

# CENTRAL ADMINISTRATIVE TRIBUNAL

## AHMEDABAD BENCH



**O.A. NO.** 64/91

DATE OF DECISION 08-3-95

Mr. S. Pawade Sadayappan Petitioner

Mr. A.K. Chitnis Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

Mr. R.M. Vin Advocate for the F

**CORAM**

The Hon'ble Mr. V. Radhakrishnan Member

The Hon'ble Dr. R.K. Saxena

### JUDGMENT

1. Whether Reporters of Local papers may be allowed
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 Bench

the Judgment ?

the Judgment ?

es of the Tribunal ?

No

S. Pawade Sadayappan  
C/o PWI (R)  
Railway Station  
Bulsar

Applicant

Advocate

Mr. A.K. Chitnis

Versus

1. Union of India  
Notice to be served on  
The General Manager  
Western Railway  
Churchgate Bombay.
2. The Divisional Railway Manager,  
Western Railway, Churchgate,  
Bombay.
3. The Chief Permanent Way Inspector (PQRS)  
Bulsar.

Respondents

Advocate

Mr. R.M. Vin

J U D G M E N T

In

O.A. 64/ 1991

Date: 08-3-95

Per Hon'ble

Dr. R.K. Saxena

Member (J)

The applicant has approached this Tribunal challenging the order Annexure-A passed by the Appellate Authority on 4-10-1988 whereby the order of removal from service passed by the Disciplinary Authority, was modified to the reduction to the post of casual gangman acquiring temporary status on pay of Rs. 811/- per month for a period of three years with future effect. By subsequent amendment,

the order Annexure A-13 on 30-11-1989 confirming the order dated 4-10-1988 in appeal was also challenged.

2. The brief facts of the case are that the applicant was initially appointed as Daily Wager Gangman on 7-8-1978 at the rate<sup>1</sup> of Rs. 4.50ps. per day. He was then made a casual mate at the rate of Rs. 6.00 per day. Thereafter he was given skilled status on 21-7-1979 and was ultimately given temporary status on 1-1-1983 in the scale of Rs. 260-400 (R/Rs. 950-1500 (RS)), and his pay was fixed at Rs. 990<sup>2</sup>. He however, continued to work as casual Gangman. He was placed under suspension with effect from 30-12-1989 vide order dated 29-12-1987 passed by the Assistant Engineer (TR) Bulsar. He was also served with the charge-sheet with a charge that he was carelessly and negligently working and was responsible for violating G.R.15.22, G.R. 15.27 resulting in the Derailment of Engine No. 21818 with SLR 5623 and GS 5158 of 147 DN between VGN - DRD on 28-12-1987. The statement of imputations of misconduct or mis-behaviour with charge<sup>3</sup> that Shri Pawade Sadayappan mate VGN while working as Mate between VGN-DRD on 28-12-1987, <sup>4</sup>he placed the dip lorry on the track and is held responsible for not protecting the lorry in the<sup>5</sup> proper manner<sup>6</sup> and which<sup>7</sup> resulted into the derailment of engine No. 21818 with SLR 5623 and GS 5158 of 147 DN between VGN, DRD on 28-12-1987. He is held, therefore, responsible for violating GR 15.22 GR 15.27 resulting into

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derailment of engine No. 21818 with SLR 5623 and GS 5158 of 147 DN between VGN-DND on 28-12-1987 amounting careless and negligent working. The charge was denied. However, the Major-Joint-Enquiry-Committee was formed which started with the inquiry and recorded the statements of the witnesses. The charge against the applicant was found established. The Disciplinary Authority, therefore, passed the order on 21-6-1988 of removal from service.

3. The applicant preferred an appeal against the said punishment order to the Additional Divisional Railway Manager, Bombay who reduced the penalty from removal from service to that of reduction to the post of casual Gangman of temporary status in the scale of Rs. 775-1025 for a period of three years with future effect. The intervening period from 28-6-1988 — the date of removal from service to 9-10-1988 — the date of reinstatement after the order passed in appeal, was treated as a period not spent on duty. In the meantime the General Manager issued notice dated 19-6-1989 to the applicant to show cause as to why the penalty which was reduced in appeal, should not be enhanced. The applicant submitted explanation, Annexure A-12, on 24-7-1989. On the consideration of the explanation, the applicant was informed vide, Annexure A-13, that the proceedings for enhancement of penalty, have been dropped. Thus the order which was in appeal, remained in force and the said order has been challenged here.

