

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

DATE: September 23rd, 2002.

1. Original Application No. 189 of 1996

Shri Amarendra Kumar, S/o Shri Baleshwar Sharma, resident of Vazirganj Rly. Station, P.O. Vazirganj, Gaya.

.... APPLICANT.

By Advocate: Shri M.M.P. Sinha.

Versus

1. The Union of India through the General Manager, Eastern Railway 17, Netaji Subhash Road, Calcutta - 700 001.
2. The Divisional Railway Manager, Eastern Railway, Danapur, P.O. Khagaul, Patna,
3. The Divisional Safety Officer, Eastern Railway, Danapur, P.O. Khagaul, District - Patna.

.... RESPONDENTS.

By Advocate : Shri A. Ujjwal.

2. Original Application No. 191 of 1996

Shri Ramchandra Paswan, S/o late Brinchi Paswan, resident of Wazirganj Rly. Station, P.O. Wazirganj, Gaya.

.... APPLICANT.

By Advocate : Shri M.M.P. Sinha.

Versus

1. The Union of India through the General Manager, Eastern Railway, 17 Netaji Subhash Road, Calcutta-1.
2. The Divisional Railway Manager, E. Rly., Danapur, Khagaul, Patna.
3. The Divisional Safety Officer, Eastern Railway, Danapur, P.O. Khagaul, District - Patna.

.... RESPONDENTS.

By Advocate : Shri A. Ujjwal.

C O R A M

Hon'ble Shri L.R.K. Prasad, Member (A)

Hon'ble Smt. Shyama Dogra, Member (J)

O R D E R


By Shyama Dogra, M(J):- Since both these Original

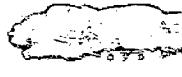
applications involve same cause of action and similar

legal proposition, hence, both these OAs are disposed of by a common order.

2. The applicants have prayed for quashing of the impugned orders by virtue of which they were imposed penalty while reducing the applicant's salary from Rs 1640-1560/- in the scale of Rs. 1423/- for a period of two years with non-cumulative effect with effect from 20.6.1995 and from Rs. 1090/- to Rs. 1050/- by two stages in the scale of Rs. 950-1500/- respectively, and further quashing of appellate authority's order who has confirmed the said punishment by the impugned orders dated 25.10.1995 (Annexure A/2).

3. The said impugned orders have been challenged on two counts, namely, that the Divisional Safety Officer, Eastern Railway is not competent authority to chargesheet and to impose punishment on the staff who is under the administrative control of Sr. Divisional Operating Manager, Eastern Railway, and, secondly, the incumbent cannot be issued second charge sheet for the same set of facts on which he was earlier chargesheeted on major penalty without assigning any reason.

4. The brief facts, as mentioned in the OAs, are that when the applicants were working as leave reserved station master and as lever man respectively at Z Wazirganj railway station, they were served a major penalty chargesheet vide letter dated 7.11.1994. The chargesheet against them were as under;

" On 1.10.1994 while he was on duty from 8.30 hours working as station master at Wazirganj, down DCNPR 16546 was received on the loop line at about 9.45 hours, when a rail loaded dip-lorry was already standing there, as a result of which train engine collided with the loaded dip-lorry with air brake pipes of locomotive was damaged. Shri Amarendra Kumar was responsible for the above accident as well as for concealing the  facts of the same."

The charge was based on

" From the J.T.R. of the Driver, it is clear that the train in question was received on blocked line and the collision took place with the loaded dip-lorry."

The Annexure A/5 series are copies of the said memorandum issued to the applicants.

5. On this, the applicants made representations and explanations were submitted to the concerned authorities. However, later on, the minor penalty chargesheet was issued on the same charges after cancelling the major penalty chargesheet issued earlier stating therein and holding  the applicants responsible for the said collision.

6. The applicants further made representations with explanation to the chargesheets and requested the Divisional Safety Officer (DSO in short) to indicate the basis of the charges before taking any decision, and prayed for cancelling this minor penalty chargesheet in the same way as major penalty chargesheet was cancelled. However,

The Divisional Safety Officer imposed the penalty of deduction of pay vide Annexure A/1. On this, the applicants preferred appeal before the appellate authority (DRM) Danapur on the grounds that the initiation of disciplinary action by the Divisional Safety officer is illegal, arbitrary and malicious in view of the fact that the charges of the two chargesheets were same, and the chargesheet cannot be issued twice for the ~~same~~ charges without assigning any reason. The said orders ~~were also~~ challenged on the ground that the Divisional Safety Officer was not competent to initiate the disciplinary action against the applicants as the applicants were under the administrative control of Sr. Divisional Operating Manager (DOM in short), Eastern Railway, Danapur who had the ^{It was also mentioned in the Appeal that} operating branch in the Division. ^{the} The said issue had already been set at rest by the Madras Bench of the Tribunal vide its decision in OA 941/91 decided on 1.7.1992 in the case ^{of} titled R. Palani Kumaran vs. U.O.I. & Ors. Therefore, the impugned orders are illegal and void ~~and~~ and the same are ~~liable~~ liable to be quashed.

7. It was further contended by the applicants that in fact no such accident had taken place as alleged in the chargesheet, which is clear from Annexure A/6, and the applicants are, thus, wrongly chargesheeted by the authorities who were not ~~even~~ competent to initiate disciplinary action against the applicants. Therefore,

the impugned orders are liable to be quashed on this ground also.

8. The contentions raised by the applicants have been opposed by the respondents in their written statement. It is contended that the ~~major~~ major penalty chargesheet SF-5 (Memorandum) detailing the offences was issued to the applicant on 7.11.1994. After receipt of their explanation, major penalty chargesheet was subsequently cancelled on 19.1.1995 by the competent disciplinary authority (DSO) and decided to issue a minor penalty chargesheet SF-II for the said charges. And after due consideration of their reply, the DSO has rightly imposed the punishment by reducing their pay in the time scale of pay by two stages for a period of two years with non-cumulative effect. Therefore, the order has been passed in accordance with law, and hence, liable to be sustained, and the appellate authority has also considered all aspect of the case and rightly upheld the said order of punishment.

