

16

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA NO.56 OF 2011

Cuttack this the 20th day of June, 2013

A.Z.Khan...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes

2. Whether it be referred to CAT, PB, New Delhi or not ? Yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

17

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA NO.56 OF 2011

Cuttack this the 20th day of June, 2013

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

A.Z.Khan, aged about 51 years, S/o. late Abdul Halim Khan, Vill/PO-
Manikagoda, PS-Bolagarh, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.B.Dash
C.Mohanta

-VERSUS-

Union of India represented through

1. The General Manager, East Coast Railway, Rail Vihar,
Chandrasekharapur, Bhubaneswar, Dist-Khurda
2. Additional Divisional Railway Manager, East Coast Railway, Khurda
Road, PO-Jatni, Dist-Khurda
3. Sr.Divisional Mechanical Engineer, East Coast Railway, Khurda
Road, PO-Jatni, Dist-Khurda
4. Divisional Mechanical Engineer, East Coast Railway, Khurda Road,
PO-Jatni, Dist-Khurda

...Respondents

By the Advocate(s)-Mr. S.K.Ojha

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Applicant in this Original Application has approached this Tribunal
challenging the order of punishment of dismissal imposed on him, as a
result of disciplinary proceedings started against him by the Respondents,
viz., the Railway Authorities as well as the orders of the Appellate
Authority as well as the Reviewing Authority.



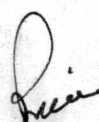
2. The short facts of the case, as revealed from the record, are that the applicant was working as Loco Pilot under the Crew Controller, Jakhapura. On 10.2.2009, while he was working in the Train No.MD/JRP-23, he stopped the train at Badabandha(BDBA) foot of the starter on main line with starter green and declared long hours. He was advised to proceed up to Paradeep as per JPO, but he refused to work further on the plea of long hours. The Station Superintendent, Badabandha served SCR Order No.12 on the applicant and accordingly, he shut down the power and handed over the operating handles to on duty SS/BDBA and piloted to Paradeep by 7 CP. It was alleged therefore, that he had taken the plea of long hours and thus violated the Item No.4 of JPO No.6 dated 2.9.2005 and Rule-3.1(ii) of the Railway Services (Conduct) Rules, 1966. The charge sheet which is enclosed as Annexure-A/1 to the O.A. was received by the applicant on 7.3.2009. The applicant submitted explanation to the charge sheet on 16.3.2009 and on 13.5.2009, the Disciplinary Authority appointed Inquiry Officer in order to enquire into the charges. The I.O. vide notice dated 25.6.2009 wanted the applicant to attend the preliminary enquiry on 3.7.2009. On the date of the preliminary enquiry, two weeks' time was granted to the applicant to submit the name and consent of the defence counsel before 17.7.2009. The regular sitting of the inquiry was fixed to 25.8.2009 by the Inquiry Officer. Applicant and his defence counsel attended the regular sitting of the inquiry along with two Prosecution Witnesses, viz., Junior Loco Inspector, Jakhapura and Asst.Loco Pilot, Jakhapura. The I.O. examined the applicant/charged official and the Prosecution Witnesses were also cross-examined by the defence counsel

during the regular sitting of the inquiry. The applicant was given all the reasonable opportunities by the I.O. to defend his case during the course of inquiry. The inquiry was closed on that date and the applicant was advised by the I.O. to submit his defence statement, if any, within 15 days. On 6.9.2009, the applicant submitted his defence brief to the I.O. On 8.9.2009, the I.O. submitted his inquiry report in which he substantiated the charges levelled against the applicant. The Disciplinary Authority, viz., DME, Khurda Road, after accepting the inquiry report, supplied copy of the same to the applicant along with letter dated 15.9.2009 calling upon him to submit his final defence statement. After receiving the same, the applicant submitted his final representation dated 10.10.2009 to the Disciplinary Authority, who passed a final speaking order on 28.12.2009, which is quoted below.

“In operational exigency, when the train is running late and the crew has to work more than the scheduled duty hours, the JPO-6 as enacted for guidelines of the crew for smooth operation of train.

