CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 172 OF 2005

Tuesday this the 27th day of March, 2007

CORAM :

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

C.A.Johnson,
S/o Abraham,
Ex-Senior Gate Keeper,
Southern Railway, Shertalai,
Residing at: Chamakkallingal House,
Konnathady Central P.O.
Via Vellathuval,
Idukki District. : Applicant

(By Advocate Mr M.P.Varkey)

Versus

1. Union of India represented by
General Manager,
Southern Railway,
Chennai-600 003.

2. Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Thiruvananthapuram-695 014.

3. Senior Divisional Engineer,
Southern Railway,
Trivandrum Division,
Thiruvananthapuram-695 014.

4. Divisional Engineer(S),
Southern Railway,
Trivandrum Division,
Thiruvananthapuram-695 014. : Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 5.2.2007, the Tribunal on 27.03.2007 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. Shri C.A.Johnson, Ex Senior Gate Keeper, Sherthala is aggrieved by the penalty advice of removal from service and confirmed by appellate order and by the review order reducing the penalty to compulsory retirement from service.

2. According to the applicant, he was working as Senior Gate-Keeper at level cross gate No.27 between Thuravoor and Sherthala Railway Stations. This is a non-interlocked gate, normally kept closed for road traffic with occasional opening. He assumed charge of the gate on night duty on 23/24.4.2003. The gate was already in closed and locked condition at the time of his taking over charge. When train No.6128 was about to pass, he belatedly noticed that someone, who came by goods auto, had opened it partially on the off side door of the gate and that the said auto was crossing the track. After the passage of the train through the gate, it was found that the front portion of the auto was damaged. An inter-departmental enquiry was conducted. The applicant was kept under suspension from 24.4.2003 to 20.5.2003. Vide A-1 charge memo dated 29.5.2003 he was charged with failure in duties to close the gate for the safe passage of the train . Despite his request to secure a copy of the fact finding enquiry report, access thereto was denied vide A-2 dated 20.11.2003 on the grounds that the charges were not based upon the findings in the said report. An enquiry followed the proceedings of which are available at A-3. The applicant submitted a brief of his case vide A-4. He was served with a copy of the report of the Enquiring Officer vide A-5. The applicant represented against the enquiry report vide A-6. Subsequently, he was served with the A-7(impugned) penalty advice, dated 19.3.2004. He preferred an appeal A-8 dated 15.4.2004. This was rejected vide A-9 (impugned) appellate order dated 5.9.2004, confirming the

penalty of removal from service. On his preferring a revision petition dated 14.7.2004 vide A-10, the penalty was reduced to one of compulsory retirement from one of removal from service vide A-11 (impugned) order dated 27.12.2004. Aggrieved by the impugned orders A-7, A-9 and A-11, he has come before this Tribunal with this application.

3. His prayers are for the quashing of the impugned orders and for a declaration that he is entitled to be restored to his post as Senior Gate Keeper with effect from 31.3.2004 and that period of suspension be treated as duty. The following grounds are relied upon:

i) The charges in A-1 are not definite and distinct as required under Rule 9(6) of the Railway Servants(Discipline & Appeal) Rules(RSDA Rules for short).

ii) More specifically the charge of not locking and securing the gate, which was absent in A-1 found a mention in A-5 report and A-9 and A-11 impugned orders.

Iii) Access to the fact finding enquiry report was unduly denied to him, as it could have helped him in properly defending himself .

iv) The enquiry was not held as per the RSDA Rules.

v) The appeal petition was not disposed off as per the mandate of the rule 22(2) of the RSDA Rules.

4. Denying the contentions of the applicant, the respondents aver that

i) the denial of a copy of the report of the fact finding enquiry was due to the reason that the charges were framed not based upon such report.

ii) the enquiry was conducted in accordance with the RSDA rules.

Iii) the applicant himself did not avail himself of the opportunities contemplated under the RSDA Rules, failed to cross examine witnesses and did not cooperate with the authorities.

v) the order on appeal (A-7) was a speaking order and

vi) likewise, the revision petition was examined in all aspects and orders passed on consideration of the same.

5. Heard the counsel and perused the documents including the disciplinary proceedings file. The applicant brought to our notice the findings in the following cases to sustain his case:

i) 2006 SCC (L&S) 840

ii) 2006 SCC (L&S) 919

iii) 2002 SCC (L&S) 1028

iv) 1998 SCC (L&S) 865.

