

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH

T.A. 1141/87  
(W.P. 1872/83)

Tuesday this the 15 day of February, 2000

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN  
HON'BLE MR. J.L. NEGI, ADMINISTRATIVE MEMBER

Prakash Narain  
Son of Shri Bhagwati Prasad  
resident of Village & Post  
Sichiya Jungle Tulsi Ram  
Dist. Gorakhpur working as  
Assistant Station Master,  
Bankayganj Dist. Kheri. .... Applicant

(By Advocate Mr. O.P. Srivastava)

V.

1. Union of India through its General Manager, N.E.Railway Gorakhpur.
2. Divisional Safety Officer N.E.Railway, Office of the Divisional Rly. Manager, Ashok Marg, Hazratganj, Lucknow.
3. Station Master, N.E.Railway Bankeyganj Dist. Kheri. ... Respondents

(By Advocate Mr. A.K. Chaturvedi)

The application having been heard on 8.2.2000, the Tribunal on 15.2.2000 delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

This litigation has a very long career. The applicant Prakash Narain filed Writ Petition No.1872/83 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench challenging the order dated 25.1.83 (A.3) by which the second respondent The Divisional Safety Officer, Northern Railway, Lucknow imposed on the applicant the penalty of removal from service. The above penalty was imposed on the applicant by the second respondent after

contd...

T.A. 1141/87

OR

cost deposited in  
the registry on 20-9-99

Rs 1000/-

12/10/99 (3) 25-11-99

case is adjm to 21-12-99.

4  
B.O.C

(32) 21/12/99

No sitting of D.B. case is  
adjm to 08/02/2000 for hearing

OR  
Submitted for  
hearing  
12/12/99

4  
B.O.C

(33) 08/02/2000

Presence

sri (1) P. Srinivasan counsel for  
applicant

sri D.K. Chatterjee counsel for

respondent

Decd. order reserved

(34) 15.02.2000

4  
B.O.C 08/02

Horale VC (J) (AVH)  
Horale MCA (J.L.N.)

order dt 18/2/2000 order pronounced in open court today.

OR  
order dt 18/2/2000  
prepared on  
18/2/2000

Q 18/2/2000

4  
Tolson  
B.O.C  
Court-I

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

LUCKNOW BENCH, LUCKNOW.

66

Original Application No. of 1998.

T.A.R.A/C.C.P.No. of 1998.

TA 1161/87

Date of Decision: 15/2

Prakesh Narain  
.....Applicant

Advocate for applicant

U.O.L. & Ors. Versus  
..... Respondents

Advocate for

Respondents

CORAM

HON'BLE MR. AVITANDANAN, V.C.

HON'BLE MR. J. L. WAGI AM

1. Whether reporter of local papers may be allowed to see the judgment.
2. To be referred to the reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether to be circulated to other benches ?

By order  
S. Vice chairman/Member  
PSW  
16/2

(10)

an enquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules held on the basis of a memorandum of charge dated 13.7.82. The article of charge framed against the applicant reads as follows:

"That the said Shri Prakash Narain while functioning as ASM at Gosakhpur Station Zone. No.1 on 11.8.81 failed to ensure that the line on which 535 UP Passenger train was to be received was clear and free of obstruction and that permanently locked points leading to running line on which 535 Up was being received were kept locked to isolate the Running line. He also failed to ensure that the line reception book had been signed by the shunting Jamadar when the shunting engine No.8198 was working his jurisdiction and when he was aware that the permanently locked point was not locked. He thus violated para 6 and 8(b) VI of SWR of Gorakpur station read with SR187(7) (iii) and SR 187(B) and Appendix to Chapter 6 Part II of G&S Rule Book. This tantamounts to gross negligence of duty on the part of Shri Prakash Narain ASM."