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4. The respondents contested the case on the ground that the original application was barred by limitation because the order in appeal was passed 4-10-1988 whereas this O.A. was submitted in December 1990. It is also the case of the respondents that the plea of representation having been made by the applicant is not correct and it is being used only to gain time and bring the application with<sup>in</sup> the period of limitation. It has also been contended that the punishment was awarded to the applicant after adopting proper procedure and giving proper opportunity to the applicant. So far as the punishment is concerned, the case of the respondents is that in the event of derailment of engine carrying passenger train, should warrant only removal from service whereas the applicant has been dealt with leniently and therefore, there is no question of further leniency. It is also averred that the P.W.I. under whom the applicant was working was also found guilty of carelessness and negligent<sup>and</sup> he too was punished by reducing him to the lower post of P.W.I. Gr. III on pay of Rs. 1640/- in the scale of Rs. 1400-2300 for one year without future effect. On this ground, the application is required to be dismissed.

5. We have heard the learned counsel for the applicant and the respondents and have perused the record.

6. The fact that the applicant was working as Gangman is not in dispute. It is also not in dispute that he had put a dip trolley on the track and when the passenger train came, the said trolley was neither



protected properly nor could be removed from the track. The result was that the engine collided with the trolley and there was derailment of the Engine. Naturally inquiry was to be conducted in the matter and the applicant was charge-sheeted and inquiry started. The learned counsel for the applicant did not show any procedural defect in the inquiry. The result, therefore, is that when the facts are admitted and there is no defect in the inquiry procedure, there remains limited scope for interference by the Tribunal.

7. The learned counsel for the applicant had been arguing that the applicant was not a trolley<sup>1</sup>-man and he did not possess the requisite qualification which is required for an employee handling trolley. In this connection, he drew our attention towards the Rules S.R. 15.22 (3) (a). This Rule<sup>2</sup> lays<sup>2</sup> down that no Railway employee is permitted to work a trolley or a lorry unless he has passed the competency examination for working of trolley/lorry and obtained certificate for the same.

8. It has also been pointed out that during inquiry this fact was admitted by the witnesses that the applicant was not in possession of the competency certificate. The P.W.I. had also admitted that the applicant was given only two red and green signal flags for protection of the trolley. His argument is that

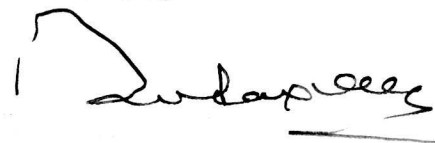
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when the applicant was not having competency certificate, the Permanent Way Inspector should not have entrusted the work of putting the trolley on the rails and to protect the same <sup>in violation of</sup> ~~according to~~ the Rules. Of course, it may be a mitigating ground only but cannot absolve the applicant from the charge altogether. We inquired of the learned counsel for the applicant as to why he complied with the directions of the Permanent Way Inspector of putting the trolley on track when he was not possessing the competency certificate. Had he refused to comply with the orders which was not legal, he would have been required to face the charge of insubordination at the most. But now he got the engine derailed by putting the trolley on the track and failed to remove the said trolley when the passenger train was coming from the opposite direction. His only answer was that the applicant simply complied with the directions of the Permanent Way Inspector who should be held responsible. Our attention has been drawn by the learned counsel for the respondents that the Permanent Way Inspector was charge-sheeted and punished. It is really surprising that the punishment which has been awarded to the Permanent Way Inspector is the reduction to the lower post of P.W.I Grade III for one year and that too without future effect, whereas the applicant has been penalised severely because he has not only been reduced to the lower Grade for three years but had also been given future effect. Looking to the fact that the applicant was not having

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the competency certificate to handle the trolley yet the Permanent Way Inspector directed the applicant to discharge the same function. The record reveals that the passenger train of which the engine derailed, was a non-vacuum train. The applicant has brought on record, Annexure A-6, which is the extract of the Major Joint Inquiry Committee Report. In this report, it has been accepted that the train was running without vacuum. In these circumstances the punishment awarded to the applicant appears to be too severe. We, therefore, direct the Appellate Authority to reconsider the quantum of punishment particularly in comparison with the punishment awarded to Permanent Way Inspector. The reconsideration about the punishment should be made within a period of three months from the date of the receipt of the copy of this judgment.

9. The application is disposed of accordingly. No order as to costs.

  
(Dr. R.K. Saxena)  
Member (J)

  
(V. Radhakrishnan)  
Member (A)

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