6. The following main grounds need examination:

i) Were the charges inconsistent and vague ?

ii) Was natural justice denied to him with denial of access to the copy of the report of the fact finding enquiry?

Iii) Were there any procedural infractions?

7. As regards the ground whether the charges were vague and inconsistent, the question of alleged vagueness may be taken up first for consideration. According to the applicant, the vagueness arises from the fact that charges at A-1 are not definite and distinct because the normal position of the gate is "closed against road traffic", there was no question of further closing of the gate and details are missing about the identity of the auto which suffered the damages due to the accident and extent of such damages. These points had been made in the appeal petition as well as in the revision petition. The respondents have denied the point about vagueness. Prima facie, we do not find that the charges were vague to start with. In fact, the question of vagueness is closely linked to

the question of inconsistency of charges at different stages of the disciplinary proceedings. The applicant tries to bring out the element of inconsistency of the charges by saying that

i) In the charge sheet the applicant was supposed to have failed in closing the level crossing.

ii) In the report of the enquiry officer, A-5 (pg 36) he failed to secure the gates with chains and locks.

Iii) In the A-7 penalty advice, the applicant failed to close and secure the gate.

iv) When the appellate order (A-9) the applicant failed to lock the gate.

v) In the revision order the applicant did not lock and secure the gate.

The applicant argues that such textual differences amount to inconsistency of charges and this would amount to the various authorities, especially the enquiry officer, traveling beyond the charges, which is forbidden by the law laid down by the Hon. Apex Court in 2006 SCC(L&S) 840. It is necessary to commence with the charge sheet which discloses the rules actually violated. These rules are SR 16.03 (III)(a)(III)(2) and GR 2.11(1)(a) of General Rules 1976 and also Rule 3.1 (II) and (III) of Railway Services(Conduct) Rules, 1966. The respondents have produced an extract of Rule 16.03 vide R-3. Relevant portion is reproduced here as follows:

"The Gateman on duty must acknowledge by repeating the particulars of the train, close and secure the gates of the level crossing against road traffic and then communicate a Private Number to Station Master/Cabin Station Master/Switchman on duty. The Private Number given by the Station Master/Cabin Station Master/Switchman on duty constitutes an assurance that he had informed the Gateman at the level crossing about the movement of the train. The Private Number given by the Gateman to the Station Master/Cabin Station Master/Switchman constitutes an assurance that he kept the gate of the level crossing closed and secured

against road traffic or the passage of the train/shunt movement. The Private Number exchanged between the Station Master/Cabin Station Master/Switchman on duty and the Gateman on duty must be entered in a 'separate register maintained for this purpose'."

"Note(1) Where it is necessary for the Gate to close and secure the gate against road traffic and then give a Private Number to Station Master/Cain Station Master Switchman, the same should be specified in the Station Working Rules, and in the Gate Working Rules,. The responsibility of keeping the gate locked across the road traffic for the safe passage of the train without delay lies with the Gateman."

And GR 211 is reproduced as follows:

"Duty for securing safety:
(1)Every Railway servant -
(a)see that every exertion is made for ensuring the safety of the public.

It is unambiguously given that the responsibility of keeping the gate **locked** (emphasis added) across the road traffic for the safe passage of the train... lies with the gateman. The word 'secure' is defined by the Oxford Dictionary as 'fasten or fix firmly'. Apart from the charge sheet, the enquiry report also has highlighted these two rules as having been violated. A combined reading of all these would leave us with no doubt about the responsibilities vested with the gateman. Under these circumstances, the alleged textual inconsistencies claimed by the applicant are not of that magnitude as to have brought about any prejudice to him.

8. Having said that, it must be added that the inconsistency has arisen due to some other reason. In the appellate order, mention has been made about the applicant having violated GWR (Gate Working Rules) because of which he stood indicted. The same reference to GWR is available in the A-11 revision order, alleging that the applicant did not lock and secure the gate before exchanging PN in accordance with GWR. The respondents had contended that GWR-s are part of General Rules (GR) justifying, perhaps on that score, an absence of

mention of GWRs that have been violated by the applicant in the charge sheet etc. This argument is not acceptable inasmuch as, the SR-s, too, form part of the GR-s but that did not prevent the respondents from making a specific reference to SR 16.03 in the charge sheet. Hence we find that the non-mention of GWR-s violated by the applicant in the charge sheet but referred to at the subsequent stages, is a case of inconsistency of charges.

