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**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/118/1990

Date of Decision : 11/02/2000

Shri. Ramsamuj Girdharilal : **Petitioner (s)**

Mr.K. K. Shah : **Advocate for the petitioner(s)**

Versus

Union of India & Ors. : **Respondent(s)**

Mr.N.S.Shevde : **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr.V.Radhakrishnan : Member(A)

The Hon'ble Mr. P.C. Kannan : Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgment? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

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Ramsamuj Girdharilal
House No. A/23
Hanse Colony,
New Bapunagar,
Ahmedabad
Gujarat State.

= Applicant =

Advocate : Mr. K.K. Shah

Versus

1. Union of India,
Notice to be served through
Shri. Subramaniam or his
Successor, General Manager,
W.Rly., Church gate,
Mumbai - 20.
2. Shri. Govind Vallabh or his successor
Divisional Rly., Manager,
Divl. Office, W.Rly.,
Pratapnagar, Baroda (BRC).
3. Shri. A.K. Singh or his successor,
Divl. Mechanical Engineer (L)
W.Rly., Pratapnagar,
Baroda (BRC).

= Respondents =

Advocate : Mr. N. S. Shevde



JUDGMENT
O.A 118 OF 1990

Date : 11.02.2000

Per Hon'ble Shri. P. C. Kannan : Member (J).

The applicant in this O.A has challenged the orders of the respondents imposing the penalty of compulsory retirement (Annexure A-8 & A -10).

2. The case of the applicant is that he was working as Driver Grade 'B' under the respondents and had completed 32 years of satisfactory service. On 08.06.89 he was running a goods train on UP line from Ahmedabad to Baroda. On the river Mahi a single track bridge at Vasad is there as given in the Map (Annexure A). The applicant was running the train and it reached at Starter Main Line. As there was no red signal at Starter Main Line and at Signal B-33 also, there was no red signal, he continued the train. The signal GF-2 was found to be defective both before and after the incident. In spite of the fact that the signal at GF-2 was faulty, the respondents did not take any action. The applicant after getting signal at B-33, (Advance Starter) passed GF-2 which was also found to be yellow. The applicant proceeded further with an impression that the train was going straight on the bridge and setting of point for dead section surprised him and due to poor earth work, the train was derailed. The applicant claims that the subsequent inquiry found that due to poor earth work, the derailment occurred. The applicant submits that subsequently he was charge sheeted and gives chronologically the series of action taken.

- (a) 08.06.89 ; the accident took place.
- (b) 10.06.89 ; joint enquiry held.

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- (c) 21/22.06.89 ; charge sheet was served on the applicant (Annexure A-1).
- (d) 23.10.89 ; the applicant was placed under suspension (Annexure A-2).
- (e) 29.06.89 ; the applicant's defence counsel demanded certain documents (Annexure A-3).
- (f) 12.09.89 ; the applicant asked for certain documents (Annexure A-4).
- (g) 03.07.89; letter from the applicant to the Disciplinary Authority (Annexure A-5)
- (h) 26.09.89 ; letter of the applicant to the Inquiry Officer.
- (i) 03.11.89 ; Order of the Disciplinary Authority (Annexure A-8).
- (j) 19.11.89 ; Appeal to the Appellate Authority (Annexure A-9).
- (k) 21/22.12.89 ; Order of the Appellate Authority (Annexure A-10).

3. The applicant has challenged the report of the inquiring authority, Disciplinary Authority and the appellate authority inter alia on the following main grounds :-

- (i) No evidence was tendered to show that the applicant passed signal GF-2 at 'ON' position. The linesman who was the crucial witness was not examined. The applicant has never admitted that he passed the signal No. B-33 at VDA 'B' Cabin at 'ON' position and failed to control the Train (as given in the statement of imputation in the charge sheet).
- (ii) The respondents took no action against ASM, Vasad S/Shri. S. A. Patel and I.K. Mehta who were responsible for setting the wrong point and in controvention of SWR.
- (iii) The person who has given the signal to the goods train of the applicant for B-33 and GF-2 has not been examined and in the absence of direct evidence, the statement of Asstt. Driver cannot be believed.

