

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 472/2004

Friday, this the 1st day of *Sept*, 2005

C O R A M:

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

B.V. Unnikrishnan,
S/o. N.R. Velayudhan,
Loco Khalasi,
Office of the Chief Crew Controller,
Southern Railway, Erode,
Residing at: No. 127, Annai Gavalli Street,
Shastri Nagar, Erode.

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India,
Represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Chief Operations Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
3. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
4. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat.
5. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3. ... Respondents.

h (By Advocate Mr. Thomas Mathew Nellimoottil)

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

1. The brief facts of the case as contained in the O.A are as under:-

(a) The applicant at the material point of time (15-05-2002) was on duty as Asst. Driver (Diesel Assistant) in Train No. 6732 – Bangalore City to Trunelveli from Erode. He was led by a driver in running the train. At about 4.10 hours , when the train was approaching Unjalur (a run through station), the applicant noticed both the 'Distant' and 'Home' signal displayed "Caution" aspect and as per the laid down procedure, the applicant called out the aspect of the signals to the driver, which the driver repeated as required. However, when the train reached the facing points, it took the wrong (loop) line and the applicant and the driver noticed the head light of another train. The train was therefore stopped immediately. The other train also stopped and thus, a possible collision was averted. The applicant was placed under suspension w.e.f. 16-05-2002 till 27-05-2002. A fact finding inquiry was earlier conducted; Major Penalty Charge Memorandum dated 02.07.2002 was drawn containing the following charge:-

"The abovenamed Shri B.V. Unnikrishnan S.No. J/M.4497, Dsl. Asst/Erode, while working as Assistant Driver/Erode of T.No. 6732 Express (SBC-TEN) on 15.5.2002 was careless and negligent in his duties, in that he has failed to call out the correct aspect of the signal to Driver and passed the UP Home Signal at 'ON'. This has resulted in the averted collision of T.No. 6732 Express with NMG Goods at URL on Road 2 at about 4.16 hours.

He has thus violated Rule 3.83(i) GRS, 1976 and failed to maintain devotion to duty and behaved in a manner quite unbecoming of a Railway Servant and thereby violated Rule 3.1 (ii) and (iii) of Railway Services (Conduct) Rules, 1966."



2. The statements given by the witnesses in the said fact finding enquiry constituted the documents relied upon by the prosecution to prove the charge. Six witnesses were named, one of whom was the driver of the train No. 6732.

3. Request by the applicant for access to the certain documents (Report of the officer who visited first the spot, copy of the fact finding inquiry report and the statement of Guard of the train) was rejected by Respondent No. 4, as irrelevant to the proceedings, vide order dated 29-07-2002. The applicant, was, therefore, compelled to give his explanation without the documents he needed to disprove the case of the respondents, and, on his denial of the charges and on his contention that the incident occurred only due to the defective signals for which neither the Driver nor the applicant was responsible, inquiry officer was appointed to inquire into the charges. Applicant once again renewed his request for the documents. Despite the request being addressed to the I.O, the I.O, without considering the same fixed the date for commencement of inquiry. After the prosecution witnesses were examined, the applicant was asked whether he would like to subject himself to self-examination and on his declining for the same, the I.O advised the applicant to furnish written brief. After the written brief was furnished, the case was again listed for further hearing, when the applicant was examined by the I.O. The inquiry concluded on that day. None of the

bz

documents were taken into account, while the depositions of the witnesses were considered by the I.O while submitting the report. The Inquiry Officer had held the charge having been 'proved'. The reasons for finding and findings as contained in the Inquiry Report are as under:-

"REASONS FOR FINDINGS

The above disposition of witnesses the Train No. 6732 Exp while approaching URL. The Assistant Driver observed the UP distant signal as caution aspect and immediately the speed of the train was reduced to enable to pick up the Home signal which he expected to be in 'ON' aspect and while approaching the home signal the Assistant Driver called out the UP Rd1 Home main line as caution aspect from the visible distance due to Red Roundel broken and missing and proceeded with the speed of 40 to 50 kmph. By assuming the train is receiving on main line and at the same time the Rd2 UP Home Signal was 'ON' aspect. But the Assistant Driver failed to call out the aspect of white light and day aspect of UP Rd1 Home close to the UP Home signal when it becomes visible before passing it. Since the Assistant Driver can easily the changing of brightness of white light of UP Rd 1 Home by which the train can be stopped at the Home signal and avoided the averted collision of 6732 Express with NMG goods on 15.5.2002. So, he violated Rule 3.83(i).

