

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

O.A. 1135 of 1996

Present : Hon'ble Mr. Nityananda Prusty, Judicial Member.
 Hon'ble Mr. N.D. Dayal, Administrative Member.

Joydeb Jana

- v e r s u s -

1. Union of India, through the
General Manager, South
Eastern Railway, Garden Reach,
Calcutta-700 043.
2. Additional Divisional Railway Manager,
(Appellate Authority),
South Eastern Railway, Kharagpur,
Dist. Midnapore.
3. Sr. Divisional Engineer (CO),
(Disciplinary Authority),
South Eastern Railway,
Kharagpur, Dist. Midnapore.
4. Permanent Way Inspector, Soro,
South Eastern Railway,
Dist. Balasore,
Orissa.

...Respondents

For the applicant : Ms. K. Banerjee, counsel.
For the respondents : Mr. S. Chowdhury, counsel.

Date of order: 7 .06.2004

O R D E R

N.D. Dayal, AM

The applicant in this case has prayed for the following reliefs:-

"8.

- (a) An order do issue directing the respondent authorities to cancel and/or withdraw and/or recall and/or rescind the impugned chargesheet dated 15/18.12.1992 and enquiry report dated 6.5.1993.
- (b) An order directing the respondent authority to set aside and/or quash the punishment order dated 6.7.1994.

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- (c) An order directing the respondent authority to set aside and/or quash the appellate order dated 21.9.1995.
- (d) An order directing the respondents authorities to re-instate the applicant to the post of PWM w.e.f. 7.6.1993 with all admissible benefits."

2. The applicant was appointed as Gangman in 1973 and after selection and undergoing training for PW Mistry in the Zonal Training School, Sini for 26 weeks from 3.5.1990 to 13.11.1990 was promoted as PW Mistry and posted under PW1/Soro on 10.12.90. According to the applicant, he was neither given a special course training nor issued a competency certificate by the Divisional Engineer to supervise the maintenance work on LWR/CWR. On 10.11.92 the PW1/Soro came for Gang Inspection and not being satisfied with the progress of work, on the applicant's explanation made a note in Mate's Diary and directed the applicant to do through packing at KM 256/10¹/₂ 257/4 down line (restricted zone). The applicant was also directed to look after the missing fittings (specially keys). The applicant states that the slow progress of work was due to absentee gangmen and shortage of proper Gang Tools and materials. As a result the PW1/Soro directed Shri Ganapati, Senior Gangman of Gang No.27 to look after the Gang's work as above on Down line and work for Track Recording Car Programme on up line. The Senior Gangman was also directed to take the help of Gang No. 27 and CPC Gang. A memo dated 10.11.92 as at Annexure-A was issued to Sri Ganapati to look after the assigned job from 15.11.92 on down line and to do Track Recording Car Programme work from 18.11.1992 on up line.

3. It is submitted that in fact the Sr. Gangman started work from 11.11.92 onwards with Gang No. 27 and on 15.11.92 the CPC Gang also joined. As such the applicant was looking after the residue work directed by PW1/Soro which was to look after missing fittings of track (specially keys). On 18.11.92 a Goods Train was derailed. By order dated 23.11.92 issued by Sr. DEN the applicant was suspended. He states that as learnt

by him from reliable sources the Sr. Gangman was also put under suspension by PW1/Soro w.e.f. 11.12.1992 as per instructions of Sr. DEN in connection with the derailment of Goods Train on 18.11.92 since the Sr. Gangman was actually holding the charge of the Gang as per written instructions of PW1/Soro. The applicant was served a chargesheet dated 18.12.92 which contained the charge as under:-

" That the said Shri Jaydeb Jana while functioning as PWM-SORO during the period 18.11.92 is alleged to have committed acts of misconduct or misbehaviour.

Sri Jaydeb Jana of Gang No. 27 of PWM/SORO is responsible for heavy lifting of left side rail without proper protection of truck during maintenance work, bending to abnormal cross level variation."

The statement of imputations of misconduct or misbehaviour reads:-

" While Sri Jaydeb Jana is working as PWM/SORO in Gang No. 27 an accident took place on 18.11.92 at 11.15 hrs. at Km 256/15 on Dn. line between SORO and Bahanaga Bazar Station causing derailment of 20 wagons due to heavy lifting of left side rail without proper protection of truck during maintenance work, bending to abnormal cross-level variation which tentaments the gross negligency on duty on the part of Sri Jana and prima facie responsible for violating the C.C.A 1968 of 3(I) (III) which is unbecoming of Rly. servant."

