

9

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.135 OF 1995

Cuttack, this the 24th day of December, 1998

Agapitha Kispotta                      .....                      Applicant

Vrs.

Union of India and others .....                      Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO.*

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN *21.12.98*

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

10

ORIGINAL APPLICATION NO.135 OF 1995  
Cuttack, this the 24th day of December, 1998

**CORAM:**

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Agapitha Kispotta,  
son of late Patras Kispotta,  
previously working as Diesel Driver,  
Bandhamunda Railway Station,  
At/PO-Bandhamunda,  
District-Sundargarh,  
now reverted from the service,  
presently residing at Quarter No.E-65,  
Sector-E, Bandhamunda Railway Colony,  
At/PO-Bandhamunda,  
District-Sundargarh,  
a permanent resident of Dumurmunda,  
P.O-Bisra Kirkeria,  
District-Sundargarh       .....       Applicant.

Advocate for applicant - Mr.S.Palit.

**Vrs.**

- J. Som*
1. Union of India,  
represented through General Manager,  
South Eastern Railway,  
Garden Reach, Calcutta.
  2. Senior Divisional Mechanical Engineer,  
Chakradharpur Division, South Eastern Railway,  
At/PO-Chakradharpur,  
District-Singhbhum (Bihar).
  3. Divisional Mechanical Engineer (II),  
Chakradharpur Division, South Eastern Railway,  
At/PO-Chakradharpur,  
District-Singhbhum (Bihar).

4. Enquiry Officer, S.L.I, Bandhamunda,  
South Eastern Railway,  
At/PO-Bandhamunda,  
District-Sundargarh ..... Respondents.

Advocates for respondents - M/s B.Pal  
O.N.Ghosh  
S.K.Ojha.

O R D E R

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the enquiry report at Annexure-A/5 and the order dated 8.12.1994 at Annexure-A/7 removing him from service. He has also asked for all consequential benefits. At the time of admission of this petition, the applicant's appeal before the departmental authorities against the order of punishment was pending. After the same was rejected, he filed amendment petition to bring within the ambit of this O.A. the order of the appellate authority rejecting his appeal. Thus, he has also prayed for quashing the order of the appellate authority rejecting his appeal against the order of punishment.

2. Facts of this case, according to the petitioner, are that he was a Diesel Driver working under Divisional Mechanical Engineer (II), Chakradharpur Division (respondent no.3). On 16.4.1994 he was driving Train No.NKKC - 751 CCB2. The train left KMPD Station at

S. Sam.

13

12

1.45 hours and while the train was approaching down outer signal of Tupdih Station, the applicant wanted to stop the train as there was no light in the Outer Signal. At that time, he noticed that Auto Brake operating handle of Engine had suddenly fallen and rolled down towards driving seat. The Assistant Driver immediately jumped from his seat and handed it to the applicant within a minute. By that time, the train had picked up considerable speed and the applicant was unable to stop the train. However, the emergency brake was immediately applied and the train stopped. The applicant has mentioned that there was no damage due to the above accident nor did the Railway suffer any loss. Because of the above incident, the applicant along with two others were placed under suspension and chargesheet dated 4.5.1994 at Annexure-A/1 was issued to him. The applicant filed a representation denying the allegation. He also mentioned that he has not been supplied copy of the statement of witness. He prayed that statement of witnesses should be supplied to him after which he will submit his detailed reply to the allegation. In response to his letter at Annexure-A/2, the applicant was informed in letter dated 1.7.1994 at Annexure-A/3 that he would get copies of the documents