FINDINGS

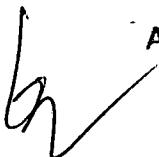
"The abovenamed Shri B.V. Unnikrishnan S.No. J/M.4497, DSL. Assistant, Erode, while working as Assistant Driver, Erode of T.No. 6732 Express (SBE-TEN) on 15.5.2002 was careless and negligent in his duties, in that he has failed to call out the correct aspect of the signal to Driver and passed the UP Home Signal at 'ON' has resulted in the averted collision of T.No. 6732 Express with NMG Goods at URL on Road 2 at about 4.16 hours.

He has thus violated Rule 3.83(i) GRS, 1976 and failed to



maintain devotion to duty and behaved in a manner quite unbecoming of a Railway Servant and thereby violated Rule 3.1 (ii) and (iii) of Railway Services (Conduct) Rules, 1966, and the charges of Rule No. 3.83(i) of GRS, 1976 is proved."

4. The applicant had filed his representation against the inquiry report, requesting the authorities to set aside the Inquiry Report as baseless, evidenceless and also as perverse.
5. The inquiry authority had passed the impugned order (Annexure A-1) of penalty of removal from service passed by the Disciplinary Authority vide order dated 10-02-2003. This was challenged by the applicant by way of an appeal as provided for in the rules and the appellate authority passed an order dated 21-08-2003 (Annexure A-2) whereby he had modified the penalty order of removal to one of "reduction in rank to Helper II (Diesel) in grade of Rs 2550 – 3200 at Rs 3200/- for a period of three years without the effect of postponing future increments and further promotion or restoration should be reviewed depending upon the applicant's working during the period of currency of penalty. Intervening period was treated as dies-non.
6. Revision applicant filed by the applicant was not successful, and the Revisional authority had upheld the penalty as imposed by the Appellate Authority, vide Annexure A-3 order dated 09-12-2003.



7. The applicant has come up against the aforesaid orders, inter-alia on the following grounds:-

- (a) Orders impugned are arbitrary, discriminatory and contrary to law and hence unconstitutional.
- (b) Annexure A-1 has been passed by an authority not competent to pass the order. In the case of the applicant, the appointment having been made by the Chief Personnel Officer, order of penalty of removal was passed by the Senior Divisional Mechanical Engineer, an authority lower in rank than the Chief Personnel Officer. Hence, Provisions for Art. 311 of the Constitution are violated.
- (c) Non supply of the documents as requisitioned by the applicant is fatal to the very conducting of the inquiry and thus, once the inquiry is vitiated, the impugned orders passed on the basis of the vitiated inquiry also become vitiated.
- (d) The procedure as prescribed in rule 9 of the Railway Services (D & A) Rules, 1968 had not been followed. After submission of defence brief, there being no provision for further inquiry, the inquiry conducted after the receipt of the defence brief, i.e. after the applicant has disclosed his defence is illegal.
- (e) The charge was failure to call out the correct aspect and the same cannot be proved by any one than the Driver, who had confirmed that the applicant had called out the correct aspect and he responded to the same as well. As such, provisions of Rule 3.83 (i) having been complied with, the I.O is in patent error in holding that the provisions of Rule 3.83 (i) of G.R.S. 1976.

A handwritten signature or mark, possibly 'bh', is located in the bottom left corner of the page.

(f) Cause of the incident was absence of Red Roundel in the signal and there are evidences to confirm the absence of the same at the time when the train passed through the signal. This has not been properly taken into account.

