

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Registration O.A. No.438 of 1986

Abdul Ali Applicant

Versus

Union of India & Others.... Respondents

Hon.Mr.Justice U.C.Srivastava, V.C.

Hon. Mr. A.B.Gorthi, Member (A)

(By Hon.Mr.A.B.Gorthi, Member (A))

The applicant, Abdul Ali, aggrieved by the punishment of removal from the service passed against him by the Senior Divisional Mechanical Engineer (Sr.D.M.E. for short) on 1.6.78 filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction for quashing of the said order of removal as also the order dated 14.11.85 under which his representation was rejected by the Divisional Railway Manager.

2. The applicant was a Driver grade 'C'. On 28.8.77 while he was the Engine Driver of 352 DN, the said train rammed into a tempo at a level crossing at Saraigopal Flag Station resulting in the death of 18 persons, all occupants of the tempo. Whereas a case under Section 101 of the Indian Railways Act, 1890 read with Section 304-A of the Indian Penal Code, 1860 was registered by the police, the Railway Department instituted Departmental Disciplinary action and served him with a chargesheet which reads as under :-

"That the said Shri Abdul Ali, Driver, HQ Lucknow working 352 Dn on 28.8.77 disregarded the gate signal of gate No.A-2 at Saraigopal Flag station in 'DN' position and entered in

level crossing which resulted in collision between 352 Dn Express train with Tempo No. UPZ 7184 at level crossing Gate No. A-2 at Saraigopal Flag station between Atrampur and Phaphamau stations on 28.8.77. He violated General Rule 76."

3. A Departmental Enquiry was held and the Inquiry Officer found the applicant guilty of the charge. A show cause notice was issued to which the applicant gave a detailed reply. Thereafter, the order of removal was passed by the Sr. D.M.E.

4. We have heard the learned counsel for the applicant Shri D.P. Srivastava at length. The first objection raised by him challenging the validity of the disciplinary proceedings was that the Sr. D.M.E., not being the Appointing Authority could not have passed the impugned order. It was contended that the applicant, being a Driver grade 'C' at the relevant time, could have been removed only by the General Manager who was the Appointing Authority. Shri Lalji Sinha, the learned counsel for the respondents showed us schedule 'C' to the Railway Servants (Discipline & Appeal) Rules, 1968 under which D.P.O. and W.M. were shown as the subordinate authorities to whom the General Manager had delegated his power to appoint class III and class IV staff. Our attention has also been drawn to the decision of the Supreme Court in Scientific Advisor to the Minister of Defence and Others Versus S. Daniel (1991) 15 ATC 799, wherein their Lordships observed that a subordinate authority to whom the power to appoint has been duly delegated or his equivalent authority would be the competent disciplinary authority as well for the purpose of Article 311(1) of the Constitution of India and Rule 9

8

of the Railway Servants (Discipline & Appeal) Rules. Accordingly, we hold that the Sr. D.M.E. was competent in this case to award the penalty of removal from service in respect of the applicant who was a grade 'C' Driver.

5. Another important issue raised by Shri O.P. Srivastava was that because the applicant was charged with violation of General Rule 76, he could not have been dealt with departmentally but should have been charged under Section 101 of the Indian Railways Act and tried by a Magistrate. Looking at the entire enquiry proceedings we are convinced that the mere mention of General Rule 76 in the charge memo had in no way prejudiced the applicant in his defence. The impropriety, if any, is not such as would hit the jurisdiction of the disciplinary authority. The arguments of the learned counsel for the applicant that the disciplinary proceedings are liable to be quashed on this ground alone cannot therefore be accepted.

6. Drawing our attention to the verdict of the Judicial Magistrate 1st Class who acquitted the accused of the charge under Section 101 of the Indian Railways Act, 1890 read with Section 304-A of the Indian Penal Code, 1860, the learned counsel for the applicant agitated that there was no justification for the finding of guilty by the Inquiry Officer on the same set of facts. We do not agree. The Bombay High Court in Bhaurao Dagadu Thakur Vs State of Maharashtra 1972 SLR 699 observed :-

" The domestic tribunal, such as the dismissing authority in departmental proceedings, does not violate any rule of law or any other principle of law, when it chooses to ignore the findings of the criminal Court and decides to act on

the evidence led before him, and ultimately comes to the conclusion that such police officer is not fit to be retained in service inspite of his acquittal by the criminal Court. He also does not violate any principle of natural justice merely by ignoring such findings of the criminal Court, where otherwise he has recorded his findings after giving full opportunity to the delinquent to have his say."

In any case, it is well settled that if the trial on a criminal charge resulted an acquittal departmental disciplinary proceedings could still follow provided the acquittal was otherwise than honourable. A perusal of the judgement of the Judicial Magistrate 1st Class in the instant case shows that the accused was acquitted on account of the failure of the prosecution to drive home the charge against the applicant. The said judgement cannot therefore legally come in the way of departmental action against the applicant.

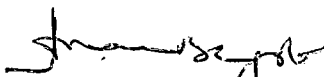
7. Assailing the manner in which the enquiry was conducted, the learned counsel for the applicant accepted that the report of the Additional Commissioner for Railways Safety was not made available to the applicant although the charge was based, admittedly, on the said report. As per the Inquiry Officer's report the accused demanded a copy of the said report which was not on file. There was however a subsequent endorsement in the enquiry report that the said report was received from higher authorities and was made available to the applicant. We do not therefore see any ground for complaint in this regard.


8. As regards the manner in which the enquiry was conducted, it was urged that the Inquiry Officer acted more

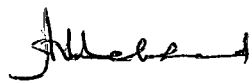
as a prosecutor than an impartial Inquiry Officer. Admittedly, no Presenting Officer was nominated at the enquiry. The Inquiry Officer in his enthusiasm undertook extensive questioning of all the witnesses. While an Inquiry Officer can legitimately question the witnesses to elicit the relevant facts of the case, he cannot cross examine them in a manner i.e. prejudicial to the defence of the accused. A perusal of the enquiry report clearly shows that the Inquiry Officer cross examined most of the witnesses on all such aspects on which the witness deposed favourably to the defence. The Inquiry Officer had gone to the extent of cross examining the accused (the applicant) at length. In Abdul Waziz Vs. State of Karnataka 1981(1) SLR 454, the Karnataka High Court observed that the cross examination of defence witnesses by the Inquiry Officer was in plain violation of the principles of natural justice and consequently the enquiry proceedings was vitiated. The Principal Bench of this Tribunal in Balu Singh Vs. Union of India ATR (1986) 1 CAT 195 held that where the Inquiry Officer had subjected the delinquent employee to cross examination and had thus assumed the role of both the judge and the Prosecutor, than the factum of Inquiry Officer assuming the role of prosecutor vitiates the entire proceedings. We therefore find that the Inquiry Officer did not conduct the proceedings in an impartial manner and had overstepped his authority. We therefore quash the enquiry proceedings.

and set aside the impugned order of punishment, Annexure-I as also the order of the Divisional Railway Manager, Annexure-2 rejecting the representation of the applicant.

9. The application is allowed. The applicant shall be deemed to be reinstated with effect from the date of his removal from the service. The applicant shall be given all consequential reliefs within six months from the date of receipt of a copy of this judgement. Parties shall bear their costs.


Member (A)


Vice Chairman


Σ Dated the 21 July, 1991.

RKM