J. Som.



13

13 after starting of the enquiry as there is no statement of Shri G.S.Rao, Guard, Bandhamunda. The applicant submitted his detailed explanation in his letter dated 12.7.1994 at Annexure-A/4 in which he pointed out that no loss has been caused to the Railways and the accident occurred because there was no light in the Outer Signal of Tupdih Station. He also submitted the name of his defence counsel. The disciplinary authority appointed an Inquiry Officer, and the Inquiry Officer conducted the enquiry ex parte and held in his report dated 14.9.1994 at Annexure-A/5 that the charge against the applicant has been proved. The applicant submitted a representation at Annexure-A/6 against the report of enquiry. That was taken into consideration by the disciplinary authority who in the impugned order dated 8.12.1994 at Annexure-A/7 imposed the punishment of removal from service on the applicant. The appeal of the petitioner is at Annexure-A/8 and the rejection order dated 24.1.1995 is at Annexure-A/9. The applicant has challenged the enquiry report and the order of punishment as also the order of the appellate authority on the ground of denial of natural justice in so far as the documents were not supplied to him. The applicant has stated that his suspension was not done as per the Railway Servants (Discipline and Appeal) Rules, 1968 and therefore, the entire proceedings started with mala fide intention.

S. Ram.

15

14

3. The respondents in their counter have taken the stand that in view of several decisions of the Hon'ble Supreme Court the nature of proceedings before the Tribunal is similar to writ of certiorari before the Hon'ble High Court and therefore, it is not open for the Tribunal to look into any extraneous material referred to in the O.A. except record of the proceedings which had culminated in the order of removal from service of the applicant. The respondents have stated that except the record of proceedings, other records need not be gone into. The respondents have stated that while the applicant was a Diesel Driver at Bandhamunda <sup>he</sup> was driving Diesel Engine NKKC 751 CCB2 on 16.4.1994 ; he left Karampada (KMPD) Station at 1.45 hours and failed to stop the train at the foot of down outer signal of Tupdih (TPDH) Station and overshot the signal and entered into catch siding of Tupdih Station with 3 Locos and 3 N. Box (L) at 2.20 hours on 16.4.1994. The failure of the applicant to stop the train at the appropriate place was in violation of the safety rules contained in GR 3.78(1), the extract of which is at Annexure-R/1. Accordingly, chargesheet was issued to him and after explanation was given by the applicant, the Inquiry Officer was appointed and regular proceedings were started. The applicant refused to take part in the

J. Som.

13  
enquiry despite notice and the enquiry was held ex parte. The applicant refused to take part in the proceeding on the ground that he has been placed under suspension illegally. The respondents have stated that the catch sidings are provided on the line ghat section on down direction so that the train will be controlled to avoid excess acceleration and the brake power of the train will be ensured to avoid heavy mishap. If the Driver cannot control the train, the train will enter the catch siding. It is mandatory for the Driver to stop the train at the foot of the signal and it is known to the applicant. In this case there was no complaint about brake power and due to his sheer negligence the train has entered into the catch siding even though there was no damage. The excuse of the applicant that the brake handle dropped is not tenable because there was another emergency brake available to bring the train to stop. The applicant has disregarded the rule to stop the train at the outer signal without any valid reason. Disobeying this rule might have caused very heavy damage and loss of life and violation of these rules is taken very seriously. The respondents have stated that all documents except the statement of Shri G.S.Rao were supplied to the applicant and with regard to

2 Jan

16

the statement of Shri G.S.Rao, it was indicated that the same would be supplied to him or made available to him before beginning of the enquiry by the Inquiry Officer. On the statement of the applicant that in the Outer Signal of Tupdih Station there was no light, the respondents have stated that under rules in force a signal without light has to be considered defective and the applicant should have treated the signal without light as defective and ought to have taken steps accordingly by stopping the train as there was no light in the signal as admitted by him. He has been charged for violation of important safety rules and not for any loss caused to the Railways. It is stated that the ex parte enquiry was conducted because the applicant did not attend the enquiry. The enquiry was conducted in accordance with rules and no illegality was involved. It is further stated in paragraph 10 of the counter that from the records it is seen that the applicant with similar disregard to the safety rules, had caused an accident which resulted in derailment of locomotives and wagons at Railway Station, Tati, on 21.4.1994. This showed scant respect of applicant for safety rules and the decision of the disciplinary authority is not because of any loss to the Railway property but because of the applicant violating the

J.S.M.