(g) The reasons for arriving at the finding by the Inquiry Officer, that the applicant failed to call out the aspect of white light and day aspect of UP Rd I Home close to the UP Home signal when it becomes visible before passing it are extraneous and without any evidence and the same makes the inquiry report perverse.

(h) The order of penalty was based purely on inquiry report, and there is no evidence to show that the disciplinary authority had considered the representation made by the applicant against the report.

(i) The appellate order also suffers from legal infirmity. While holding that the engine crew had reduced the speed and was able to control and stop the train the moment the train started entering the loop line, and further while holding that expecting a driver to pick up the day aspect of the signal at night from distance is not very practical, the appellate authority had committed the error of holding that the applicant is guilty of misconduct of being careless and negligent. The appellate authority has also erred in holding that the applicant is guilty of the charges, when as per Rule 3.78 revolves round the duties of driver and not assistant driver.

(j) The Revisional authority's order is non speaking and hence illegal.

A handwritten signature in black ink, appearing to read 'bh', is located at the bottom left of the page.

8. Respondents have contested the OA. According to them, while approaching Unjalur station, the distant signal was showing caution aspect and simultaneously Home Signal was visible and showing caution aspect at about 4.16 hrs. early in the morning and the applicant called out the aspect of the up Road 1 home signal (main line) as caution aspect to the Driver and passed Up Road 1 signal with white light on Road No. 2 home signals at "ON" aspect. This has resulted in the averted collision. As regards non supply of the documents demanded, rejection was justified as these were not relevant. Facts finding report was not taken into consideration while proving the charge. As regards competence of the authority which passed the penalty order, it has been submitted that the applicant was issued with necessary appointment order as per Senior Divisional Mechanical Engineer vide office order No. J/P R 44/99. Hence, the said authority has jurisdiction and competence to pass the penalty order. Conducting the inquiry even after receipt of the defence brief, was to ensure compliance of rule 9(21) of the D.A Rules. The Inquiry Officer had clearly established that at the time when the train crossed the Home signal, the same was on "ON" i.e. danger aspect and as the red roundel had fallen, the applicant mistook it as "caution aspect" and took the train on loop line. All the authorities had considered the case thoroughly before passing the respective orders.

9. Rejoinder and additional reply to the rejoinder have also been filed, by and large reiterating the respective stand of the parties.



10. Arguments were heard and documents perused. The counsel for the applicant argued that with the admitted fact that the red roundel having fallen off the signal, and the time being the wee hours of the day, there was no possibility of day aspect being pressed into picture and assuming without accepting that the signal was on "ON" aspect, admittedly, the applicant did call out of the aspect of the signal as "caution" aspect and the driver had reciprocated the same and thus, at best the error could be termed only as one of "error of judgment". There cannot be any negligence or carelessness, much less not calling out as per the provisions of Rule 3.8. Thus, the finding arrived at by the inquiry authority is without evidence and hence perverse. Again, the appellate authority's decision basing on the provisions of Rule 3.78 is also erroneous as 3.78 in no way is applicable to any one other than the Driver. The counsel has also taken the court through other grounds, as contained above. It is also argued by the counsel for the applicant that under rule 3.68(1)(a) and (b) of GRS 1976, it is the responsibility of the Duty Station Master who should have known about the breakage of red roundels and who should have made alternative arrangement in respect of regulating the movement of the train in the absence of proper functioning of the signal. The following decisions have been relied upon by the counsel for the applicants in support of his case:-

 (a) M.V. Bijlani vs Union of India (2006) SCC (L & S) 919 wherein the

Apex Court has held as under:-

"Departmental proceedings, being a quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e beyond all reasonable doubt, we cannot lose sight of the fact that the inquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

(b) **Kuldeep Singh vs Commissioner of Police (1999) 2 SCC 10** especially with reference to para 9 and 10 thereof which are as under:-

"if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

11. The counsel for the respondents has contended that as the entire proceedings were in accordance with the D& A Rules, no legal lacuna could be discerned and the judicial scope of interference with disciplinary



proceedings being limited, no interference is called for.

