

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Sitting at Aurangabad
~~XXXXXX XXXXXXXX~~

O.A. No. 198
T.A. No. 14/87.

DATE OF DECISION 19/7/1988.

Shri Babu Son of Haji Wagh Petitioner

Shri A.H. Kapadia. Advocate for the Petitioner(s)

Versus

Union of India & ors (S.C.Rly.) Respondent

Shri S.R. Barlinge, Advocate for Shri V.G. Rege, Advocate for the Respondent(s) for the Respondents.

CORAM:

The Hon'ble Mr. B.C. Gadgil, Vice-Chairman

The Hon'ble Mr. P. Srinivasan, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? *3. No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTING AT AURANGABAD

Tr.14/87

Shri Babu Son of Haji Wagh,
Residing at: Purna,
Dist.: Parbhani.

.. Applicant

vs.

1. Union of India
2. The General Manager,
South Central Railway,
Secundarabad,
Andhra Pradesh.
3. The Divisional Railway Manager,
Divisional Office,
Mechanical Branch,
HYB(MG)Division,
SCR-Secundarabad,
Andhra Pradesh.
4. Assistant Mechanical Engineer,
Divisional Office,
South Central Railway,
Secundarabad,
Andhra Pradesh.

.. Respondents

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil
Hon'ble Member(A) Shri P.Srinivasan.

Appearances:

1. Shri A.H.Kapadia,
Advocate for the
Applicant.
2. Shri S.R.Barlinge
Advocate (for Shri
V.G.Rege)
for the respondents.

ORAL JUDGMENT

Date: 19-7-1988

(Per P.Srinivasan, Member(A))

In this application which originated as Writ Petition No.722-A of 1982 before the Bombay High Court, Aurangabad Bench, the applicant who was earlier working as a Driver in the South Central Railway complains that he has been wrongly punished with removal from service by order dtd. 17-4-1982 passed by the Disciplinary Authority. He also complains that the Appellate Authority wrongly dismissed his appeal by order dtd. 30-6-1982

2. The brief facts giving rise to this application may now be stated. The applicant was on duty as a Driver on Passenger Train No.578 UP running between Purna and Adilabad on 12-6-1981. According to the train schedule he left Purna towards Adilabad on 12-6-1981 at about 7.15AM; 1-30hours behind schedule. When his train reached Bhokar Station in Nanded District at 9.37AM, the Station Master of that station informed him that communication between Bhokar and the next station Hadgaon had failed. The Station Master ordered the applicant to open communication with Hadgaon by proceeding to Hadgaon in his engine. Disconnecting his engine from the body of the train, the applicant started from Bhokar at 9.45AM to go to Hadgaon. Meanwhile the engine of train No.577DN was proceeding from Hadgaon to Bhokar on a similar mission of opening up communication. The two engines collided head on about $8\frac{1}{2}$ kms. from Bhokar station. Thereupon departmental proceedings were initiated against the applicant for serious misconduct and failure to maintain devotion to duty while driving the engine of 578UP to Hadgaon, thereby causing collision with the other engine. This was said to be in violation of Safety Rule 373-2(6) and in contravention of Rule 3(i) and (ii) of the Railway Service Conduct Rules 1966. An Inquiry Officer was appointed to conduct the enquiry. During the enquiry, the Fireman of the applicant's engine testified inter-alia that the applicant was driving the engine too fast and was not following Rule 373-2(6) of the Safety Rules. He also stated that just before the collision, the applicant jumped out of the engine. The Inquiry Officer stated in his report that the applicant had also admitted that he had jumped off the engine to save his life. A scrutiny of the record of the enquiry shows that this was what the applicant said; "As the engine was stopping I jumped out on my side and the second Fireman jumped out from his side". Other witnesses

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like the Driver and Fireman of the other engine and a P.W.Inspector were also examined. On the basis of the evidence brought before him, the Inquiry Officer found the applicant guilty of the charge levelled against him. Accepting the report of the Inquiry Officer, the Disciplinary Officer passed the impugned order of punishment dtd. 17-4-1982 removing the applicant from service. The applicant made an appeal to the Appellate Authority who, by his order dtd. 30-6-1982 confirmed the penalty and rejected the appeal.