18

17

safety rules as a consequence of which the train passed the outer signal at high speed entering the catch siding which is reckoned as an accident. In view of this, the respondents have stated that continuance of the applicant in the Railways service would have been dangerous from the point of safety and therefore, the punishment of removal from service is justified.

4. The applicant has filed a Rejoinder in which he has denied that he has violated the safety rules contained in GR 3.78(1) for which he was suspended. He has further stated that on the date of the incident on 16.4.1994 the light in the signal was not burning and therefore, for violation of the aforesaid rule, if any, the Driver cannot be made liable. He has further quoted Rule 3.74(1) under which it is laid down that if during night the signal light is extinguished the Driver shall bring his train to a stop at such signal. If during day he finds that the signal is clearly visible and he is satisfied that the signal is in the "Off" position, he shall proceed past it upto the station cautiously at a restricted speed obeying all intermediate Stop signals, if any, relating to him and report the matter to the Station Master for necessary action. He further states that as

✓ Som .



19

18

there was no light in the Stop Signal the applicant obeyed this rule and reported the matter to the Station Master of Tupdih Station. He has further stated that the Rules enclosed by him at Annexures-A/9 and A/10 lay down what the Station Master is required to do if the signal is defective, but these actions have not been taken by the Station Master, Tupdih and therefore, he cannot be held liable. He has further stated that GR 3.68(2) lays down that the very knowledge of defective signal should be intimated to the Driver by the Station Master of the starting Station, i.e., the Station of Karampada, which has not been done in this case. He has further stated that after the train entered the catch siding which is taken as an accident, according to Rule 10.26 of Accident Manual which is at Annexure-A/11, the Station Master has to verify the Vacuum System and reckon the distance passed by the train before coming to stop and the report of the same should be entered in the Station Diary, but none of these has been done and this proves the innocence of the applicant. He further states that as the brake handle was detached , the applicant shouted at the Assistant Driver to apply emergency brake which was applied and the train stopped. He has further stated that for the same incident the Assistant Driver, one M.M.Mishra was also chargesheeted, but he was exonerated of the charge. But

S. Som.

19  
for the same incident, the Inquiry Officer has found the applicant guilty and the disciplinary authority has imposed the punishment of removal from service. On the above grounds in the Rejoinder the applicant has reiterated his prayer in the O.A.

5. We have heard Shri S.Palit, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Panel Counsel appearing for the respondents, and have also perused the records. The departmental authorities have produced the proceedings file and we have gone through the same very carefully.

6. On the question of non-supply of documents, it is seen that in Annexure-A/1, which is the memo enclosing the charge, the applicant was informed that if he so desires he can inspect and take extracts from the documents mentioned in the enclosed list of documents at Annexure-III. Under Annexure-III enclosed to the charge only one document is mentioned, i.e., joint finding of SLI, TXR and Sr.DTI of Bandamunda, dated 16.4.1994. The respondents have indicated in their counter that this document was supplied to the applicant. This is also borne out by the fact that the applicant in his letter dated 18.6.1994 at Annexure-A/2 has denied the charge and has stated that he has not been supplied the copy of the statement of witness as per Annexure-IV. In this letter he

Jdm.



has not mentioned about non-receipt of the document mentioned at Annexure-III. Therefore, the conclusion is inescapable that the averment of the respondents in the counter that the document has been supplied to the applicant is correct. This contention of the applicant is, therefore, rejected.

7. As regards the statement of G.S.Rao, Guard, this has been mentioned in Annexure-IV to the charge, which is a list of witness by whom the articles of charge framed against the applicant are proposed to be sustained. In this only the name of Shri G.S.Rao, Guard has been mentioned. The applicant has asked for supply of copy of statement of G.S.Rao and he has been informed in letter dated 1.7.1994 at Annexure-A/3 that no statement of Shri G.S.Rao has been recorded. From the report of the enquiry we find that the statement of G.S.Rao, Guard, was recorded during enquiry which the applicant did not attend and therefore, copy of the statement of Shri G.S.Rao, Guard, could not have been supplied to him earlier. Had the applicant attended the enquiry, he could have cross-examined Shri G.S.Rao after his examination. But the applicant chose not to attend the enquiry and therefore, he cannot make a grievance of this

J. Som.

22

21  
point.

