

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO.516 of 2004
Cuttack, this the 6th day of May, 2005**

Shri G.Durjee

..... Applicant

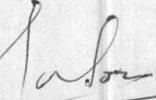
- VERSUS -

Union of India & others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not ? 75
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 74


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.516 of 2004
Cuttack, this the 6th day of May 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

Shri G.Durjee aged about 56 years son of late G.Goura, Driver under the Sr.Divl.Mechanical Engineer, E.Ce.Rly, Khurda Road at present residing at Qr.No.G.34/B, New Colony P.O.Jatni, Dist.Khurda, PIN-752050.

..... Applicant

Advocates for the applicant

..... Mr.Achintya Das

Versus-

1. Union of India service through General Manager, E.Ce. Railway, Chandrasekharpur, Bhubaneswar, PIN 751023.
2. Commissioner of Railway Safety, Eastern Circle, 14 Strand Read, Kolkata, PIN 700 001.
3. Additional Divisional Railway Manager, E.Ce.Railway, Khurda Read, P.O.Jatni, Dist.Khurda, PIN 752 050.
4. Sr.Divl.Mechanical Engineer, E.Ce.Railway, Khurda Read, P.O.Jatni, Dist.Khurda, PIN-752 050.
5. Divisional Mechanical Engineer, E.Ce.Railway, Khurda Read, P.O.Jatni, Dist.Khurda, PIN-752 050.

..... Respondents

Advocates for the Respondents

..... M/s.Ashok Mahanty
& T.Rath

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN:

Shri G.Durjee has filed this O.A. being aggrieved by the order of punishment issued by Res.No.5 (Annexure-A/3), the order of the Appellate Authority (Annexure-A/5) and the

order of the Revisionary Authority (Annexure-A/s).

2. The case of the applicant in a nutshell is that a minor penalty charge sheet was issued to him for the alleged negligence of duty while he was on duty as driver in Train No. MD/BZA-14 in excess speed on loop line. His allegation is that to prove the charges, no witness and no document was relied upon by the Disciplinary Authority (DA in short). The applicant submitted his representation denying the charges. Without conducting any enquiry, the DA issued the punishment order of reduction to a lower stage in the time scale of pay for a period of 24 months. The said order was a non-speaking one without discussing the points raised in the representation submitted by the applicant. On receipt of his appeal against the said punishment, the Appellate Authority (AA in short) reduced the punishment period from 24 months to 12 months. The said authority also did not issue any speaking order and while passing his order he had taken into account, on the otherhand, the instances of punishment earlier meted out to the applicant although these were not mentioned in the charge sheet, thereby violated the procedure laid down in Railway Servants (Discipline and Appeal) Rules, 1968. The applicant preferred a Revision petition to the Additional Divisional Railway Manager, Khurda Road, who also while passing the order confirming the punishment, did not consider whether the procedure laid down in the D&A Rules had been complied with or whether the findings of the DA were warranted by the evidence on record. He has also pointed out that the order of the AA was non-speaking order and 2

was in clear violation of the instructions issued by the Railway Board dtd. 21.2.92 (Annexure-A/10). He has, therefore, prayed for the following reliefs:

- "a) to quash and set aside the Charge Sheet dtd. 3.4.2001 (Annexure-A/1), the punishment notice dtd. 23.5.2001 issued by the Divisional Mechanical Engineer, Khurda Road (Annexure-A/3), the Appellate Authority's order dtd. 30/31.7.2002 (Annexure-A/5) and the Revisionary Authority's order dtd. 15.4.04 (Annexure-A/8).
- b) to direct the Respondents to grant the applicant all the consequential benefits.
- c) to grant any other relief including cost as deemed fit by the Hon'ble Tribunal."

3. The Respondents have opposed the application and have stated that the applicant while on duty as driver in the goods Train No. MD/BZA-14 running between the Khurda Road-Palasa Section on 4.2.01, an accident took place. The Train was supported with brake power certificate and was admitted on Route No. 4 for giving precedence to Train No. 5630 Express as per the advice of the Section Controller. While being admitted on Route-4, 5 N Box Lead Wagons, namely, 8th, 9th, 10th, 11th and 12th from the locomotive derailed. A joint Enquiry Committee comprising AEN, Berhampur, AME/C&W, Khurda Road and ASTE Berhampur carried out a preliminary enquiry into the cause of the accident and found the applicant guilty of negligence in duty. The report of the Committee was put up to the Divisional Railway Manager, Khurda Road who after going through the report accepted the same and decided to proceed against the applicant departmentally for his negligence. This led to issue of minor penalty charge sheet against the applicant. It is the case of the Respondents that applicant was given opportunity to submit his representation after cen-

