CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION No. 192/2008

Date of Order :24.05.2012

(Reserved on 17.02.2012)

HON'BLE MR. SUDHIR KUMAR, MEMBER (A)
HON'BLE V. AJAY KUMAR, MEMBER (J)

Rais Khan, S/o Shri Bundu Khan,
R/o T-5-A, Railway Colony,
Phalodi, NWR. Applicant

(By Advocate: Shri A.K. Kaushik)

Versus

1. Union of India through General Manager,
North Western Railway, Jaipur.

2. Assistant Divisional Railway Manager,
North-west Railways, Jodhpur Division,
Jodhpur.

3. Sr. D.O.M Jodhpur Division,
North West Railway, Jodhpur. -Respondents

(By Advocate: Shri Govind Suthar for
Shri Manoj Bhandari)

O R D E R

Per Mr. Sudhir Kumar, Member (A):

The applicant, of this OA, is aggrieved by the departmental proceedings started against him in respect of an incident which happened on 23.11.2005 when he was working as Indoor Assistant Station Master of Merta Road, Railway Station, and the Train No.9112 was allowed to come on line No.3 although the line was already blocked with a stationary engine for many hours. The department started Disciplinary Proceedings against both the Indoor Assistant Station Master and the Outdoor Assistant Station Master as being responsible for the above incident. The required notice under Rule-9 of the Railway Employees (Discipline and

Appeal) Rules, 1968, was issued to the applicant through Annexure A-1 dated 12.12.2005. He was charged with having violated various Regulations and the Railway Service Conduct Rules, 1966, in not having taken proper care regarding the safety aspect of the Train operations. The applicant has filed along with the OA the daily order sheets of the disciplinary enquiry, and the details of examination of witness as Annexures A-4, A-5, A-6 and A-7 and A-8. The report of the enquiry submitted by the Enquiry Officer on 26.2.2007, recording the finding that the applicant had committed breach of various rules for safe running of trains, and that the charges levelled against the applicant stood fully established was forwarded to the applicant through Annexure A-9 dated 26.2.2007. He had submitted his representation against the enquiry report through Annexure A-10 dated 11.4.2007. An order of punishment was awarded by the Disciplinary Authority reducing his salary to one lower grade of pay for a period of three years with future effect.

2. The applicant appealed against this order on 26.8.2007, and was given a personal hearing by the Appellate Authority also on 20.02.2008, and through his order dated ...04.2008, the Appellate Authority upheld the order of punishment imposed by the Disciplinary Authority. His appeal dated 26.8.2007 has been annexed to the OA as Annexure A-11.

3. The applicant is aggrieved by several actions of the respondents, which he states prejudiced his case. Firstly, he submitted that the fact finding preliminary enquiry conducted by the respondent authorities, on the basis of which the charge sheet

was issued, was not supplied to him, and nor were the statements of witnesses taken during the Preliminary Enquiry. He is also aggrieved that first a person, who was his junior was appointed as an Enquiry Officer, but when he objected, his objection was sustained, and then only a person senior to him was appointed as an Enquiry Officer.

4. It was further submitted that even though he was allowed the assistance of a Defence Counsel, and was allowed to produce defence witnesses, no proper Presenting Officer was appointed, and as a result no statements of prosecution witnesses were taken during the enquiry. He has also submitted that even the defence counsel examined the witnesses produced only on the basis of the Article of Charges served upon him in SF-5 charge sheet while cross examining the prosecution witnesses 1 to 4, whose statements have been annexed as Annexures A-4 to A-7. The applicant examined himself and two other persons as his defence witnesses, though the other three persons named by him could not be produced as defence witnesses due to various reasons.

5. The applicant admitted that Para-6.2 (a) of the General and Subsidiary Rules of the Northern Railway then in force at the Merta Road Railway Station stated that for line No. 2, 3 and 1A of the Railway Station, the Indoor Station Master on duty shall be responsible to ensure clearance of track by personal visual observation or through the assistance of outdoor station master or shunting staff or cabin man before permitting any movement over the same. He however, submitted that such personal visual observation was not possible for him as the Indoor Station Master,

as there was a heavy rush of trains, and he could not have left his chair even for a moment.

6. The applicant admitted that for the same incident the Outdoor Station Master had also been proceeded against, and had been awarded punishment of withholding three increments without cumulative effect after charges having been proved in the enquiry held against him. The applicant, therefore, submitted that since the Outdoor Station Mater has already been punished for the incident, responsibility could not be put upon him also for the same incident, and that the Enquiry Officer did not consider all these aspects while holding the enquiry.