8. The second aspect of the matter is that the enquiry was held ex parte. This was because the applicant himself wrote to the Inquiry Officer that he would not attend the enquiry as he has been wrongly placed under suspension. This contention is without any merit because even if it is taken for argument's sake that he was placed under suspension wrongly, that would not mean that he would not attend an enquiry. He stayed away from the enquiry voluntarily and therefore, he cannot take the plea before us that the enquiry has been held ex parte. This contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

9. In consideration of the above, we hold that the prayer of the applicant to quash the enquiry report is without any merit and the same is rejected.

10. The learned counsel for the petitioner has addressed us at length on the question of punishment. The extent to which the Tribunal can look into the question of punishment has been laid down by the Hon'ble Supreme Court in a series of cases and we are conscious of our limitation in this regard. But before going into that aspect, the relevant rules will have to be quoted.

S Sm.

23

22

Normally for the Central Government employees, who are governed by Central Civil Services (CCA) Rules, 1965, the different minor and major penalties are set out in the Rules and it is for the disciplinary authority to decide the question of punishment taking into account the seriousness of the lapses proved against the delinquent official. The relevant rules under the CCS (CCA) Rules, 1965 themselves do not provide for a particular punishment for any particular lapse. Here the applicant is governed by the Railway Servants (Discipline & Appeal) Rules, 1968 and these Rules are slightly different with regard to the above aspect. Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968 lists out the minor and major penalties. Briefly stated, the major penalties are: reduction to the lower stage in the time scale of pay for a specified period, reduction to a lower time scale of pay, compulsory retirement, removal from service, and dismissal from service. The first proviso to Rule 6 is important and this is quoted below:

J. Jom.

"Provided that in cases of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collisions of Railway trains, one of the penalties specified in Clauses (vii) and (ix) shall ordinarily be imposed and in cases of passing Railway signals at danger, one of the penalties specified in Clauses (v) to (ix) shall, ordinarily, be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing."

In the first part it is provided that in case a Railway servant is found guilty of any act or omission which resulted or would have ordinarily resulted in collisions of Railway trains, one of the penalties specified in Clause (viii), i.e., removal from service, and Clause (ix), i.e., dismissal from service shall ordinarily be imposed. The second part of the proviso lays down that in case the Railway servant is guilty of passing Railway signals at danger, then one of the penalties specified in clauses (v) to (ix) of Rule 6 which include the five major penalties listed by us earlier shall ordinarily be imposed and if such penalty is not imposed, as required under the Rules, reasons thereof shall be recorded in writing. We have to further note that the first part of the proviso speaks of act or omission which resulted or would have ordinarily resulted in collisions of Railway trains. The words used in this part are "Railway trains" and therefore, it is clear that what is meant is a situation where two trains have collided or would have collided because of act or omission of the delinquent Railway servant. In such case the normal punishment is removal from service or dismissal from service. The case of the applicant does not come under this part of this

J. J. M.

proviso. There is only one charge against the applicant and this is quoted below:

"ARTICLE-1

That the said Sri A.Kispotta while functioning as Driver of D/NKKC-751 CCB2 on 16.4.94, overshot the outer & Home Signal of TPDH and entered into catch siding of TPDH with 3 locos & 3 N Box (L1)."

