CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 343 of 2003

Tuesday, this the 22nd day of November, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Shibu,
Junior Engineer(Permanent Way) Grade II,
Southern Railway,
Palghat West, Palghat. - Applicant

By Advocate Mr TC Govindaswamy

vs

1. Union of India represented by
the General Manager,
Southern Railway,
Park Town.P.O.
Chennai-3.

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

3. The Senior Divisional Engineer(Co-ordination),
Southern Railway,
Palghat Division,
Palghat.

4. The Divisional Engineer (West),]
Southern Railway,
Palghat Division,
Palghat. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

ORDER

1. The applicant, Shri K Shibu, Junior Engineer Permanent Way is aggrieved by the penalty advice in pursuance of a departmental proceedings and confirmation thereof by the authorities concerned.

2. The facts of the case are that he was working as Junior Engineer(JE), Grade II, Permanent Way at Angadipuram. On 8.8.2001, there was an accident of derailment of passenger train no 644. He was issued with a major penalty memo on

22.1.2002 (A-3) alleging improper maintenance of track with consequential derailment of the train. Enquiry was conducted during March and April 2002. He filed his defense Statement. In the meanwhile, in the safety meeting held during the second fortnight of July 2002, the appellate authority gave instructions relating to the applicant's case to issue penalty advice on that day itself which according to the applicant amounted to prejudging the issue. He was given a penalty advice vide A1 document by the R3, against which he filed an appeal. The appellate authority, R2 rejected the petition and enhanced the punishment vide A2 order. The applicant has impugned in this petition both the penalty advice A1 and the appeal rejection order A2.

3. He seeks the relief of quashing the impugned orders with costs. He rests his case on the following grounds:

(i) The impugned orders A1 and A2 were not based on the evidence on records

(ii) The departmental proceedings were conducted in a prejudged, predetermined and biased manner, opposed to basic principles of natural justice.

4. The respondents oppose the application. They contend that the charge sheet (A-1) was issued based on the findings of the Accident Enquiry Committee, which went into all the aspects of the derailment, examining various persons connected therewith. Apart from the findings of the Accident Enquiry Committee, statements of the persons concerned and the Joint Track Readings of the affected portion, which actually was signed by the applicant himself formed the integral part of the enquiry documents.There was neither jumping of jurisdiction between the disciplinary and appellate authorities, nor prejudging of the issue nor the punishment preconceived. The proceedings of the safety meeting referred to was only a routine administrative exercise, and it did not amount to any prejudgment of the issue, as alleged by the applicant . The enhancement of punishment ordered by the appellate authority was in tune with the instructions of the Railway Board in the context of an accident to a train carrying passengers and such punishment was given in due exercise of powers vested with the appellate authority. The entire matter was considered in a

dispassionate manner by the authorities concerned.

5. In the rejoinder, the applicant made certain additional points. The Joint Track Readings were not factored in the enquiry. He reiterated the point that with the admission by the appellate authority about the intention to punish the applicant right at the stage of charge sheet, the enquiry that followed was just an empty formality. In view of this and the fact of evidence not being brought on record, enhancement of punishment becomes all the more unjustifiable. He also brought on record a true copy of the inspection note of the Chief Safety Officer which brings about the deficiencies in the track.

6. We have heard the learned counsels to the parties and perused the documents. At the outset, the limited role for judicial review of departmental proceedings merit mention. It has been laid down by the Principal Bench of this Tribunal in Kishan Singh v. Union of India and others in O.A.2021/2003 that the scope for judicial intervention/review in disciplinary proceedings is very limited, it cannot re appreciate the evidence: it has the power to re-examine the decision making process but not the decision itself. The punishment imposed by the disciplinary authority, is not subject to judicial review unless shocking to the conscience and any intervention in the punishment should be justified with supporting reasons.

7. The grounds raised by the applicant may be examined now.

As to the ground that the impugned orders, A-1 and A-2 are not based on the evidence on record but based on materials collected behind the applicant's back, the respondents have countered this averment in their reply statement. They say that the charge sheet(A-3) was issued based upon the findings of the Accident Enquiry Committee which had conducted a detailed enquiry into the pros and cons of the accident, after visiting the site of the accident and examining the various persons, connected with the working of the derailed train . The penalty proceedings were initiated only after giving a chance to the charged employee for proving his stand through another DAR enquiry. A-3 document (Charge memorandum) refers to Annexure-III and Annexure-IV, the former containing the Accident Enquiry

