

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

Original Application No. 590 of 1996

DATE OF ORDER : AUGUST 29th, 2002.

1. Himanshu Soren, S/o late Babu Lal Soren, resident of village Khizuria, P.O. & P.S. Dumka, District - Dumka.

..... APPLICANT.

By Advocate : Shri S.P. Mukharjee, Shri S. Pratap, Shri G. Rai and Mrs. Mirdula

Versus

1. The Union of India represented through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Eastern Railway through the General Manager, E. Rly. having its office at 17 Netaji Subhash Road, Calcutta-1
3. General Manager, Eastern Railway, 17 Netaji Subhash Road, Calcutta - 700001.
4. The Divisional Railway Manager, E. Rly., Mughalsarai, Varanasi.
5. The Chief Operating Manager, E. Rly., 17, Netaji Subhash Road, Calcutta.
6. The Divisional Mechanical Engineer (P), E. Rly., Mughalsarai, Varanasi.

..... RESPONDENTS.

By Advocate : Shri Gautam Bose.

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):- This Original Application has been preferred by the applicant for quashing of order dated 27.5.1993 (Annexure A/5) by virtue of which the applicant has been removed from service, with further prayer to quash the order of the appellate authority dated 12.5.1994 (Annexure A/7) and his revision petition (Annexure A/9 and A/9 (1), which were rejected by the concerned authorities.

with prayer to quash all these orders with direction to the respondents to pay all arrears and allowances to the applicants as admissible under the law.

2. The facts of the case in brief is are that the applicant while working as Driver, one accident took place on the intervening night of 31.12.1992/1.1.1993 at Bagha Bishunpur Railway Station. On this, departmental proceedings were initiated against the applicant, and he was chargesheeted on the charge that while he was working as Driver on diesel light engine No. 18628 OM - 2 passed up at advanced starter signal of BCJ unauthorisedly at danger and collided ^{on 1.1.1993. Thus} in the rear of I. SD passenger between BCJ - SEB, on 1.1.1993. Thus he has violated GR 3.81 (1) & (3).

3. The applicant had put his defence and after conclusion of the departmental ~~inquiry~~, the inquiry officer submitted his report, and found the applicant responsible for the lapse in the matter of accident which took place, as mentioned hereinabove. The applicant has annexed all these documents with this O.A. as Annexure A/1 to A/4. On the basis of the findings submitted ~~the~~ by the inquiry officer, an order was passed by the disciplinary authority vide Annexure A/5 dated 27.5.1993, whereby he was imposed a major penalty by removing him from service. The applicant preferred an appeal against this order vide Annexure A/6, which was decided by the

appellate authority on 12.5.1994 vide Annexure A/7, who found no reason to reduce his punishment from removal from service already imposed on him, hence upheld the order of the disciplinary authority. Feeling aggrieved by the said order, the applicant preferred revision petition to the Chief Mechanical Engineer, Eastern Railway, Calcutta vide Annexure A/8, and the same has also been rejected vide Annexure A/9 by the Divisional Railway Manager, Mughalsarai, and he also upheld the said punishment of removal from service on the ground of gravity of offence and the death caused to the Guard of BD Passenger, which is a result of Shri Soren entering an occupied section without observing correct aspect of the signal at BCJ. Even his mercy appeal has been rejected for change or amendment of the punishment imposed on Shri Soren, the applicant.

4. The applicant has challenged these impugned orders on the ground that the same have been passed by the concerned authorities without applying their minds, and the impugned orders are not supported with reason/makn making them non-speaking orders and the same are passed in very arbitrary manner, hence they are not sustainable in the eyes of law, and are liable to be quashed and set aside.

The applicant has also challenged these orders on the grounds of discrimination, so far as

quantum of punishment is concerned. The applicant submitted that the Assistant Driver who was also on duty with the applicant, and has been chargesheeted for the same offence has been imposed the punishment of compulsory retirement , and the said arbitrary action on the part of the respondents is not fair as the Assistant Driver is equally responsible with same responsibility similar to the driver of the train. Therefore, the punishment imposed on the applicant is very harsh, and the authorities have come to the wrong conclusion when not accepting the appeal and revision of the applicant for amendment or modification of the punishment.