In the instant case, Sri A.Z.Khan, LP/JKPR who is the Loco Pilot of the late running train did not cooperate as per JPO-6 and detained the train knowingly causing loss of sectional path and movement of train. The inquiry officer has also scrutinized the evidences on record and found the alleged charges of declaring long hours by Shri A.Z.Khan, LP(G)/JKPR is proved”.


3. The Disciplinary Authority decided that the applicant/charged official does not deserve to remain in the railway service and imposed the penalty of dismissal from railway service in view of the gravity of the charges for violation of JPO No.6 as well as Rule-3.1(ii) of Railway Services(Conduct)



Rules, 1966. Accordingly, punishment notice dated 12.1.2010 was issued by the Disciplinary Authority dismissing the applicant from Railway service with immediate effect and the said notice was acknowledged by the applicant on 12.1.2010.

4. The applicant submitted his appeal against the order of dismissal on 5.2.2010 to the Appellate Authority, viz., Sr.DME, Khurda Road. The Appellate Authority examined the points raised in the appeal, went through the records and passed a speaking order on 15.9.2010 in which he upheld the penalty of dismissal from service as imposed by the Disciplinary Authority. A copy of the speaking order of the Appellate Authority was acknowledged by the applicant on 22.9.2010. Thereafter, the applicant moved the Reviewing Authority on 22.10.2010 challenging the order of the Appellate Authority. The Reviewing Authority, after consideration of the matter passed a speaking order upholding the orders of the Disciplinary Authority as well as the Appellate Authority.

5. Hence, the applicant has moved this Tribunal in the present O.A. in which he has prayed that the notice for imposition of punishment of dismissal from service, the speaking order of the Disciplinary Authority, the speaking order of the Appellate Authority and the speaking order of the Reviewing Authority, copies of which have been placed at Annexures-A/8, A/11 and A/13 respectively, may be quashed and the Respondents may be directed to reinstate the applicant in his former post along with full benefits of back wages.



6. The learned counsel for the applicant has taken several grounds for challenging the order of dismissal of the applicant from Railway service. He has, first of all, submitted that the charge sheet which was served on the applicant was not accompanied with JPO No.6 which was alleged to have been violated by the applicant. According to him, law requires that all the documents based upon which the statement of imputation of misconduct or misbehavior has been prepared should be enclosed to the charge sheet. This requirement of law has not been fulfilled while serving the charge sheet on the applicant.

7. Secondly, the applicant had informed the on duty SS/Rahama to tell the on duty SS/BDBA to put JRP 23 on suitable line as it was going to be long hours. Therefore, the learned counsel has pleaded that the applicant very well informed the authorities for arranging a reliever. Further, as per direction of SS/BDBA vide SCR Order No.12, the applicant shut down the power and handed over the operating handles to the on duty SS/BDBA and piloted to Paradeep by 7 CP. This proves that the applicant obeyed the official directions and had not fled from BDBA.


8. It is the further case of the applicant's counsel that the Loco Inspector Shri S.K.Swain who is a Prosecution Witness stated in his answer to Question No.5 that he prepared his report basing on a letter dated 16.2.2009. According to learned counsel for the applicant, basing on a letter dated 16.2.2009, a report could not have been prepared on 10.2.2009. The applicant was completely exhausted and was feeling drowsy for having

P. Swain

performed his duties for 12 hours in the night. The authorities should have considered this aspect and should not have compelled the applicant to work.

9. The learned counsel for the applicant has also submitted that the Item No.3 of JPO No.6 has a provision that in operational exigencies the running duties may be extended beyond 10 hours within the overall limit of 12 hours provided that a due notice has been given to the staff by the controller before completion of 8 hours running duty from signing on time. In the Item No.4 of JPO No.6, it is provided that if a train does not reach within 12 hours of duty to its normal crew changing point/destination of the train/the station where relief has been arranged and such point is at an approximately one hour journey away the staff shall be required to work to that point. The learned counsel for the applicant has stressed on the fact that the provisions Item No.3 and Item No.4 of JPO No.6 have to be read harmoniously. In the present disciplinary proceedings, the applicant was charged with the violation of Item No.4 of the JPO No.6. But Item No.3 of JPO No.6 provides that in operational exigencies the running duty may be extended beyond 10 hours within the overall limit of 12 hours provided that a due notice has been given to the staff by the controller before completion of 8 hours running duty from signing on time. But the applicant admittedly has not been put to notice about the extension of work beyond 10 hours before completion of 8 hours of running duty in this case. Since the authorities have failed to give him a notice for extending running duty beyond 10 hours, as required in operational exigency, before completion of 8 hours running duty, the applicant could not be charged with violation of Item No.4 of JPO No.6.