From the above, it is clear that the charge against the applicant is that he passed the Railway Signal at danger and his train entered into catch siding which is reckoned as an accident and therefore, his case would come into second part of the proviso and in such a case any of the five major penalties has to be imposed on him and if such penalty is not imposed, the reasons therefor shall have to be recorded in writing. In this case, penalty of removal from service has been imposed on the applicant. It has been submitted by the learned counsel for the petitioner that the punishment is harsh enough to shock the judicial conscience and therefore, he prayed that the punishment of removal from service should be reduced to some other major penalties so that the applicant is not deprived of his retiral benefits. As we have earlier noted the scope of interference by the Tribunal with regard to quantum of punishment has been subject-matter of a large number of decisions of the Hon'ble Supreme Court. It is not

J. Som.



25

necessary for us to go into all those cases because the matter had recently come up before the Hon'ble Supreme Court in the case of Union of India and another v. G.Ganayutham, AIR 1997 SC 3387, in which their Lordships of the Apex Court have analysed several earlier judgments including a large number of English cases, the literature on the subject, and have laid down the law in the following words:

"30. In Ranjit Thakur (AIR 1987 SC 2386) this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case, in B.C.Chaturvedi v. Union of India (1995) 6 SCC 749: (1995 AIR SCW 4374) a three Judge Bench said the same thing as follows (Para 18 of AIR):

J. Som.

"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusions on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority **shocks the conscience** of the High Court/Tribunal it would appropriately mould the relief, either by directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in **exceptional and rare case**, impose appropriate punishment with cogent reasons in support thereof."

Similar view was taken in Indian Oil Corporation v. Ashok Kumar Arora, (1997) 3 SCC 72, that the Court will not intervene unless the punishment is wholly disproportionate.

31. In such a situation, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for consideration. It is only in very rare cases as pointed in B.C.Chaturvedi's case (1995 AIR SCW 4374) that the Court might, - to shorten litigation - think of substituting its own view as to the Quantum of punishment in the place of the punishment awarded by the competent authority. (In B.C.Chaturvedi and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different). For the reasons given above, the case cited for the respondent, namely, State of Maharashtra v. M.H.Mazumdar (AIR 1988 SC 842) cannot be of any help."

From the above it is clear that the Tribunal has a limited role in the matter of judging the adequacy or excessiveness of punishment. The Tribunal cannot normally substitute its own conclusion on penalty and impose some other penalty. Only when the punishment is such that it shocks the conscience of the Tribunal, it would be appropriate to mould the relief either by directing the disciplinary authority to reconsider the penalty or to shorten the litigation, the Tribunal itself, in exceptional and rare cases, <sup>may</sup> impose appropriate punishment with cogent reasons in support. In view of this, it has to be

J.Som.



considered if this is a case of excessive punishment and if it be so, whether the matter should be sent back to the disciplinary authority or some relief can be given by the Tribunal itself.

11. In this case the punishment imposed is removal from service which as Clause (viii) of Rule 6 of Railway Servants (Discipline and Appeal) Rules, 1968 lays down shall not be a disqualification for future employment under Government or Railway Administration. Under clause (ix) which deals with dismissal from service, it is laid down that dismissal from service shall ordinarily be a disqualification for future employment under Government or Railway Administration. In this case, the applicant has been removed from service at the age of 50 years and even though such removal is no disqualification for future employment under Railways or Government, the chances of his getting any other employment at the age of 50 years under Government or Railway Administration are very remote. In effect, the order of penalty virtually takes the character of dismissal from service. In either case of removal from service or dismissal from service, retiral benefits are

S. J. M.

24

28

not allowed. This is because Rule 40 of Railway Services (Pension) Rules, 1993 lays down that dismissal or removal of a Railway servant from a service or post shall lead to forfeiture of his past service. Thus, it is seen that in this case, the second highest punishment has been imposed on the applicant which in effect works out the highest punishment. As earlier noticed, under the second part of the first proviso to Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968 for passing Railway signal at danger any of the five major penalties has to be imposed normally unless for reasons recorded in writing a minor penalty is imposed.

