

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 655/92

this the 22<sup>nd</sup> day of December, 2000

Hon'ble Mr. D.C. Verma, JM  
Hon'ble Mr. A.K. Misra, AM

P.C. Dwivedi, aged about 27 years, s/o late  
Girija Shankar Dwivedi r/o II-178/A, Running Shed  
Colony, Alambagh, Lucknow.

....Applicant

By Advocate: Sri A.K. Shukla.

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Sr. Divisional Mechanical Engineer, Northern Railway, Hazratganj, Lucknow.
3. Additional Divisional Railway Manager, I, Northern Railway, Hazratganj, Lucknow.
4. Sri A.K. Manocha, Sr. Divisional Safety Officer, Northern Railway, Lucknow.

....Respondents

By Advocate: Sri Anil Srivastava.

ORDER

A.K. MISRA, MEMBER (A)

The applicant to this O.A. has prayed for quashing of the impugned order of dismissal dated 18/20th August, 1992 passed by respondents No. 2 (Annexure A 1 to the OA) and further for quashing of the appellate order dated 23.11.92 passed by respondent No. 3 dismissing the applicant's appeal dated 24.8.92 (Annexure A-2 to the OA). It has also been prayed that the respondents be directed to treat the applicant continuously in service as if impugned dismissal order dated 18/20.8.2000 and the impugned appellate order dated 23.11.92 had never been

passed. A further prayer is for payment of full salary and allowances from the date of suspension i.e. 4.8.91 till he is reinstated after adjusting the subsistence allowance already received by the applicant. The benefit of seniority and increments has also been claimed through this O.A.

2. Pleadings on record have been perused and learned counsel for the parties have been heard.

3. The applicant was initially appointed as Cleaner in the Railways on 8.8.1956 and thereafter was promoted to the post of Firemen II, Diesel Assistant, Shunter and Driver (Goods) in the year 1987. He was also confirmed as Driver and was holding the said post. the applicant on 4.8.91 was carrying 1144 UP Gwalior Chhapra Mail from Lucknow to Kanpur. Sri Mobin Ahmed was provided as Diesel Assistant, one Sri R.C. Gupta was on duty as Assistant Station Master, Sonik and one Sri Sunder Lal was on duty in east cabin. The said train met with an accident at Sonik Railway station on 4.8.91 with the military special which was standing on line number 3. From the Lucknow Railway Station when the train was started by the applicant, Sri Mobin Ahmed, Sri Mahesh Prakash and three others all of whom were Drivers and were senior to the applicant entered into the engine cabin. The applicant did not object to their entry.

4. The case of the applicant is that after crossing the Ajgain Station, he saw that the outer signal at the Sonik Railway Station was lower and after getting a confirmation from the Diesel Assistant, Mobin Ahmed that the signal position was O.K., he approached the outer signal when suddenly Sri Mobin Ahmed shouted that the



signal was red. The applicant duly applied the emergency brakes and brought the train under control but even then the train dashed ~~against~~ the military special standing on line no.3 resulting in an accident involving loss of 11 deaths, leaving 39 persons injured apart from causing loss of Railway property. The case of the applicant is that because of his alertness, a major accident was averted and further that the other railway employees who were equally responsible for the accident such as Mobin Ahmed, Diesel Assistant, Sri R.C. Gupta, Asst. Station Master, Sonik and Sri Suner Lal on duty in the east cabin and the four senior drivers who entered into the engine cabin at Lucknow Railway Station were left free and not even a chargesheet was issued against them. Thus on behalf of the applicant it is contended that the punishment if any should have been imposed on the other persons also. Thereafter the Commissioner Railway Safety conducted a fact finding enquiry on the accident on 8.8.91 in which the Divisional Railway Manager, Northern Railway, Lucknow and other sr. officers were also associated. During the course of enquiry, the statement of Sri Mobin Ahmed, Diesel Assistant was also recorded. According to the applicant during the course of the fact finding enquiry conducted by Commissioner, Railway Safety, the defective position of the signal at Sonik Railway Station on the relevant date was not brought to light and this vital fact was concealed. The said signal was later on repaired. Further the diesel assistant Sri Mobin Ahmed during the course of <sup>regular</sup> enquiry was also held