statements of five persons and the latter, giving a list of these five persons as witnesses. Now, it remains to be seen whether there were any other documents which were not supplied to the applicant and whether such a non-supply has prejudiced his case. Though not specifically stated, the depositions of witnesses during the accident enquiry, perhaps including the five mentioned above must have been recorded and the resultant report would have been subject to successive scrutinies referred to by the applicant as senior scale officers report, remarks of the accepting authorities thereon, enquiry report of JA grade officers and remarks of the accepting authority of the JA grade officers' report and the Accident Enquiry Committee report. It follows that the document containing the final decision on the Committee report should a natural base document for the purposes of the departmental enquiry. None of these were supplied. In fact, A-4 records the absence of the defence counsel of the applicant during the enquiry because some of these documents, viz, senior scale officers report, remarks of the accepting authorities thereon, enquiry report of JA grade officers and remarks of the accepting authority of the JA grade officers' report were not supplied to him. In his absence, the proceedings on 1.4.2002 and 10.4.2002 were conducted ex-parte. As per A-5 document containing Report of the enquiry proceedings, the disciplinary authority is reported to have claimed confidentiality as the reason for such non-supply. It is not known whether an order was passed under Standard Form No.6 as contemplated under proviso to Rule 9(16). of the Railway Servants (Discipline & Appeal) Rule 1968. The possible impact of non-supply of Accident Enquiry Committee can be assessed from the observations of the Enquiry Officer in his report which is reproduced as below:

> *"The enquiry committee also in its findings has concluded vaguely, that due to track defects as a result of deficient fittings on CI pot sleepers wooden keys tie bard and subsidence of track between Km.54/7-8, which caused gauge variation of 19 to 21 mm between 10 to 21 meter from point to drop. "* and concludes that *"the delinquent employee is not guilty of the said charges".*

If the enquiry committee was vague in some respects, they could be crucial to the defence of the applicant and he is entitled to the knowledge of the same to organise his defence. The inevitable conclusion is that certain important documents were not included in the array of documents put as evidence and the absence of documents like the Accident Enquiry Report is a determinant factor to cause prejudice to the applicant. What now transpires is that

- only the depositions during the enquiry were supplied.
- The Accident Enquiry Committee report was not made available despite explicit admission by the respondents that this formed the base for the charge sheet.
- Joint Tract Recording document to which the applicant was a signatory was not included and proved.
- Certain specified asked for documents were not produced by respondents despite specific requests.
- No records is available whether such refusal was formally communicated as required by the Rules.
- The reasons for confidentiality have not been made known in the records.

That supply of indicting documents is the most fundamental requirement of any departmental enquiry cannot be overstated. No claim of confidentiality is sustainable. All this lead to the inevitable conclusion that there was denial of natural justice to the applicant as regards insufficient supply of documents.

8. Another ground to rest his case is that the whole exercise of power, both by the Disciplinary Authority and the Appellate Authority was pre-determined, biased and prejudiced as evident from A-1 and A-2. A-1 and A-2 are therefore, liable to be set aside. First to be mentioned in this connection is the proceedings of the safety meeting held on 29.7.2002 in the Divisional Office chaired by the DRM(R-2). The proceedings (A-7) contain, inter-alia, a decision "K.Shibu case – penalty advice to be issued today i.e. 29.7.2002". DRM is the appellate authority, who, later would issue the Annexure A-2 impugned document on 14.3.2003. The applicant contends that

on that day of the above meeting, even the copy of the enquiry report and dissenting note had not been issued. The chronology of the events that unfolded is as follows:

22.1.02: Applicant served with major penalty memo

18.3.02 to 10.4.02: enquiry conducted

20.7.02: Date of letter from Divisional Engineer(A-5) sending enquiry report with his dissenting note and directing the Applicant to respond with a defence statement within ten days of receipt thereof.

27.7.02: Safety meeting when instructions to send penalty advice were ordered by the Appellate Authority.

31.7.02: Applicant contends he receives A-5 letter sent on 20.7.2002.

16.8.02: A-6 reply furnished by applicant.

10.10.02: Penalty advice A-1.

In counter, the respondents reply that it was only a routine instruction to expedite proceedings. It is difficult to accept this as a proper instruction to issue in that meeting would have been just to order that the disciplinary proceedings be expedited. Coming as it does from an authority higher than the disciplinary authority, it amounts to an order to the latter to award a penalty advice to the applicant. And it was at a stage, when he was yet to send A-5 letter along with the Inquiry Report. Another point stressed by the applicant is the impugned A-2 order by the appellate authority who observes:

"..(a) That the decision was taken in the second fortnight of July 2002 for imposing the punishment. In fact the intention to impose the punishment is indicated right on the day the charge sheet is served (emphasis added). The quantum of punishment however, is the only thing, which depends on the outcome of DAR enquiry. During the meeting quoted by the employee, the disciplinary authority was urged to finalise the long pending case and no comments on quantum of punishment were made. It does not amount to prejudice and determined intention."

In the charge sheet in A-3 document, no intention to impose the punishment is

indicated. The above observation would only amount to an admission of prejudgment of the issue before the DAR enquiry. Hence, in view of the above, the point made by the applicant on bias and pre-conceived judgment carry considerable credibility and we are led to the inevitable finding that the issue was prejudged at the level of appellate authority even before hearing was started.

9. Under these circumstances, the O.A. must succeed for reasons of non-supply of important documents and apparent pre-judgment of the issue before the commencement of the enquiry and at intermediate stages. The impugned documents A1 and A2 are quashed. The respondents are at liberty to pursue further action in respect of the accident against the applicant as per extant rules and instructions by the competent authorities, if they so desire. No costs.

Dated, the 22nd November, 2005.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.V.SACHIDANANDAN
JUDICIAL MEMBER

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