

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : PATNA

Date of Decision:- 26.9.2001

Registration No. OA-254 of 1996

Ram Sewak Singh, son of Late Ram Adhin Singh,
resident of Village Bocha Chak, P.O. Phulwarisharif,
P.S. Phulwarisharif, District Patna.

... Applicant

- By Shri G. Saha, Advocate

Versus

1. The Union of India through Divisional Railway Manager, Eastern Railway, Danapur.
2. Senior Divisional Personnel Officer, Eastern Railway, Danapur.
3. Divisional Mechanical Engineer (Power), Eastern Railway, Danapur.

.... Respondents

- By Mrs. N. Niyrvikar, Advocate

Coram:- Hon'ble Shri Lakshman Jha, Member (Judicial)
Hon'ble Shri L. Hmingliana, Member (Administrative)

ORDER

Hon'ble Shri Lakshman Jha, Member (J):-

1. The applicant has prayed for quashing the impugned order dated 18.12.95, whereby the disciplinary authority ordered for reconstituting inquiry with Shri J.P.Sharma, AE(P), Danapur as inquiry officer in

place of Shri R.N.Jha, SLI, Danapur, to inquire into the charges framed against the applicant, and also, for quashing the charge-sheet dated 31.1.95 as at Annexure-A-5(1). Further prayer for direction to the Respondents Nos. 2 & 3 to make payment of all post-retiral benefits with interest has also been made.

2. The applicant, Ram Sewak Singh, was initially appointed to the post of Cleaner on 4.3.1957, in the Danapur Division of Eastern Railway. In due course, he was promoted to the post of Driver, Grade-A in the year 1994, and retired from services on 31st January, 1995. ^{31/1} He stated that on 14th January, 1995, at about 11.58 P.M., the applicant was on duty as Driver of the 4 K.P. (DMU) along with his diesel Assistant, Shri R.N.Mishra. They reached down platform of Barahiya Station for further journey towards Kiul. However, 5048 Down Express Train was given precedence on the main line at Barahiya Station and, therefore, the aforesaid 4 K.P. DMU train was stable at Barahiya Station at that time. However, Station authority without announcing lowered the routing signal, and the applicant started the train. In the meantime, a Group of five miscreants armed with knives and iron rods entered ^{into} the driver's cabin from both sides and over-powered the applicant and the Asstt. Driver. They took control of the engine in which they moved ahead towards sand hump. The applicant tried to apply emergency brake, but three front coaches and one engine of the said train derailed and moved towards the sand hump. However, no damage was caused either to the coaches

or the engine. After the accident the miscreants kidnapped the applicant and his Assistant Driver and detained them till the evening of 15th January, 1995. They also threatened them with dire consequence if they lodged F.I.R. against them. However, the applicant lodged the F.I.R. through post on 17.1.95, vide Annexure-A-2 series.

3. It is the further case of the applicant that loco-foreman, Danapur, suspended him vide order dated 16.1.95, who is not competent authority, vide Annexure-A-3, and Facts finding inquiry committee was constituted which consisted of (i) Senior Divisional Engineer (ii) Senior Divisional Signal and Telecommunication Engineer; (iii) Divisional Mechanical Engineer (Power) who was also appointing-cum-disciplinary authority of the applicant and (iv) Divisional Safety Officer, Danapur. The facts finding committee submitted its report which reported that disregard of Signal was the cause of the accident and the applicant had violated G.R.2, 11(a)(b), G.R.3.78(i)(a)(b)(3), S.R. 3.78 and G.R. 3.81 (i)(2) and Railway Service (Conduct) Rules 1966 - Rule No.3(i)(ii) and (iii) vide Annexure-A-4. However, the Respondents revoked the suspension order from the date of retirement i.e. on 31st January, 1995 and he was served with the Memorandum of charges as issued by the Divisional Mechanical Engineer (Power), Danapur (Respondent No.3) vide the charge-sheet as at Annexure-A-5. It is stated that the Divisional Mechanical Engineer (Power) was one of the Members of the Facts Findings Committee and, therefore, he was not competent to issue the charge-sheet vide letter dated 31.1.95 at Annexure-A-5. The applicant requested the authority to provide an opportunity to inspect original documents