12. The next question which arises for consideration is whether in the facts and circumstances of the case the penalty imposed is excessive. We have noted from the records of the disciplinary proceedings that because of the applicant's lapse no loss or damage was caused to the Railways. In the joint enquiry which was conducted immediately after the incident and report of which is at page 6 of the proceedings file it has been specifically mentioned by the team of three officers that cost of damage to Loco is nil and cost of damage to P.W. is also nil. The respondents have also admitted in the counter that there was no loss or damage to the Railway

S. Jom.

30

29

property. It is also seen from punishment particulars of  
are  
the applicant, which at the last but one page of the  
proceedings file, that it is recorded that in accident  
cases no punishment has been imposed on him except in this  
case. In matters dealing with other than accident, one of  
his increment was withheld for six months in 1984 in the  
order issued on 28.11.1984 and one set of privilege pass  
for 1987 was withheld for his refusal to work "stable  
train". From this it appears that this is the first case  
of the applicant being involved in accident in his entire  
service career from 1962. The respondents in paragraph 10  
of the counter have averred that the applicant had  
similarly disregarded safety rules on 21.4.1994 and this  
resulted in derailment of locomotives and wagons at Tati  
Railway Station. This incident happened five days after  
the incident which is the subject-matter of this O.A. The  
respondents have not mentioned that <sup>if</sup> for the accident on  
21.4.1994 any proceedings were drawn up against the  
applicant or liability was fixed on him. From the  
proceedings file it appears that this accident on  
21.4.1994 was not officially taken into account while  
imposing the extreme punishment on the applicant. It  
cannot be said whether this was at the back of the mind of  
the disciplinary authority while imposing the punishment

S. Jm.

30

in this case. In any case, it is clear that the accident on 21.4.1994 cannot be taken into account because no proceedings were started against the applicant and his guilt was also not established in that case. Therefore, it has to be held as it is clear from the proceedings file that while imposing the penalty the disciplinary authority took note of only this lapse of the applicant which is the subject-matter of the present application.

13. The next aspect of the matter is that for the same incident one M.M.Mishra, Assistant Driver of the same train was also put under proceedings and the charge against him is exactly the same as the charge against the applicant. This appears from page 21 of the proceedings file dealing with the applicant. The applicant has mentioned in his rejoinder that charge was framed against M.M.Misra, Assistant Driver, but he was exonerated. From the order dated 13.6.1991 at page 21 of the proceedings file dealing with the applicant we find that this order was issued to MM.Misra, Asst.Driver. The charge is also mentioned in this order and this charge is exactly the same as the charge against the applicant. The punishment imposed on M.M.Mishra, Assistant Driver, was reduction of pay from Rs.1200/- to Rs.950/- for a period of three years with non-cumulative effect. It was also

S.M.

32

31

-22-

ordered that on restoration of the above punishment, his basic pay will be further reduced by three stages for a period of three years. It is not known if against this order M.M.Misra appealed and if he was exonerated. But even taking this order as it is, it is seen that on the Assistant Driver involved in the same incident, a punishment of reduction of pay was imposed. This also is no doubt a major penalty but is of lesser severity than the one imposed on the applicant.

14. The respondents have stated in their counter that the punishment has been imposed on the applicant not so much because that an accident has been caused in course of which there has been no loss to the Railway property but because of his disregard of safety rules. The respondents have mentioned that the applicant has violated GR 3.78 (1) copy of which is at Annexure-R/1. This GR 3.78(1) lays down in its first clause that the driver shall pay immediate attention to and obey every signal whether <sup>The cause of</sup> the signal being shown is known to him or not. <sup>^ J.M.</sup> The second clause, however, lays down that the driver shall not, however, trust entirely to signals, but also be vigilant and cautious. The applicant has denied his liability with regard to ignoring of safety rules on

J.M.



32

32 various grounds and has challenged the report of enquiry.

