

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

M.A. No.132 of 1996  
O.A. No.563 of 1996

Present : Hon'ble Mr. S. Biswas, Administrative Member  
Hon'ble Mr. Shanker Raju, Judicial Member

Suresh Chandra Biswas, S/o late Bicharam  
Biawas, residing at Village Paschim  
Sikta, P.O. Makalpur, Dist. Hooghly, WB

... Applicant

VS

1. Union of India service through the  
General Manager, Eastern Railway, 17,  
Netaji Subhas Road, Calcutta-1

2. The Chief Personnel Officer, Eastern  
Railway, 17, Netaji Subhas Road, Calcutta

3. The Divisional Railway Manager,  
Eastern Railway, Asansol, Post Office,  
Asansol, Dist. Burdwan

4. Additional Divisional Railway Manager,  
Eastern Railway, Asansol, PO. Asansol,  
Dist. Burdwan, West Bengal

5. The Senior Divisional Mechanical  
Engineering (C&W), Eastern Railway,  
Asansol, P.O. Asansol, Dist. Burdwan, WB

... Respondents

For the Applicant : Mr. S. R. Kar, counsel

Mr.D. P. Bhattacharyya, counsel

For the Respondents : Mr. P. K. Arora, counsel

Date of order: 24.09.2002

O R D E R (ORAL)

S. Raju, JM

MA 132/96 has been preferred by the applicant for condonation of delay in filing the present OA. The grounds on which the condonation is sought are a) after the appeal was rejected on 20.4.93, the applicant has preferred a review petition to the respondents which was pending for consideration with the respondents and b) by an order dated 4.4.96, as admitted by them in their counter reply, it was informed that no further step can be taken at this stage. The OA has been filed on 6.5.96.

2. Keeping in view the aforesaid fact that the case of the

applicant was still pending consideration with the respondents and he was communicated the outcome of his review only on 4.6.96 as well as the ground adduced in the reply, though vehemently opposed by the respondents, we are satisfied that the reasons are justifiable and keeping in view the merits of the case the delay in filing the OA is condoned.

3. Applicant in this OA impugns the respondents' order dated 22.1.93 imposing upon him punishment of compulsory retirement as well as the appellate order dated 20.4.93 upholding the punishment.

4. The applicant who was working as a Driver was on account of derailment of Engine was proceeded with fact finding enquiry and on the basis of the report submitted disciplinary proceeding for major penalty was initiated and he was issued chargesheet in Standard Form No.5 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on the allegation of being responsible for starting the train in force of loop starter signal (on up direction) in dragger (on position) violating G.R. 3.78(1)(a)(b) and 3.81(1) & 4.35(1) resulting in derailment of engine. The Enquiry Officer through his findings held the applicant partially guilty of his failure to control the train from the adequate distance and also held the cabinman who fled away after the incident, responsible for such mishaps. The applicant represented against the findings.

5. The applicant who had 14 months to go for his retirement on superannuation was imposed upon the penalty of compulsory retirement which on preferring appeal was affirmed by a non-speaking order.

6. Learned counsel for the applicant though challenged the proceedings on several grounds including vagueness of the charge and that though the applicant was held guilty of negligence in operation of the engine, but has been punished on the charge of bad engine manship which has not been proved in the enquiry and

against which the applicant has not been afforded a reasonable opportunity.

7. It is also stated that only on the basis of fact finding report he has been held guilty which is not permissible and the Appellate Authority passed an order in violation of Rule 22 (2) of the Rules.

8. It is further stated that the applicant was not at all responsible for the negligence and it was on account of technical lapse and the main cause of derailment was the wrong setting of points for which Cabinman who fled away from the site was responsible and he was meted out differential treatment by giving a lesser punishment which cannot be upheld in view of Arts. 14 & 16 of the Constitution of India.

9. On the other hand, the respondents denied the contentions and stated that the applicant in pursuance of the findings in the letter dated 7.1.93 has not responded to the findings and impliedly accepted the case. It is further stated that the enquiry has been held in accordance with the Rules and as the derailment of a passenger train was a serious fault a lenient view has already been taken by the respondents which is in accordance with the rules and cannot be found faulted with. It is stated that the DA proceeding has been conducted in accordance with the Rules affording all the opportunities to the applicant to defend his case.

10. We have carefully considered the rival contention of the parties and perused the materials on record.

11. At the outset without going into ~~other~~ contentions of the applicant we find that the appellate order is non-speaking and in contravention of the Rule 22(2)(b) of the R.S. (D&A) Rules, 1968 where it is incumbent upon the Appellate Authority to analyse the evidence and also to go into the adequacy of the punishment and also to record the reasons after giving opportunity of personal hearing to the delinquent official as

also this has been mandated by the Railway Board's circulars issued in 1978 and 1982. The Hon'ble Apex Court has also held in Ram Chander vs. Union of India & Ors. [1986(2) SLJ (SC) 249] that in an appeal the Appellate Authority is bound to record his reason and also to go into the proportionality of the punishment. As we find the appellate order is not legally sustainable and contrary to the ratio of the Apex Court as well as the rules, the same cannot be sustained.

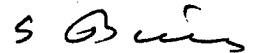
12. In the result the OA is partly allowed. The appellate order dated 20.4.93 is quashed and set aside. The matter is remanded back to the Appellate Authority to consider the appeal of the applicant and pass a detailed and speaking order within three months from the date of receipt of the copy of the order.

No costs.



(S. Raju)

MEMBER (J)



(S. Biswas)

MEMBER (A)