Item No.4 of



JPO No.6, according to him, cannot be read in isolation when the requirements of the Item No.3 in JPO No.6 have not been fulfilled by the concerned authorities.

10. It is the further case of the learned counsel that although the applicant wanted one D.Sahu, Guard to be his defence witness during the enquiry, he was not allowed to be examined by the applicant.

11. Moreover, the 2nd Prosecution Witness submitted that the applicant appeared to be exhausted and tired and it was not safe to allow him to work in the train. The same Prosecution Witness also submitted that he did not know about JPO No.6. Based upon these grounds, the learned counsel for the applicant has made a point that the findings of the I.O. were perverse and a product of conjecture and surmises. There was no intimation to the applicant before 8 hours of duty that his duty period might be stretched beyond 10 hours. The applicant was exhausted and tired and this was not taken into account by the I.O. On the other hand, the I.O. himself put a number of questions to the applicant which were in the nature of building up the charges. He also took into account various extraneous things, which were not part of the charge sheet. It has been alleged by the learned counsel that there was an attempt to somehow find the applicant guilty of the charges.


12. The learned counsel for the applicant has also assailed the speaking order passed by the Appellate Authority in this case. The Appellate Authority observed in his order that the applicant stabled the train in a manner so as to block the train movement in and out of BDBA station and



that it was the intention of the applicant to bring to a halt the freight operation in that area. This was never a part of the charge sheet and therefore, it has been alleged that the Appellate Authority travelled beyond the charge sheet while disposing of the appeal. Further, it is alleged that the ADRM, who is the Reviewing Authority, dealt with only the Item No.4 of JPO No.6 for holding the applicant guilty of the charge. He upheld the orders of the Disciplinary Authority and the Appellate Authority by dismissing several points made in his petition to be irrelevant to the issue.

13. Another point which is raised by the learned counsel for the applicant is that the Member(Traffic) Railway Board had directed the General Manager, East Coast Railways to implement 10 hours duty rule strictly and observed that the performance of East Coast Railway regarding 10 hours rule for the running staff requires urgent improvement. This letter of the Railway Board is attached at Annexure-A/17 to the O.A. This only shows that in the East Coast Railways, 10 hours duty norm was not being followed strictly which was adversely commented upon by the Railway Board. In this case also the applicant was being forced to do duty beyond 10 hours duty rule for the running staff. In short, the above stated grounds are the main basis on which the learned counsel for the applicant has assailed the orders passed by the Disciplinary Authority, Appellate Authority as well as the Reviewing Authority in this case.

14. On the other hand, the learned counsel for the Respondents has submitted that the inquiry into the charges has been conducted strictly according to provisions of law and at every stage the applicant has been



given due opportunity to defend himself. The applicant has also submitted his appeal petition and the Appellate Authority has disposed of the same through a speaking order after taking into account each and every point of his submission. The Reviewing Authority also has taken into account all the submissions made by the applicant while passing his order. In course of the inquiry, the charges against the applicant have been proved beyond doubt and therefore, there is no scope for the applicant to agitate any further issue before the Tribunal. Regarding the plea of the applicant that he was not allowed to examine one defence witness Shri D.Sahu, Guard, learned counsel for the Respondents has submitted that at no point before the closure of the proceedings by the I.O., the applicant had ever requested him to allow Shri D.Sahu as the defence witnesses to be examined.