and to take extract therefrom, and, accordingly, he was directed to attend the office of the Divisional Safety Officer vide Annexure-A-7. However, in spite of ^{the} visiting the office of the Divisional Safety Officer for several times, he was not permitted to ^{The Relied} inspect and rely upon the documents. Thereafter, he filed a written statement of defence on 7.3.95, as at Annexure-A-8. The disciplinary authority without considering ^{the} its defence appointed Shri R.N. Jha, Senior Loco-Inspector, Danapur, as inquiry officer vide Annexure-A-9. The inquiry proceedings concluded on 14th November, 1995, and the applicant also submitted his note of defence on 21.11.95, vide Annexure-A-10. The inquiry officer submitted his inquiry report to the Disciplinary authority (Respondent No.3) who without considering the inquiry report submitted by the inquiry officer, Shri R.N. Jha, appointed a second inquiry Officer, Shri J.P.N.Sharma, A.E. (Power) vide the impugned Annexure-A-1 without specifying any reason for non-consideration/non-acceptance of the inquiry report submitted by Shri R.N. Jha.

4. The Respondents in their Written Statement have stated that Shri R.N.Jha, Senior Loco Inspector, Danapur was nominated as inquiry officer at the first instance, but the final report with detailed verification, which was urgently required, could not be available and, therefore, another officer, namely, Shri J.P.Sharma, Assistant Mechanical Engineer (Power), Danapur, was nominated as inquiry officer. It is stated that the applicant disregarded the Down Loop Starter Signalling 'On'

position, as a result of which three coaches and one engine got derailed causing a loss of Rs.1,50,000/- . The story of the miscreants entering inside the Driver cage and over-powering him causing derailment is denied. It is said to be a fabricated story.

The Guard of the train did not support the aforesaid story of accident vide Annexure-C. The facts and findings of the inquiry established that due to disregard of signalling the accident took place.

It is denied that the applicant was not supplied with the required documents. In this connection, a photo-copy of the acknowledgement regarding receipt of the copy ^{of the documents} is at Annexure-D. Thus, it is said that there is nothing arbitrary, mala fide and illegal in initiating the disciplinary action against the applicant.

5. The applicant in his rejoinder has stated that the inquiry officer appointed earlier submitted inquiry report to the disciplinary authority who without considering the inquiry report and without assigning any reason cancelled the inquiry report and appointed Shri Sharma to inquire into the charges afresh. The former inquiry officer, Shri R.N.Jha in the inquiry report held the charges as not proved. The disciplinary authority without considering the inquiry report so submitted ordered for a de novo second inquiry, which is not permissible under law. The applicant retired from services on 31.1.95, and his retiral dues have not been settled so far. The second inquiry officer had not been able to conclude the inquiry till date. The criminal case arising out of the same charge has ended in acquittal (Annexure-A-11)

The earlier inquiry report was submitted as far back as in 1995. The de novo inquiry was ordered on 18.12.95, and the second inquiry officer appointed was also transferred as far back as 4 years ago. It is denied that the alleged accident caused a loss of Rs.1,50,000/-.

The facts findings inquiry committee has not given detailed report as to how the loss was caused and the respondents could not send a report to the Railway Board in this respect as required under rules.

6. Heard Shri Gautam Saha, the learned counsel for the applicant and Mrs. N. Nirvikar, learned counsel for the respondents and perused the record.

