

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.353 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

Sri Kedar Mistry, S/o Late Jhagar
Mistry, Vill. Narottampur, P.S.
Surajgarh, Dist. Munger

... Applicant

VS

1. Union of India & Others
represented by the General Manager,
Eastern Railway, Calcutta

2. The Divisional Railway Manager,
Eastern Railway, Malda,

3. The Sr. Divisional Operating
Superintendent, Malda, E. Rly.
(presently redesignated Sr.DOM)

4. The Divisional Safety Officer,
Malda, E. Rly.

... Respondents

For the Applicant(s): Mr. A.K. Bairagi, counsel

For the Respondents : Mr. M. K. Bandopadhyay, counsel

Heard on 10.8.1999

: : Date of order: 03-9-99

O R D E R

D. Purkayastha, JM

Applicant, Shri Kedar Mistry, now removed from the service has filed this application challenging the chargesheet dated 29.10.90, Annexure/D to the application as well as the enquiry report and order of punishment removing him from service by a letter dated 19.4.91 issued by the Divisional Safety Officer, Malda and the order of the appellate authority and the order of the revisional authority on the ground that he was denied reasonable opportunity to defend his case and also as the findings of the appellate authority and the revisional authority are not based on records and thereby perverse, arbitrary and illegal. The brief fact of the case is that while on duty as Cabinman at West Cabin, Kajra station on 21.9.90 for a period from 17/00 hours to 01/00 hours, applicant after reception of 140

DN on main line at 17/55 hrs. allowed reversal of train engine of 5 UP KJ WMT which was standing on loop line by lowering loop shunt signal without taking any advice from duty ASM under exchange of private number. There was no entry in this regard in the log register seized from the Cabin after the accident. Further, he allowed carelessly, the train engine of 5 UP KJ WMT on main line which was still blocked by 140 DN passenger train, resulting train engine of 5 UP KJ WMT dashed against rear SLR of 140 DN at 18/10 hrs causing damage to rear SLR No.5318 and front SLR No.5618 and derailment of one pair of wheels of rear SLR. Thus the applicant violated the provision of the main body of SWR Item No.5(f). On receipt of the chargesheet, the applicant filed a written statement denying the charges levelled against him vide letter dated 25.12.90, Annexure/D5. Thereafter Enquiring Officer was appointed by the disciplinary authority by a letter dated 20.11.90, Annexure/D6 and the Enquiring Officer conducted the enquiry and submitted his report vide his letter dated 31.3.91 to the Divisional Safety Officer, Eastern Railway, Malda who is the Disciplinary Authority of the applicant holding holding that the applicant, Shri Kedar Mistry is found responsible for violating the provision main body of SWR Item No.5(f). Thereafter the copy of the enquiry report has been furnished to the charged official vide letter dated 31.3.91 for making representation against the enquiry report. Accordingly the applicant made a representation against the enquiry report on 11.4.91. Thereafter a notice of punishment vide letter dated 19.4.91 along with the findings of the disciplinary authority dated 9.4.91 has been served upon the applicant stating inter alia that after considering the findings of the DA enquiry in respect of the major penalty chargesheet No.RB-3/90-91 dated 20/29.10.90 it has been decided that he is guilty of the offence brought against him and he shall be removed from service as a disciplinary measure and same will take effect immediately and he was further directed to hand over the charge

to SM, Kajra Railway property, if any, in his possession. On receipt of the said order of punishment the applicant preferred an appeal on 2.5.91 Annexure/G, against the purported punishment dated 19.4.91 before the Divisional Operating Superintendent, Eastern Railway, Malda. The appellate authority disposed of the appeal on 31.7.91. Thereafter the the applicant filed a revisional application on 2.8.91 which has been disposed of by the Sr. Personnel Officer on 12.8.91. Be it mentioned that in respect of the same accident a criminal case bearing No.1380/90, TR No.108/95 under section 304(A) of IPC was filed and that has been disposed of by the Judicial Magistrate, 1st Class, Munger on 21.2.95 acquitting the applicant from the charges levelled against him in that case. Thereafter the applicant made another revisional application on 30.4.95 before the authority for withdrawal of the removal order from service since he has been acquitted from the criminal case and that application has also been disposed of rejecting the same on 21.12.95, Annexure/A. Thereafter the applicant filed this application before this Tribunal on various grounds mentioned in the application.