sideration of which the Disciplinary Authority imposed the punishment of reduction of pay by one stage as stated by the applicant. They have also submitted that both the Appellate Authority and the Revisionary Authority had given full consideration to his representations as a result of which the period of punishment was reduced from 24 months to 12 months with non-cumulative effect. They have, therefore, contended that the applicant having participated in the enquiry into the accident and having answered the charge sheet under Annexure-A/1, the objection now raised by him is without any basis. They have also submitted that the minor penalty charge sheet was issued against him for maintaining excessive speed of the train on steep line which was an act of lack of devotion to duty as excessive speed is against the safety norms. They have also stated that Rule 11 of the Railway Servants Disciplinary Rules 1968 does not prescribe for holding of an enquiry for imposing minor penalty nor that the applicant had earlier either in his explanation or in his appeal had demanded for an enquiry and therefore the question of holding an enquiry in the disciplinary case was not necessary under the rules.

4. I have heard Ld.Counsel for both the parties and have perused the records placed before me.

5. The main grievance of the applicant is that he was not provided with the documents nor any witness was called by the prosecution thus denying him the opportunity to cross-examining ^{any witness} ~~them~~ for the purpose of defending his case. By referring to Annexure-R/4, that is, the report of Enquiry

Committee, he has pointed out that the Enquiry Committee was itself not free from doubt about the event. In their report they have stated that "it is difficult to establish the excessive speed of the train and defects in the wagon if there". Then in the same report, the Committee observed as follows:

"But it is clear from the accident site sketch that there was dragging of five derailed wagons by approximately 600 m. from POD and one point & crossing was totally damaged and thrown outside approximately 2 meter. This much of dragging and damage is not possible with the permissible speed in the loop line i.e. 15 KMPH., keeping in mind that wagon was in lead-ed condition and track was on PSC+CST-9 sleeper with scanty ballast. If the speed of the train was less than the damage of the Railway property will be less."

It has also been mentioned there that the sleepers were not properly stacked outside the safe moving dimension which was the cause of derailment.

5. The Lt.Counsel for the applicant repeatedly submitted that had open enquiry been held by the disciplinary authority he could have got an opportunity to bring out the contradictions and inconsistencies in the report of the preliminary enquiry Committee and prove his innocence. He has also submitted that the Respondents after admitting that there was no speedometer in the engine, accusing him of over speed was nothing but an act of conjecture.

6. Taking into account the admitted fact that there was no speedometer attached to the engine and taking note of the finding of the Committee that 'it was difficult to establish the excessive speed of the train' for want

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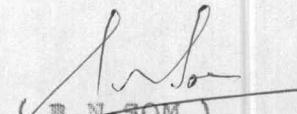
of speed chart of loco, the Respondents were asked to submit an affidavit taking opinion of the expert that if the train had dragged five wagons upto 600 meters on the loop line what must have been the speed of the loco per hour. The Respondents have supplied the opinion of the expert who stated that the speed of the loco must have been about 29 KMPH. The Lt.Counsel for the applicant, however, seriously disputed the parameters taken by the expert to arrive at the speed of the loco. In the circumstances, I feel that the applicant should be given an opportunity to prove his case that the speed at which he was running the loco at the loop line was within the permissible limit. Under Rule 11 of the RS(D&A) Rules 1968, the disciplinary authority may order holding an enquiry in the manner laid down in sub-rules (6) to (25) of Rule 9 where such an enquiry is deemed necessary.

7. In view of the issues raised by the applicant as discussed above and he having challenged the finding of the preliminary enquiry Committee as also the opinion of the expert about the speed of the loco at the loop line, I am of the opinion that an enquiry into the allegation under Rule 11 is called for in the circumstances of the case, in the interest of justice and fairplay. He had also assailed the order of the AA being passed in violation of the procedure enshrined in Rule 22 of the RS(D&A) and the order of the Revisionary Authority also suffers from vice of a non-speaking order. There is no doubt that the orders passed by the aforesaid authorities are in viola-

tion of the instructions issued by the Railway Board
order dtd. 21.2.1992. In the circumstances, ^{those} deserve
to be set aside.

8. I, therefore, remand the matter to the disciplinary
authority to hold an enquiry under Rule 11 providing the
applicant the documents with the help of which the allega-
tion against him is sought to be proved and also produce
the members of the preliminary enquiry committee and
also the Divisional Mechanical Engineer, Khurda Road whose
opinion has been recorded at Annexure-R/5 before the
Enquiry Officer as witnesses. The Disciplinary Authority
is accordingly directed to institute an enquiry under
Rule 11 (1) (B) of RS (D&A) Rules, 1968 and the said enquiry
should be completed within a period of 120 days from the
date of appointment of the Inquiring Officer ~~on~~ Presenting
Officer.

9. With the above order this O.A. is disposed of.
No costs.


B.N. Sasmal
VICE-CHAIRMAN

SAN/