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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.647 OF 2011
Cuttack this the 11th day of February, 2014

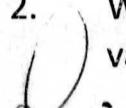
Shri Venkata Raman Mohapatra...Applicant

-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 for being circulated to various Benches of the Tribunal or not ? yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

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

Shri Venkata Raman Mohapatra
Aged about 37 years
S/o. late A.Mohapatra
At present working as Junior Engineer, Grade-I
East Coast Railway,
Sambalpur Railway Division
C&W Department
Kantabanjhi
At/PO-Kantabanjhi
Dist-Bolangir

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy
M.K.Rath
J.Pati
Mrs.J.Bhagat

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway
Rail Vihar
At/PO-Chandrasekharpur
Bhubaneswar
District-Khurda
2. The Addl. Divisional Railway Manager
East Coast Railway
Sambalpur Railway Division
At/PO/Dist-Sambalpur

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3. The Senior Divisional Mechanical Engineer
East Coast railway
Sambalpur Railway Division
At/PO/Dist-Sambalpur
4. The Senior Section Engineer(C&W)-cum-Inquiring Officer
Sambalpur
East Coast railway
Sambalpur Railway Division
At/PO/Dist-Sambalpur

...Respondents

By the Advocate(s)-Ms.S.L.Pattnaik

ORDER

R.C.MISRA, MEMBER(A)

Applicant in the present Original Application is working as Junior Engineer, Grade-I in the East Coast Railways. He has approached this Tribunal praying that the charge sheet issued against him in a disciplinary proceedings and the inquiry report pertaining to the same, the order of punishment issued by the Disciplinary Authority and also the order of the Appellate Authority upholding the punishment as imposed by the Disciplinary Authority should be quashed.

2. The short facts of the case are that applicant along with other Supervisors was engaged in lifting a match truck load from the railway track to clear the same from the front side of 140 ton B.D. crane on 31.8.2006. However, this operation was not successfully done as the crane became unstable and created a condition of toppling due to heavy rain. There was an SA Grade Inquiry Committee to go into the circumstances of this failure and after preliminary inquiry, the Committee fixed responsibility

R.C.MISRA

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on the staff and officers including the present applicant. A copy of the inquiry report of S.A. Grade Inquiry Committee dated 25.10.2006 has been annexed to the O.A. at Annexure-A/1. Based on the findings of this enquiry report, applicant was served with a Memorandum of Charge dated 9.11.2006 for alleged misconduct and was proceeded against under Rule-9 of the Railway Servants (D&A) Rules, 1968. There was only one Article of Charge in the said Memorandum, which is quoted below.

"Shri V.R.Mohapatra, JE-I/C&W/KBJ while functioning as such on 31.08.2006 was being assigned to oversee 140 Tonne BD Crane for its safe operation at KM No.648/2 between DJX-KHPL in order to carryout lifting & landing work safely by it. But he failed to do so for which the crane toppled at the site on 31.08.2006 while lifting match truck load from the track in order to clear the same from front side of the Crane and thereafter grounding the same to the right side of the bank. Hence, SA Grade Officer Inquiry Committee held him primarily responsible against toppling of 140 Tonne BD Crane at the site on 31.08.2006. thus, he has shown serious lapse during his duty hours and thereby violated Rule-3.1 (ii) & (iii) of RS (Conduct) Rules, 1966".

3. On receiving the Memorandum of Charge, applicant requested the Senior Divisional Mechanical Engineer, East Coast Railways, i.e., Res.No.3 to supply some documents to enable him to submit a detailed explanation. After these documents were supplied, applicant submitted his explanation denying the charge. An Inquiry Officer (I.O.) was appointed to enquire into the charges levelled against the applicant and the I.O. after completing the inquiry arrived at the conclusion that lack of knowledge of working,