The applicant denied the charge. An enquiry was held. The Enquiry Officer submitted a report holding that the charge has been established. The second respondent accepting the finding of the enquiry officer by the impugned order A.3 imposed on the applicant the penalty of removal from service. Aggrieved by that the applicant filed the Writ Petition before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench. The writ petition filed in the year 1983 was after the commencement of the Administrative Tribunals Act transferred to this Bench of the Tribunal under Section 29 of the Administrative Tribunals Act, 1985. The applicant had in the application alleged that the second respondent was not competent to initiate and to impose penalty of removal from service on him because he was not the competent disciplinary authority in so far as the second respondent being Divisional Safety Officer did not have control administrative and disciplinary jurisdiction over the applicant who belongs to the Operating Department and that

contd...

he being an officer lower in rank than the officer who appointed him could not have removed him from service. It has further been alleged that the enquiry was not held in conformity with the rules as the applicant has not been given fair and reasonable opportunity to defend himself as he was not supplied with the report of the Accident Enquiry Committee which he requested for. Further the applicant had alleged that the charges levelled against the applicant did not constitute a misconduct as it was only a non-compliance with rules. The applicant has also alleged that there was no evidence which justified a finding of guilt and that/a copy of the enquiry report was not furnished to the applicant before the disciplinary authority found the applicant guilty the order of penalty is vitiated for non-compliance of the principles of natural justice.

2. The respondents filed a detailed reply statement in which they contended that the enquiry was held in conformity with the rules, that the second respondent was competent to initiate the disciplinary proceedings and award on the applicant the penalty of removal from service and that the penalty of removal from service/<sup>was</sup> imposed on the applicant as his guilt was established in an enquiry held according to rules. They also contended that as the applicant did not exhaust the departmental remedy of appeal, the writ petition was not maintainable. The Tribunal by its judgment dated 13.7.92 allowed the application following the ruling of the Apex Court in Mohammed Ramzan's case holding that the impugned order of penalty was unsustainable as the copy of the enquiry report was not supplied to the

contd....

✓

applicant before the disciplinary authority took a decision that the applicant was guilty and imposed on him the penalty of removal from service. Aggrieved by the decision of the Tribunal, the Railway Administration filed Special Leave Petition before the Hon'ble Supreme Court. The S.L.P. was allowed and in Civil Appeal No.950/95 the Hon'ble Supreme Court set aside the decision of the Tribunal and remitted the matter back to the Tribunal for a fresh disposal in view of the ruling in ECIL V.Karunakar, JT 1993(6)SC.1 on merits. Thus the case is again before us for orders.

3. Though various grounds have been raised in the Writ Petition, the learned counsel of the applicant Shri O.P.Srivastava mainly stressed before the following points:

- (i) The allegations in the memorandum of charge amounted only to infraction of certain rules for which the penalty has been provided for in the Railway Act and therefore the charge and the disciplinary proceedings are not sustainable.
- (ii) The second respondent Divisional Safety Officer being an officer of the Safety Department was not competent to initiate disciplinary proceedings and to impose on the applicant the penalty of removal from service.
- (iii) The second respondent being an officer lower in rank than the authority who appointed the applicant was not competent to remove the applicant from service and the impugned order therefore, is in violation of Art.311(1) of the Constitution.

4. We have with meticulous care gone through the pleadings and all the materials placed on record and have heard at length the arguments advanced by Shri OP Srivastava, learned counsel of the applicant and Shri A.K.Chaturvedi,

contd...

learned counsel of the respondents.

5. The argument of the learned counsel of the applicant that the charge does not spell out any misconduct but amounts only to non-compliance of certain provisions of the rules for which the consequences have been provided for in the Indian Railway Act and therefore the initiation of the proceedings under Rule 9 of the Railway Servants (D&A) Rules is not called for has only to be mentioned and rejected because from a perusal of the memorandum of Charge (Annexure.I) it is evident that the allegations made therein were in addition to being non-observance of the provisions of the rules amounted to gross misconduct of dereliction of duty.