12. We may straightway hold that there is no lack of competence in respect of the disciplinary authority as it is the appointing authority as per the words of the respondents, vide para 9 of the counter reply.

The following questions arise for consideration:

- (a) Whether the inquiry report is vitiated for reasons of non supply of documents or for other legal lacunae?
- (b) What is the rule position relating to the duties of Asst. Driver and Driver relating to crossing the signals.
- (c) Whether the applicant had actually called out or not, and what is the charge relating thereto.
- (d) What was the effect of the red roundel having been fallen off the signal and how the applicant could have reacted at that time.
- (e) Who all could prove the non calling of the signal aspect as stated in the charge and what is the evidence in this regard and how the inquiry authority has dealt with the same.
- (f) Whether the impugned orders are sustainable?

13. First about rejection in making available the documents. Two scores of years ago in Ridge vs Baldwin, the question of principles of natural justice

b/✓

was discussed and Lord Reid and the same has been quoted in full emphasis by the Apex Court and one of the latest judgments wherein the same has been referred to and discussed is that of **Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant, (2001) 1 SCC 182**, wherein Hon'ble Mr. Justice Umesh C. Banerjee has stated as under:-

Since the decision of this Court in Kraipak case (A.K. Kraipak v. Union of India(1969) 2 SCC 262) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v. Baldwin (1963) 2 All ER 66 (HL)very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances — who then is a reasonable man — the man on the Clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin (1963) 2 All ER 66 (HL)in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even in the millennium year. As a matter of fact this Court in the case of Keshav Mills Co. Ltd. v. Union of Indi(1973) 1 SCC 380upon reliance on the attributes of the doctrine as above-stated as below: (SCC p. 387, para 8)

"8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yardstick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in H.K. (an infant), In re(1967) 2 WLR 692. It only



means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin case(1963) 2 All ER 66 (HL)as 'insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances'. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J. observed in Russell v. Duke of Norfolk(1949) 1 All ER 109 (CA):

'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth.' "

2. While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action."

14. And in that case, the way principles of natural justice were breached was explained in the judgment as under:-

"The situation therefore, shortly put, thus remains that even though a show-cause notice was served but by reason of the factum of non-availability of the documents to the respondent herein, the show-cause notice could not be answered in an effective manner at all excepting however in a rough and ready manner so as to avoid the comment and criticism of acceptance of the charge."

15. The ratio as laid down in the above case has to be telescoped upon the facts of this case. After the receipt of show cause or charge sheet, the applicant did apply for production of certain documents which were denied as not relevant. In fact, representation of the applicant for supply of relied upon/attendant documents vide letter dated 28-08-2002 remained unanswered and rejection of the same was by action and not by written communication. When the prosecution relies upon some documents, obviously, they would be such as to assist the prosecution in proving the charged officer of his misconduct. Making available the copies of such documents would be essential as the applicant should know in advance before actual inquiry is commenced so that he could make an effective reply and not a rough and ready reply of mere denial of charges. Again, attendant to the relied upon documents, there could be some other documents which when scanned would favour the case of the charged officer or at least dilute the impact of the relied upon documents. If the prosecution could have its required weapons (relied upon documents) to prove its case and if according to the charged official certain other documents in possession of the prosecution would go to disprove the case of prosecution and the same is demanded, principles of natural justice warrants that the same are being provided. Of course, in order to ensure that the attempt of the charged officer is not to drag the proceedings, sufficient safeguards are available, such as, asking for the relevance of the documents called for and certain discretions are available with the disciplinary authority to reject the request



for valid reasons. Here, all that was asked for by the applicant are the documents - (a) report of the official who first arrived at the spot; (b) the fact finding inquiry report and (c) the statement of Guard of 6732. Irrespective of whether these were relied documents or not, once the applicant has made a request for a copy of the same and when such documents, even on the face of them confirm the link between the documents and the matter in question, there should have been no hesitation on the part of the authorities in making available the documents. This has admittedly not been done. Thus, there is a clear infraction of the principles of natural justice in this case.

