BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A. 254/86 and O.A. 255/86

1. C.S. Patil,
Electric Fitter,
Workshop,
Central Railway,
Bhusaval.

... Applicant in O.A.254/86

2. V. Mahajan,
Electric Fitter,
Workshop,
Central Railway,
Bhusaval.

... Applicant in O.A.255/86.

vs.

1. Union of India.

2. General Manager,
Central Railway,
Bombay V.T.,
Bombay.

3. The Chief Electrical
Engineer,
Central Railway,
Bombay V.T.,
Bombay.

4. Deputy Chief Electrical
Engineer,
ELW, POH,
Central Railway,
Bhusaval.

5. The Works Manager,
Electrical, (ELW,POH)
Central Railway,
Bhusaval.

Respondents in
both the above
applications.

Coram: Hon'ble Member(A) Shri P.Srinivasan.
Hon'ble Member(J) Shri M.B. Mujumdar.

Appearances:

1. Shri P.R. Naidu,
Advocate for the
applicants.

2. Shri V.G. Rege,
Advocate for the
Respondents.

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ORAL JUDGMENT Date: 21-1-1988

(Per Shri P.Srinivasan, Member(A)

Both these applications raise common issues involving more or less identical facts and are therefore disposed of by a common order.

2. Both the applicants before us were working as Electrical Fitters in the Electrical Loco Works (ELW), Central Railway at Bhusaval. By two separate memoranda dtd. 22-5-1981 the Works Manager (ELW), Bhusaval informed the applicants that an inquiry was proposed to be held in respect of an article of charge enclosed with the memoranda. The article of charge is identical in all respects in both the cases viz. that the silver fusing element of power fuses (main rectifier fuse NGEF make type NG-3) had been replaced by copper wires causing blowing off/bursting of the power fuses and burning of RSi blocks thus causing failure of the AC Locomotive No. 20575 in service. In addition the applicant in O.A.254/86 was charged with replacing Silver wires by Copper wires in locomotive No. 20667. The replacement was said to have occurred between 2-2-1981 and 7-2-1981 when both the applicants were on duty and again between 11-3-1981 and 16-3-1981 when the applicant in application No.254/86 was on duty. An Inquiry Officer was appointed who made separate reports in respect of the two applicants on 14-8-1982. He returned the finding that the charge levelled against each of the applicants had not been established. The Disciplinary Authority viz. The Works Manager (ELW), Central Railway, Bhusaval rejected the finding of the Inquiry Officer in both cases by separate orders dated 14-10-1982. He inflicted the same punishment on both of the applicants viz. withholding of increments for a period of three years without cumulative effect. Subsequently by separate letters dt. 15-1-1983 reasons were given as to why the Disciplinary Authority did not agree with the finding of the Inquiry Officer. Appeals filed against these orders by the applicants were rejected by the Appellate Authority by orders passed

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on the same date viz. 11-8-1983 Review applications filed by both the applicants were rejected by similar orders dtd. 7-6-1986 by the Deputy Chief Engineer Electrical (ELW) on the ground that they were belated. In these applications the applicants have prayed that the orders passed by the Appellate Authority in their cases on 11-8-1983 be set aside.

3. Shri V.G. Rege the learned counsel for the respondents raised a preliminary objection that these applications were barred by limitation. The applicants were challenging the Appellate Authority's order dtd. 11-8-1983. Under Section 21 of the Administrative Tribunals Act,1985 (The Act) the applications should have been filed on or before 1-5-1986. They were however filed only on 14-8-1986 and so were belated. On the other hand Shri P.R. Naidu, the learned counsel for the applicants submitted that the applicants had to exhaust all departmental remedies available to them before coming to this Tribunal.

4. We have considered the rival contentions carefully. The Applicant's review applications were rejected on 7-6-1986 and whatever the reasons for their rejection of the date of that order cannot be overlooked. When considering the question of limitation and condonation of delay in filing this application. In our view, the delay deserves to be condoned We condone the delay and proceed to deal with the merits of the applications.

5. Shri P.R. Naidu then contended that the orders of the Disciplinary Authority, the Appellate Authority and the Reviewing Authority in both the cases were illegal and should be struck down. He urged various reasons as to why these orders should be struck down. Particularly he pointed out that when the Inquiry Officer returned a finding of not guilty, the Disciplinary Authority should have given proper reasons for differing from the Inquiry Officer. The Inquiry Officer was unable to find evidence linking the applicants with the

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incidents with which they were charged. The order of the Disciplinary Authority does not show how the applicants were linked with the incidents. He has only surmised that they would have removed the fuses because they were on duty. The lack of conviction even in the mind of the Disciplinary authority was evident from the fact that he imposed only a minor penalty while the charge was a serious one of theft. The Appellate and Reviewing Authorities had not considered this aspect of the matter at all. He also pointed out that the Appellate Authority had, in his order, stated that the involvement of the applicants directly or indirectly in the act of replacement of fuse was based on sufficient and reasonable suspicion. Suspicion could not be the basis for inflicting punishment on the applicants. He therefore prayed that the orders of the Disciplinary Authority, Appellate Authority and Reviewing Authority in both the cases should be cancelled and the penalty imposed upon the applicants should be quashed.

6. Shri Rege, sought to refute the contentions of Shri Naidu. He explained that the Appellate Authority had wrongly used the word suspicion and what he meant was that reasonable circumstantial evidence existed to hold the applicant guilty. The mere use of a wrong word in the Appellate order should not influence the Course of this litigation. The complaint against each of the applicants was that replacement of fuses happened during the period when they were on duty. Their duty was to clean the fuses and not to open them up. But the fuses were found opened up and silver wires were replaced by copper wires only they could have done this. It was impossible to lead direct evidence by producing eyewitnesses but the circumstantial evidence was strong to hold them guilty. In fact the authorities have been considerate in imposing a minor penalty. He therefore pleaded that this Tribunal should not interefere with the orders of the authorities.

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7. Having considered the rival contentions carefully we are of the view that both these applications should suceed. We cannot assume that the Appellate Authority used the word suspicion without understanding its meaning. Moreover we do not see in the order of the Disciplinary Authority anything which establishes the involvement of both the applicants in the replacement of fuses complained against them. We may incidentally notice that the Disciplinary Authority passed the order imposing the penalty on 14-10-1982 and supplied the reasons therefor to the applicants a few months later. Shri Rege, however showed us the records which showed that these reasons, though communicated to the applicants only on 15-1-1983, had been recorded in the file on 14-9-1982 in one case and on 16-9-1982 in the other, both before the disciplinary authority passed the orders punishing the applicants. We leave this matter at that. We are, however, not satisfied that the Disciplinary Authority's decision to disagree with the Inquiry Officer was well founded. We are also satisfied that the Appellate Authority was influenced by suspicion which by no stretch of imagination can justify the imposition of a penalty. We have, therefore, no hesitation in setting aside the orders of the Disciplinary Authority dtd. 14-10-1982 of the Appellate Authority dated 11-8-1983 in both the cases.

8. In result, the orders of the Disciplinary and Appellate Authority in both the cases are cancelled with all consequential benefits. If any entries are made in the Annual Confidential Records of the Applicants consequent on the ~~this~~ orders which we have set aside, they should be deleted. Both the applications are allowed.

9. Parties to bear their own costs.

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(P. SRINIVASAN)
MEMBER(A)

True copy

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(M.B. MUJUMDAR)
MEMBER(J)