

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 7/06

MONDAY THIS THE 22nd DAY OF OCTOBER, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

T.K. Prakash S/o C.R. Kuttappan
Junior Engineer Grade-II
Permanent Way/Southern Railway,
Morappur
residing at Railway Quarters,
Pettavaithala R.S. And P.O.
Tiruchirappalli. ..Applicant

By Advocate M/s TCG Swamy, D. Heera,
P.N. Pankajakshan Pillay, Sumy P. Baby

Vs.

- 1 Union of India represented by the General Manager, Southern Railway Headquarters Office, Park Town PO Chennai-3
- 2 The Senior Divisional Engineer (East) Southern Railway, Palghat Division Palghat.
- 3 The Divisional Railway Manager Southern Railway, Palghat Division Palghat
- 4 The Principal Chief Engineer, Southern Railway, Headquarters Officers Chennai-8

By Advocate Ms P.K. Nandini

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant presently working as a Junior Engineer-II/ Permanent Way at Morappur Railway station of Southern Railway, Palghat division is aggrieved by the Penalty advice dated 15.10.2004 issued by the 2nd respondent (Annexure A-1) imposing a penalty of withholding of annual increments for a period of three years with the effect of postponing his future increments and loss of seniority and the order of the appellate authority modifying the penalty holding that it will not have the effect of postponing future increments and loss of seniority.

2 The applicant has urged the following grounds in his favour:-

He has listed the procedural irregularities in the enquiry such as

- a) the enquiry was closed abruptly,
- b) he was not given an opportunity to examine himself and was not questioned generally as required under Rule 9 (21) of the DA Rules,
- c) certain documents relied upon by the Enquiry authority and disciplinary authority were not provided to the applicant.

3 Further, it is alleged that the enquiry officer's findings were not based on any evidences placed on record but base on depositions led before the fact finding enquiry committee which were not part of the disciplinary proceedings. The entire

proceedings are thus violative of the principles of natural justice. The applicant has also submitted that he was a Junior Engineer of the lowest rank and the persons responsible for inspection, supervision renewal of the track etc. have been left scotfree and the applicant has been made a scape goat. The Appellate authority also did not consider these points and he was denied a personal hearing though he made a specific request.

4 A reply statement has been filed. The respondents have submitted that the penalty in Annexures A-1 & A-2 have been awarded after affording all opportunities to the applicant and duly conducting the enquiry in accordance with the Rules. The DAR enquiry was conducted on 19.4.2004, 17.5.2004, 29.5.2004 and 12.8.2004. The enquiry report was sent to the applicant for submission of his representation. The depositions of the witnesses, the fact finding joint enquiry report of the enquiry committee containing the discussion of evidence and reasons for findings was furnished to the applicant. The applicant had engaged a defence helper. The disciplinary authority after consideration of the entire matter had imposed the penalty and the Appellate authority had taking a sympathetic view, reduced the penalty also. There is thus no truth in the grounds taken by the applicant.

5 No rejoinder has been filed. Arguments were heard and the File relating to the Disciplinary Proceedings produced by the respondents has been perused.

6 The Learned counsel for the applicant in his arguments relied on two judgements of the Apex court in Kuldeep Singh vs Commissioner of Police reported in 1999 SCC(L&S)429 and M.V. Bijlani vs Union Of India, 2006 SCC(L&S) 919. In the first case, the court observed that "the findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence of record or are not based on evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. The second judgement further elaborates this ratio that the Enquiry Officer must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record and he cannot shift the burden of proof only on the basis of surmises and conjectures. The Learned counsel also submitted that it was well known to the Railway authorities that the tracks in this sector were in a poor condition which is confirmed by the fact that after the derailment the authorities had sanctioned major works for renewal and maintenance and hence the blame cannot be laid on the doors of the applicant alone.

7 The Learned counsel for the respondents on the other hand relied on the judgement in High Court of Bombay vs Shashikant Patel, AIR 2000 SC 22 and stated that the applicant who was a Permanent Way Inspector was responsible for conducting inspection of the track periodically and cannot be absolved of the

responsibility for the poor condition of the sleepers which led to the derailment of the train.

8 The applicant was working as Junior Engineer II, Permanent Way, Pettavaithalai when he was charge sheeted for failure to maintain the track within his jurisdiction in a satisfactory manner and safe condition for traffic which resulted in derailment of the Loco No WDM2 18451 and SLR No 93731 of 685 Passenger train at Perugamani on 29.11.2003. An accident enquiry by a joint departmental enquiry was conducted into the causes of the accident on 2-3.12.2003 and the joint findings are as under:-

"The derailment of WDM18451 and SR SLR 93731 of 685 passenger of 29.11.2003 derailed at PGN on account of yielding of track due to poor and inadequate fastenings, poor condition of the sleepers and deficiency of stone ballast.'