4. Along with the charge memo a list of documents was enclosed which mentioned only one document, the Joint Enquiry Report. The list of witnesses enclosed carried two names which were those of Bhadrak -Driver and Bhadrak - Guard. In the charge memo, it was stated that copies of the documents are enclosed. The applicant was also informed that he could inspect them and take extracts from them. He was asked to submit his written statement of defence within 10 days and could take another 20 days after completion of inspection of documents if he desired to do so. He was informed that he should state whether he would like to be heard in person and furnish the names and addresses of the witnesses whom he would like to call in support of his defence.

5. The applicant wrote to the Disciplinary Authority on 29.12.1992 informing that he visited the office on 28 and 29.12.92 to inspect the record but they were not given to him. As such he had to reply to the chargesheet on 31.12.92 without perusing the Joint Enquiry Report. However, his order of suspension was revoked from 1.1.93. Later on 27.1.93 he again wrote to the Sr. DEN for a copy of the Joint Enquiry Report and also sought copy of preliminary reports (statements) of witnesses for preparation of his defence but did not receive them.

6. It is explained by the applicant that for conducting preliminary enquiry into the accident a Joint Enquiry Committee had been formed in which the applicant was not asked to appear nor his statement was taken. As a result of which he could not examine the witnesses who appeared before the Committee which finally held the applicant responsible for the derailment of the Goods Train. Further in the enquiry conducted thereafter, the Enquiry Officer found the applicant guilty in an arbitrary and biased manner. Despite his letter dated 18.5.93 he was not supplied the statement of witnesses who deposed in the enquiry on 16.4.93. It is alleged that the Disciplinary Authority issued punishment order dated 3.6.93 without considering his representation dated 28.5.93 against enquiry report in which he had pointed out irregularities committed by the Enquiry Officer. A punishment of reduction from the post of PW Mistry to Sr. Gangman in the scale of Rs.800-1150/- on the pay of Rs.1030/- for a period of three years with cumulative effect was imposed on him. Being aggrieved the applicant came before this Tribunal in O.A 640/93 which was disposed of on 5.7.93 with the following directions:-

" In view of the above we dispose of this application with

this order that within a period of one month from the date of communication of this order the disciplinary authority shall consider the representation made by the applicant against the enquiry report and all other materials and shall pass a reasoned order in terms of the Railway Servants (Discipline & Appeal) Rules, 1968, and communicate the same to the applicant. If the applicant is aggrieved by that order then he shall have to prefer an appeal within 45 days of passing the order of the disciplinary authority. Within a period of two months from

date of preferring of such appeal the appellate authority shall dispose of the appeal giving the applicant a personal hearing and communicate the same to the applicant. If the applicant has any grievance against the order of the appellate authority liberty is given to him file a fresh application challenging both the orders passed by the disciplinary authority as well as appellate authority. There will be no order as to costs."

7. Thereafter the disciplinary authority upheld the previous punishment imposed by order dated 27.7.93 and subsequently, the Appellate Authority by memo dated 27.9.93 rejected the appeal upholding the punishment awarded. The applicant returned to the Tribunal in O.A. 4 of 1994 on the following grounds:-



i) That the charge sheet dated 18.12.92 issued by the Senior Divisional Engineer (L-IV)/Kharagpur is without jurisdiction and authority as he was the President of the fact findings enquiry, who found the applicant guilty of the charges and as such he should not have acted as a disciplinary authority on the principle that prosecutor cannot be a Judge in the same matter.

ii) That the provision of Accident Manual have been blatantly flouted by the Divisional Officer conducting fact finding enquiry in as much as the applicant's statements were not taken before the said examination and cross-examination of the witnesses who gave statement before the said committee.

iii) That the applicant has been denied reasonable opportunity to reply his charge sheet in the absence of listed documents, namely, Joint Enquiry Report which is the fundamental of the charge sheet and the enquiry officer acted with biased and pre-conceived notion in finding the applicant guilty of the charges without giving him reasonable opportunity to put up his defence.

iv) The punishment imposed upon the applicant was the sole motive to shield the laches on the part of the Engineering Officials.

v) The appellate authority failed to take into consideration whether the procedure, prescribed in Indian Railway Permanent Way Manual and Manual of instruction of long welded Rail have been compelled with and whether the applicant was at all culpable for the alleged accident. Your applicant crave leave to refer to the said O.A. No. 4 of 1994 at the time of hearing, if necessary.