9. So far as competence of DSO to initiate the disciplinary proceedings and to impose punishment aforesaid is concerned, it is submitted by the respondents that he is empowered and competent to take disciplinary action against the operating staff including the station master who belongs to the department. It is submitted that there are two ~~wings~~ in the operating department viz. transportation (movement of trains and safety). 

Transportation operation is controlled by the Divisional Operating Manager, whereas safety operation including accident is controlled by the Divisional Safety Officer, but both belongs to the same department. In this case, it is submitted that the accident of the goods train which falls under the safety operation, the DSO was quite competent to initiate and take disciplinary action as relevant per the ~~applicable~~ rules against the station master who are under his jurisdiction for safety aspect, hence the order is legal and passed in accordance with law. Therefore, these applications are devoid of merit and are liable to be dismissed.

10. Heard learned counsel for the parties and perused the record. During the course of arguments, the learned counsel for the applicant has placed on record one letter issued by the Railway Board dated 14.8.1997 wherein in para 3 it is mentioned as under;

" After taking into account all relevant aspect of the issue including the order of the Hon'ble Supreme Court in SLP filed before it, the Board have decided that henceforth only the Sr. DOMs/DOM will exercise the disciplinary powers in respect of operating staff even in the matter of violation of safety norms and any practice contrary to the above that may be in force on the Zonal Railways may be discontinued henceforth.

the Sr. DOM/DOM will henceforth exercise the disciplinary powers on the defaulting staff belonging to Operating Department even if they are charged with offences of violating safety norms."

11. The Madras Bench of the Tribunal has passed the order to the same effect while discussing these two wings of the railways in para 4 of the order. The said Bench has also referred to one order specifically passed in this regard by the Railway Board by its letter dated 16.10.1973 followed by subsequent instructions from time to time by the railways in this regard. In para 6 of the order, it is mentioned that in principle also , it is only the person in administrative charge of the railway servant who could appropriately function as disciplinary authority. The lower officials is administratively responsible to the superior in the administrative hierarchy. A person outside the vertical hierarchy cannot, therefore, function as a disciplinary authority unless , in a exceptional cases, he is validly made an ad hoc disciplinary authority, as may be provided for in the rules in certain circumstances. The DSO was in a different vertical hierarchy on the safety side. In this case, there is no claim that there was a notification pending in the ad hoc disciplinary authority , and in view of this, the orders passed by the DSO were quashed by the said Bench.

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12. On the second plea that a fresh chargesheet cannot be issued on the same charges if the earlier one was cancelled without giving any reason, the learned counsel for the applicant has placed reliance on 1987 (2) SLJ CAT 47, titled R.B. Parmar vs. U.O.I. & Ors wherein it is held that the chargesheet cancelled without giving any reason or without prejudice to the rights to issue a fresh one, new chargesheet issued on the same charges is not permissible. In the instant cases also when a fresh charge sheets were issued, the applicants have not been apprised of the reason for cancelling the earlier charge-sheet though in the appellate authority order, it has been mentioned by the appellate authority that the earlier charge sheet was cancelled on technical grounds and not on merit of the case, but the authorities have failed to place on record any document showing that the earlier charge sheet has been cancelled without prejudice to the rights to issue a fresh one on the same charges. Therefore, taking a similar view as taken in R.B. Parmar case, it is held that the ~~said~~ impugned orders (Annexure A/1) and A/2) passed on the basis of a fresh charge-sheet are not sustainable. It is further held in para 10 of the order passed by Ahmedabad Bench of the Tribunal in ~~T.A.44/1986~~ decided on 6.2.1987 , titled R.B. Parmar vs. U.O.I. & Ors which is as follows;

" It is quite evident from the aforesaid

order that the Disciplinary Authority , while cancelling the memo of charges, he has neither indicated or expressed his intention to issue a subsequent fresh charge. A duty has been enjoined upon the authorities to assign ~~the~~ the reasons for such an action while passing an order of cancellation. In case, the competent authority has any intention to issue a fresh charge sheet against the delinquent , he should be careful in indicating the same in explicit terms while passing the order. Thus, it is amply clear that the action of the disciplinary authority in issuing a ~~fresh~~ charge sheet (Annexure 'C') and consequently passing the impugned order is bad in law. The disciplinary authority under the circumstances was debarred from initiating fresh proceedings against the petitioner. The impugned order is, therefore, not sustainable."

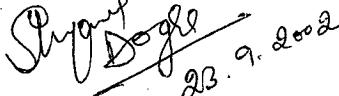
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Moreover, taking into consideration the competence of the DSO and inview of the Railway Board's letter, as mentioned hereinabove and in view of the decision passed by the Madras Bench of the Tribunal, while taking similar view, it can be safely held that the DSO was not competent to initiate disciplinary action against the applicants, therefore, the impugned orders passed by him vide Annexure A/1 ~~are~~ ~~not~~ order in the eyes of law, and hence ~~is~~ not sustainable and are hereby quashed.

13. In this view of the matter and observations

made by us hereinabove, these original Applications are allowed as above, and the impugned orders (Annexure A/1 and A/2) imposing the penalty upon the applicants are hereby quashed and set aside.

14. With these observations, these O. As stand disposed of, with no order as to costs.

/CBS/


Shyama Dogra
23.9.2002
(SHYAMA DOGRA)
MEMBER (J)


L.R.K. Prasad
23.9.02
(L.R.K. PRASAD)
MEMBER (A)