3. Shri A.H. Kapadia, learned counsel for the applicant, submitted that there was no evidence for the Inquiry Officer to come to the conclusion that the applicant was guilty of the charge levelled against him. The accident happened about $8\frac{1}{2}$ kms. from Bhokar station from where the applicant had started and about 10kms. from Hadgaon station which was his destination. The time taken by the applicant was about $\frac{1}{2}$ an hour and this clearly showed that he was not over speeding and even if that, only marginally. The applicant was driving the engine cautiously. It was the duty of the Fireman who was on the left side to notice and warn ~~of~~ the approaching engine from the opposite side, the applicant himself having been ~~sighted~~ unsighted. The other driver had been let off ~~whiz~~ with a lighter punishment in-so-far as he was only reverted by one grade while the applicant had been visited with the ultimate punishment of removal ffrom service. Shri Kapadia therefore pleaded that the impugned orders be set aside and the respondents directed to pay the applicant all consequential financial benefits. The applicant would have retired in 1983 in the normal course, ^{He} should be given full pay and allowances upto the date of superannuation and full retirement benefits thereafter.

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4. Shri S.R. Barlinge, learned counsel for the respondents, submitted that the guilt of the applicant had been conclusively established. In any case, there was evidence before the Inquiry Officer to come to the conclusion which he did and it was not for this Tribunal to reappraise the evidence and come to a different conclusion. The evidence of the Fireman of the applicant's engine as well as of other witnesses clearly showed that the applicant was at fault. It was not for this Tribunal to assess whether ~~there was~~ the evidence was sufficient but only to see whether there was some evidence to support the finding or whether the finding was totally perverse based on no evidence. This being so, Shri Barlinge submitted, that this Tribunal should not interfere either with the finding of guilt or the quantum of penalty.

5. We have considered the rival contentions very carefully. We do agree with Shri Barlinge that we are not expected to go into the evidence in detail to reappraise the entire case and to substitute our opinion for that of the Inquiry Officer or of the Disciplinary and Appellate Authority. We are only expected to examine whether the orders of authorities are in accordance with law and are based on evidence. We find that the statement of the witnesses, particularly the Fireman of the applicant's engine constitute evidence in support of the finding arrived at by the Inquiry Officer and accepted by the Disciplinary Authority. It cannot, therefore, be said that the decision was perverse or arbitrary and consequently illegal. This being so, we cannot disturb the finding of guilt recorded by them. Having said so much, we however feel that the penalty imposed was disproportionate to the charge levelled against the applicant. The applicant was driving the engine no doubt, at a higher speed than was prescribed in Safety Rule 373-2(6) but he exceeded the speed limit only marginally.

The applicant was negligent and was not as careful as he ought to have been, but the extent of his negligence was not such as to deserve removal from service with no retirement benefits whatsoever. This amounts to wiping out his entire past service. We feel that since he had put in over 25 years of service on the date of the accident he should get some credit for the service so rendered. Taking all the facts and circumstances of the case into consideration we are of the view that it would meet the ends of justice if the penalty imposed upon the applicant is reduced to one of the compulsory retirement with effect from 17-4-1982. We would, however, direct that his pension on retirement should be restricted to 50% of what would have been otherwise payable to him if he had retired in the normal course on that date. He should however be paid all other retirement benefits to the full extent to which he would have been entitled if he had retired from service on 17-4-1982.

6. In the result we pass the following orders:

- (i) The penalty imposed on the applicant is reduced to one of compulsory retirement with effect from 17-4-1982.
- (ii) The pension payable to the applicant on compulsory retirement will be determined at 50% of the amount ~~to~~ which would have been payable to him under the rules if he had retired from service on 17-4-1982.
- (iii) All other retirement benefits should be paid to the applicant in full i.e. to the extent admissible to him under the rules if he had retired from service on 17-4-82.

(iv) The terms of this order should be complied with as expeditiously as possible, preferably within four months from the date of this order.

7. The application is partly allowed to the extent mentioned above but in the circumstances of the case parties to bear their own costs.



(B.C.GADGIL)
Vice-Chairman



(P.SRINIVASAN)
Member(A)