5. The applicant has further informed this Court that an FIR was also lodged for the said accident, and the applicant along with other accused persons were put on trial in a criminal case under Section 279, 337, 338 and 304 (A) of the I.P.C. with Section 175 of the Railway Act in Tr. No. 29/2001, which was pending before Sub-divisional Judicial Magistrate , Aurangabad, and the same has been disposed of on 15.3.2001 by acquitting all the accused persons of the said offence for want of evidence. Therefore, on this ground also, the applicant deserves leniency, and the impugned orders are liable to be quashed and set aside, as he has been acquitted by the Trial Court for the same offence and for the same set of evidence. The learned counsel for the applicant has referred to AIR 1999 SCW 1098 (M. P. and Antonycase). He

has also annexed copy of the order passed by the Trial Court vide Annexure A/10, and further submitted that if the punishment imposed by the respondents is quashed or modified, the applicant still has two years of his service to serve the railway.

6. The respondents have filed written statement, and raised various objections like mis-joinder of parties, principle of res-judicata and estoppel. So far as imposition of punishment of removal of the applicant is concerned, it is averred that the same has been passed in accordance with law, and after following the principle of natural justice and taking into consideration the gravity of offence being committed by the applicant, therefore, the same is liable to be upheld .

So far as reply to the question of discrimination being caused to the applicant regarding quantum of punishment is concerned, it is ~~not~~ submitted in para 12 of the written statement that the said Assistant Driver , Shri Rameshwar Prasad has sought for voluntary retirement, which was accepted by the authority according to the merit of the ~~case~~, the applicant's case is not similar to the case of said Rameshwar Prasad, and both cannot be equated so far as quantum of punishment is concerned. The learned counsel for the applicant has taken us through the various decisions so far as point of acquittal of the applicant in criminal case is

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concerned. He has referred to 1999 (3) SLJ 152 SC, AIR 2001 SC 1767, 1996 (1) SLJ 145, AIR 1989 SC 1185 and 1997 (11) SLJ 93 SC in this regard.

7. Heard learned counsel for the parties and perused the record. After perusal of the relevant documents and particularly on the point of discrimination and on the point of quantum of punishment and order of acquittal passed by the Trial Court, which is a subsequent event being developed during the pendency of the case, we are inclined to decide the matter without going into the details of the case and touching the merit of the case at this stage, as it appears that after acquittal of the applicant of the criminal case vide Trial Court's order dated 15.3.2001 (Annexure A/10), the applicant has not apprised the concerned authorities of this fact because of pendency of the present O.A. in this Court so that they could consider his case on quantum of punishment. Therefore, it would be in the interest of justice to refer this matter to the concerned authorities to re-consider the case of the applicant so far as quantum of punishment is concerned, in the light of the order so passed by the Trial Court in Criminal offence vide Annexure A/10 and also on the point of discrimination, as the applicant has also requested for modification/amendment of the punishment when he filed his appeal and revision, and as it is submitted by the respondents in their written statement

S. Jayaram

that the said Assistant Driver, Rameshwar Prasad had sought voluntary retirement, therefore, he was awarded with the punishment of voluntary retirement.

8. Keeping in view the facts and circumstances of the case we feel that the penalty of removal imposed on the applicant appears to be on higher side.

9. In view of the above discussions, the Revisional Authority is directed to reconsider the case of the applicant in the light of the observations made by us hereinabove and thereafter pass speaking order in accordance with law within a period of three months from the date of receipt of this order after giving the applicant an opportunity of personal hearing. The applicant is at liberty to submit relevant documents including copy of the order of the Trial Court referred to above in this regard before the Revisional Authority.

10. With these observations, this O. A. stands disposed of with no order as to costs.

/CBS/

*Shyamal
D. 29-8-2002*
(SHYAMA DOGRA)
MEMBER (J)

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29.8.02
(L.R.K. PRASAD)
MEMBER (A)