

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

Original Application No. 367 of 1990

Date of decision: 6.8.1993

Shri Narayan Prasad Ghanto Applicant
-Versus-
Union of India and others Respondents

For the Applicant ... M/s. A.Patnaik, L.Pangari,
N.C.Patnaik, S.Udgata,
T.K.Mitra, Advocates

For the Respondents ... Mr. Ashok Mohanty,
Standing Counsel (Rly.)

C O R A M :-

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN
&
THE HONOURABLE MR. M.Y.PRIOLKAR, MEMBER (ADMN.)

1. Whether reporters of local papers may be
allowed to see the judgment ? Yes.
2. To be referred to the reporters or not? Yes.
3. Whether Their Lordships wish to see the
fair copy of the judgment? Yes.

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JUDGMENT

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the impugned order of punishment contained in Annexure 3 and the appellate order confirming the order of punishment contained in Annexure-4.

2. Shortly stated the case of the petitioner is that while he was working as Station Master, Baranga Railway Station on 16th September, 1989, the 9UP Jagannath Express travelling from Howrah to Puri on line No.5 collided at its side with an Engine of goods train standing on line No.4 without causing any injury to any human life. Opposite Party No.1 had himself conducted a spot inspection and on the basis of preliminary report prepared by Opposite Party No.1, against the petitioner and after a fulfledged enquiry was held, the enquiry officer found that the charge No.1 was not established and charge Nos.2 and 3 were proved. Accordingly the enquiry officer submitted his findings to the Disciplinary Authority i.e. Opposite Party No.1 who by his order dated 16th April, 1980 contained in Annexure-3 imposed a penalty reverting the petitioner to the Post of Assistant

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Station Master for a period of five years. The matter was carried in appeal and the appellate authority vide his order dated 12th June, 1990 contained in Annexure 4 confirmed the order of punishment. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the case being one of full proof of evidence and principles of natural justice having been strictly followed, the order of punishment should not be unsettled - rather it should be sustained.

4. We have heard Mr. Ananga Patnaik learned counsel appearing for the petitioner and Mr. Ashok Mohanty learned Standing Counsel (Railway) at a considerable length. Before we deal with the merits of this case it would be profitable to succinctly state the charges framed against the petitioner to find out as to whether the charges are interconnected. In charge No. 1 it is stated that the petitioner while functioning as Station Master, Barang during the period from 00.00 hours to 8.00 hrs. on 16.9.1989 failed to ensure that the line over which 9 UP Express was to pass was cleared and free from obstruction before giving permission to North Cabinman to take off reception signals

for reception of 9 UP line No.5 as a result of which a particular side of 9UP Express collided with one side of the Engine of 504 goods train standing on line No.4. In regard to Charge No.2 it is stated that the petitioner failed to withdraw shunting authority from the driver of D/L Engine or 504 goods before giving permission to take off signals for reception of 9 UP express on Line No.5 and in regard to Charge No.III it is alleged that the petitioner had violated GR 5.14 in allowing shunting of engine in the face of an approaching train.

5. While dealing with Charge No.I, the enquiry officer has specifically stated that the Cabin Man took it for granted that the other line was cleared and therefore, he had normalised the levers for setting points for 9 UP and PN was issued to SM without verifying any further regarding the clearance of the concerned line within his jurisdiction as per SWR/BRAG. Again in paragraph 2 of the report it has been observed by the enquiry officer that the driver after backing the engine to route No.4 has observed that his engine was fouling to route No.5. The driver had neither exhibited danger to the Cabinman nor he had given whistle to apprise the Cabinman and Station master regarding the fouling of route No.5. Concurring with

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with these findings, the disciplinary authority held that Charge No.1 was not established. Since there was no negligence on the part of the petitioner in regard to Charge No.1 which is interconnected with allegations contained in Charge No.2, we are unable to accept the reasons assigned by the concerned authority that Charge No.2 was established or proved. So far as Charge No.3, is concerned, there is no detailed discussion in the enquiry report or by the disciplinary authority. Except that, it is stated that the Station master should not have allowed shunting of the knight engine on route No.4 within the short time. The Petitioner should be held guilty of Charge No.3, if he would have allowed shunting at a time when line clear was given to the 9UP express. That is not so. After the Cabin Man was convinced that line was clear and signal was given, the shunting was not allowed. The Shunting had taken place long after the station master had received the correct PN and then asked him to lower down the signal for 9UP. We fail to understand as to how the petitioner violated the provisions contained in GR 5.14. In such circumstances, we are of opinion, that the petitioner cannot be held liable or guilty for charge Nos.2 and 3. Apart from the above, it would be found that the disciplinary authority namely

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Shri V.B.Mathal, Divisional Safety Officer, Khurda Road had made a spot inspection before he had initiated the disciplinary proceeding and had framed charges against the petitioner. This eventually means that he had personal knowledge about the facts and circumstances of the case relating to which charges were framed against the petitioner. In the case Arjun Choubey Vs. Union of India and others reported in AIR 1984 SC 1356, Hon'ble Mr. Justice Chandrachud C.J. of the Hon'ble Supreme Court speaking for the Court was pleased to observe as follows :-

"The order of dismissal was illegal on the ground that the order was passed by the Superintendent after considering the explanation himself which violated the principles of natural justice. The main trust of the charges against the employee related to his conduct qua the Superintendent. Therefore, it was not open to the Superintendent to sit in judgment over the explanation offered by the employee and decided that the explanation was untrue. No person could be a judge in his own cause and no witness could certify that his own testimony was true. Any one who had a personal stake in the enquiry must have kept himself aloof from the enquiry". (emphasis is ours)

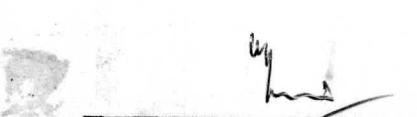
By the last three lines (which have been underlined) personal stake includes personal knowledge. After having gained some personal knowledge in the spot

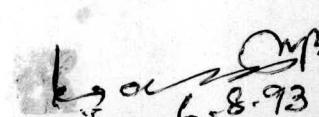
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inspection, possibility of using one's personal knowledge ~~in which~~ while passing the quasi judicial order cannot be overruled. Therefore, in our opinion, The Divisional Safety Officer should have kept himself aloof from passing any quasi judicial order. 'Justice shall not only be done, there must be a manifestation of Justice being done'.

6. In view of the aforesaid facts and circumstances and in view of the reasonings given above, we are of opinion that the order of punishment is not sustainable. Hence the enquiry report contained in Annexure 2 and the order of disciplinary Authority reverting the petitioner to the post of Assistant Station Master and the appellate order confirming the order of disciplinary authority are hereby quashed. The petitioner is exonerated from Charge Nos. 2 and 3 and stands acquitted.

7. Thus, the application stands allowed leaving the parties to bear their own costs.


MEMBER (ADMINISTRATIVE)


6.8.93.
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
6.8.1993