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- (iv) The findings of the Inquiry Officer have been arrived at not on the basis of evidence received by him but on the basis of report and statements made before Major Joint Enquiry. The inquiry officer did not assess the evidence in the disciplinary inquiry and given reasons.
- (v) The disciplinary authority did not examine the records of the proceedings of the inquiry independently and did not apply his mind. The appellate authority had also not ^{led} apply his mind and dispose^d of the appeal in accordance with the DAR Rules.
- (vi) The action of the respondents by dropping certain witnesses and officers who have been examined in the Major Joint Inquiry clearly shows that the respondents failed to discharge their burden of proof.
- (vii) The fact that the respondents did not impose any penalty on the Guard of the Train clearly shows about the discriminatory attitude of the respondents.
- (viii) The action of the respondents by changing the SWR of Vasad after the above accident shows that the wrong was done by the Railways.
- (ix) The inquiry officer after his findings, has given certain "suggestions". This clearly implies that the derailment has occurred due to fault, signal system and the defective GF-2 signal and the operation on block section on single track was not implemented properly.
- (x) The action of the respondents by furnishing the inquiry report with the notice, imposing penalty is not in conformity with the rules.
- (xi) The respondents did not supply GR & SR Rules particularly Rules 2.01, 3.39, 3.26 etc., These rules clearly shows that the action of the applicant was fully justified and whatever misconduct that may be attributed should be against Assistant Station Master etc.,

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- (xii) After the accident, the provisions of the Accident Manual (Chapter IX) are required to be followed. The respondents did not produced the relevant reports.
- (xiii) The respondents did not produce the following vital documents as required by the applicant at the time of inquiry :-
- (i) Signal Defects and Maintenance Register
 - (ii) T.S.R. of GF & VDA 'A',
 - (iii) Signal Commissioned Register
 - (iv) Charge book diary of ASM, GF
 - (v) Statements of S/Shri. S.A. Patel, ASM, VDA ; I.K. Mehta, ASM, GF, VDA ; Ram Vilas Asst., Driver, (Preliminary inquiry) and Inquiry (Major Joint Inquiry).

(XIV) The applicant states that provisions of Station Working Rules (SWR) of Vasad shows that if a train running on UP line and once it is from Starter main line then after entering into block section; any down main line train requires to be stopped at Vasad 'A' Cabin or before that. This provision was violated in this case. The applicant demanded the production of the above rules but the same were not produced. The vital documents were also not produced. The applicant contends that this amount to violation of principles of natural justice and the DAR Rules.

4. The respondents in their reply denied all the allegations and contended that the orders passed by the authorities are legal, proper and constitutional.

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The respondents admitted that there is a single track Mahi bridge and there are loop lines (as per the Map at Annexure R-1). According to the respondents, GF-2 Signal is an important signal and GF-4 was not operated at the time of accident. The signaling installation at VDA / EGF was commissioned on 20.03.89 and being a new installation there were teething troubles for sometime causing signal / points failures. The Signal Failure Register enters all such failures.

5. Regarding the accident, it is stated that as the signal was yellow at B-33, at Starter Main Line and the applicant ought to have been cautious, it appears that the applicant got 'Off' signal on approach. It is also contended that signal was not defective on that date and the signal failure result is not relevant for the purpose of inquiry. It is claimed that the applicant had passed the signal GF-2 at Danger and had not observed the safety Rules. In the facts and circumstances, the respondents submitted that the O.A is devoid of merits.

6. We have heard Shri. K.K. Shah, counsel for the applicant and Shri. N. S. Shevde, counsel for the respondents. At our direction, the respondents produced the relevant file.

7. The charge sheet at Annexure A-1 refers to the statement of imputation of misconduct or misbehaviour of the applicant ;

While working as a driver by SIKKA-BRC up goods on 08.06.89 with engine No. WDM 2-17843, you were given UP Home Signal of VDA 'C' Cabin on approach because your train was to cross a down train at EGF, accordingly point No.4 of EGF VDA was set for dead end and signal No. EGF 2 was at 'ON' and no line

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clear was also obtained by EGF VDA ASM for your train No. EGF VDA 'A' Cabin. But you failed to observe 'ON' aspect of signal No. EGF.2, failed to control your train, passed signal No. EGF.2 at 'ON' position and entered into the dead end which caused derailment of your train. You also clearly admitted in your statement that, you passed signal No. B-33 at VDA 'B' Cabin at 'ON' position and failed to control the train.