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maintenance and operation of B.D. Crane on the part of the applicant made him ineffective at the site and that is the reason why he was unable to carryout safe operation of the crane. The Inquiry Officer did not come to any conclusion that the charge framed against the applicant had been proved. But the Disciplinary Authority, without proper application of mind, issued a letter dated 17.04.2008 enclosing a copy of the inquiry report calling upon the applicant to submit his written statement of defence. In response to this, applicant submitted his final defence statement on 3.5.2008, in which he submitted that he was never given any training for 140 ton crane but was forced to go with the crane under a senior employee viz. Shri D.Behera, JE-I. The Disciplinary Authority, i.e., the Senior Divisional Mechanical Engineer, without proper consideration of the defence statement of the applicant passed a non-speaking order and issued a punishment notice dated 13.6.2008 imposing major punishment to the effect that the next annual increment due to the applicant would be withheld for a period of three years with cumulative effect in his existing grade and pay. The applicant was aggrieved by this punishment notice and therefore, preferred an appeal petition before the Appellate Authority, i.e., Additional Divisional Railway Manager on 5.8.2008, in which he ventilated all his grievances and prayed for cancellation of the order of punishment. The Appellate Authority, who is Res.No.2 in this O.A. called upon the applicant for a personal interview on 22.5.2009 and asked the applicant whether he was trained or not. According to applicant, the Appellate



Authority, without consideration of his appeal in its proper perspective, passed an order upholding the punishment as imposed by the Disciplinary Authority, by an order issued on 9.6.2009. Applicant being aggrieved by these orders had filed O.A.NO.305 of 2009 before this Tribunal, but the same was allowed to be withdrawn with liberty to file a better O.A. This is the sequence of events preceding the present O.A. filed by the applicant.

4. In support of his case, applicant has submitted that the charge sheet, inquiry report, orders of the Disciplinary Authority and the Appellate Authority which have been filed as Annexure-A/2, A/6, A/8 and A/10 respectively, to the O.A. are illegal, arbitrary and contrary to the sound principles of law and therefore, the same should be quashed. His case is that Shri D.Behera, JE-I had got adequate training from a recognized training Institution of the Indian Railways for the operation of the BD crane whereas applicant was never sent for any such training regarding the operation, maintenance and safety of the crane. Applicant was only directed to accompany Shri D.Behera along with the crane and therefore, the SA Grade Inquiry Committee committed palpable injustice against the applicant by holding him responsible on the failure of this operation. Since the Memorandum of Charge is based upon the report of SA Grade Inquiry Committee, these charges are not sustainable. Moreover, the inquiry report was full of bias and was not based on evidence of the prosecution witness. The I.O made an observation that no foundation course training was given to the applicant and at the same time, came to the conclusion

that the applicant failed to maintain communication with the other departments for site selection and did not apply his mind during the operation of the crane. The Disciplinary Authority on the other hand, did not apply himself properly to the findings of the I.O and while issuing the punishment order did not consider the final written statement of the applicant in its proper perspective. He passed a cryptic and non-speaking order which was not sustainable under the law. He ^{is} supposed to have ascribed reasons for coming to the conclusion which he did not do. He did not discuss the points raised by the applicant in the defence statement and therefore, order was based upon hypothesis rather than proven fact. Coming to the orders of the Appellate Authority, applicant has pleaded that he also upheld the punishment imposed by the Disciplinary Authority without properly considering the issues raised by the applicant in his appeal petition and his order is also a non-speaking order. Applicant had only one Article of Charge levelled against him and his submission in this respect is that he was not responsible for toppling of 140 Ton BD crane because, he was an untrained person and was forced to accompany with the crane under a senior person's guidance. The SA Grade Inquiry Committee held some of the officers as primarily responsible along with the applicant, but the others were given minor penalty whereas, a major penalty was imposed on the applicant. This, in the submission of the applicant is a matter of discrimination against him. It is the specific case of the applicant that no action was taken against Shri D.Behera, JE-I and Shri J.V.Apparao,

ADME, who had examined the crane at the site and almost all the works were done under their supervision. According to applicant, this brings out mala fide intention of the Respondents.

