

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL



On. Dr. 19.9.03

For Admission &
Final disposal with
MA 970/02 and MA 1034/02
for consideration.

Le
20/2

Bench

On. Dr. 21.10.03

Final Disposal with
MA 970/02 and MA 1034/02
for consideration.

Another MA has
also been 692 for
app. orders. copy not
served

Le
20/2

Bench

21.10.03

As a last chance, the matter is
advising to 27.10.2003 for hearing
peremptorily.

Sukh
Vice-Chairman ID

M.C.
Member (S)

Order dt. 27.10.03

The Applicant, a Railway Engineer Driver was departmentally proceeded and major penalty charges were served on him on 05.01.2001. The Enquiring Officer appointed in the matter, after completing the enquiry, submitted a report basing on which proceeding was dropped under Annexure-4 dt. 23.1.01. Later, the A.D.R.M. at Waltair (as Reviewing Authority) vide his notice under Annexure-5 dt. 28.6.02 called upon the Applicant to show cause as to why major penalty should not be imposed on him. The relevant portion of the said notice under Annexure-5 dt. 28.6.02 issued by the Reviewing Authority reads as follows:-

Sub:- Over shooting of signals by Tr. No. 1019 Exp at BAM on 17.9.2001.
Ref:- Charge sheet major (SF-5) brg. No. WM/D&A/GPR/420 dt. 23.1.02.

Please refer to the above notices, duly acknowledged by you on 6.10.01 and 25.1.02 respectively.

In exercise of the powers conferred upon me as per the Rules 25(1)(b) of RS(D&A) Rules, 1968, I have called for the records pertaining to the DAR case against you. On going through the case thoroughly and obtaining the statements of the witnesses of the case duly inquiring ~~them~~, I find that the decision of the Disciplinary Authority is not commensurate with the gravity of the offence committed by you.

I, therefore, propose to modify the decision of the Disciplinary Authority and to impose a major penalty in terms of Railway Board parameters, since you have failed to control your train at BAM Dn home signal, which was at danger and overshoot the signal, violating G & S.R. 3.78, 3.80 and 3.83.

You are hereby given an opportunity to make a representation if any, against the above proposed action, within 15 days from

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the date of receipt of this notice."

2. It is the case of the Applicant that his Disciplinary Authority having dropped the departmental proceeding in question (because the Enquiring Officer exonerated him (Applicant) from the charges levelled against him), the Show cause notice suggesting to impose major penalty is not sustainable, without supplying a copy of the enquiry report and ~~different~~ opinion of the Reviewing Authority.

3. While issuing notices to the Respondents, the following interim orders were passed on 19.07.2002:-

"No final action should be taken on the show cause notice under Annexure-5 dt. 28.6.02, without leave of this Tribunal and as a consequence, no coercive action should be taken against the applicant without taking leave of this Tribunal."

4. The Respondents have filed a counter contesting the stand of the Applicant and also filed M.A.No.970/02 seeking leave of this Tribunal to pass final orders on the show cause notice.

5. We have heard Mr.A.Kanungo, learned counsel appearing for the Applicant and Mr.D.N. Mishra, learned Standing Counsel appearing for the Railways and also perused the materials placed on record.

6. Without supplying a copy of the enquiry report drawn in the case, major penalty is certainly not available to be imposed on the Government servant protected under the Article 311 of the Constitution of India and, therefore, this O.A. is hereby disposed of as follows:

(i) The Respondents are hereby directed to supply a copy of the enquiry report to the Applicant at the earliest and while doing so, they should give full opportunity to the Applicant to have his say on the Enquiry Report by making an effective representation to the Reviewing Authority.

(ii) The Reviewing Authority should also supply to the Applicant (a) the reasons for which he has differed with the views of the enquiring officer/enquiry report and

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Mr. 27.6.03

Copies in order
prepared for counsel
for both sides.

DLB
31.07
SD

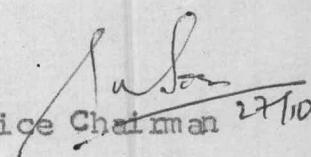
(b) that of the views of the Disciplinary Authority and give adequate opportunity to the Applicant to have his say on the matter by way of submitting the representation.

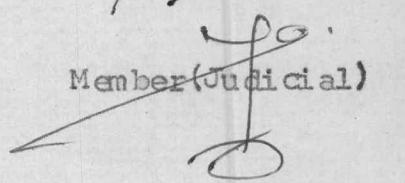
(iii) The Reviewing Authority should also grant personal hearing of the Applicant if he (the Applicant) opts for that.

(iv) If the Reviewing Authority has recorded statement(s) of any witnesses (or if he is intending to take statement(s) of any of the witnesses) then the Applicant should be allowed to cross examine to those witnesses and to rebut any of the evidence being taken into consideration by the Reviewing Authority.

We make it clear here that only after supplying the enquiry report and differing views of the Reviewing Authority etc. and after giving opportunity to the Applicant to have his say on the said reports/views and after giving personal hearing etc., to the Applicant, the Reviewing Authority should pass final orders on the notice given under Annexure-5 dt. 28.06.02.

7. With the aforesaid observations and directions, this Original Application is disposed of. No costs.


Vice Chairman 27/10


Member (Judicial)