You are thus, considered responsible for passing signal No. EGF 2 of EGF VDA at danger and non-observance of Safety Rules, violating GR.3.78 (1) (a) (b) and (4) GR.3.81 (1) (2) (3) and SR. 4.40 (2) and (3).

A perusal of the charge sheet shows that the applicant was proceeded against with major DAR enquiry mainly on the basis of 'Major Joint Inquiry' ^{Conducted by IF} respondents. While extracts from the findings of the report were annexed with the charge sheet, a copy of the said report along with the statements recorded in the inquiry were not supplied to the applicant. It is also admitted by the respondents that the applicant demanded the production of Signal Defects and Maintenance Register ; JSR of GF & VDA 'A'; Signal commissioned Register ; and charge book of ASM GF. In addition to copies of certain statements of certain employees recorded at the time of primary and Major Joint Inquiry were also demanded by the applicant (Annexure A-3 and Annexure A-4). It is admitted by the respondents that a copy of the Major Inquiry Report was not supplied to the applicant. It is also found that the Signal Defects Maintenance Register and other documents were not supplied to the applicant probably on the ground that the same were ^{not} relevant for the purpose of the inquiry.

8. The case of the respondents against the applicant is that he failed to observe 'ON' aspect of signal No. GF-2 ; failed to control the train ; passed signal GF-2 at 'ON' position and entered the dead end which caused the derailment. The respondents alleged that he clearly admitted the guilt.

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The respondents for the purpose of the above imputation relied upon the copy of the findings of the major inquiry report. The case of the applicant is that (i) the signals at that time were defective ; (ii) there were no violation of GR / SR Rules as contended by the respondents ; (iii) The evidence of Shri. I.K. Mehta clearly shows that he has given 'ON' position for B-33 signal and as per the rules, (^{single} signal block section) the applicant proceeded with the UP line train upto A-4. The inquiry report shows that the applicant passed B-33 signal not in the danger position. It is also claimed that between Vasad 'A' and GF, there is no station section and signal B-33 at Vasad 'A' is one block section. As the signal GF-2 was found defective, the applicant claims that he cannot be held guilty of the charge. The applicant also claim that there was not even one single witness before the inquiry officer who had deposed that the applicant had passed GF-2 signal in danger position. The inquiry officer in the report indirectly admitted that GF-2 signal was defective and the permission of the Chief Commissioner of Safety was not obtained and the driver cannot be held responsible for violating GR/ SR. The main thrust of the defence of the applicant is that there was no admission by him as claimed in the charge sheet about the guilt and that the section GF-2 signal was defective and the signal was not operated at the time of accident. For this purpose, the applicant relied upon the report of the Major Joint Inquiry, TSR of GF and VDA 'A', signal defects and Maintenance Register, Signal commission register and charge book of ASM GF. In our view, these are vital documents which are required to be placed before the inquiry officer to show that the contention of the applicant had no basis.

9. The Supreme Court in the case of Kashinath Dikshita V/s. UOI (1986) ATC 176 made the following observations ^{at para 12 and 13,}

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"When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in a effective manner. And no one facing a departmental inquiry can effectively meet the charges unless the copies of the relevant statements and documents to be issued against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegation are incredible."

The apex court at para 13 of the above judgment made the following observations :

" 13. The appellant relied on Trilok Nath V/s. UOI in support of the preposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case :

Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents being furnished to the appellant he might, after perusing them, have exercised his rights under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the inquiry officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura House and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.

Reliance has also been placed on State of Punjab V.s Bhagat Ram and State of U.P. V/s. Mohd. Sharif in support of the preposition that copies of statement of witnesses must be supplied to the Govt., servant facing a departmental inquiry. It has been emphatically stated in State of Punjab V.s Bhagat Ram by this Court as under (SCC p. 156, SCC (L & S) p. 19, paras 6,7 and 8)

The State contended that the respondents was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondents would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondents with the gist of the evidence.

The meaning of the reasonable opportunity of showing cause against the action proposed to be taken is that the Govt., servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The Govt., servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statement is that the Govt., servant will be able to refer to the previous statement of the witnesses proposed to be examined against the government servant. Unless the statements are given to the Govt., servant he will not be able to have an effective and useful cross-examination.

