

CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH
CALCUTTA.

Calcutta this the 17 day of October 2001.

Original Application no. 1011 of 1997.

Hon'ble Mr Rafiq Uddin, Judicial Member
Hon'ble Maj Gen KK Srivastavaas, Administrative Member

Uday Nandan Goswami, S/o Shri NN Goswami,
R/o Rly. Qrs. No DS/286/D (Behind Engineering Training School)
P.O. Adra, Distt. Purulia.

....Applicant.

C/A Sri TK Biswas.

VERSUS

1. The Union of India,
Service through the General Manager,
South Eastern Railway, Garden Beach,
CALCUTTA.
2. Chief Personnel Officer,
South Eastern Railway, Garden Reach,
CALCUTTA.
3. Chief Engineer (Track),Rs
South Eastern Railway, Garden Reach,
CALCUTTA.
4. Addl. Divisional Railway Manager,
South Eastern Railway, Adra Division,
P.O. Adra Distt. Purulia.

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5. Senior Divisional Engineer,
(Co-ordination), South Eastern Railway,
Adra, PO Adra, Distt. Purulia.
6. Divisional Engineer (Track),
South Eastern Railway, Adra Division,
PO Adra, Distt. Purulia.
7. Assistant Engineer (Track),
South Eastern Railway, Adra, PO Adra,
Distt. Adra.
8. Divisional Safety Officer,
South Eastern Railway, Adra, PO Adra,
Distt. Purulia.

...Respondents

C/Rs Sri AK Dutta.

O R D E R

Hon'ble Maj Gen KK Srivastava, Member-A.

By means of this OA filed under section 19 of the Administrative Tribunals Act, 1985, the applicant Sri VN Goswami, has challenged the major penalty charge sheet dated 18.4.1996 (Ann. D), punishment order dated 30.08.1996 (Ann. H) and appellate order conveyed vide letter dated 29.7.1997 (Ann. N) and has prayed that the major penalty charge sheet dated 18.4.1996, punishment order dated 30.8.1996 and appellate order communicated vide letter dated 29.7.1997 be quashed and set aside. He has further prayed for direction to the respondent authorities to refund the deducted salary, which was deducted as per punishment (Ann. H) and to pay all arrears. He has also prayed that the respondent authorities be directed not to withhold the promotion of the applicant as per promotion letter dated 22.1.1997 (Ann. M) in respect of others and promote the applicant from the date he is entitled to with payment of all arrears.

2. The facts in brief, as per applicant, are that the applicant at the relevant time has been working as PWI Gr. II at Indrabil. An accident occurred on 22.09.1995 in between Indrabil and Sirgam section as a result of one passenger bogie of 470 Dn Kharagpur-Adra passenger was derailed. A Joint Accident Committee was framed and submitted its report. The applicant was served with a minor penalty charge sheet by Senior Divisional Engineer (CO) Adra on 05.01.1996 which was cancelled on 22.3.1996. On advise from Divisional Safety Officer Adra, Senior DEN (CO) issued major penalty charge sheet on 18.4.1006 on the basis of Joint Committee Inquiry Report. An inquiry was conducted and punishment was imposed by disciplinary authority vide its order dated 30.8.1996. The penalty of reduction of pay to lower stage from 1950-1900 in time scale with effect of postponing future increment on expiry of such proceeding has been awarded. The applicant, preferred an appeal to ADRM, Adra on 2.10.1996, which has been rejected by order dated 29.7.1997, giving rise to this OA. The case has been contested by the respondents.

3. Shri TK Biswas, learned counsel for the applicant drew our attention to relevant extract of Joint Inquiry Report (Ann. A) which is given below :-

"C. Casualty. There was no casualty and none-injured.

Reasons of findings.....

1. Track defects.....

a. Track Twist.....

"As per letter no. TC/TSC/58/Genl/1911 dated 14.7.82 of CTE-II/GRC safety limkts were laid down for twist parmatres and for a speed of 80 Kmph, for BG the limit in 15 mm over 2 metre base i.e. 7.5mm/ metre.

Hence the twist of 4.38/metre cannot be the cause of this derailment on the straight track.

C....

"From the above discussion, it is evident though there are some track defects but they have not of such serious nature.

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so as to be the cause of this derailment."

2. C&W defects....

a. Spring defects...

"This is what has precisely taken place and hence this difference of 23mm in spring height is the primary cause of derailment."

FINDINGS.

"After taking into consideration of the written physical and oral evidences as well as after visiting the spot of accident and considering all the track and coach reading, enquiry committed has come to the conclusion that the derailment of 1 rear trolley of coach no. SR 5504/Y of 470 pass. between IBL-JPH on 22.9.95 took place due to C&W defects, dash pot defects, loose stop screws etc. as detailed in the reasons for findings."