15. With regard to the alleged violation of Item No.4 of JPO No.6, the learned counsel for the Respondents has submitted that the violation of Item No.4 is by itself an offence and should not be read along with Item No.3. Para-3 of JPO No.6 provides that in operational exigency the running duty may be extended beyond 10 hours within the overall limit of 12 hours provided a due notice has been given to the staff by the controller before completion of 8 hours running duty from signing on time. The operational exigency, according to learned counsel for the Respondents, arises in the event of derailment, agitation, equipment failure or track trouble and in any such situation anticipating inordinate delay, due notice should be given to the Loco Pilot. In the present case there was no operational exigency and green signal was assigned for through pass of the train to its destination, i.e.,



Paradeep which is only 11 kms away from Badabandha and was hardly 15 to 20 minutes journey. The applicant stopped the train on the main line in spite of green signal for through pass and therefore, independently, violated Item No.4 of JPO-6 and was accordingly, proceeded against. Therefore, it is not required here to read Item No.3 and Item No.4 of JPO No.6 together. The applicant cannot take the plea that the authorities have violated Para No.3 of JPO No.6 and therefore, he cannot be charged with violation of Para No.4 of JP No.6. On the other hand, the applicant should have proceeded to Paradeep which was only a 20 minutes journey from BDBA, strictly as per the provisions of Para No.4 of JP No.6.

16. The learned counsel for the applicant had pointed out that copy of JPO No.6 which is alleged to have been violated by the applicant was not served upon him as a document along with the charge sheet. To this point, the learned counsel for the Respondents has submitted that Section 101(b) of the Railway Act, 1890, clearly indicates that all the Railway employees are bound by the rules and regulations, circulars and instructions and subsidiary rules etc. issued by the Railway Board as well as by Local Administration from time to time. The JPO No.6 is a subsidiary rule and is a reiteration of the circular issued by the Railway Board as well as local administration from time to time. These instructions were known to the applicant and not enclosing a copy of this subsidiary rule to the charge sheet does not constitute a violation of the principles of natural justice. The learned counsel for the Respondents has further mentioned that although the learned counsel for the applicant during hearing of the matter has raised the issue of harshness of




punishment, has not taken any such ground in Paragraph-5 of the O.A. nor has made any such prayer to that effect. He, therefore at this stage cannot take the plea of excessiveness of punishment since no such ground was taken by him in the O.A.

17. The sum and substance of the submission made the learned counsel for the Respondents is that applicant has only made a plea of long hours and has refused to proceed to Paradeep which is at a short distance involving travel of about 20 minutes and has knowingly violated Item No.4 of JPO No.6. In course of enquiry he has been afforded full opportunity to defend himself which he has also admitted in course of the inquiry. Therefore, he is not liable to get any relief from the Tribunal at this stage.

18. During the course of hearing of this case, the learned counsel for the applicant has cited two important case laws. The first is in **State of UP and Ors. Vs. Saroj Kr.Sinha reorted in 2010(1) SCC (L&S) 675**. In this case, the Hon'ble Apex Court has held as under:

“An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidences presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, the same could not have been taken into consideration to conclude that the charges have been proved against the respondents”.



Further, the Hon'ble Supreme Court in that case held as under.

"A perusal of the aforesaid rule would clearly show that the disciplinary authority is duty-bound to make available all relevant documents which are sought to be relied upon against the government servant in proof of the charges. It is only when the charge-sheet together with documents is supplied that the government servant can be said to have had an effective and reasonable opportunity to present his written statement of defence.

Keeping in view the mandate of the aforesaid sub-rule the respondent made a written request to the appellant demanding copies of the documents relied upon in the charge-sheet. This representation was dated 10.6.2001. In spite of the mandate of the 1999 Rules neither the disciplinary authority nor the inquiry officer made the documents available to the respondent rather a reminder was issued to him by the inquiry officer on 15.6.2001 to submit the reply to the charge-sheet".

19. In the case of **Roop Singh Negi vs. Punjab National Bank & Ors.** (2009) 1 SCC (L&S) 398, as relied on by the learned counsel for the applicant, the Hon'ble Apex Court has also observed as under.

"Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witness merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence".



