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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 16.3.2001

O.A. No. 378/1997

Jai Singh Rathore son of Shri Basant Singh Rathore at present working as Chief Permanent Way Inspector, Northern Railway, Jaisalmer.

... Applicant

v e r s u s

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Shri Deepak Subhlok, Divisional Superintending Engineer (I), Northern Railway, Jodhpur.
3. Additional Divisional Railway Manager, Jodhpur.

... Respondents

Mr. D.C. Sharma, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Administrative Member

: O R D E R :

(per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for quashing of the order of the appellate authority vide Annexure A/1 dated 16.6.97 and also the order of the disciplinary authority vide Annexure A/14 dated 4.4.97, with a consequential relief not to revert the applicant from the post of Chief Permanent Way Inspector (for short, CPWI), to a lower scale.

2. Heard the learned counsel on both the sides.

3. By reading the impugned order vide Annexure A/14, we find that

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the disciplinary authority after holding that the charges are proved against the applicant, imposed the punishment of reduction to a lower scale, i.e., from the scale of Rs. 2375-3500 to 1600-2660 (RP). On an appeal preferred by the applicant, the appellate authority has modified the punishment by reducing the penalty of lowering the scale from 2 steps to one step, i.e., from the scale Rs. 2375-3000 to 2000-3200. Being aggrieved by these orders, as stated above, the applicant has preferred this application.

4. The applicant himself has filed the statement of articles of charge vide Annexure A/4. The charge reads as under:

"Shri J.S. Rathore, while working as CPWI/Northern Railway at Makrana during the period February, 1995, had committed serious irregularities in so much so that due to his failure, collision of 391 passenger train running between Bikaner and Jaipur with Track Tamping Machine (CSM No. 912) took place at 10.39 hours on 11.2.95 between Borawar and Makrana stations on Jodhpur division because of CSM No. 912 being taken into the block section without the required authority in the face of an approaching passenger train moving with necessary authority.

Shri J.S. Rathore, CPWI/Makrana now at Jaisalmer had committed the irregularity and is held responsible for the above lapses thereby violated the instructions and contravened Para 1227(i) of Indian Railway P.Way Manual (1986) and GM/Engg./N.Rly's letter No. 219-W/61 (UT) Pt. V dated 10.9.84."

5. It is not in dispute that ~~thereafter~~, the matter was referred to the enquiry officer, and the enquiry officer had submitted his report. The disciplinary authority again referred ~~xx~~ the matter to the enquiry officer with an observation that he had not given any finding as to the charge No.(i) in Annexure A-II of the SF-5 Memorandum. Thereafter, the enquiry officer again submitted his detailed report vide Annexure R/4 dated 25.2.97. The department stated that the applicant was furnished with earlier enquiry report as well as the later enquiry report, and alongwith the later enquiry report, a final show cause notice was also given to him, and thereafter, vide impugned order Annexure A/14 dated 4.4.97, a penalty of reduction to a lower scale by two scales, i.e., from the scale Rs. 2375-3500 (RP) to Rs. 1600-2660 (RP) has been



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imposed on the applicant, and the appellate authority has modified the same, as we have stated above. The learned counsel for the applicant contended that the applicant has not been furnished the necessary documents to defend his case. But the respondents alongwith the reply filed Annexure R/1, the proceedings of the enquiry officer. We think it appropriate to extract Annexure R/1 as under :-

"No. AEN/HQ/170/E
Dated : 30.9.96

Sub: D&AR Enquiry against Shri J.S. Rathore, CPWI/MKN now at JSM.

Present:

1. Sh. J.S. Rathore, CPWI/JSM
2. Shri H.S. Bhati, Defence Counsel

By E.O. 1. All defence witnesses have been examined as desired by you. Do you want any more defence witnesses to be called for?

Ans. No, I do not want to produce any more defence witness.

2. All the relevant documents had been handed over/shown to you. Do you want any more document for your defence?

Ans. No I do not require any more document. I close my case.

3. Since the enquiry is completed, you may submit your written or verbal brief?

Ans. I will submit my written brief within 15 days. "



6. From the above proceedings of the enquiry officer, it is clear that the applicant was furnished with all the relevant documents, and he was permitted to lead his defence. Accordingly, the enquiry was completed. It also shows that the applicant did not require any more document and the proceeding was closed. In view of these proceedings, it is not possible for us to accede to the request of the learned counsel for the applicant that the applicant was not furnished with the necessary documents.

7. Nextly, the learned counsel for the applicant contended that on the basis of the material on record, it cannot be established that the

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applicant was liable for the accident, that ~~was~~ occurred on 11.2.95. But this contention is liable to be rejected for ~~more than one reason~~. It is not in dispute that the accident in question occurred on 11.2.95 due to collision of 391 passenger train, running between Bikaner and Jaipur, with Track Tamping Machine (CSM No. 912) at about 10.39 hours between Borawar and Makrana Stations of Jodhpur Division. It is the case of the department that this accident occurred due to taking of Track Tamping Machine (CSM No. 912) into the block section without the required authority in the face of an approaching passenger train No. 391, moving with the necessary authority. It is also not in dispute that at the relevant time of accident, the applicant was working as CPWI, and he was incharge of the work at the spot, at the relevant point of time. It is the case of the applicant that at the relevant time, he was attending other duties in relation to the track repair, and as such, he was not liable. But the contention of the department is that since the applicant being CPWI, was incharge of the Track Tamping Machine and the work in question, he has permitted the Foreman to move the Track Tamping Machine into the Block Section, in which passenger train No. 391 was moving within that block with necessary authority of the Station Master. From the evidence on record, it is clear that the applicant had not taken specific authority from the Station Master to move the Track Tamping Machine outside the signal point, for the purpose of attending the track repair, and according to Para 1227 of the Indian Railway Permanent Way Manual, 1986, as amended by Advance Correction Slip No. 17 dated 8.9.98, all 'on track' machines shall be worked in ~~under~~ the traffic block with the permission of the concerned Station Master and in accordance with the special instructions issued in this regard, and each machine shall be in direct charge of nominated track machine operator, who shall be fully conversant with the rules of working of the trains and protection in case of emergency. Clause (ii) (b) further states that the track machine shall work under the direct supervision of an engineering