2. The respondents have filed a written reply denying the claim of the applicant and it is stated in the written reply that the applicant was given full opportunity to defend his case before the enquiring authority as well as before the appellate authority. The applicant was furnished all requisite documents as relied upon by the applicant during the enquiry. The enquiry was conducted by the Enquiring Officer. He recorded the rule and allowed the applicant full opportunity to defend his case. The enquiry officer thereafter completed the enquiry and submitted his report to the Disciplinary Authority. A copy of the enquiry report was sent to the applicant. After receipt of the enquiry report the applicant was given liberty for making representation before the disciplinary authority. The disciplinary authority after considering the enquiry report and the representation filed

by the applicant against the enquiry report had come to the findings that the applicant is guilty of the charges brought against him and decided to remove him from service with immediate effect and accordingly, the order of punishment has been communicated to the applicant by a letter dated 19.4.91, Annexure/A4 to the application. Thereafter the appellate authority as well as the revisional authority considered the appeal as well as the revisional application in accordance with the rules and found that the appeal and revisional application were devoid of merit and accordingly the findings of the disciplinary authority were affirmed and therefore, the application is devoid of merit and liable to be dismissed.

3. Mr. A.K. Bairagi, learned advocate appearing for the applicant strenuously argued the case before us. Mr. Bairagi contended that the charges are vague indefinite and not sustainable under the provision of SWR Item No.5(f). He also contended that the disciplinary authority totally failed to consider the inquiry report submitted by the inquiring authority independently and the representation against the inquiry report filed by the applicant. Thirdly, the appellate authority did not allow the applicant any opportunity of personal hearing before rejecting the appeal and arriving at perverse finding holding that the applicant is guilty of offence, without considering the fact that the provision of SWR Item No.5(f) cannot be applied to the Cabinman. The revisional authority also failed to consider the material facts of the Inquiry Report and provision of SWR Item No.5(f), by which the applicant cannot be held responsible for such accident.

4. Mr. M.K. Bandopadhyay, learned advocate appearing on behalf of the respondents, on the other hand, submits that after the Railway accident took place 21.9.90, a joint enquiry was held on 25.9.90 to 27.9.90 to investigate the causes of accident. The Joint Enquiry Committee found the applicant along with others

responsible for the accident. Thereafter chargesheet was issued against the applicant and an enquiry was held, in which the applicant was given full opportunity to defend his case. After the completion of the enquiry, a copy of the report was furnished to the applicant and the applicant made a representation against that report. Thereafter the disciplinary authority agreeing with the report of the enquiry officer imposed the penalty of removal from service. Therefore, Mr. Bandopadhyay submits that there is no laches on the part of the respondents and hence the application has no merit and it is liable to be dismissed.

5. We have heard the learned advocates of both sides in details and perused the records. At the outset after perusal of the records and the submissions of the learned advocates of both the parties, we are to say that it is well established law that the disciplinary authority must apply his mind independently and record his findings on the charges after examining the evidence produced during the enquiry. The applicant did not enclose the enquiry report along with the application, but the respondents produced the enquiry report submitted by the Enquiring Officer appointed by the disciplinary authority. We have also gone through the chargesheet framed by the disciplinary authority for imposition of major penalty on the allegation of misconduct as set out in Annexure/D. We have perused inquiry report. It is alleged that the applicant was found responsible for violation of the provision of the main body of SWR Item No.5(f). On a careful perusal of the provision of the SWR Item No.5(f) it is found that the said provision of SWR Item No.5(f) does not apply to the Cabinman. The provision of SWR Item No.5(f) runs as follows:

"(f) When carriages or wagons have to be attached or detached at stations where there is no Shunting Jamadar, the Guard shall proceed with that portion of his train which has to pick up or detach the wagons or carriages, and show the proper signal to the Driver. During the hours of darkness and before commencing to detach or attach vehicles the Guard shall proceed to the engine and notify the Driver that he is present. At stations where there are Shunting Jamadars

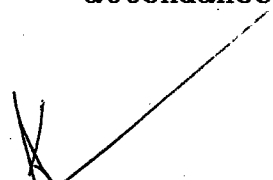
the work of attaching or detaching vehicles shall be performed by the Shunting Jamadar on duty who shall give necessary signal to the Drivers after taking orders from the Station Masters."

The same provision has been embodied below 5.14 of Indian Railways (Open Lines) General rules, 1976 which was issued for the guidance of the Railway servant. So, the said provision of SWR Item No.5(f) does not deal with the responsibility of the Cabinman, but deals with the responsibility of the Guard and Driver of the Train. So, Cabinman cannot be charged for violating the provision of SWR as stated in the chargesheet and the enquiry report. The applicant who is a Cabinman cannot be held responsible for violation of SWR Item No.5(f).