7. He also submitted that the evidence of the four prosecution witnesses and three defence witnesses including himself was not properly analyzed by the Disciplinary Authority before coming to the conclusion of punishing him, and that the Disciplinary Authority had acted in a mechanical manner, without properly considering all the points and grounds raised by the applicant in response to the enquiry report, which was served upon him. The applicant had, therefore, prayed that the impugned orders are ex-facie illegal, arbitrary, discriminatory and void *ab initio*, as the impugned punishment order and the appellate order have been passed without following the rules and procedure as established by law, and principles of natural justice.

8. He, therefore, prayed that the impugned orders are liable to be quashed and when the witnesses have averred that the senior D.M.E (P) and the Outdoor Station Master were responsible for the alleged incident, and the applicant had merely gave the slot for line

No.3 for the train concerned on demand of the Outdoor Station Master, and the Outdoor Station Master has also already been punished, his own punishment is for extraneous reasons, and in a colourable exercise of power. He also submitted that the Enquiry Officer had travelled beyond the charge sheet, and this is a case of no evidence, and the impugned order suffers from total non-considerations of the facts as well as law.

9. He also stated that it has been wrongly held that the Railway tracks are visible from the seat of the Indoor Station Master, and further the Indoor Station Master cannot disobey the direction or the order of the Outdoor Station Master, as he is senior to him, and, therefore, the conclusion arrived at by the authorities about the guilt of the applicant is itself contradictory, and not sustainable in the eyes of law, and deserves to be quashed. In the result, the applicant had prayed for charge sheet dated 12.12.2005 (Annexure A-1), the order of the Disciplinary Authority dated 17.07.2007 (A-2), and the order of the Appellate Authority dated nil/4/08 (Annexure-3) to be declared as illegal, and quashed, with all consequential benefits, and for such other direction or order as may be passed in favour of the applicant which this Tribunal may deem just and proper under the facts and circumstances of the case, in the interest of justice, apart from the costs.

10. In their reply written statement submitted on 3.8.2009, the respondent authorities stoutly defended their actions to be within the bounds of law, rules and the procedure prescribed. It was submitted that the Preliminary Enquiry was not the sole basis for

the conclusions arrived at, and it was only the basis for issuing the SF-5 charge sheet, and a copy of that joint enquiry report was supplied to the applicant on 27.7.2006. It was further submitted that the applicant has himself admitted (when he examined himself as a defence in his own case) that the enquiry has been conducted absolutely in accordance with law, and that he was satisfied with the conduct of the enquiry. It was, therefore, submitted that the contention now raised by the applicant in the present OA is contrary to his own statement made before the Enquiry Officer.

11. It was further submitted that the Enquiry Officer never refused to call any witnesses, and it was only the defence assistant of the applicant himself, who on 28.8.2006, as per Annexure A-8 (page 32 of the OA), submitted that the four officials whose designations were mentioned by him need not be called as defence witnesses. It was further stated that the decision regarding relevancy of the witness is the sole domain of the Enquiry Officer, and the applicant cannot claim any grievance with regard to the non-calling as prosecution witnesses of two earlier named individuals. It was, therefore, submitted that the validity of the enquiry conducted by the Enquiry Officer cannot be assailed on this ground as a violation of the prescribed procedure.

12. It was further submitted that no extraneous matter has been discussed in the enquiry report and that though it is correct that the outdoor ASM was also held responsible in this accident case, but that he had been charged under different Rules as applicable to his role in the accident. It was further submitted that in any

case the applicant cannot be absolved of his offence if the outdoor ASM is also imposed punishment, whether it is a lesser punishment or a greater punishment.

13. It was further submitted that this Tribunal may not like to sit as an Appellate Authority to interfere with the findings arrived at by the Disciplinary Authority and affirmed by the Appellate Authority in regard to the facts of the case. It was further submitted that when the Appellate Authority himself has also granted an opportunity of personal hearing to the applicant while deciding the appeal filed by him against the orders of the Disciplinary Authority, and the applicant cannot hold any grievance in regard to the procedure adopted in the case. It was further submitted that both the Disciplinary Authority and the Appellate Authority have fully applied their mind, after going through the entire records of the disciplinary enquiry, and have passed speaking orders in accordance with law, and hence it is wrong for the applicant to contend that there has been any violation of his rights under Articles 14 and 16 of the Constitution of India.

14. It was further submitted that the applicant has miserably failed to prove any violation of the principles of natural justice, and that if he had himself refused to call certain defence witnesses, and gave another list of witnesses, some of whom did not appear and some others were not found to be relevant by the Enquiry Officer, this cannot give rise to any grievance for the applicant. The respondents had then gone on to describe the procedural aspects on which the applicant before us had failed in performing his duties in ensuring that Line no. 3 was vacant, and hence

submitted that the accident which took place on 23.11.2005 was on account of a serious lapse on the part of the applicant in not having taken enough care to avoid the accident on Line No.3. It was, therefore, prayed that the OA may be dismissed with costs. They had supported their submissions by filing copy of the Station Working Rules concerned regarding conditions for granting line clear, and the responsibility for ascertaining clearance of the lines as Annexure R-1, and the General and Statutory Regulations concerning the incident as Annexure R-2.