16. The disciplinary authority is in patent error when he holds, "*The charged employee should have been extra vigilant after noticing distant as caution, home signal it expected to be danger and should be prepared to stop the Train. Under the circumstances with his alertness he could have noticed the changing brightness of white light as well the day aspect of the signal.*" What the disciplinary authority held against the applicant is not the charge as proved but his failure to show "extra vigilance". This not being the charge (nor could be a charge), the error on the part of the disciplinary authority is evident. The appellate authority is in error, as could be seen from the succeeding paragraph when it has mistaken the applicant as driver and expected the applicant to perform that job which is specified as the job of the driver.

b ✓

17. Now, as to the Rules relevant to the case. The following rules of GRS 1976, are referred to by the parties-

"3.78 : Duties of Engine Crew in respect of Signals:

- (1) (a) The driver shall pay immediate attention to and obey every signal whether the cause of the signal being shown is known to him or not.
- (b) He shall not, however, trust entirely to signals but always be vigilant and cautious."

"3.83 : Assistance to the engine crew regarding signals:

- (1) The Driver and the first Fireman or the Assistant Driver, as the case may be, shall identify each signal affecting the movement of the train as soon as it becomes visible. They shall call out the aspects of the signals to each other.
- (2) The Assistant Driver or the Fireman shall, when not otherwise engaged, assist the Driver in exchanging signals as required.
- (3) The provisions of sub rules (1) and (2) shall, in no way, absolve the Driver of his responsibility in respect of observance of and compliance with the signals."

18. A perusal of the above rules would go to show that rule 3.78 (1)(a) and (b) exclusively deals with the duties assigned to the Driver and it has no link with the Assistant Driver or other engine crew. This rule has been relied upon by the appellate authority while dismissing the arguments put forth by the applicant in his appeal. Thus, observes, the appellate authority, "Various argument submitted by the charged employee vide brief history of the case



are not correct. GRS 3.78(1)(a) states that the driver should pay immediate attention to and obey every signal whether the cause of the signal being shown is known to him or not and GRS 3.78(1)(b) states that he shall not, however, trust entirely to signals, but always be vigilant and observe the day aspect, since the light on the home signal up road -1 was white in colour." (Emphasis supplied). **This means that the appellate authority expected the applicant who is only an assistant driver (diesel assistant) to observe the duties as contained in rule 3.78 (1)(a) and (b) which essentially applies to the Driver and not the other crew members, though the caption of 3.78 refers to Engine Crew. Or else, the appellate authority has mistaken the applicant as the Driver. This is evidenced by the fact that while dismissing the reasoning of the Inquiry Authority who had stated that the applicant ought to have observed the day aspect of the signal, the appellate authority stated, "It appears that expecting a driver to pick up day aspect of the signal at night from distance is not very practical...."** While 3.83 (1) and (2) assigns certain responsibility to the Assistant Driver, provisions of 3.83(3) imposes a rider upon the same and states that provisions of (1) and (2) of Rule 3.83 '*shall in no way, absolve the Driver of his responsibility in respect of observance of and compliance with the signals.*' This means that it is ultimately, the responsibility of the Driver and the Assistant Driver is only assisting the Driver in performing the former's duties. Thus, as per the rules, there is a limited role to be played by the applicant in his capacity as



Assistant Driver. And, a perusal of the charge sheet would show that the charge is that the applicant was 'careless and negligent in his duties, in that he has failed to call out the correct aspect of the signal to Driver and passed the UP Home Signal at "ON".' The question now reduces to whether at all the applicant called out the aspect of the signal and if so, what the same was and whether the one called out by the applicant was not the 'correct aspect' and if so, how far was it due to "carelessness and negligence" of the applicant. The narration of facts even as per the respondents, vide para 5 of the counter is to the extent that the applicant did call out 'caution aspect' of the UP Road 1 home signal (main line). The deposition of the Driver of the Train as contained in para 6 of the Inquiry Report reads as under:-