6. We will now consider the other grounds raised by the applicant against the penalty imposed on him. The learned counsel of the applicant with considerable tenacity and vehemence argued that the second respondent Divisional Safety Officer being the head of the Safety Department at Divisional Level had no competence to initiate the disciplinary proceedings against the applicant who belongs to the Operating Department and that therefore the entire proceedings and the impugned order of removal from service is incompetent and void ab initio. The learned counsel referred us to Railway Board Letter dated 16.10.73 (Annexure.R4) which reads as follows:-

"In Board's Circular Letter No.E(D&A)60.RG 6-30 dated 28.7.62, it had inter alia been indicated that it would be procedurally wrong for an authority to initiate and finalise disciplinary proceedings against an employee who is not under its administrative control.

It has however, been brought to the notice of the Board that some difficulties are being experienced in initiating and finalising the disciplinary proceedings against the staff involved in irregularities concerning

purely personal matters such as misuse of passes, PTOs, unauthorised occupation/retention of quarters unauthorised absence from duty etc. and it has been suggested that the instructions referred to above may be so amended as to provide for initiation/ finalisation of disciplinary proceedings by the officers of the Personnel Department, such as APOs, DPOs even against the staff who may be working in Departments other than the Personnel Department and thus be not under their administrative control. It has been also mentioned that in respect of the category of Assistant Station Masters/Station Masters, the disciplinary action is initiated and finalised both by the Divisional Safety Officer and Divisional Commercial Superintendent, depending upon the Department to which the irregularity committed pertains, despite the fact that the Assist. Station Masters being belong to the Operating Department.

The matter has been carefully considered by the Board and in consultation with their legal advisor, it is clarified that a Railway servant essentially belong to only one Department even though in the course of the performance of his day to day duties, he may violate rules/regulations administered by some other departments. The Assistant Station Masters and Station Masters belong to the Operating Department even though they have to perform the duties pertaining to the Commercial Department also from time to time. Disciplinary authorities in their case would thus belong to the operating Department and none else. If any other practice is being followed, but if irregular and should be stopped forthwith. Disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working, as any other procedure would not be in keeping with the instructions referred to in para 1 above. " *emphasis added*

and argued that the applicant a Station Master belonging to the Operating Department was not under the disciplinary jurisdiction of the Divisional Safety Officer who is head of the/department of Divisional Level and therefore, the disciplinary proceedings initiated by him by issuance of the charge Sheet AI and the order of removal from service

cond...

imposed on the applicant by Annexure.3 is invalid and unsustainable. The learned counsel of the Respondent on the other hand argued that the Divisional Safety Officer is in administrative control of the Station Masters and is therefore fully competent to initiate the disciplinary proceedings and also to impose the penalty of removal from service on the applicant, for the General Manager has issued instructions bringing the officials of the Operation Department like Station Masters under the Administrative as well as disciplinary control and jurisdiction of the Divisional Safety Officer. He referred to the letter issued by the General Manager dated 22.4.69 (Annexure.R1).

7. The question whether the Station Masters and Asstt. Station Masters and staff of the Operating Department are amenable to the disciplinary jurisdiction of Divisional Safety Officer has come up for consideration before various Benchs of the Tribunal earlier. The Madras Bench of the Tribunal in O.A.941/91, while a Station Master Gr.III working in the Southern Railway was charge-sheeted by the Divisional Safety Officer of the Division relying on the letter of the Railway Board dated 16.10.73 (supra) stated that:

"It is very clear from the above that the disciplinary authority in respect of Station Masters could only belong to the operating side and none else.

The railway board by its letter dated 6.7.1979 reiterated the same orders as follows:

Railway Board's Letter No.E(D/A)78 RD 6-15 dated 6.7.1979

An employee cannot be treated as under the administrative control of more than one department. Therefore there is no necessity of making any amendment in the Railway Servant's Disciplinary and Appeal) Rules, 1968. The instructions as contained in Board's letter No.E(D/A)/72 RG 6-13 dated 16.10.1973 and reiterated in their letter of even number dated 10.1.1979 should, therefore, continue to follow.