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The Tribunal vide its order dated 12.2.94 disposed of the application with the following directions:-

" The Divisional Railway Manager, Kharagpur, shall appoint an appropriate disciplinary authority, who shall be of the rank equivalent to that of Shri Neeraj Jain or any officer higher in rank than Shri Jain, within a period of one month from the date of communication of this order. The said disciplinary authority shall consider the representation of the applicant to the enquiry report as well as the enquiry report and other materials and he shall also give the applicant the appropriate personal hearing. If the applicant has any grievance that the necessary documents have not been handed over to him, the disciplinary authority shall also consider that aspect of the matter and then pass a final order, in accordance with the Railway Servants (D & A) Rules, 1968. If the applicant is aggrieved by the order passed by the disciplinary authority, he shall be at liberty to prefer an appeal to the authority, who shall be higher than the disciplinary authority nominated and if he is still aggrieved by the appellate order, he shall be at liberty to file an original application. The appellate authority shall pass his order strictly in terms of the Railway Servants (D & A) Rules, 1968. The entire process shall have to be completed by the disciplinary authority, within a period of two months from the date of appointment of the disciplinary authority. The appellate authority shall also dispose of the appeal if filed within two after filing of the appeal giving the applicant personal hearing."

8. Accordingly the nominated disciplinary authority gave a personal hearing to the applicant on 2.5.94 and after applying his mind afresh to the enquiry report and other records concluded that the charges were proved against the applicant and issued punishment order dated 6.7.1994 making it effective from 3.6.93, the date of receipt of the previous punishment order and awarded the penalty of reduction from the post of PWM in scale of Rs.1400-2300/- RPS on pay, Rs.1440/- to the post of Sr. Gangman in scale of Rs.800-1150/- (RPS) for a period of one year six months with cumulative effect. The applicant preferred an appeal dated 30.8.94 but received no decision. A reminder dated 9.6.95 also did not elicit any decision. The applicant filed contempt notice dated 24.7.95 and thereafter received instruction to appear in the office of ADRM, Kharagpur on 22.8.95 for a personal hearing which he did and explained his case. The appellate authority by order dated 21.9.95 having gone through the case file, appeal and points raised during personal hearing was convinced that the applicant had failed to perform his duties as PWM of Gang No.27, and reduced the penalty which was with cumulative effect to non-cumulative effect making it effective from 7.6.93 which

was the date of receipt of the previous punishment order dated 3.6.93. The applicant has stated that the appellate authority acted with bias and non-application of mind upon the issues brought to notice by the applicant and to say that the punishment order would take effect from 7.6.93 being the date of receipt of previous punishment order dated 3.6.93 is illegal and in fact the applicant should have been exonerated.

9. In their reply a preliminary objection has been raised by the respondents that the application is barred by limitation. However, since the appeal was decided on 21.9.95 and the application was filed on 16.9.96, it cannot be said to be time-barred. They have clarified that derailment occurred due to absuption of cross level on DN Track and the accident falls under category avoidable as well as failure. The applicant only was found responsible in the Enquiry report dated 6.5.93, and not Sri Ganapati, the Sr. Gangman. It is stated that LWR-CWR is also included in the training course. In fact the certificate is issued by the Principal of Zonal Training School, who is in the rank of DEN. The instruction given by the PWI/SFO through mate's diary was that Sri Ganapati, Sr. Gangman will assist the PWM, to do through packing. The applicant was not instructed to look at his missing fitting of the section. The Sr. Gangman was suspended but his suspension was revoked as enquiry report found only the applicant responsible. The respondents have disputed the allegations made by the applicant and stated that all the documents desired by the party were handed over to him on 9.2.93 on clear receipt. As per 13.2.2. of Manual Instruction for LWR/CWR, PW Mistry who passes competency certificate by DEN shall be posted on LWR/CWR. Since the applicant had undergone necessary training and had been found suitable he was assigned to supervise the work. The Sr. Gangman had not been entrusted periodical checking which were being done by Sectional PWI/Gr.III PWI/Incharge & AEN during their P/Trolley inspection of Track.

10. In the rejoinder the applicant has by and large reiterated the contentions raised in the application and denied the clarifications given by the respondents.