responsible by the enquiry officer who conducted the detailed enquiry in the matter but according to the applicant no action was taken against the Diesel Assistant because he agreed to become a prosecution witness against the applicant. It may be mentioned here that in the fact finding enquiry report submitted by the commissioner, Railway Safety, the applicant was alone held responsible for the accident. The fact that the applicant also contends that the signal at Sonik Railway Station was not functioning properly into was also not taken ~~into~~ account in the fact finding enquiry report. By order dated 4.8.91, the applicant was suspended by Sr. Divisional Mechanical Engineer, NR, Lucknow (Respondent No.2) and a chargesheet dated 17.3.92 was served on the applicant. According to the applicant he was neither supplied with the statement of the Diesel Assistant as recorded at the time of fact finding enquiry nor the report of the fact finding enquiry along with the chargesheet. On the contrary by order dated 31st March 1992, the applicant was informed by the respondent No. 4 that the fact finding report of the Commissioner Railway Safety being a confidential document cannot be supplied to him. It is further admitted by the applicant that during the course of the detailed enquiry conducted by the Sr. Loco Inspector, the prosecution witness~~es~~ were examined and the applicant was also allowed to cross examine all the prosecution witness~~es~~ ~~XXXX~~ ~~XXXX~~ including the diesel assistant Sri Mobin Ahmed, the four senior Drivers who entered the engine cabin at Lucknow Railway Station, Asst. Station Master, Sonik and the <sup>east</sup> Cabin Man, Sonik Railway Station.

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5. On behalf of the respondents the basic facts as stated above are not disputed. It has been contended on behalf of the respondents that the applicant in utter violation of railway rules allowed four persons other than engine crews to enter in the engine cabin at Lucknow Railway Station and was carrying the train at high speed and did not pay any attention to the signal at the Sonik Railway Station as he was busy talking to the four persons who were allowed <sup>entry</sup> by him in the engine cabin at Lucknow. Thus according to the respondents, the accident took place because of negligence and carelessness of the applicant, resulting in loss of 11 human lives, injuries to 39 persons apart from loss of Railway property. Further it was contended that all the relevant documents were made available to the applicant during the course of enquiry and every reasonable opportunity of being heard was given to the applicant. It was contended that as many as 16 witnesses were examined in the presence of the applicant who was also given an opportunity to cross examine ~~all~~ all these witnesses. Further the report of the Commissioner, Railway Safety was not provided to the applicant being a confidential and privileged document. Further the enquiry report was also furnished to the applicant on 27.7.92 allowing him a full opportunity to represent against the said report within 15 days in accordance with the existing rules. The representation of the applicant against the enquiry report dated 21.7.92 is admitted by the respondents to have been received on 11.8.92 which was duly considered by the disciplinary authority before passing the order of punishment.

*AKM*

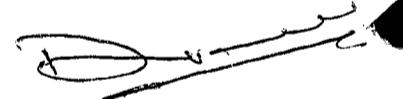
6. In view of the factual position discussed above, we are of the view that the O.A. has no merit. It is not disputed that 16 prosecution witness were examined in the presence of the applicant and he was also given an opportunity to cross examination all of them. It is also not disputed that 4 railway employees were allowed by the applicant to enter in the engine cabin at Lucknow Railway Station. There is also no dispute that the applicant was duly allowed to present his defence during the course of the enquiry. The enquiry report dated 21.7.92 had duly been furnished to the applicant on 27.7.92 allowing him 15 days to submit his representation. The representation dated 11.8.92 furnished by the applicant was duly considered by the disciplinary authority before imposing the penalty of dismissal from service. The key witness, namely Sri Mobin Ahmed, Diesel Assistant Sri R.C. Gupta, Asst. Station Master, Sonik Railway Station, Sri Sunder Lal, Cabin Man, East Cabin, Sonik were also examined ~~and~~ in the presence of the applicant ~~and~~ were subsequently cross examined by the applicant. It carries conviction since ~~that~~ the applicant was busy talking to the Railway employees whom he allowed to enter in the engine cabin at Lucknow Railway Station ~~when~~ the accident took place. All these aspects of the matter were duly considered by the enquiry officer before he submitted his report dated 21.7.92. The appeal filed by the applicant was rejected by the Addl. Divisional Railway Manager, Northern Railway, Lucknow (Respondent No. 3) by a reasoned and speaking order. The applicant cannot be allowed to take shelter behind the finding of the enquiry officer who no

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doubt came to the conclusion that the applicant was not alone responsible and the Diesel Assistant was also ~~equally~~ responsible for the accident. It is no doubt true that action could have been taken against ~~the~~ Diesel Assistant also but the mere fact that no action was taken against him will not absolve the applicant ~~from responsibility~~ ~~his~~ ~~xxxx~~. The enquiry officer found the applicant responsible for the accident and also found the charges against the applicant as proved. We accordingly held that the penalty of dismissal from service imposed by the disciplinary authority (Sr. Divisional Mechanical Engineer), Northern Railway, Lucknow (Respondent No. 2) does not call for any interference. We ~~further~~ hold that the appellate order dated 23.11.92 passed by Additional Divisional Railway Manager, N.R. Lucknow (Respondent no. 3) also does not call for any interference.

7. In the result, the O.A. is dismissed with no orders as to costs.

  
MEMBER (A)

  
MEMBER (J)

LUCKNOW: DATED: 22<sup>nd</sup> Dec: 2000

HLS/-