9 It fixed the primary responsibility on the JE Permanent Way for violation of Para 224 and 201 of IRWPM And purportedly the applicant was charged based on this report. The Report had also pointed out many defects noticed in the Loco maintenance which facts were not alluded to in the enquiry nor was this report marked as document during the enquiry nor any of the members of the Committee examined in the enquiry. Certain parts of the evidence adduced before the Fact finding team were brought into the fold of the enquiry by examination of one of the administrative witnesses in the fact finding enquiry viz. Sri R. Suresh Ram, SE/PW/TP who was cited as one of the official witnesses in the charge sheet given to the applicant.

10 We have seen the proceedings of the enquiry. In the light of records available, the averments of the applicant that the enquiry was beset with procedural irregularities is not found sustainable as witnesses were examined and cross examined by the defence helper, documents were supplied etc. But we are constrained to observe that the quality of the enquiry leaves very much to be desired. It is very perfunctory and does not address itself to the main issues. There has been no attempt to go deep into the matter why the derailment occurred and how the applicant was responsible for it. The Loco wing has endeavoured to put the blame on the maintenance wing underplaying its role as the fact finding report would show. The higher authorities should have taken a dispassionate view of the matter before initiating the enquiry against the applicant alone. Having instituted the enquiry, the authorities seem to be bent upon holding someone responsible. The enquiry officer relies only on certain answers given by the SE Sri Suresh Ram to Questions 9-12 which are actually supporting the applicant's case, but the E.O goes on to derive adverse findings from the statements against the applicant. What this witness said was that when he had conducted the inspection on 18.11.2003, the tracks in the main line and Loop line were satisfactory. But the E.O concludes that the inspection was only a general inspection and not a specific inspection. Similarly the Applicant had stated that he had conducted Trolley inspection on 29.11.2003, the accident date in the morning and also the inspection of the Looplins on 8.11.2003. But these facts were

not accepted by the E.O stating that he had not recorded the gauges and no manual inspection had been done. The role enjoined on the Keyman and the Gangmate subordinate to the applicant who are responsible for the daily manual inspections and reporting any problems to the JE has also been ignored while fixing the sole responsibility on the applicant. No doubt that the applicant had also a supervisory role to play but this holds good for the SE also who cannot be absolved of his moral responsibility. The Enquiry Officer also rejects the evidence of the SE relating to the excess thrust exerted by the Loco which could have contributed to the derailment though it is to be noted that the SE is the official witness by whom the charges are proposed to be proved. In fact the record of enquiry presents the strange spectacle of the applicant relying on the evidence of the official witness SE Sri Suresh Ram and the E.O straining to distort the said evidence to establish the guilt of the applicant.

11 The order of the disciplinary authority makes still stranger reading. In para 9 (ii to vi), the disciplinary authority discusses the findings of the E.O in detail and comes to the conclusion that the Loco defects brought out by the enquiry committee have sought to downplay this defect and has simply recorded the evidence of the witness who is himself in charge of maintenance and records the observation that "the role of such induced differential lateral flange forces in pushing the rail laterally forcing the track to yield and give way for the wheels to drop cannot be

ignored." Then suddenly he comes to the following conclusion. "However taking into consideration that a train carrying passengers has derailed in the loopline of a station and proceeds to impose a penalty. It is very clear from the order that the Disciplinary authority did not agree with the findings of the Enquiry officer, finds them totally inadequate, but proceeds to punish the charged officer as it is a case of derailment and somebody should be held responsible. The same tone and tenor are seen in the order of the Appellate authority also and it is clear from their orders that these authorities were very much aware of the lacunae in the enquiry findings and the administrative exigencies and related maintenance problems.

12 In the above circumstances, we are constrained to agree with the contentions of the applicant that the findings of the Enquiry officer were not based on evidence recorded in the Enquiry and are purely based on his surmises and presumptions and the order of the Disciplinary authority is also not based on the findings of guilt but on extraneous considerations. The Appellate order in as much as it merges with original order also suffers from the same lacunae and are both liable to be set aside. The observations of the Apex Court in the case of M.V Bijlani vs Union of India relied on by the applicant are very relevant in this connection and deserves to be reproduced:-

"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

enquiry 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 the 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 has not been charged with."

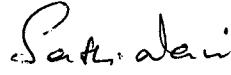
13 In this case also, the report of the Enquiry Officer suffers from the same vices. The orders of the Disciplinary and Appellate authority purportedly based on the said report are therefore also not sustainable. In the result, Annexures A-1 and A-2 are quashed. The applicant will be eligible for all consequential benefits including arrears of pay and allowances as if the said orders had not been issued. OA is allowed accordingly.

Dated 22.10.07.



GEORGE PARACKEN

JUDICIAL MEMBER



Sathi Nair

SATHI NAIR
VICE CHAIRMAN

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