6. On a perusal of the enquiry report submitted by the Enquiring Officer it is found that the enquiring officer made a specific observation in the enquiry report to the effect that primary responsibility to cause the accident lies on the shoulder of the Driver and the responsibility of the Cabinman comes as a secondary only and we find that the disciplinary authority did not consider the observation and representation of the applicant against the enquiry report and after considering the enquiry report alone he has come to a decision of imposing the penalty of removal from service which is apparent from the order dated 19.4.91 where it is stated that after considering the enquiry report in respect of the major penalty chargesheet the disciplinary authority had decided that the applicant was guilty of violation of provision of main body of SWR Item No.5(f) and it was decided that he will be removed from the service with immediate effect. After issuance of the notice dated 19.4.91, no final order of removal had been issued to the applicant. The order dated 19.4.91 (Annexure 'F') cannot be said to be a final order of removal from service. No order stating that he is removed from the service with immediate effect has been issued by the Disciplinary Authority. It is noted by us that the disciplinary authority acted mechanically and he did not consider

the material fact and provision of the SWR Item No.5(f) as discussed above for the purpose of imposition of the penalty upon the applicant by way of removal from service. The note of the disciplinary authority dated 19.4.91 does not disclose the reason as to why the grounds taken by the applicant could not be accepted by him. So, the order of the disciplinary authority dated 19.4.91 is not only mechanical and also devoid of consideration of material evidences on record. In other words, findings are not based on legal evidences on record.

7. We have gone through the enquiry report submitted by the enquiring officer. From page 2 of the enquiry report, it is found that enquiry officer fixed three days for holding the proceeding, which are 30.1.91, 23.2.91 and 20.3.91 and the enquiry officer completed the enquiry on three sittings only. In the written statement submitted by the applicant, he denied the charges made in the chargesheet. We also mentioned the name of the 14 witnesses for the purpose of examination in this case for his defence, but it is found that the enquiring authority did not make any attempt to ensure the attendance of the prosecution witnesses and defence witnesses and he hurriedly completed the enquiry without taking proper steps for securing the attendance of the witnesses. It is also found from the records and enquiry report that one B. D. Gupta was cited as a defence witness. At the same time he was also cited as a prosecution witness in this case. But the enquiring officer stated that "Shri B.D. Gupta, Driver, JMP despite timely notice did not turn up and therefore, he could not be examined or cross-examined by the E.O. or the defence helper." He closed the inquiry. He did not take any effective step for securing the attendance of Shri B. D. Gupta. It can be said that it is not left to the witnesses to choose whether or not to appear as witnesses in the inquiry. So, prompt action ^{ought} ~~should~~ have been taken by Inquiry Authority in regard to attendance of the employee as witness in disciplinary inquiry.



The Hon'ble Supreme Court in the case of Mahavir Prasad vs. State of U. P. and Others (AIR 1970 SC 1302) observed that "the recording of reasons in support of a decision by a quasi judicial authority is obligatory as it ensures that the decision is reached according to law and is not result of caprice, whims or fancy or reached on ground of policy or expediency." Besides this, it is found from the chargesheet that the charges were framed on the basis of the findings of the enquiry proceeding submitted by J.A. Grade Officers, Joint Enquiry Committee consisting of Sr. DOS, Sr. DEN, DME & DSTE, Malda. And the said enquiry report has been relied as document under Annexure/3 to the chargesheet. But none of the said officers was examined for the purpose of proving the report on the side of the prosecution. Burden lies on the prosecution to prove the charge. So, they must prove the charge in accordance with the procedure and the said document marked as Annexure/A3 to the chargesheet was neither marked exhibit in this case nor any witness in support of the said documents was examined in this case. It is found from Railway Board's letter No.E(D&A)66RG6-24 dated 13.2.67NR 3927, SC92/67, it is obligatory on the part of the Inquiry Officer to summon the witness i.e., author of the report (Annexure 'BII' of the chargesheet) which is sought to be brought on the records as evidence. So, non-examination of the listed witnesses certainly affects the departmental enquiry causing prejudice to the applicant and the applicant was denied reasonable opportunity to defend his case before the enquiring officer. It is also found from the letter dated 31.1.91 (Annexure 'D') that the applicant was required to supply the statement of Guard of 140 DN on 21.9.90 and said documents had not been furnished to the applicant and the enquiry officer closed the hearing of both parties without taking steps for production of the documents as demanded by the charged official.

8. From the enquiry report it is also found that the first

sitting of the enquiry took place on 30.1.91. On that date the enquiry was postponed due to absence of the defence assistant, Shri R. Prasad and next date was fixed on 23.2.91. On that date also enquiry was postponed. Thereafter another date was fixed on 20.3.91 and on that date enquiry was conducted and completed by the Enquiring Officer. From the proceeding of the DA inquiry it is found that the Inquiring Officer puts some question to the charged official, Kedar Mistry, Cabinman. And it is found that a question was formed at Sl.No.11, which runs as follows:

"As per your own admissions you did so many operations for movement of the engine after WMT. Was it authorised with an order from the ASM on duty under exchange of private number as per extant rules ?