argued that the Divisional Safety Officer is not the appointing authority of the applicant. The learned counsel of the respondents on the other hand argued that it was the Divisional Safety Officer who appointed the applicant and therefore there is no merit in the contention raised. In support of this contention, learned counsel of the respondents placed reliance on the so-called appointment order of the applicant A.2 dated 25.3.77 of the Divisional Safety Officer. A reading of this order would show that this was only an order of posting after the applicant had successfully completed the training. Annexure.R5 dated 24.12.75 issued by the Senior Personnel Officer in the Office of the General Manager, Gorakpur is the order by which the applicant was offered the post of Gr.III Signaller in the scale Rs.260-480. In the light of this document it is futile to contend that the Divisional Safety Officer is the authority who appointed the applicant. The Senior Personnel Officer in the office of the General Manager, Gorakhpur is an officer who is higher in rank than the Divisional Safety Officer (Annexure.R2). The applicant having been appointed by the Senior Personnel Officer who is an authority higher in rank than the second respondent, we hold that the impugned order of removal from service issued by the second respondent is incompetent and in violation of Article 311(1) of the Constitution of India.

9. In the result, in the light of the above discussion, we hold that the impugned order of penalty of removal from

contd...

w

By both the above orders, the Railway Board has set the matter beyond any possible doubt, particularly regarding Station Masters and Assistant Station Masters in respect of disciplinary proceedings against them. The Chief Personnel Officer had no authority to overrule the specific orders of the Railway Board. No order of the Railway Board cancelling or modifying the above orders have been produced before us. As we have already pointed out, even otherwise, it is but proper that the administrative superior should function as the disciplinary authority and not an outsider even if there is functional inter-relationship."

Relying on the above ruling of the Madras Bench the Ernakulam Bench of the Tribunal in O.A.195/95 titled C.Mohan, Station Master Gr.III V.Union of India and others set aside an order passed by the Divisional Safety Officer imposing on the applicant therein a penalty of reduction of grade for a period of two years with recurring effect. The above ruling of the Madras Bench was again followed by the Ernakulam Bench in its Judgment in O.A.761/97 to which one of us (Vice Chairman(J) was a party. We do not find any reason to deviate from the above ruling. On the contrary we are in respectful agreement with the view taken. We therefore, hold that the impugned disciplinary proceedings as also the penalty of removal from service imposed on the applicant/ by the impugned order Annexure.3 by the Divisional Safety Officer (2nd respondent) is incompetent and therefore, unsustainable in law.

9. The next question is whether the impugned order of removal from service violates the guarantee under Article 311(1) of the Constitution of India, that a person shall not be removed by an authority lower in rank than the authority which appointed. The learned counsel of the applicant

cond.....

Central Administrative Tribunal  
Lucknow Bench  
Date of Filing .....  
Date of Receipt by Post .....

(21)

.2.

**By, Registrar ( )**

aside the judgment of the Hon'ble Tribunal dated 13.7.1992 in view of the law, settled in Managing Director, ECIL Versus B.Karunakar, J.T. 1993 (6) S.C. regarding supply of enquiry report and remitted the matter to the Hon'ble Tribunal for disposal of the said T.A.No.1141 of 1987 on merit, vide order dated 23 January, 1995. A true copy of the judgment/order of Hon'ble Supreme Court dated 23.01.1995 is being filed herewith as ANNEXURE NO.'A' to this Misc. petition.

4. That now the above-noted case is to be heard and decided on merits, for which some date is required to be fixed.

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to fix some date for hearing of the above-noted case at the earliest for the sake of ends of justice.

LUCKNOW

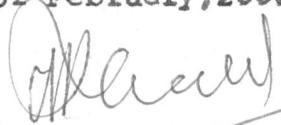
DATED 29 .2.1996.

  
(O.P. SRIVASTAVA)  
Advocate,  
COUNSEL FOR THE PETITIONER

service imposed on the applicant by the second respondent is unsustainable in law and therefore we set aside the said order. The respondents are directed to reinstate the applicant in service forthwith with continuity of service and all attendant benefits and to pay to the applicant the entire backwages for the period he was kept out of service. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 15 day of February, 2000

  
J.L. NEGI  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

S.