"He is the only man to say about the duties of the Assistant Driver whether done or not. He clearly admits that the Asst. Driver called out the aspects of up home and distant signal (R to Q 103). He further stressed that the Asst. Driver called out the up Distant as 'Caution' and up home as 'Caution' on main line Rd 1 (R to Q 104). "

19. The above goes to prove that the Applicant had actually called out the signal as he observed both in respect of Home signal as well as Distant Signal and the signal was reciprocated by the Driver. In other words, whatever was the observation by the Applicant, the same was the observation by the Driver. Now, the next question is whether the applicant had called out 'correct' aspect of the signal. Admittedly, the signal was found broken and the red roundel was not available. Thus, there was even as per the

A handwritten signature in black ink, appearing to be the initials 'B' and 'V'.

respondents, only a white light. The Inquiry officer, while appreciating the deposition of the East Cabin Man has stated, "*He accepts that the reason for entering in Rd 2 is only due to Red Roundel broken in up Rd 1 home as the same is reported immediately after the incident by the Railway Police and the OFF duty SM (R to Q 76).*" When white light be there (that being early hours of the day), and when the Driver too could not find the difference between the white light and its most proximate colour amber (which is meant for caution aspect) , all that the applicant did was to call out the aspect of the signal as he observed and his observation cannot be said to be one of carelessness or negligence as even the Driver observed the same and at best it could be one of 'error of judgment'. The inquiry authority has, while arriving at the finding held that the applicant failed to 'call out the aspect of white light and day aspect of UP Rd 1 Home ... , when it becomes visible before passing it.' In other words, the inquiry authority expects the Asst. Driver to take into account the day aspect at the wee hours of the morning and this view of his has certainly influenced the inquiry officer to arrive at the findings as the charges having been proved. That one cannot take into account the day aspect when the time is one of night (not even the dawn or dusk but well before the dawn - 4.16 a.m.) has been appreciated by the Appellate authority when it holds, "*It appears that expecting a driver to pick up the day aspect of signal at night from distance is not very practical, especially with the increased speed in semaphore signal territory.*" Thus, the charge does not stand proved, even though held by the Inquiry Officer's

b

report. The report of the Inquiry Officer is thus perverse in particular when the documents demanded were not made available and the requirement to confirm that the report is perverse as contained in the case of Kuldeep Singh (supra) is fully available in this case.

20. To conclude, therefore, there has been legal lacuna at every stage i.e at the inquiry stage (documents not being made available); disciplinary authority's order wherein he has stated that the applicant had failed to be extra vigilant and at the level of appellate authority when it mistook the functional responsibilities of the driver as one of the applicant who at the material point of time was only an Assistant driver. Once upto the appellate authority the orders are held to be legally unsustainable, the logical corollary is that the order of the revisional authority is also liable to be set aside. As such, the **O.A succeeds**. The impugned orders (Annexure A-1 to A-3) are hereby quashed and set aside. The applicant, as prayed for, is entitled to consequential relief(s) and the same are as under:-

(a) The period of absence from the date of removal from service and the date of his having been reduced in rank shall be treated as duty and the applicant is entitled to the pay and allowance as of Assistant Driver for this period.

(b) The applicant is also entitled to normal increment during this period and thereafter.



(c) Arrears of pay and allowances on account of the same shall become payable to the applicant.

(d) If during the currency of the penalty the applicant was entitled to be considered for promotion, he shall be so considered by holding a review DPC. In case, for the purpose of promotion there shall be the requirement of qualifying in any trade test or viva voce, the applicant shall be permitted to take part in the next available chance and if he qualifies in the same, he shall be deemed to have qualified earlier and the benefit of the same shall be given to him by considering him for promotion to the higher post. In case, during the currency of penalty, there had been any cadre restructuring and any junior to the applicant had been so accommodated in the higher post, the applicant shall also be eligible (subject to other conditions being fulfilled for such upgradation) for such upgradation and benefit thereof shall be made available to the applicant.

21. The above direction shall be complied with, within a period of four months from the date of communication of this order. There shall, however, be no order as to costs.

(Dated, the 1st Sept., 2006)


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K B S RAJAN
JUDICIAL MEMBER

cvr.