We have already rejected this prayer of the applicant and have held that the charge has been rightly held proved against the applicant. The submissions made by the applicant with regard to violation of safety rules have, however, to be noted only from the point of view of considering this question of adequacy of punishment. The admitted fact of this case is that at the time of the incident the outer signal of Tupdih Railway Station was not functioning, that is to say, there was no light. The respondents have pointed out that according to the instructions if there is no light in the signal, then the Driver has to stop the train, which the applicant did not do. The applicant has pointed out and also enclosed the copies of the relevant rules which lay down that when a particular signal is not working, information of this should be sent to the Station Master of the Station in the rear. This is laid down in Rule 3.49 enclosed at Annexure-A/9. Rule 3.49 also lays down that if the signal lights cannot be kept burning the Station Master before giving line clear should initiate actions prescribed in Rules 3.68 to 3.72. SR 3.68.02 lays down that if the signal cannot be kept in the "on" position a competent Railway servant in uniform should be deputed to exhibit a

S. J. M.

Stop hand signal at the foot of the defective signal post. The aforesaid Railway servant shall not leave his post until relieved by another competent Railway servant. Relief shall be arranged every four hours. The applicant has stated that none of these pre-cautions was followed and therefore, he alone cannot be blamed for the train entering the catch siding. Shorn of all these technicalities, the plain fact is that the signal was not burning. The applicant as driver should have stopped his train but he could not stop the train because one brake handle had broken down. The train was at a down gradient and it gathered speed. The Assistant Driver applied the emergency brake and it took some time and in the process the train entered the catch siding. From the statement of the Guard, Shri G.S.Rao, which was recorded at the time of enquiry, it is seen that the maximum speed achieved by the train was 15 K.Ms. per hour. In consideration of the above facts, it is seen that even though the applicant is guilty of the lapse of ignoring the safety rules and in <sup>not</sup> stopping <sup>^ Jom</sup> the train at the danger signal of Tupdih Railway Station, the other contributory factors were also there. In view of this, we feel that the penalty of removal from service which forfeits all retiral benefits to the applicant and also his service from 1962 under the Railways is



shockingly disproportionate. We think that punishment of compulsory retirement as mentioned in the second part of the first proviso to Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968 would have more than met the ends of justice. If the applicant would have been compulsorily retired, then he would not be in service and would not have been in a position to ignore safety rules in future and jeopardise the lives and property of the Railways. But at the same time he would have got credit of thirty-two years of service during which there was no accident case except this one. In the event of compulsory retirement, the applicant would be entitled to compulsory retirement pension under Rule 64 of Railway Services (Pension) Rules, 1993. Sub-rule (1) of Rule 64 lays down that a Railway servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement. Sub-rule (2) of Rule 64 also lays down that in case an order is passed awarding a pension less than the full compensation pension admissible under the Rules, Union Public Service Commission shall be consulted before such order is passed.

Jdm.

35

The explanation to sub-rule (2) also provides that the expression "pension" includes "gratuity". In other words, if penalty of compulsory retirement is imposed upon the applicant, he will be entitled to compulsory retirement pension under Rule 64 referred to above.

15. The next question which arises for consideration is whether the matter should be remanded to the disciplinary authority for considering the question of imposing the penalty of compulsory retirement or if the Tribunal would be entitled to mould the relief and impose this penalty. The decision of the Hon'ble Supreme Court in **G.Ganayutham's case (supra)** lays down that in rare cases and for reasons to be recorded in writing the Tribunal itself can mould the relief. In this case, if the matter is remitted back to the disciplinary authority and the punishment of removal from service is changed to that of compulsory retirement, the process would be time-taking because the applicant's appeal having been rejected by the disciplinary authority, the disciplinary authority may have to seek concurrence of the appellate authority and the revisional authority for changing the punishment. In consideration of this, we feel that in this case it would be proper for the Tribunal to substitute the penalty of

Jdm.

36  
removal from service by penalty of compulsory retirement.  
In view of the above, while we dismiss the Original  
Application, we order that the penalty of removal from  
service imposed on the applicant should be changed to that  
of compulsory retirement effective from 14.12.1994 on  
which date the order of original penalty has become  
effective. *Sum*

16. The Original Application is disposed  
of without any order as to costs.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN *21.12.98*