15. The applicant filed a rejoinder on 15.1.2010, more or less reiterating the points taken by him in the OA. He submitted that the enquiry proceedings themselves show that no alleged earlier statement of witnesses, as given before the fact finding committee during the Preliminary Enquiry were shown to the witnesses at the time of the regular enquiry. He also submitted that the evidence of the witnesses was wrongly appreciated by the Disciplinary Authority.

16. Heard. The case was argued vehemently by both the sides. The learned counsel for the applicant emphasized on the point that the Outdoor Station Master, who had already been punished in a separate enquiry, alone could have detected that a stationary engine was standing on the line for which he had given clearance for an important Express Passenger train to arrive, and that the full length of the Line No. 3 could not be visible from the seat at which the applicant was seated as an Indoor ASM.

17. On the other hand the learned counsel for the respondents emphasized on the point that there are multiple levels of

responsibilities fixed in the General and Statutory Regulations, as well as under the Station Working Rules to ensure the safety of the passengers of the trains, and it was the duty of both the Outdoor Station Master and of the applicant, the Indoor ASM, to ensure the clearance of the line before allowing an important passenger train to come on to that line. The learned counsel for the respondents also submitted that no procedural irregularity had been committed by the respondents in this case.

18. We have given careful consideration to the facts of this case. Once the incident of the accident occurred, the respondents first held a preliminary fact finding enquiry, and collected evidence from all the concerned persons, after recording their statements. The report of the Preliminary Enquiry then submitted formed the basis of the issuance of SF- 5 charge sheet to the applicant Indoor Assistant Station Master, and a parallel charge sheet to the Outdoor Assistant Station Master, who has already been punished in separate disciplinary proceedings. The applicant has not been able to prove that a copy of the preliminary fact finding enquiry was not supplied to him, and he has failed to counter in his rejoinder the statement made by the respondent authorities in their reply written statement regarding having supplied him with a copy of such Preliminary Enquiry report.

19. Further, it is seen that the respondents have not taken into consideration the statements recorded during the fact finding enquiry, as the basis for the conduct of the disciplinary enquiry, and had very rightly held a fresh examination of all the witnesses produced during the disciplinary enquiry. The applicant could

have alleged procedural fault on the part of the Disciplinary Authorities only if they had failed to record independent statements of the prosecution and defence witnesses, and had merely relied upon the statements recorded earlier during the preliminary fact finding enquiry, which was instituted before the disciplinary enquiry. Therefore, the applicant cannot be allowed to assail the procedure as followed by the respondent authorities.

20. We agree with the contention of the respondents that we cannot sit as an Appellate Authority for a re-appreciation of the evidence which has already been appreciated and weighed by the Enquiry Officer, the Disciplinary Authority, and the Appellate Authority. This aspect has been emphasized by the Hon'ble Apex Court in the case of B .C. Chaturvedi Vs. Union of India and others 1995 AIR SCW 4374; 1996 SCC (L&S) 80; (1995) 6 SCC 749. This principle was again reiterated and upheld by the Hon'ble Apex Court in the case of Apparel Export Promotion Council vs. A.K. Chopra AIR, 1999 SC 625; (1999) 1 SCC 759. These two judgments had followed the principles earlier laid down by the Hon'ble Apex Court in the case Union of India Vs. Sardar Bahadur (1972) 4 SCC 618 and in the case of Union of India Vs. Parma Nanda (1989) 2 SCC 177; AIR 1989 SC 1185.

21. Bowing down before the law as clarified and laid down by the Hon'ble Apex Court in the above cited judgments and many other similar judgments, we refuse to entertain the prayer of the applicant to re-appreciate the evidence adduced during the disciplinary enquiry in his case. It is certainly not a case of no evidence either, also it is not a case of extraneous evidence (the

report of the preliminary fact finding enquiry) being the only basis for arriving at the conclusions in a disciplinary enquiry case. The disciplinary enquiry has been conducted as per the procedure prescribed, and the applicant before us, and another officer in a separate proceeding, both have been found guilty of having been negligent in averting a disastrous accident. The respondent authorities have followed the proper procedure, and the Appellate Authority even gave an opportunity of personal hearing to the applicant, apart from considering his representation in appeal. Therefore, we find that the OA has no legs to stand upon, and deserves to be dismissed.

22. The OA is, therefore, dismissed, but there shall be no order as to costs.

(V. Ajay Kumar)
Member (J)

(Sudhir Kumar)
Member (A)

cc.

R/L 28/7/12

R/L 28/5/12