

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A. No. 674/88.

T.A. No.

1990

DATE OF DECISION 09.08.1990

Shri Sohanlal S. Wadhavan

Petitioner

Shri YB. Phadnis,

Advocate for the Petitioner(s)

V/s.

Union of India and others

Respondent

---

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. I. K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? ☒
2. To be referred to the Reporter or not? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal? ☒

ly

O.A.674/88.

P R E S E N T :

Date of Order - 9.8.90.

G.SreedharanNair, Vice Chairman :-

The applicant while functioning as Driver 'A' Special was proceeded against by the issue of a Memorandum of Charges dated 28.10.1985 for alleged serious misconduct. The imputation was that he detained 2 UP Mail at the Summit Station for 55 minutes on 16.10.1985 on the plea that the signal aspects could not be seen by him due to foggy weather. It was alleged in the statement of imputations that as per General and Subsidiary Rule Book, there is no provision for stopping the trains at stations due to foggy weather conditions and that in view of Subsidiary Rule 3.73(3), the Driver should have exercised caution and kept his train under control. The applicant pointed out by his letter dated 12.11.1985 that Subsidiary Rule 3.73(3) has no relevance at all. Thereafter, it was rectified as Subsidiary Rule 3.78(3). The applicant preferred an appeal challenging the very institution of the proceedings pointing out that he has observed the Rule and, as such, there is no question of misconduct. However, the Disciplinary Authority withheld the appeal and proceeded with the enquiry. The applicant requested the Inquiry Officer not to proceed with the enquiry till the disposal of the appeal. The request was not acceded to. The Inquiry Officer proceeded with the enquiry and it was completed

within a single day on 17.2.1986 so that the applicant was denied the opportunity of participation in the same. The Divisional Railway Manager, to whom the applicant had submitted the appeal, rejected the appeal by his order dated 26.2.1986.

2. On 4.4.1986, the Disciplinary Authority accepting the report of the Inquiry Officer held the applicant guilty of the charge and imposed upon him the penalty of reduction of pay to a lower stage in the time-scale for a period of six months. The applicant submitted an appeal, which was rejected by the Appellate Authority by the order dated 10.12.1986.

3. The applicant prays for quashing the order imposing the penalty. It is urged that there has been no breach of the Rule as alleged in the Memorandum of Charges and that the applicant was justified in detaining the train as the departure signals were not visible due to the admitted fog. It is contended that the Disciplinary Authority should not have proceeded with the enquiry till the decision of the appeal preferred by the applicant against the Memorandum of Charges itself. There is also the plea that there has been denial of reasonable opportunity and that the enquiry should not have been proceeded with ex parte.

4. The respondents have filed reply traversing the grounds urged by the applicant.

5. It is admitted by the applicant that the train was stopped by him at the Summit Station as alleged in the Memorandum of Charges. The question that arises is whether the said conduct of the applicant amounts to serious misconduct warranting the initiation of the disciplinary proceedings, and

(8)

3.

the imposition of the penalty. On a careful consideration of the ~~xx~~ facts and circumstances we are of the view that the question has to be answered in the negative.

6. It is in evidence that there was heavy fog at the Summit Station at the relevant time. The Transportation Inspector who was also travelling by that train from MMR has deposed in the course of the enquiry as follows :-

" As the train left MMR I noticed that there was a little fog, but as the train went ahead the fog became little thick and accordingly the driver Sri Wadhawan reduced the speed and took extra time to reach the Summit Station. The train was stopped on the up main line at Summit and on enquiry it was noticed that the fog was very thick. The up main line starter could not be seen from the rear SLR.

The driver came to the rear SLR to inform the guard and then we all went to the station. From the SMs' office the up main starter could not be seen as the layer of the fog were passing but in between a slight glimpse of the signal could be seen. The driver refused to work the train and wanted the same regulated till the fog lasted. I explained to the driver that there is no such provision in the rules and referred the rule from the station copy of the G&SR book. I told him to proceed with restricted speed and I am prepared to pilot the train. But the driver wanted a message from the Dy. Controller and the TLC, which was not given."

7. Subsidiary Rule 3.78 (3) is extracted hereunder :

" (3 ) If in consequence of fog or storm or for any other reason, the view of the signals is obstructed, the Driver shall take every possible precaution, so as to have the train well under control."

It is clear from the Rule that the Driver has to take every possible precaution, in such circumstances, to have the train well under control. No doubt, the Rule does not specifically provide that the Driver can stop the train at the station though signals are given. From that it does not follow, and in our view it will be unreasonable to infer, that if the Driver stops the train on the bona fide ground, that he cannot see the aspects of the dep

2

9

signal on account of the thick fog, there is ~~no~~ gross misconduct on his part. In this context, the reliance placed by the Inquiry Officer on the testimony of the Drivers of two trains which during the relevant period passed the station was misconceived as both the trains were Down trains. At any rate, when all the witnesses have spoken that there was fog and in view of the same the visibility was poor, there is no foundation for a charge of gross misconduct on the part of the applicant.

8. It is on <sup>e</sup> record that as soon as the Memorandum of Charges was received, an appeal was preferred by the applicant before the Divisional Railway Manager pointing out the circumstances and highlighting that the charge is unsustainable. The applicant requested the Inquiry Officer as well as the Disciplinary Authority to hold up the enquiry till the <sup>a</sup> appeal is disposed of, but the request was not allowed and the enquiry was proceeded with ex-parte. The entire proceedings were completed within a single day on 17.2.1986 and it was only thereafter that the DRM disposed of the appeal by his order dated 26.2.1986 where -in he has also referred to the circumstances that the enquiry has been completed. In the circumstances, there is force in the plea of the applicant that there has been denial of reasonable opportunity to establish that the imputation is not true.

9. In the result, the order of the Disciplinary Authority dated 4.4.1986 imposing upon the applicant the penalty of reduction of pay to a lower <sup>s</sup> stage in the time -scale, as confirmed by the order of the Appellate Authority dated 10.12.1986, is hereby quashed. The applicant shall be allowed the consequential benefits within a period of three months from the date of receipt of the copy of this order.

10

5.

10. The application is disposed of as above.

*I.K. Rasgotra*  
( I.K. Rasgotra )  
Member (A) 9/8/90

*G. Sreedharan Nair*  
( G. Sreedharan Nair )  
Vice Chairman.  
9-8-1990

S.P. Singh/  
9.8.90.

....