11. We have heard Id. counsel for both the parties and perused the pleadings. By its earlier two orders in O.A. 640/93 and 4/94 the Tribunal had given specific directions to the respondents with a view to ensure that the applicant received fair treatment and the disciplinary proceedings were properly followed giving the applicant reasonable opportunity to defend himself. In the process the representation of the applicant against the enquiry report was ordered to be considered as well as other materials before the penalty was awarded, the punishment order itself was remitted back to the disciplinary authority considering that certain directions of the Tribunal had not been properly interpreted and the disciplinary authority was changed. The respondents had met the necessary requirements and in the process the penalty awarded was also reduced by them.

12. The punishment order and the appellate order being contested are speaking orders that are not inconsistent with the article of charge and the findings of the enquiry accepted by the disciplinary authority. We have perused the enquiry report whereunder the Analysis of Evidence Witnesses in course of Enquiry it is recorded:-

" After a careful study of reply to the charge sheet and sparing of documents to the party the enquiry was conducted in three sittings. For the first two sittings the witnesses of Disciplinary Authority side based on which the charge had been framed could not turn up due to some unavoidable circumstances. However, in the 3rd sitting dated 16.4.93 all were present.

The witnesses examined are :-

- 1) Sri G. Ch. Rao, Driver/BHC.
- 2) " S. Behera, Guard/BHC.
- 3) " Baikuntha, S/O Krushna, G/Men, G/No.27 under PW1/SFO
- 4) " Bhallu, S/O. Hara
- 5) " Ganapati, S/O. Sadashiva, Sr.G./Man. "
- 6) " S.N. Patra, PW1/SFO.

and Sri Jaideb Jana, PWM/SFO, delinquent staff.

Sl. No. 1, 2 are the witnesses from the disciplinary authority side, based on then the charge sheet had been framed.

Sl. No. 3-4 are two witnesses for the Rly. Employees side (witnesses to charged employee).

Sl. No. 5, 6 are the witnesses called by E.O. as they were involved in the case."

Again it has been noted that the PW1/SFO being not satisfied with progress of Shri Jaydeb Jana, PWM/SFO had instructed the Sr. Gangman Sri Ganapati, S/o Sadashiva of Gang No. 27 to assist PWM in through packing work on down line. Further on, the E.O. has noted:-

" But nowhere the PW1/SFO has instructed the PWM to take the missing fittings position."

The Reasons for Finding expressed by the E.O. read as follows:-

" Sri Jaydeb Jana, PWM/SFO is the head of Gang No.27 under PW1/SFO.

Any work done by Gangman on 18.11.92 whenever he was present about one rail length of through packing portion and also was coming to the through packing zone intermittently, it was his responsibility to see whether his Gangman were doing the through packing work with lifting with proper track protection, safe passage of trains, rather a PWM has not bothered at all about the protection of track although he was present on the spot one rail behind the through packing zone - which is obvious from the statement of Sri Jaydeb Jana, PWM vide his reply to Question No.8."

13. The conclusion of the E.O. cannot be said to have been drawn without any material to substantiate the same. It also does not appear that the enquiry is vitiated by denial of reasonable opportunity to the applicant. In his appeal dated 30.8.94 the applicant has stated on page 5:-

" The D & A Enquiry in connection with charge-sheet memo dated 15/18.12.1992 started on 22.3.1993 where I was shown the joint Enquiry Report."

He has later in the appeal also drawn upon it to make further points. The applicant has not specifically controverted the statement of the respondents that all the documents were handed over on 9.2.93 under clear receipt. He blames the E.O. for failure to produce one of the defence witnesses but it has already been noticed that apart from the applicant six witnesses were examined during enquiry. If the available

material on record is sufficient then non-examination of more witnesses could not vitiate the whole enquiry. This being a matter in the realm of appreciation of evidence on record it is not for the Tribunal to go into it.

14. The Hon'ble Supreme Court has time and again elaborated upon the power of judicial review that could be exercised by the Tribunal and Courts. In the case of Parma Nanda Vs. State of Haryana and Ors., 1989 (2) SCC 177 observed as under:-

" The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In R.S. Saini Vs. State of Punjab and Others 1999 (8) SCC 90 it has been held-

"..... the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings." (Para 16)

15. In view of the above we do not find it necessary to consider further the citations referred by the Id. counsel of both parties. Considering the serious consequences of a train accident it cannot be said that the punishment awarded is disproportionate to the gravity