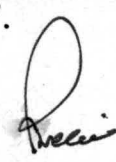
20. On the other hand, learned counsel for the Respondents has cited two important case laws. The first is the case of **North Eastern Karnataka Road Transport Corporation vs. Ashappa and another in Civil Appeal No.2637 of 2006 (arising out of SLP (Civil) No.9644 of 2005 decided on 12.5.2006 reported in 2006(2) (SC) SLJ 141.** In this case, the Hon'ble Apex Court has observed as follows:

“Yet recently in *State of U.P. v. Sheo Shanker Lal Srivastava and Others*, [(2006) 3 SCC 276], it was opined that the Industrial Courts or the High Courts would not normally interfere with the quantum of punishment imposed upon by the Respondent stating :

“It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience”

The said principle of law has been reiterated in *A.Sudhakar vs. Post Master General, Hyderabad and anr.*, [(2006(3) SCALE 524] stating:

“Contention of Dr.Pillai relating to quantum of punishment cannot be accepted having regard to the fact that temporary defalcation of any amount itself was sufficient for the disciplinary authority to impose the punishment of compulsory retirement upon the Appellant and in that view of the matter, the question that the third charge had been partially proved takes back seat”.



21. In the case of **State Bank of Patiala & Ors. Vs. S.K.Sharma** in **C.A.No.5129 of 1996 (arising out of SLP © No.17475 of 1995)** decided on **27.3.1996** reported in **1996 1 SC Service Law Judgments 440**, the following observations of the Hon'ble Supreme Court have been brought to our notice by the learned counsel for the Respondents.

“In the case of violation of a procedural provision, the position is this; procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are generally speaking conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except case falling under “no notice”, ‘no opportunity’ and ‘no hearing’ categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively”.

22. Disciplinary proceedings, as has been forcefully brought out in the various judgments of the Hon'ble Apex Court are in the nature of quasi judicial proceedings. The I.O. in a disciplinary proceedings performs a quasi judicial function. He has a duty to arrive at a finding after taking into consideration the materials brought on record by the concerned parties. In the present case, the learned counsel for the applicant in his written note of submission, has made a few points regarding the role played by the Inquiry Officer. He has submitted that in the Railway Board's letter No.78/Vig.1/DAR/1 dated 5.2.1979, an illustration has been given as to how the I.O. should act. The provision has been made for the Presenting Officer to cross examine the witness and the I.O. is not supposed to take



upon himself this responsibility. In the present inquiry, however, it has been alleged by the learned counsel for the applicant that the Inquiry Officer himself was asking questions to the charged official(applicant). It is, therefore, required to go through the proceedings of the inquiry in the present case. At Annexure-A/3 of the O.A., the record of the preliminary sitting of the inquiry has been enclosed. During this inquiry, only the I.O. and the charged officer were present. During this session, certain initial questions had been put by the I.O. to the charged officer. On 25.8.2009, the regular sitting of the inquiry was conducted, the records of which are enclosed as Annexure-A/4 to the O.A. During this session, the Inquiry Officer, the Prosecution Witness and the Defence Counsel were present. The I.O. has examined the prosecution witness and thereafter, the cross-examination of the prosecution witness was done by the defence counsel. On the same day, the inquiry officer has also examined the charged officer, in course of which he has asked him several questions. Some of the questions which have been asked to the charged officer by the I.O. are as follows.

- i) " Did you know about JPO No.6 item No.4 ? "
- ii) " Why did not you follow JPO No.6 ? "
- iii) " Was not it your duty that proceed up to destination as per JPO, then you had to complain against him to higher authority, if any body failed to perform his duty ? "

It is also found that in the final sitting of the inquiry on 25.8.2009, the I.O. has himself asked some questions to the prosecution witness; one of the questions is "on that day what did you feel about the health condition of LP & whether he could work the train safely" ? The answer given by the



prosecution witness is "what I had experienced the Loco Pilot was appear to be exhausted, feeling drowsiness and tired. According to me and in my view it was not safe to work the train by Loco Pilot and I did also not had the confidence on his health condition".

23. The inquiry has been completed on 25.8.2009 in course of the day and on 8.9.2009, the I.O. has submitted his report. In the observation and conclusion of the inquiry, the I.O. has analyzed these questions and the answers given by the charged officer to him in course of the inquiry. He has made certain summary observations like "hence this statement of the C.O. is worthless". He has finally made an observation as under.

