CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 451 of 2001

Friday, this the 7th day of March, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. P. Rajendran,
S/o V. Ponnusamy,
Section Engineer/Permanent Way/West,
Southern Railway, Palghat,
Permanent address: No.2/82, C-1,
Arulmurugan Nagar, Chettipalayam Road,
Poddanur, Coimbatore District. ....Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the
General Manager, Southern Railway,
Head Quarters Office, Park Town PO,
Chennai-3

2. The Senior Divisional Engineer (East),
Southern Railway, Palghat Division, Palghat.

3. The Senior Divisional Engineer (Coordination),
Southern Railway, Palghat Division, Palghat.

4. The Divisional Railway Manager,
Southern Railway, Palghat Division, Palghat.

5. The Chief Engineer, Southern Railway,
Head Quarters Office, Park Town PO,
Chennai-3 ....Respondents

[By Advocate Mr. P. Haridas]

The application having been heard on 7-3-2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, Section Engineer/Permanent Way/West of Southern Railway, Palghat, has filed this application impugning the order dated 6-5-1998 (Annexure A-6) by which the 3rd

respondent imposed on the applicant a penalty of reduction in pay to a lower stage for a period of one year fixing his pay at Rs.7300/- in the scale of pay of Rs.6500-10500 as also the appellate order dated 25-6-1999 (Annexure A-10) of the 4th respondent by which the penalty imposed on him is maintained. The short facts are as follows:-

2. The applicant was served with a memorandum dated 6-8-1997 (Annexure A-1) which contains the following charge:-

> "The aforesaid Sri.P.Rajendran S.E.P.Way, while working as S.E.P.Way BQI on 26.6.97 was careless and negligent in that, he failed to maintain the track in his jurisdiction (i.e. at Point No. A-12 at BQI Yard) as stipulated in para 237.2(b)ii of IRPWM. This has caused the derailment of T.No. CBF N Goods at BQI Yard on 26.6.97. He has violated IR/PWM/Rule 237(2)(b) and GR 15.02(a). He has not shown devotion to duty and thereby violated Rule 3.1.ii of Railway Services Conduct Rules."

The applicant acknowledged the receipt of the charge memo on 1-9-1997 and on the same date by Annexure A-3 letter he requested that a copy of the joint enquiry committee findings on the derailment and joint rolling stock readings be supplied to him as the details necessary for him to give an effective explanation to the memorandum of charge are wanting in Annexure A-1. In reply to that, he was informed by letter dated 19-9-1997 (Annexure A-4) that he has to submit his explanation on or before 26-9-1997 failing which ex-parte decision would be taken by the disciplinary authority. However, this communication (Annexure A-4) was received by the applicant only on 15-10-1997. He, on 10-11-1997, submitted a detailed explanation (Annexure A-5) as a prelude by stating that the materials have not been made available to him, but explaining how he cannot be held guilty as the derailment, according to

him, was not on account of any defect in the track. However, in Annexure A-6 order dated 6-5-1998, finding the applicant guilty and imposing on him the penalty of reduction in pay as aforesaid, it was stated that the order was made ex-parte and no reference was made to the statements made by the applicant in Annexure A5. Aggrieved by that, the applicant filed Annexure A-7 appeal memorandum to the 4th respondent. The 4th respondent disposed of the appeal by Annexure A-10 order. While the appellate authority observed that there were certain defects in the charges but also stated that as the para which was stated to have been violated has been clearly stated in the charge memo, the defect has been rectified. However, the appellate authority did not find anything wrong in not furnishing the copy of the findings of the joint enquiry committee on the ground that it was on account of administrative interest and as it was not advisable to dispute the decision of the competent authority. Aggrieved by these orders, which according to the applicant are perverse, non-speaking and bereft of application of mind, the applicant has filed this application seeking to set aside these orders with consequential benefits.

3. Respondents in their reply statement seek to justify the impugned orders on the ground that the orders have been issued complying with the requirements of the rules. They contend that the action on the part of the respondents in not providing the applicant with a copy of the findings of the joint enquiry committee was justified on administrative exigencies and that it was not advisable to dispute the

correctness of the findings of the competent authority regarding the guilty on the basis of the joint enquiry committee's report.

