunal cannot go into evidence now. The whole point at issue is based on the evidence only in this case. So ~~it~~ we are unable to agree with the contention of the learned counsel for the respondents ~~and~~ that we cannot weigh the evidence at this stage. Though there is no evidence that the applicant is responsible for the accident, the Disciplinary Authority and the Appellate Authority have come to a conclusion that the applicant is indirectly responsible for the accident. When the evidence on record positively reveals that the applicant has ~~not~~ ~~know~~ no knowledge about the trolley being brought on the track, how can the respondents come to the conclusion that the applicant is indirectly responsible for the act done by the

trolleymen. The Enquiry Officer, ~~as~~ the Disciplinary as well as the Appellate Authority should have applied their mind scrupulously having regard to the material on record and their conclusions should be followed by a clear and definite findings. In this case, there is no evidence at all to substantiate the charges ~~well~~ ^{Tribunal} levelled against the applicant. In such a case ~~well~~ ^{cannot} respondents cannot remain as mere spectators and allow the respondents to impose penalty. The order is not a speaking order. The interference of the Tribunal is, therefore, inevitable.

By drawing inferences and surmises, penalty should not be imposed. There must be positive evidence to come to the conclusion that the applicant is guilty of the charges. In this case, it is lacking.

The learned counsel for the applicant argues that the applicant is a seniormost employee and he is the Divisional Organising Secretary of Western Railway Employees Union, Bombay Division and Branch Secretary of Bilimora Unit and he is ripe for promotion. He states that there are no remarks against

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the applicant and the service record of the applicant is clean. The learned counsel states that because the applicant is ripe for promotion and in order to deprive his promotion, the applicant was penalised wantonly and according to him the orders of the respondents are not just and proper.

Of course, the applicant is ripe for promotion. While we are disagreeing with the contention of the learned counsel that the respondents deprived the ~~present~~ applicant to get his promotion, wantonly imposed the penalty, at the same time we hold that the impugned orders ~~is~~ are not a speaking orders and the respondents have not properly exercised their discretion and power in imposing the penalty against the applicant.

In the circumstances, taking into consideration the material on record, we are of the view that the impugned orders viz., Order No.E/E/308/3/2(87) dated 29-2-1988 passed by the Senior Divisional Engineer(I)Bombay Central and the order No.E/E/308/3/2(87) dated 16-8-1988 are liable to be quashed.

Accordingly they are quashed.

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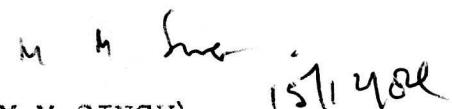
In the result, the applicant is allowed.

The respondents are directed to place the applicant to his original position with consequential benefits such as promotion, payment of difference of pay and allowances, increments etc.. The respondents are directed to implement these orders within three months from the date of receipt of these orders.

There will be no order as to costs.



(J. NARASIMHAMURTY)
Member (Judicial)


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(M.M.SINGH)
Member (Administrative)

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