RESPONSIBILITY.

"Sri AK Shome, TXR/KGP is responsible for not doing proper primary maintenance of coach no. SR/5504/I at KGP on 21.9.95. He was also failed to carry out proper examination."

RECOMMENDATIONS.

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4. Track Renewal :

ADA-MDN section is having approximately 350 Kms on UP and Dn lines. Out of which approximately 270 Kms is overaged track laid as back as in 1945. Due to overaged track, there are series of low joints are given bad reading and cause unnecessary oscillations. Out of 270 Kms overaged track, only approximately 20 Kms is targeted for renewal. Balance riding and speed restriction."

4. The learned counsel for the applicant pointed out that in the said inquiry report the senior DSTE, Adra, who is one of the members ⁱⁿ _{against his} of four of the Inquiry Committee has added * mark _{below} the signatures

5. ~~an~~ ~~an~~ ~~an~~ ~~an~~ ~~of all members giving an endorsement:-~~

"* Since there are defects in track also such as missing fitting 34% and level variation & low joints the track plays at least secondary role in derailment, therefore, secondary responsibility lies with respondents also."

5. The main submission of learned counsel for the respondents is that the inquiry committee has fixed total responsibility on mechanical department, but due to observation of one of the ~~members~~ out of four, the secondary responsibility has been fixed on engineering department also, which is not correct. Out of four members, only one member has tried to fix responsibility on the engineering department which has not been accepted by the other 3 members including the president. Hence, this needs to be ignored.

6/ The second submission of the learned counsel for the applicant is that the minor penalty charge sheet has been withdrawn without assigning any reason which is against rules.

7. Learned counsel for the applicant argued that C&W defects are the cause of derailment as is clear from Joint Committee Report. The derailment has not been caused because of the track defects and the applicant is illegally being made a scapegoat. The applicant had already brought out the track defects to the knowledge of DEN through Chief PWI on 3.3.1995. Hence holding only the applicant responsible for the track defects is illegal. If the engineering department is held secondary responsible for the accident then all officials from AEN to Mate are to be blamed as AEN is over all incharge of the maintainance of the track as per rule 108 of Permanent Way Manual and the mate is responsible ^{for the} of the safety of the line as per rule 150 of Permanent Way Manual. Learned counsel for the applicant also drew our attention to para 3, 4 & 5 of Final Works Programme 1992-93 Vol. III, Track Renewal Works which is reproduced below:-

"3. The existing CST/9 sleepers were laid in 1964. Thus they are 27 years old and are in very bad condition. The rail seats have either broken or cracked and the keys cannot be held in position. The slots of tie bars have worn out and become elongated. About 50% of the sleepers are now unserviceable and the same will go higher at the time of actual renewal.

4. Due to deteriorated condition of rails and sleepers the track cananot be maintained to an acceptable standard despite additional maintenance effeorts having been ~~restored~~ to.

5. In consideration of what has been stated the above proposed renewal is inescapable for safety of traffic and economy maintenance."

This proves that the track defects was not caused by the negligence of the applicant, finally submitted that the Joint Committee Report should have been accepted by the Chief Safety Officer, which has not been done in this case. Hence, any action taken on the basis of the Joint Inquiry Report is bad in law.

8. Shri AK Dutta learned counsel for the respondents while contesting the case submitted that bad maintainance of track was within the knowledge of sectional PWI Grade II i.e. applicant, and the joint inquiry committee has held engineering department secondry responsible for the accident. Learned counsel for the respondents has also submitted that in view of the Railway Board's letter dated 3.7.1968, the charge sheet for minor penalty was inadequate and, hence, the disciplinary authority i.e. Senior DEN Co-Ord was directed to follow the schedule of punishment as per Railway Board and the minimum punishment prescribed in the accident cases by Railway Board has only been awarded to the applicant. He also submitted that the applicant seriously neglected his duties resulting into derailment of the bogie

of 470 Dn passenger on 22.9.1995 due to missing of track fitting, 24% Cross Level Variation and Low Joints, as has been pointed out by the findings in the Joint Inquiry Report. The applicant could not maintain the schedule inspection as has been admitted by the applicant in his representation dated 12.7.1996 addressed to Senior DEN. Thus it is evident that the applicant neglected his duties.

9. Learned counsel for the respondents further submitted that proper procedure was followed, Inquiry Officer was appointed and reasonable opportunity to defend was provided to the applicant. The inquiry officer held the applicant guilty of charge and the disciplinary authority passed the order on 30.8.1996 (Ann. H). The appellate authority after full application of his mind considered all the points raised in the appeal and passed the order which was communicated by the disciplinary authority on 29.7.1997. The plea of the applicant that the Senior DEN has acted as Disciplinary Authority as well as appellate authority is not borne on facts.