9. Another point raised by the applicant is that he was denied access to the inter-departmental enquiry report. According to him, he submitted a statement of defence on 10.6.2003, (not part of the material papers), denying the charges and requesting copies of documents listed in A-1 as well as report of the above enquiry. Vide A-2, a reply was given to him saying that 'the copy of the entire proceedings, including the findings of the fact finding enquiry is not being given to you since the charges against you are not framed based on this. And I consider that no document other than those included in Annexure-III of the charge sheet are required for proceeding the enquiry.' The respondents contend in their reply statement that the fact finding enquiry is a confidential report and the enquiry was conducted by a special committee and the same was not related to the DAR enquiry. But, it is seen that a reference to the above report was possibly made by the enquiry officer, vide portion highlighted,in his report A-5 in the following lines:

> *".....He(Driver/NCJ) further says that he did not notice any vehicle passing or standing through the gate and he was unaware of the accident as he did not hear any sound of a vehicle crashing against the train as the engine was continuously whistling. This statement is also not correct* ***as the guard working that train had deposed during the fact finding enquiry*** *(emphasis added) of the poor whistling and not having heard any specific whistling while approaching the LC.*

Besides, in the revision order A-11, the DRM says "It is undoubtedly proved and

also admitted by him *(emphasis added)*that Shri Johnson did not lock and secure the gate before exchanging PN in accordance with GWR. A perusal of the enquiry report shows that nowhere any such admission on the part of the applicant is available. Obviously, it should be some other document wherein such admission was referred to and, quite possibly, that document should be the fact finding enquiry report. Inasmuch as the revision authority factored such an alleged admission to consider the question of punishment to be given to the applicant and access to the document containing such admission was denied to him, this is a case of prejudice caused to the applicant in defending himself. Lastly, the respondents in their reply statement submitted that 'in the inter-departmental enquiry conducted, the applicant himself admitted that even though the gate was closed by him, it was not locked which indicates lack of alertness and safety consciousness on the part of the gate keeper and as a consequence of this, the accident had occurred. The applicant asserts that the right to access to the report flows from the proviso to Rule 9(16), which lays down as follows:

> *"...Provided that if the authority having the custody or possession of requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any such documents would be against the public interest or security of the state, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Railway servant and withdraw the requisition made by it for the production or discovery of such documents."*

The reasons stated for the denial by the respondents are to the effect that the enquiry report was not relied upon by the authorities in framing charges. But, as seen from the rule quoted above, the denial can be only on reasons of public interest or security of state. In fact, Rule 9(12) also enjoins upon the enquiry authority to record an order that the Railway servant may for the purpose of preparing his defence, give a notice for the discovery or production of

documents, which are in possession of the Railway administration **but not mentioned in the list referred to in sub rule 6** (emphasis supplied). Relevancy of the document is not to be, prima facie, decided by the respondents, but claimed by the applicant./charged officer. It is left to the authorities concerned to dispute the relevancy. It is also enjoined upon the authorities concerned that the reasons for refusal recorded in the daily order sheet and in the standard form No.6 provided under the RSDA Rules. Inasmuch as the enquiry officer himself has made a reference to be fact finding enquiry report, we hold that this was relevant for the purpose of determining the charges against the applicant and the denial was not made in the proper form and substance and such denial of and lack of access to the Joint inter-departmental Enquiry Report has caused prejudice to the applicant, in properly defending his case.

10. Next point to be considered is whether there were any procedural infractions. According to the applicant, the appeal petition was not disposed off as mandated by Rule 22(2) of the RSDA Rules. The said rule envisages that the appellate authority shall consider whether the procedures specified were complied with, whether the findings of the disciplinary authority are warranted by the evidence on record and whether the penalty was adequate. A comparison of the appeal petition (A-8) and the appellate order A-9 shows that the following points made by the applicant in the former were not adequately answered.

i) non-marking of documents upon which reliance was placed.

ii) denial of facilities envisaged under the provisions of 9(19) and 9(20) under the RSDA Rules

iii) absence of the elements of Rule 9(25)(1)

iv) the enquiry report was not in accordance with Rule 9(25)(i) of the RSDA Rules.