7. The Respondents Railways have not given ^{come} ~~former~~ with categorical denial that the ^{former} ~~farther~~ inquiry officer could not submitted his inquiry report after conclusion of inquiry proceedings. It is simply stated that the inquiry report was urgently required and, therefore, a de novo inquiry was ordered with Shri J.P.Sharma as inquiry officer. On the other hand, the applicant has ^{come} given with definite assertion in his rejoinder to the Written Statement that the former inquiry officer held inquiry proceedings and submitted inquiry report to the disciplinary authority, in which he held him not guilty. It is also not denied that the second inquiry officer appointed as far back in the year 1996, has not been able to hold inquiry for the last four years. The applicant retired as far back in 1995 and just on the day of retirement he was served a charge-sheet after revoking his suspension. It is also not disputed that the applicant faced criminal charges for the same occurrence in which he was acquitted by

the competent Trial Court. The inquiry report submitted by the former inquiry office has not been brought on the record by either of the parties. However, as said above, the applicant has come with categorical statement that the inquiry officer submitted his inquiry report and the disciplinary authority without assigning any reason, and also without cancelling the earlier inquiry report ordered de novo inquiry by a fresh inquiry officer. We are afraid as to whether this course was open to the disciplinary authority. The disciplinary authority could have differed with the inquiry report after mentioning reasonings and could have passed suitable order in respect of punishment. But, instead of doing so, he appointed the second inquiry officer for conducting the inquiry afresh which is not warranted under law.

8. It is not disputed that the applicant was served with the charge-sheet on the date of retirement i.e. 31.1.95 and Shri R.N.Jha, Senior Loco Inspector, Danapur, ^{ROK} was nominated as inquiry officer by a letter dated 14.3.95, and the second inquiry officer was nominated on 18.12.95. The second inquiry officer has not given his report till date.

9. The learned counsel for the applicant referred to a decision of the Hon'ble Patna High Court in CWJC No.125 of 1995 - Nawal Kishore Prasad Versus the Union of India and Others, in which the Respondents were directed for making payment of the retiral dues in a case where a departmental proceedings could not be concluded even after one and half year of the retirement.

The instant case is on a better footing inasmuch as even after retirement of about six years, the applicant has not been paid his retiral dues though he was not held guilty by the first inquiry officer, and was also not held guilty by the competent criminal court.

10. In view of the aforesaid discussions, the impugned order as at Annexure-A-1, is hereby quashed. The Respondents are directed to make payment of the retiral dues to the applicant with interest at the rate of 12% per annum within a period of four months from the date of communication of this order. There shall be no order as to costs. The application is allowed.

SKS

(L. Hminglana) 26/12/95 (Dk) Lakshman Jha)
Member (A) Member (J)

26/12/95

1. I agree that the impugned order dated 18.12.95 as at Annexure-A-1 has to be quashed and set aside, and I also agree that the applicant is entitled to payment of his retirement benefits with interest at the rate of 12% per annum within a period of four months from the date of communication of the order. In addition, I am of the opinion that the impugned chargesheet dated 31.1.95 must also be quashed for which I am giving the following reasons:-

The applicant was charged with causing a Railway accident of derailment of engine, he was driving on 15.1.1995. But the accident did not cause

any casualty. The charge-sheet was issued to him on his last day while in service, which was 31.1.95. It must be noted that it was with commendable promptness that the charge-sheet was issued. The change of the inquiry officer by appointing Shri J.P.N. Sharma, in place of the earlier inquiry Officer, Shri R.N.Jha vide order dated 18.12.95 has been satisfactorily explained by the Respondents, saying that it was because the earlier inquiry officer was not available. But the statement at paragraph 34 of the O.A. that after the conclusion of inquiry proceedings, the inquiry officer submitted the inquiry report to the disciplinary authority, but instead of passing an order, the disciplinary authority appointed the second inquiry officer, has not been denied. Then the initiation of the departmental inquiry itself has to be quashed and set aside even on the sole ground.

Unless a departmental inquiry is not for award of a major penalty, it is not to be continued after the retirement of the Government servant who is charged. Even though the charge-sheet was issued for award of a major penalty under rule 9 of the Railway Servants (Disciplinary and Appeal) Rules, 1968, it is likely that the disciplinary inquiry even if properly finalised may not result in award of any award of a major penalty to the applicant. Even on that ground, the impugned charge-sheet dated 31.1.95 need to be quashed and set aside.

The impugned chargesheet is also hereby quashed and set aside.

26/9/95
L. Hsingliana
Member (A)