10. Heard learned counsel for the parties and perused the records.

11. We have given due consideration to the submissions made by learned counsel for the parties. The main question to be decided in the present case is whether there was material before the enquiry officer to conclude that the applicant is responsible for the accident or not. The Joint Committee Report (Ann. A) is detailed one and it covers all the points concerning the derailment of coach of 470Dn on 22.9.1995. It is obvious that basis of the conclusion found by the enquiry officer is Joint Committee report. The careful perusal of the Joint Inquiry report does not hold the engineering department at all responsible for the accident. It is only on the basis of remarks of the Senior DSTE, Adra, who was one of the members of the Joint Committee that secondary responsibility is that of Engineering department. We would like to point out that if the endorsement of the Senior DSTE Adra, was accepted by president of the Joint Committee ^{others} ~~and~~,

2 members, then the applicant has no case. Since there is nothing on record to prove that president and other members are in agreement with the endorsement of Senior DSTE, it is not correct to fix the responsibility on engineering department at all. Therefore, the conclusion of the enquiry officer is not justified. We have no doubt in our mind that in the cases of accident, action has to be taken against people responsible for contributory negligence as well. But in the present ^{case}, we do not agree with the respondents that the applicant is in any way responsible for negligence. The applicant had thoroughly inspected the track and he had duly informed the DEN about the deteriorating condition of the track vide his letter dated 3.3.1995 (Ann. B). Every one from top to bottom in the HQs office was also aware of the track condition which was bad as is evident from the Final Works' Programme 1992-93 Vol III, Track Renewal Works issued by S.E. Railway, HQs. Calcutta. What comes to our mind is that when the disciplinary authority served the minor penalty charge sheet upon the applicant in the first instance he was convinced that the charge against the applicant was not grave. We are of the opinion after going through the Joint Committee Report that there is no act of omission and commission on the part of the applicant. Therefore, holding the applicant responsible for accident is not established from the material on records.

12. Learned counsel for the respondents has pointed out that as per Rule 125 of Permanent Way Manual the applicant is directly responsible for the accident. For convenience sake we would like to reproduce para 125 of Permanent Way Manual :-

"125. Safety of track:- (1) The Permanent Way Inspector is directly responsible for the safety of the track. He shall be vigilant to locate faults in the Permanent Way ⁱⁿ and ~~promptly to locate faults in the Permanent Way~~ and promptly

remedy them.

Track defects which are beyond his powers to remedy should be immediately brought to the Assistant Engineer's notice by the Permanent Way Inspector and mention of the same made in the special reports on the condition of Permanent Way on the Section.

(2) Independent of Detailed periodical inspections, the Permanent Way Inspector, during his routine inspections, should watch for any signs of weakness in bridges and structures affecting track and promptly report any matter demanding the Assistant Engineer's attention."

As per this rule the PWI is supposed to be vigilant to locate faults in the track, he should bring the same to the notice of Assistant Engineer. He should also do the detailed periodical inspections and during his routine inspections should watch for any weakness etc etc. The point for consideration before us is whether the applicant had carried out his duties as required and our answer is in affirmative as is clear from the applicant's Diary for the month of September 1995 (Ann. A-1). The DEN, Assistant Engineer and also Senior Officers of the H Qrs. were fully aware of the track condition and its defects which was not within the power of ^{the applicant} to remedy. Besides we also find force in the submission advanced by learned counsel for the applicant that withdrawing minor penalty charge sheet without assigning any reason and then serving major penalty charge sheet is contrary ^{to the instructions contained in} in Railway Board's letter no. E(D&A)93 RG 6-83 (RBE No 171/93) dated 1.12.1993 which lays down:-

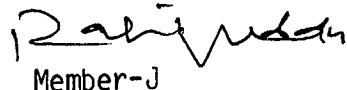
"If the memorandum of charges issued to an employee is withdrawn/dropped with the intention to issue a fresh chargesheet subsequently, the order cancelling the original one or dropping the proceedings should be worded carefully,

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so as to mention the reasons for such an action indicating the intention of issuing chargesheet afresh appropriate to the nature of the charges."

13. In view of the above observations, the OA is allowed. Major Penalty chargesheet dated 18.04.1996, Punishment order dated 30.08.1996 and Appellate order communicated vide letter dated 29.7.1997 are quashed with the direction to the respondents that the applicant is given all consequential benefits. The necessary orders will be passed within a period of three months from the date of communication of this order. The OA is decided accordingly.

14. There shall be no order as to costs.


Member-A
Member-J

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