4. The scrutiny of the relevant materials placed before us makes it abundantly clear that the disciplinary authority as also the appellate authority have taken an evasive attitude towards the relevant question raised by the applicant in his explanation to the memorandum of charge as also in the appeal memorandum. In the memorandum of charge (Annexure A-1), apart from stating that the applicant failed to maintain the track in his jurisdiction at Point No.A-12, inspite of the applicant making it clear in his letter (Annexure A-3) the details are wanting for him to give an effective explanation and requesting the disciplinary authority to furnish to him the necessary documents, the disciplinary authority did not accede to that legitimate and reasonable request of the applicant. This action is sought to be justified on the ground of administrative exigency. We are not told as to what administrative exigency stood in the way of furnishing to the applicant the relevant materials, furnishing of which alone would have enabled him to give an effective explanation to the memorandum of charge. The memorandum of charge is defective even, according to the appellate authority, for the appellate authority has stated in its order that the charge is defective. Findings of the appellate authority that the defect has been rectified, because paragraph of the Indian Railway Permanent Way Manual (IRPWM for short) has been correctly quoted, is absolutely meaningless. Quoting the paragraph number would not to our mind cure the defect in the charge. The charged employee should know what actually is the failure on his part

to give a proper explanation. Further, the letter dated 19-9-1997 (Annexure A-4) giving the applicant a further opportunity to submit his explanation on or before 26-9-1997 has been received by the applicant only on 15-10-1997. However, many months before the disciplinary authority has passed the impugned order Annexure A6, the applicant had on 10-11-1997 given a detailed explanation to the memorandum of charge which is defective even without the aid of the documents which he has sought. He has stated in Annexure A-5 that the track was not defective and the derailment ought to have occurred on account of the mechanical defect in the train. However, in the impugned order Annexure A-6, although Annexure A-5 explanation was received by the disciplinary authority long before Annexure A-6 was issued, nothing was mentioned about that and the order is said to have been issued ex-parte. The disciplinary authority was not justified in issuing the ex-parte order because Annexure A-4 letter affording the applicant a further opportunity was not served on him within the time stipulated. Even otherwise, on the basis of the defective memorandum of charge (Annexure A-1) which does not disclose what actually was the defect in the rail, we are of the considered view that no finding that the applicant was guilty could not have been arrived at by any reasonable individual. Annexure A-6 order, according to us, is bereft of application of mind, perverse and non-speaking. Less said about the appellate order is the better. Extracting the relevant part of the appellate order alone would suffice:-

> "... This is a minor penalty case where, the details of the irregularities found in the track has not indicated in the charges, to that extent it is defective. However, as long as para violated by the charged employee has been indicated in the charges which can be taken as correct also.

I have also gone through the speaking order of Sr.DEN/Co-ord./PGT wherein already ex-parte penalty has been imposed due to non-submission of any explanation by the charged employee and consequent to this his pay was reduced to lower stage for a period of one year (NR). The same has been advised to the charged employee.

Vide letter dated 1.9.97, Sri Rajendran had asked for joint enquiry committees and joint rolling stock readings and has not been given by administration and he was advised vide letter dated 19.9.97 and to which has to give a reply.

As long as the report of joint enquiry committee has been accepted by the competent authority and findings are also accepted, it is not possible and advisable to dispute on the decision of the competent authority, and according to the gravity of offence, charge memo and subsequent penalty thereupon can be imposed by disciplinary authority, taking into account the relevant aspect and representation of the charged employee.

In this case, I find that already sympathetic view has been taken by the disciplinary authority, therefore, there is no substantial reason for further reduction in the penalty already imposed. Therefore, I decide to maintain the penalty already imposed by the disciplinary authority that his pay is reduced to lower stage for a period of one year (NR). ...."

5. From the 1st paragraph extracted above, it is evident that the appellate authority was satisfied that the charge was defective. By merely indicating one para of IRPWM how could the charge be taken as correct is not indicated anywhere in the appellate order. The conclusion of the appellate authority that the findings of the joint enquiry committee and the joint rolling stock readings could not be furnished to the applicant for administrative reasons would not stand the test of reasonableness because it is not explained as to what administrative exigency would be jeopardized by furnishing relevant materials to the applicant who has to meet the charge effectively. Further, it is seen that the appellate authority has relied on the joint enquiry committee's report to uphold the order of penalty, although this material which was relied

on has not been made available to the applicant, even after his request. The principle of natural justice has been grossly violated.

6. In the light of what is stated above, we are of the considered view that the impugned orders are unsustainable. Accordingly, the Original Application is allowed. The impugned orders Annexure A-6 and Annexure A-10 are set aside. The applicant shall be entitled to all the consequential benefits. There is no order as to costs.

Friday, this the 7th day of March, 2003

T.N.T. NAYAR
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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