5. Respondents have filed a detailed counter reply in this case, in which the main issue that they have submitted is that the report of the Senior Administrative Grade Inquiry Committee came to a finding that the main contributing factor for toppling of the crane was the misjudgment of the applicant while operating the crane at the site. They have brought to the notice of the Tribunal that if an accident takes place, there is a Special Safety Circular dated 12.1.2006 based on which Senior Administrative Grade Inquiry Committee make ^{an} inquiry into the matter and comes ^{to} a ^{been} prima facie conclusion as to for whose fault accident or loss had caused. In this case also this procedure was followed and the report was accepted by the General Manager, East Coast Railways. Major penalty charge sheet which was issued to the applicant was based upon the findings of the SA Grade Inquiry Committee. Applicant while working with Shri D.Behera for a long period had already acquired enough knowledge with regard to operation and maintenance of the crane and during the leave period of Shri D.Behera, applicant single handedly used to maintain and operate 140 Ton BD Crane and therefore, his plea of lack of knowledge and training does not stand to reason. Another fact which has been brought out in the counter is that Shri D.Behera, JE-I was on leave from 29.8.2006 to 1.9.2006 and on the date of toppling of the crane on 31.8.2006, applicant had not

accompany Shri D.Behera. On the other hand, applicant was entrusted to supervise the operation by himself. He accepted this duty and did not refuse to supervise the operation in the absence of Shri D.Behera. All the documents which were asked for by the applicant to put up his defence statement were supplied to him and the inquiry was conducted in accordance with the due procedures. The Inquiry Officer went through the order of distribution of duty in this case and took into account ^{all} ~~of~~ other factors and found the applicant responsible for the failure and therefore, it can never be said that the Inquiry Officer's conclusion was hypothetical in nature. If the applicant did not think himself to be capable of handling this operation, he could have expressed his inability to carry out this work. On the other hand, he had already acquired sufficient knowledge in this matter and because of this confidence, he agreed to supervise this work. The order of the Disciplinary Authority is based upon the report of the IO and other relevant documents. In so far as dismissal of appeal is concerned, the Appellate Authority before passing his order had also called the applicant for a personal hearing and passed orders after going through the report of the I.O., defence statement of the applicant, order of the Disciplinary Authority, as well as the other relevant documents. Another point submitted by the Respondents in the counter affidavit is that the repairing of the toppled crane was estimated by the Chief Workshop Manager, Eastern Railway, Jamalpur to the tune of Rs.2,03,48,266 and after the repair was actually done, the Railway authorities had to pay Rs.3.13 crores.

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Therefore, the point made by the Respondents is that this failure of the applicant has cost the Railways dear. With regard to the charge of discrimination, the submission made by the Respondents is that three of the Railway employees including the applicant were found to be responsible in the report of the SAG Committee. During the course of the disciplinary proceedings, S.A.Rajak, one of the charged employees expired on 4.12.2009. In case of A. Vasanta Rao, punishment of reversion to a lower grade for two years has been imposed on him and this has been confirmed by the Appellate Authority. By stating these facts, Respondents have pleaded that the other employees who were found responsible have also been given due punishment. One fact which has been brought out very strongly in the counter affidavit is that Shri D.Behera, JE-I was no way responsible for this incident since he was on leave from 29.8.2006 to 1.9.2006 whereas the incident had happened on 31.8.2006. Therefore, Shri D.Behera was neither supervising the crane operation at the site on the date of accident nor was he involved in any manner. According to Respondents, there is no reason to bring Shri D.Behera to the picture by the applicant in this O.A. Therefore, in the counter reply, Respondents-Department have brought out all the facts in detail to counter the points raised by the applicant in this O.A.

6. Applicant, however, has filed a rejoinder to the counter, in which it has been stated that the SAG Officers Inquiry Committee had fixed responsibility on several other officers and staff of the Mechanical and

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Engineering Department, but no action was initiated against them. One Sr. Supervisor, viz., M.K.Sahu, who was the crane in charge was also present in the site and the Committee did not fix any responsibility on him also. Several such officers who had supervised this operation have been let off without any disciplinary action being taken against them. Applicant has again reiterated the fact that Shri D.Behera and M.K.Sahu had received some training in the area of supervision of the crane whereas he was never sent for any such training. On the other hand, he was forced by the Senior Officers to handle this operation. He only accompanied the Supervisors, but was never given to undertake any independent operation. He has only been made a scape-goat by the Railway authorities. In the rejoinder, applicant has also submitted that ~~it is~~ the Disciplinary Authority and the Appellate Authority have passed non-speaking orders revealing non-application of mind on their parts. Based upon these submissions, applicant has reiterated his prayer as made in the O.A.