"The running time between BDBA-PRDP is 20 minutes (referred guide line of operation "Chetak" of a loaded train. So the total hours of duty of LP would be (12.25 hours + 20 minutes) 12.45 hours to reach PRDP and it is meant another 15 minutes were in LP's hand. Hence 15 minutes detention might be allowed at the home signal. It should not be judged by LP that his train would be detained at home signal. The LP could have reached at PRDP within 12.45 hours and duty hours would not have exceeded beyond 13.00 hours as per item no.4 of JPO-6. So the LP should have gone to PRDP without declaring long hours".

Basing on this concussion, the I.O. has given a finding that the C.O. had definitely violated Item No.4 of JPO-6 as well as Rule No.3.1(ii) of Railway Services (Conduct) Rules, 1968 and that the charges levelled against the charged officer are substantiated.

24. From the facts which have been brought out above, it is quite clear that the I.O. has taken upon himself the role of both a prosecutor and the judge. He has himself asked questions to the C.O. and the answers given by the C.O. have been examined by him while drawing his conclusions and




inferences. In the O.A. the applicant has already submitted that the I.O. has not taken into account even the evidence given by the prosecution witness that the applicant appeared to be exhausted and was feeling drowsiness and was tired and in his view it was not safe to work the train by the applicant. The process of inquiry was completed on a single day, i.e., 25.8.2009. As has already been cited in earlier paragraphs, in the **State of UP and Ors. Vs. Saroj Kr.Sinha reorted in 2010(1) SCC (L&S) 675**, the Hon'ble Apex Court has already held that "An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government". Further in the case of **Roop Singh Negi vs. Punjab National Bank & Ors. (2009) 1 SCC (L&S) 398**, it has also been observed by the Hon'ble Apex Court that "indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties".

25. The law as laid down by the Hon'ble Apex Court is, therefore, crystal clear that the I.O. is not supposed to act as a representative of the departmental authorities. On the other hand, he is supposed to independently examine the evidence and come to an impartial finding regarding the guilt or otherwise of the delinquent officer. He is not supposed to show any prejudice or bias during the course of the inquiry. In any circumstances, he



should not act like the Presenting Officer of the Department in course of the process of inquiry. Further, from the way the inquiry has been conducted by the I.O. in the present case, it appears that the I.O. has put a large number of questions directly to the charged officer with a view to establishing the charges against the applicant. This goes against the spirit with which the inquiry officer should conduct himself in course of a disciplinary proceeding. From the counter affidavit submitted by the Respondents, it comes out that vide order dated 13.5.2009, the I.O. was appointed to enquire into the charges framed against the applicant. The facts also revealed that no Presenting Officer was appointed in this disciplinary proceedings. The Respondents have pleaded that the C.O. and the Prosecution Witness were examined by the I.O. and the prosecution witnesses were cross examined by the defence counsel and the C.O. was given all reasonable opportunity by the I.O. to defend his case during the course of the inquiry. The inquiry was completed in one day and the C.O. was advised by the I.O. to submit his defence statement, if any, within 15 days. Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968 lays down a procedure for imposing major penalties. Rule-9(9)© provides that where the disciplinary authority itself enquires into an article of charge, or appoints a board of inquiry or any other inquiring authority for holding an inquiry into such charge, it may by an order in writing appoint a railway or any other Government servant to be known as Presenting Officer to present on its behalf the case in support of the article of charges. In this regard, it is pertinent to mention the judgment of the Madhya Pradesh High Court in



W.P.(S) No.4874/2004 which was filed against the order dated 25.3.2004 of the C.A.T. in O.A.No.408/2002. The Hon'ble High Court of Madhya Pradesh in that case has observed that although the use of the expression "may appoint Presenting Officer" indicates that such appointment is not mandatory, a careful reading of the said rule shows that it is an enabling provision which gives discretion to the Disciplinary Authority to appoint any Railway or other Government servant as a Presenting Officer to present the case on behalf of the Disciplinary Authority. But the said provision does not permit an Inquiry Officer to act as the Presenting Officer and conduct examination-in-chief of the departmental witness and cross examine the defence witnesses. Another important observation of the Hon'ble High Court is whether the Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as the Presenting Officer depends on facts of each case. To avoid any allegation of bias and running the risk of inquiry being declared illegal and vitiated, the present trend appears to be invariably to appoint Presenting Officers except in simple cases. On the facts of that particular case the Hon'ble High Court has observed as under.