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It is unjust and unfair to deny the govt., servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges leveled against the govt., servant. A synopsis does not satisfy the requirements of giving the govt., servant a reasonable opportunity of showing cause against the action proposed to be taken. "

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We have carefully examined the matter whether there has been a denial to afford a reasonable opportunity in this case. In our view the documents like Major Inquiry Report, Signal Defects and Maintenance Register, Signal Commission Register, Statements recorded at Major Inquiry are important documents and the failure to furnish the same must be held to have caused prejudice to the applicant. The applicant was superannuated during the pendency of this O.A. In the case of R. Parangusam Vs. Chief Electrical Inspector and Another (1996) 10 SCC 55, the Hon'ble Supreme Court in similar circumstances, set aside the compulsory retirement and directed that there should not be any fresh inquiry and the Govt., was directed to consider the case of the appellant for promotion on a par with the juniors promoted pending inquiry, and if found eligible grant him promotion and other consequential benefits. Taking into account all the facts and circumstances of this case and the time which has elapsed and the observations of the Supreme Court in the cases referred to the above, We are of the opinion that the impugned order of the compulsory retirement rendered by the disciplinary authority is violative of article 311 (2) of the Constitution as the applicant had been denied reasonable opportunity of defending himself and ~~he~~ ^{he} is on that account null and void. In the light of the above, we do not propose to deal with other grounds raised in the O.A. We accordingly allow the O.A and quash the order of the disciplinary authority as at Annexure A-8 and the order of the appellate authority as at Annexure A-10.

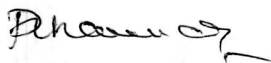
We are of the opinion that the respondents should not be permitted to hold a fresh inquiry against the applicant on the charges in question. The respondents are directed to consider the case of the applicant as if he was in service till the date of

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superannuation and consider him for further promotion on par with his juniors who were promoted during the pendency of the inquiry and then grant him promotion if he is found eligible. The respondents may determine the notional scale of pay of such promotional post and pay the arrears of the salary and pension as if the applicant had retired on promotional post. With the above direction the O.A is finally disposed of with no orders as to costs.



(P.C. Kannan)
Member (J)



(V. Radhakrishnan)
Member (A)

mb

<div>तारीख</div> <div>DATE</div>	<div>कार्यालय टिप्पणी</div> <div>OFFICE REPORT</div>	<div>आदेश</div> <div>ORDER</div>
8.9.2000	<p>Notice was issued on 19.9.2000 RAN</p> <p>awaited</p>	<p>Heard Mr. Dhotare, counsel for the complainant. Issue notice to the respondents returnable on 20.10.2000.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(P.C. Kannan) Member (J)</p> <p>Mb</p>
20.10.2000		<p>Mr. Shevde files vakalat- name on behalf of the respondents. He seeks and granted time for filing reply. Adjourned to 6.12.2000.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(P.C. Kannan) Member (J)</p> <p>pkn</p>
06/12/2000		<p>Mr. Shavde for the respondents seeks time for ^{filing} reply. Adjourned to 22/01/2001.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(P.C. Kannan) Member (J)</p> <p>Raj/</p>

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દિનાંક
Date

કાર્યાલય ટિપ્પણી
Office Report

આદેશ
Order

2.12.2001

Heard Mr. Shevde, learned counsel for the respondents.

Oral order dictated in the Open Court.

(G.C. Srivastava)
Member (A)

(D.N. Chowdhury)
Vice Chairman.

nkk.

दिनांक Date	कार्यालय टिप्पणी Office Report	आदेश Order
25.6.2001		<p>Mr. Shevde files reply to the C.P. He also submits that the special C.A. filed against the decision in the O.A 118 of 90 is admitted by the High Court and as such this C.P. does not survive Mr. Dhotre for the applicant is not present and hence adjourned to 24.7.2001 for verification.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(A.S. Sanghvi) Member (J)</p>
24/07/2001		<p>Mr. Dhotre for the applicant submits that he is not aware about the admission of the special C.A. in the High Court and that stay granted by the High Court or not. Mr. shevde is not present. Mr. shevde is directed to produce the orders passed in the High Court. Adjourned to 10/08/2001.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(A.S. Sanghavi) Member (J)</p> <p>CMJ/</p>
10.8.2001		<p>Mr. Shevde says that Civil Application No. 135³⁴/2000¹⁵ has filed by the respondents before the Hon'ble High Court which has ^{is} already been admitted and is pending for ^{an} for hearing. He also says that Mr. K.K. Shah has ^{has} appeared for the applicant therein, and Mr. K.K. Shah ^{also} confirms that he had ^{has} appeared for the applicant in the High Court and the matter is already admitted. In view of these developments, C.P. is adjourned to 2.11.2001.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(A.S. Sanghavi) Member (J)</p>