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official not below the rank of PWI, who will be responsible for taking the traffic block for protection of the line, while the work was in progress and for clearing of the block, after completion of the work. The learned counsel for the applicant submitted that this clause (ii)(b) was later inserted on the basis of this amendment, whereas on the date of accident, this clause (ii) (b) was not in existence. He stated that it is only under clause (b), if at all, there could be liability on the applicant as CPWI. But this has come into force only with effect from 8.9.98, and as such, the applicant cannot be held liable for the accident, that was occurred on 11.2.95. But the contention of the department is that, as held by the appellate authority, both track machine operators and the applicant were jointly responsible for the accident in question. In Para 1227 of the Indian Railway Permanent Way Manual, 1986, as extracted at page 108 of the O.A., all 'on track machines' shall be worked only with the permission of the concerned Station Master, and in accordance with the special instructions issued in this regard. The Railway issued the Rules for working on track tamping machine. Both of them, in fact, covered the field. From the enquiry report, it is clear that the applicant had an understanding with the Station Master on duty that he would bring the machine in time to line No.1, to enable the route being set on line No.1. This is an highly technical matter, which the Railway official can appreciate better than the Courts. In this view of the matter, we think it appropriate to extract the relevant portion of the 2nd enquiry report, as under:-

"...(D)...(b) As per para 1227 (i), "all on track machines shall be worked with the permission of the concerned Station Masters and in accordance with the special instructions issued in this regard." It is seen that special instructions have been issued to TTM staff only for which the SEN/TT Line, Shivaji Bridge, New Delhi, had issued instructions which are only for the machine staff. As already stated in my enquiry report, these circulars have not been received by the Jodhpur divn. and copies were obtained during the period of enquiry. It was mainly/probably the reasons that Jodhpur was on meter gauge and TTM may not be required to work in this division.



(c) As per item No.5(b) of GM/Engg's letter No. 219-W/61(UT)/Pt.V dated 10.9.84 "after the grant of block and issue of caution order on Form OPT 80 by the SM to the P.Way official accompanying the machine, Asstt. Foreman/Chargeman will proceed to work in the block section at the KMs. indicated by the P.Way official who will be responsible for the safety of the track and will also ensure that the pre-tamping and post-tamping operations are completed by the gangmen earmarked for machine working. The Asstt. Foreman/Chargeman will carry out the work to the satisfaction of the P.Way official accompanying the TT machine."

It is seen in this case that the Foreman was taking the caution order/authority/OPT/80/OPT/79, which has been proved from the answer to question No.5 of Shri K.S. Rai/on duty SM, which states as under:-

"All the documents and token were delivered to the machine operator and the operator used to acknowledge these documents."

It is cleared above that the above special instructions issued by the GM/Engg and SEN/TT Line/New Delhi have not been received on Jodhpur division and not circulated to anybody on Jodhpur division. However, it has been circulated to all the Machine Staff and had the Foreman not taken / acknowledged these orders/OPT/80 etc., then it would have automatically come to the notice of the CPWI that as per the guidelines, only the P.Way official is authorised to take such cautions/OPT/80/79 etc. and he is supposed to be on the machine. This would have helped in averting the accident."

(Emphasis supplied)



8. From the above finding of the enquiry officer, it is clear that the enquiry officer on the basis of the departmental instructions dated 10.9.84 and also on the evidence on record, has come to the conclusion that the applicant and foreman both were responsible for the accident. It is not in dispute that the applicant was issued both the enquiry reports, and he replied to the final show cause notice issued under Article 311 of the Constitution of India. In view of the clear finding arrived at by both the authorities on the basis of the enquiry reports, we find that it is not possible for this Tribunal to interfere with such findings of the competent authority. It is not a case of no evidence on record also. Therefore, these findings cannot be interfered with on any ground. It is also brought to our notice that the foreman also has been imposed similar punishment, which is not the subject matter in this OA.

9. However, the learned counsel for the applicant strenuously

contended that the quantum of punishment imposed on the applicant is too harsh and unconscionable. From the order of the appellate authority, it is clear that the applicant has been punished with reduction of one step of pay scale, and having regard to the materials on record, we do not find any illegality in the quantum of punishment also. Hon'ble Supreme Court in number of judgements, reported in 1994 (1) SLR 516 [State Bank of India vs. Samarendra Kishore Endow and another], AIR 1996 SC 2474 [State of Tamil Nadu vs. Thiru K.V. Perumal and Others], AIR 1997 SC 2696 [State of Punjab & Ors. vs. Bakhshish Singh] and 1997 SCC (L&S) 90 [N. Rajarathinam vs. State of Tamil Nadu and another], has held that the High Court/Tribunal should not interfere with the quantum of punishment as an appellate authority. Hon'ble the Supreme Court has pointed out that the Tribunal has no power to substitute its own discretion to that of authority, while imposing the punishment. In view of this established principle of law as declared by the Apex Court, we do not find any reason to interfere with the order, even regarding the quantum of punishment. Accordingly, we pass the order as under:



Application is dismissed. But in the circumstances, without costs."

(A.P. NAGRATH)
Adm. Member

(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.

R. C. M.
22/3/07

Per D. C. H.
22/3

Part II and III destroyed
in my presence on 22.3.07
under the supervision of
section officer as per
order dated 29.2.07

Section officer (Record)