7. We have heard Shri B.S.Tripathy, learned counsel for the applicant and Ms.S.L.Pattnaik, learned Panel Counsel for the Respondents in extenso and also perused the required documents.

8. There are several issues which have been raised by the applicant to which counter reply has also been submitted by the Railway authorities. Because of toppling of the crane, a preliminary inquiry was conducted by the SA Grade Inquiry Committee as per the regulation of the Department. This Committee submitted a report on the basis of which disciplinary

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proceeding was initiated against the applicant under Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968. Rule-9 of the said Rules provides that no order imposing any of the penalties specified in clauses - (v) to (ix) of Rule-6 shall be made except an enquiry held, as far as may be, in the manner provided in this Rule and Rule-10 or in the manner provided by the Public Servants (Inquiries) Act, 1850 where said inquiry is held under that Act. It further provides that whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Railway servant, it may itself inquire into or appointment under this Rule or under the provisions of Public Servants (Inquires) Act 1850, as the case may be, a Board of Inquiry or other authority to enquire into the truth thereof.

9. In the present case, there is no allegation made by the applicant that any of the statutory rules were violated while handling the disciplinary proceedings against him. He was also properly heard and documents as necessary were provided to him. He has also not challenged the SA Grade Inquiry Committee report that was submitted on this accident. He has only prayed for quashing the Memorandum of Charge dated 9.11.2006, the inquiry report dated 1.4.2008, punishment notice dated 13.6.2008 and the appellate authorities' order dated 9.6.2009. Since the charge sheet has been framed on the basis of the SA Grade Inquiry Committee report, there is no scope for quashing the charge sheet in this case. Along with the charge sheet also applicant was given a copy of the SA Grade Inquiry



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Committee report approved by the General Manager, E.Co. Railways. But coming to the report of the enquiry, which was supplied to the applicant by the Disciplinary Authority vide Annexure-A/6, we find that the same is an extremely brief report. The I.O. has not bothered to give his observation and findings in a detailed manner. He has mentioned that 1st sitting of the inquiry was conducted on 21.9.2007, 2nd sitting of the inquiry was conducted on 5.12.2007 and the 3rd sitting of the inquiry on 13.2.2008. It is further reported that the prosecution witness Shri J.V.Appa Rao failed to appear before the inquiry and this matter was reported to Sr.DME, Sambalpur. The 4th sitting of the inquiry was conducted on 5.3.2008 in which again the prosecuting witness failed to appear. It is not understood as to how the witness which has been cited by the Railway authorities had repeatedly failed to appear for conduct of the inquiry. The Inquiry Officer has made a mention that the opinion of the ADME about the accident as submitted on 17.9.2006 to the SAG Inquiry Committee is taken into consideration. Under the column "Analysis of the Inquiry", it has been mentioned that "after careful consideration of various statements of PWs, the I.O. has observed that....." He has not written anything about the various statements given by the PWs although he has mentioned that he has made a careful consideration. Thereafter, he has written a short conclusion that after careful examination of various statements of PW and CO, the I.O. (sic) came to the conclusion that the lack of knowledge of working, maintenance and operation of B.D. Crane of Shri V.R.Mohapatra



caused him ineffective at the site and made him unable to look out the safe operation of crane. It has been further mentioned that "though being a responsible supervisor Shri V.R.Mohapatra, JE-I, C&W, KBJ failed to maintain communication with other Department for site selection and did not apply his mind during the operation of the crane".