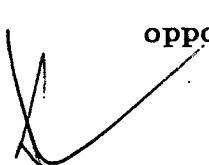
Ans: Save and except this movement all the movements were confirmed by the ASM on duty under exchange of private number. As per usual practice, the ASM had ordered me verbally to reverse the engine of the WMT and after reversing of the engine he had assured exchanging the private number with me. Therefore, in good faith of obedience I had acted on his verbal instructions."

The Enquiring Officer at the time of submitting the report took the said answer of the applicant as an admission on the part of the delinquent officer in support of the charge and he held that charge has been proved.

9. From the provision of Rule 9(21) of the RS(D&A) Rules, 1968 it is found that the Inquiring Officer is authorised to put question to the charged official on the circumstances appearing against him in the evidences for the purpose of enabling the charged official to explain any circumstance appearing in the evidence against him. It is settled law that the Inquiring Officer should be impartial person and cannot act as a Judge as well as Prosecutor. As per Sub-Rule (21) of Rule 9, the Inquiring Officer was authorised to ask clarificatory question only whenever as many as he likes in order to enabling the delinquent officer to explain any circumstance appeared in the evidence during enquiry. In the instant case none of the witnesses from the side of the prosecution has made any


allegation against the applicant i.e., charged official that he acted in violation of the order of the Assistant Station Master and that fact has been revealed from the question put to the charged official by the Inquiring Officer. So, the question No.11, as mentioned above, put to the charged official by the Inquiring Officer cannot be said to be a clarificatory statement rather it is found to be a question in a nature of cross examination to the witness and thereby we are of the view that the said Inquiring Officer had acted in the matter of examining the charged official in violation of the provision of Sub-Rule 21 of Rule 9 of the said DA Rules. It is an undisputed fact that the foundation of the DA Rules based on Art.311 is natural justice and reasonable opportunity. The Inquiring Officer is not supposed to bring any incriminating element ^{against} ~~to~~ the charged official by putting question in the nature of cross examination and thereby the procedure adopted by the Inquiring Officer in the matter of examination of the applicant in view of the Sub-rule 21 of Rule 9 of the DA Rules is found contrary to the law and such question and answer are not sustainable in the eyes of law.

10. We have gone through the appellate order passed by the appellate authority and we find that the appellate authority also acted mechanically and the applicant was not allowed any personal hearing before him before disposal of the appeal filed by the charged official and the appellate authority also did not consider the representation against the inquiry report filed by the charged official. The Hon'ble Apex Court has held in the case of Ramchander vs. Union of India & Ors., reported in 1986(2) SLR 608 decided on 2.5.86, that the appellate authority must give a personal hearing to the applicant before disposing of the appeal and it was necessary to provide an opportunity of personal hearing and the matter has been clarified by the Hon'ble Supreme court stating that now before penalty is imposed no opportunity is given to the appellant to represent against the

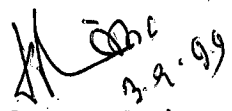


penalty proposed to be imposed upon the charged official. So, personal hearing is essential in order to give further opportunity to the applicant to represent his case and in view of the circumstances we find that the appellate authority also denied the applicant reasonable opportunity of being heard in this for the purpose of rendering fair justice to the applicant.

11. In view of the discussion made above, we are of the view that the inquiry conducted by the inquiring officer on the basis of the charges levelled against him was done in violation of the principle of natural justice and the applicant was denied reasonable opportunity to defend his case in accordance with the rule prescribed under the provision of RS(D&A) Rules, 1968. Therefore, the order of punishment dated 19.4.91, Annexure/F and the report of the enquiry officer as well as orders of the appellate authority and revisional authority are liable to be quashed. Accordingly we set aside all the impugned orders i.e., report of the enquiry officer, order of penalty at Annexure/F, orders of the appellate authority and revisional authority and we direct the respondents to reinstate the applicant in service with all consequential benefits as admissible to him forthwith. Since allegations are of serious nature and a departmental proceedings against other officers involved are pending till date, as stated by the learned counsel of the respondents and thus liberty is given to the respondents to start a de novo enquiry against the applicant on the basis of the chargesheet and to pass appropriate order in accordance with the rules, if the respondents think it fit and proper. With this observation we allow the application awarding no costs.


(G. S. Maingi)

MEMBER (A)


(D. Purkayastha)

MEMBER (J)