11. The law is well settled as relating to the way in which the appeal petition should be disposed of as mandated by the Apex Court in quite a few cases. Thus,

> *"It is of utmost importance that after the 42nd Amendment as interpreted by the majority in* ***Tulsiram Patel's case [(1985) 3 SCC 398]****, that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contention raised by him in the appeal.[Ram Chander v. Union of India, AIR 1986 SC 1173].*
>
> *"The Supreme Court in Ram Chander v. Union of India, AIR 1986 (2) SC 252 held that the word 'consider' in Rule 27(2) of the CCS(CCA) Rules (Rule 22(2) of the Railway Servants(Discipline & Appeal) Rules, 1968) for the appellate authority casts an obligation on him to give reasons for its findings by applying his mind. A mechanical repetition of the provision of the rule in the appellate order without marshalling of evidence to sustain the finding of the disciplinary authority will not cure the legal flaw of the routine appellate order.*
>
> *The appellate authority in the present case has grievously erred in having passed the impugned order without even adverting to the legal points raised by the applicant in the appeal and without substantiating the conclusion arrived at by him in the order without stating sufficient reasons in support of the same.*
>
> *The appellate authorities should remember that they are dealing with very important rights of the public servants which are very valuable for them and hence they should take utmost care and caution while dealing with the appeals and make sincere efforts to find out the truth especially in departmental proceedings. The failure of the authorities in the discharge of these duties necessarily result in miscarriage of justice.*
>
> *Rejection of an appeal without discussing the various points is not tenable in law.*
>
> *Obviously unless the appellate authority passes a speaking order, it is not possible to know as to how the various points raised by the appellant have been considered and as to why the points raised by him were rejected. As the appellate authority did not pass*

in the present case order in accordance with the requiremtns of CCS(CCA) Rules, 1965, the same is not consistent with the basic requirements of law that must be fulfilled by the quasi judicial authority when hearing the appeal, namely to pass speaking orders." [Jagan Nath v. Quarter Master General (1971) i SLR 810].

"Even in the absence of rules, the natural justice requires that the points raised in the appeal should have been properly considered and due weight given thereon by the appellate authority. Appeal cannot be disposed of by writing cryptic sentence that in his opinion the punishment should stand."[Pashupati Banerjee v. Dy. Chief Engr. N.R. Rly, AIR 1960 Assam]. "

Viewed in the above context, it is easily seen that the appellate order has not followed the above mandate.

12. The applicant filed a revision petition vide A-10 which was disposed of by the impugned order A-11. Rule 25(3) of the RSDA Rules provides "An application for revision shall be dealt with in the same manner as if it were an appeal under these rules." The applicant has practically raised the same points in his revision petition as were raised in the appeal petition viz, incompetency of the DEN/TVC to remove him from service, non-production of documentary evidence, unclear charges, procedural lapses, non-confirmation of the enquiry report etc. None of these points are found to have been answered with due application of mind in the revision order. This, again, is a serious lapse on the part of the respondents. Hence, we find that the orders on appeal and revision petition were not passed in terms of the provisions of the RSDA Rules and of the mandates of the Hon. Apex Court referred to above.

13. A discussion on the reliefs is very much called for. It is true that prejudice has been found to have been caused to the applicant during the disciplinary proceedings by certain inconsistencies in the charges, non-furnishing of inter-

departmental fact-finding enquiry committee and non-consideration of some points raised by the applicant in his appeal and revision petitions by the appellate and revision authorities. Hence, he should not be loaded with the consequences of the impugned orders. But, it is equally true that the disciplinary proceedings arising from the accident should reach the logical end. Such accidents are really very serious. If the persons involved, including the railway servants concerned in such accidents are allowed to go scot free by non-pursuit of the same, it would send very wrong signals to all concerned. Hence, we find that it is necessary to remit the case to the disciplinary authority.

14. In sum, we find that

i) the non-mention of GWR-s allegedly violated by the applicant in the charge sheet but relied upon at the subsequent stages is a case of inconsistency of charges,

ii) the Joint inter-departmental Enquiry report was relevant for the purpose of determining the charges against the applicant and the denial was not made in the proper form and substance and such denial of and lack of access to the report has caused prejudice to the applicant in properly defending his case.

iii)the orders on appeal and revision petition were not passed in terms of the provisions of the RSDA Rules and of the mandates of the Hon. Apex Court referred to above and

iv) it is necessary to remit the disciplinary case to the disciplinary authorities.

15. Based upon the above findings, we order that

i) the impugned orders are quashed,

ii) the applicant shall be reinstated in service forthwith,

iii) the disciplinary proceedings are remitted back to the disciplinary authority,

iv)such proceedings should commence from the stage of issuance of charge sheet,

v)the applicant should be given a copy of the Joint inter-departmental Enquiry report.

16. There shall be no order as to costs.

Dated, the 27th March, 2007.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.B.S.RAJAN
JUDICIAL MEMBER

trs