10. From a plain reading of this conclusion, one can make out that the conclusion suffers from self-contradiction and does not state categorically whether the charge levelled against the applicant ^{ve h} has been proved or not proved. It is also quite strange that being the I.O., he himself has hesitated to write "**I have come to the conclusion**" and instead of that, he has mentioned that "**I.O has come to the conclusion**". The I.O. is duty bound to consider the matter in detail and come to a finding as to whether the charge levelled against a delinquent has been proved or not proved or partially proved. He also has to draw his conclusion unequivocally and expressly, justifying the reasons of coming to such a conclusion. The I.O. in this case has not fulfilled any of the requirements prescribed under law for conducting inquiry in the instant case. In this connection, sub-rule(25(i) of Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968 prescribes as follows.

"(25(i))- After the conclusion of the inquiry, a report shall be prepared and it shall contain –

- (a) the articles of charge and the statement of imputations of misconduct or misbehaviour
- (b) the defence of the Railway servant in respect of each article of charge;



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- © assessment of the evidence in respect of each article of charge; and
- (d) the findings on each article of charge and the reasons therefor".

11. Judged from the above provisions of rules, it is quite clear that the report of the I.O. does not reveal the assessment of the evidence in respect of the charge levelled against the applicant. The report also does not contain the categorical findings on the article of charge and the reasons therefor. In the circumstances, report of the I.O. being tainted with legal infirmities is not sustainable under law and therefore, the same liable to be quashed.

12. Now coming to the order of the Disciplinary Authority, which has been filed at Annexure-A/8, we find that this is also a highly cryptic order and does not reveal that the D.A. has duly applied ^{his} ~~its~~ mind to the case. Under the column 'speaking order', D.A. has written as follows.

"After going through all the evidences on record, it is proved beyond doubt that the unfortunate incident could have been avoided if B.R.Mohapatra had taken adequate care and caution at the site of the incident.

13. The above reasoning of the D.A. in the punishment notice ~~on the~~ by no stretch of imagination could be termed as a speaking order. The D.A. is expected to deal with each of the findings of the I.O. against the weight of evidence before coming to the conclusion regarding imposition of punishment. In this regard, unfortunately, the report of the I.O. itself did not contain any detailed discussion and as, it suffers from various inadequacies as mentioned above, there was hardly any scope for the D.A.



also to pass a detailed speaking order. In the conclusion therefore, the order of the D.A. at Annexure-A/8 does not have any leg to stand upon. *R*

14. There is also another order dated 9.6.2009 in which the Appellate Authority has disposed of the appeal petition of the charged official. The Appellate Authority has mentioned about the personal interview that he had granted to the charged officer. The order of the Appellate Authority is also cryptic and suffers from the defect of non-application of mind. This also can be understood from the fact that the report of the I.O and the orders of the D.A. were not accompanied with due reasons and therefore, the order of the Appellate Authority dated 9.6.2009 is of no consequence.

15. In this regard, we would like to observe that the orders of the administrative authorities should always be accompanied with due reasons and justification. This being a disciplinary proceedings matter, various authorities are exercising quasi judicial powers under the statutes. They are supposed to pass detailed orders in an unambiguous and in express manner *R* terms so that the view points of the charged officer are well considered by them and in the process injustice is not meted out. The Hon'ble Apex Court in Kumari Shrilekha Vidyarthi etc. vs. State of UP & Ors. (AIR 1991 SC 537) has held as under.

"Every such action may be informed by reason and it follows that an act uninformed by reason is arbitrary; the rule of law contemplates governance by law and not by humour, whim or caprice of the ~~man~~ to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you". This is what a man in power must remember always".

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 16. Further, the Hon'ble Supreme Court in Krishna Swami vs. UOI & Ors.(AIR 1993 (SC) 1407 has held as under.

"Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached, lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article-21." *P*

17. Having regard to discussions held in foregoing paragraphs, we quash the report of the Inquiry Officer, orders of the Disciplinary Authority as well as the Appellate Authority vide Annexures-A/6, A/8 and A/10 respectively.

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

R.C.MISRA
 (R.C.MISRA)
 MEMBER(A)

BKS

A.K.PATNAIK
 (A.K.PATNAIK)
 MEMBER(J)