Plm

દિનાંક Date	કાર્યાલય ટિપ્પણી Office Report	આદેશ Order
2.12.2001		<p>Heard Mr. Shevde, learned counsel for the respondents.</p> <p>Oral order dictated in the Open Court.</p> <p>(G.C.Srivastava) Member (A)</p> <p>(D.N.Chowdhury) Vice Chairman.</p> <p>nkk.</p>

दिनांक Date	कार्यालय टिप्पणी Office Report	आदेश Order
25.6.2001		<p>Mr. Shevde files reply to the C.P. Heals submits that the special C.A. filed against the decision in the O.A 118 of 90 is admitted by the High Court and as such this C.P. does not survive Mr. Dhotre for the applicant is not present and hence adjourned to 24.7.2001 for verification.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(A.S. Sanghavi) Member (J)</p> <p>Mo</p>
28/07/2001		<p>Mr. Dhotre for the applicant submits that he is not aware about the admission of the special C.A. in the High Court and that stay granted by the High Court or not. Mr. shevde is not present. Mr. shevde is directed to produce the orders passed in the High Court. Adjourned to 10/08/2001.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(A.S. Sanghavi) Member (J)</p> <p>CMJ/</p>
10.8.2001		<p>Mr. Shevde says that Civil Application No. 13534/20009 has filed by the respondents before the Hon'ble High Court which has already been admitted and is pending for for hearing. He also says that Mr. K.K. Shah says has appeared for the applicant therein and Mr. K.K. Shah confirms that he had appeared for the applicant in the High Court and the matter is already admitted. In view of this ^{e c} developments, C.P. is adjourned to 2.11.2001.</p> <p>(G.C. Srivastava) Member (A)</p> <p>(A.S. Sanghavi) Member (J)</p>

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**C.P No./40/2000 in
O.A.No/118/1990**

Date : 2.11.2001

Mr. Ramsamuj Girdharilal : Applicant(s)

Mr. V.M. Dhotare : Advocate for the Applicant(s)

Versus

Union of India & Others : Respondents

Mr. N. S. Shevde : Advocate for the Respondent(s)

CORAM:

HON'BLE Mr. D.N. Chowdhury : **VICE CHAIRMAN**
HON'BLE Mr. G.C. Srivastava : **MEMBER (A)**

JUDGMENT

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

:2:

Shri Ramsamuj Girdharilal
Resident of A/23 Hanse Colony
New Bapunagar, Ahmedabad.

Applicant

Advocate: Mr. V.M. Dhotare

Versus


1. Shri V.D. Gupta and/or
his successor in the office
General Manager
Western Railway, Churchgate,
Mumbai-20.
2. Shir K.C. Jehna and/or his
successor in the office
Divisional Railway Manager
Western Railway, Pratapnagar
Baroda.
3. Shri A.K. Mishra, and/or his
successor in the office,
Divisional Mechanical Engineer (L)
Western Railway, Pratapnagar
Baroda.

Respondents

Advocate: Mr. N.S. Shevde

C.P. 40/2000 in OA 118/1990

ORDER (ORAL)

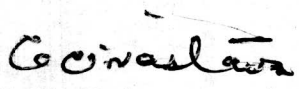
 **Hon'ble Justice Shri D.N. Chowdhury : Vice Chairman**


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Date : 2.11.2001

It appears that against the order of the Tribunal dated 11.2.2000 in the OA/118/90, the party has approached to High Court under Article 226 of the Constitution of India and the judgement of the Tribunal is under scrutiny by the High Court. In the circumstances, contempt proceedings stand dropped.


(G.C. Srivastava)
Member (A)


(D.N. Chowdhury)
Vice Chairman

Nkk.