"In this case no Presenting Officer was appointed. The evidence on behalf of the disciplinary Authority has been presented by the Inquiry Officer, by conducting regular examination-in-chief of prosecution witnesses by taking them through the prosecution case. The Inquiry Officer has also conducted regular cross-examination of the defence witnesses. This is not a case where the Inquiry Officer merely put a few questions to clarify certain aspects. The Inquiry Officer has put questions to present the prosecution case and make out the prosecution case. Leading questions suggestive of answers have been put to the prosecution witnesses. The fact that Inquiry Officer



36

acted as the Presenting Officer is not seriously disputed. In fact it is sought to be justified as permissible as per Railway Board circulars. In the circumstances, we find that the inquiry was vitiated”.

In the case of *Moni Shankar v. Union of India* (2008) 3 SCC 484, the Hon'ble Apex Court has observed as follows.

“The examination-in-chief was conducted by the enquiry officer himself. As the proceeding was for imposition of a major penalty, why the presenting officer, who must have been engaged by the Department, did not examine the witness is beyond any comprehension. Even minimum safeguard in regard to the manner in which the examination-in-chief was conducted has not been preserved. The questions posed to the appellant were leading questions. The questions asked in this case (para 20 of the judgment) do not comply with Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules, 1968. What were the circumstances appearing against the appellant had not been disclosed (Paras 19 to 21)”.

26. It is therefore, absolutely clear from the observation of the Hon'ble High Court of M.P. and also the Hon'ble Supreme Court that although the appointment of Presenting Officer is not mandatory under the rule, that does not give the authority to the I.O. to also discharge the function of a presenting officer. He should not behave in a manner which will show that he is representing the Department and presenting the case against the charged officer on behalf of the Department. The status of the I.O. has been defined with extreme clarity that he should ~~he should~~ examine all the facts and evidences presented before him with independence and impartiality and come to a finding based upon such evidence with impartial evaluation. From the examination of the records of inquiry in this case it appears that the I.O. has exceeded the strict limits of his role assigned to him and also arrogated to himself the role of the presenting officer. Such conduct is not sustainable



in view of the law laid down by the Hon'ble Apex Court. Besides, the disciplinary proceedings being in the nature of a quash judicial proceeding, there is a serious responsibility on the inquiry officer to conduct himself with due propriety. In the present case, the inference drawn by the I.O. at the conclusion of his inquiry is somewhat conjectural, e.g., the Inquiry Officer has observed that the LP (charged officer) could have reached Paradeep within 12.45 hours and duty hours would not have exceeded beyond 13.00 hours as per Item No.4 of JPO-6. So the LP should have gone to Paradeep without declaring long hours. This kind of conclusion is not based upon the evidence in this case and is more in the nature of surmises and conjecture. The I.O. has commented on what the LP should have done or could have done which certainly is not a matter of inquiry in this case.


27. As is clear from the discussions made above, the process of inquiry in this case has not conformed to the principles of natural justice. The process of inquiry has also gone against the spirit of the guidelines which have been laid down by the Hon'ble Apex Court with regard to the conduct of disciplinary proceedings. In view of these lapses which have been pointed out, the orders passed by the Disciplinary Authority and subsequently by the Appellate Authority and the Reviewing Authority cannot, in our view, be sustained the eyes of law. Therefore, the orders placed at Annexures-A/8, A/11 and A/13 respectively, are quashed and the matter is remanded to the

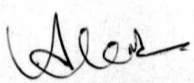


38

Disciplinary Authority for conduct of fresh process of inquiry in compliance with the observations made above, by providing due opportunity to the applicant to defend his case. The entire process of inquiry should be completed within a period of 90 days from the date of receipt of this order.

In the result, the O.A. is allowed to the extent indicated above. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS