

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.248/86

Abdul Shakur Banemiya Shaikh,
Hamal Wada, Aurangabad Road,
At & Post: Nandgaon,
(Dist: Nasik)

.. Applicant

vs.

1. General Manager,
Central Railway,
Bombay V.T. 400 001.

2. Sr.Divisional Mechanical
Engineer(C&W),
Central Railway,
Divisional Administrative Offices,
At & Post: Bhusaval,
(Dist.Jalgaon)

.. Respondents

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

Hon'ble Member(A) Smt. J. Anjani Dayanand

Appearances:

1. Shri E.K. Thomas
Advocate for the
Applicant.

2. Shri Mohan Sudame
(for Shri D.S. Chopra)
Advocate for the
Respondents.

ORAL JUDGMENT

Date: 1-8-1988

(Per M.B. Mujumdar, Member(J))

The applicant Shri S.B. Shaikh has filed this application under Section 19 of the Administrative Tribunals Act challenging the order passed by the General Manager in November, 1985, by which the penalty of reduction by two stages for a period of two years is imposed upon him.

2. Along with memorandum dtd. 18-8-1983 the chargesheet containing one charge was served upon the applicant. The memorandum stated that action was proposed to be taken under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 (briefly, the Rules). This rule lays down procedure for awarding a minor penalty. The charge against him was that he was careless and negligent while discharging his duties as Train Examiner inasmuch as on

30-3-1983 he failed to examine load at UP Soyabin Goods train properly with the result that Wagon No. CR 49076 TV got derailed between Asavali and Gooty Stations ~~due to~~ ^{as the pin was worn out} ~~working out of~~ right hand shackle of the wagon causing derailment. The applicant was asked to submit his representation which he did. However, his explanation was not accepted by the Sr. Divisional Mechanical Engineer (C&W) Bhusawal and he by his order dtd. 7-10-1983 held him guilty of the charge and imposed the penalty of withholding of one increment for a period of six months with a direction that on expiry of the period it will not have the effect of postponing the future increments. The applicant had preferred an appeal against that order but it was rejected by the Appellate Authority on 4-12-1983. A copy of that order and other papers were sent to the General Manager as required by the procedure. The General Manager under the powers vested on him ~~vide~~ ^{under} Rule 25 of the Rules, reviewed the order passed by the DRM on 7-10-1983 which was confirmed by the Appellate Authority on 4-12-1983 and set aside the order of penalty and remitted the case back to the Sr. Divisional Mechanical Engineer as he thought that the penalty imposed upon the applicant was inadequate and required to be enhanced. Hence he set aside the order of penalty and remitted the case back to the Sr. Divisional Mechanical Engineer (C&W) Bhusawal with a direction that he should hold an enquiry under Rule 9 of the Railway Servants (D&A) Rules, 1968 into the charges outlined in the memorandum dtd. 7-10-1983. Obviously this date in the order of the GM was wrong because that was the date of penalty which was imposed upon the applicant and not the date of memorandum. The memorandum was dtd. 18-8-1983.

3. The Sr. Divisional Mechanical Engineer (C&W) Bhusawal, instead of himself holding an enquiry appointed Shri A.K. Soni, Carriage and Wagon Inspector, Bhusawal as Inquiry Officer. The Inquiry Officer again served a copy

of the same charge on the applicant along with memorandum dtd. 18-8-1983. The applicant submitted his representation about that charge. No Presenting Officer was appointed. But the applicant appointed Shri Narkhede, Retired Carriage and Wagon Inspector as his Defence Assistant. 12 witnesses were examined before the Inquiry Officer. After considering their evidence and statement of the applicant the Inquiry Officer held that the charge framed against the applicant could not be established beyond doubt. Thereafter the papers were sent to the GM along with the report. The GM by his report dtd. Nil of November, 1985 (copy of which is attached as Ex.A/7 to the application) disagreed with the findings of the Inquiry Officer for the reasons recorded in a separate note and held the applicant guilty of the charge levelled against him. Hence he awarded the penalty of reduction by two stages in the same Time Scale of Rs.425-700(RS) for a period of two years. The applicant was reduced from the stage of Rs.580/- to Rs.545/- in the same scale for a period of two years. The reduction was not to have the effect of postponement of future increment. It was along with this order of penalty that a copy of the report of the Inquiry Officer was supplied to the applicant. But the note giving the reasons on which the GM disagreed with the findings of the Inquiry Officer was not supplied to the applicant. Hence he made a number of representations for supplying the copy of the note but that was never done. Hence without preferring an appeal he has filed this application under Section 19 of the Administrative Tribunals Act on 28-8-1986.

4. The respondents have filed their written statement justifying the order of penalty and the applicant has also filed his rejoinder.

5. We have heard Shri Thomas, advocate for the applicant and Shri Mohan Sudame (for Shri D.S. Chopra) advocate for the respondents.

6. Shri Thomas urged two points before us. The first was, when the GM by his order dtd. 12-10-1984 remitted the case back to the Sr. Divisional Mechanical Engineer (C&W) Bhusawal with a direction that he should hold an inquiry under Rule 9 of the Rules, the Divisional Mechanical Engineer was not competent to appoint Shri Soni as the Inquiry Officer. In other words according to Shri Thomas the Sr. Divisional Mechanical Engineer himself should have conducted the enquiry. The second point which was urged by Shri Thomas was that the GM was not justified in awarding the penalty of reduction by two stages without supplying copy of the Inquiry Officer's report and without hearing him.

7. After hearing the advocates for both the sides and after considering the legal position we find no substance in the first point urged before us but we do find substance in the second point urged before us by Shri Thomas.

8. By the order dtd. 12-10-1984 the GM had, no doubt, remitted the case back to the Sr. Divisional Mechanical Engineer (C&W) Bhusawal with a direction that he should hold an enquiry under the Rule 9 of the Rules. But this direction does not mean that the Sr. Divisional Mechanical Engineer was himself required to hold an enquiry. Shri Sudame, advocate for the respondents, showed us an order dtd. 1-1-1985 by which the Divisional Mechanical Engineer (C&W) Bhusawal (Shri S.P. Joshi) had under Rule 9 of the Rules appointed Shri A.K. Soni, Carriage and Wagons Inspector, Bhusawal as the Inquiry Officer. In our opinion the Divisional Mechanical Engineer was competent under Rule 9 either to hold the enquiry himself or to appoint an Inquiry Officer. Shri Sudame pointed out that nobody was then working as Sr. Divisional Mechanical Engineer and hence

The Divisional Mechanical Engineer had to pass the order on 1-1-1985 appointing Shri A.K.Soni as the Inquiry Officer. In our view the Divisional Mechanical Engineer was justified in passing the order and appointing Shri A.K.Soni as Inquiry Officer. Hence we find no substance in the first point which was urged by Shri Thomas.

9. However, we must accept the second point urged by Shri Thomas. Admittedly the GM had not supplied copies of the Inquiry Officer's report and his own note giving reasons as to why he was disagreeing with the Inquiry Officer's finding, to the applicant before passing the impugned penalty order dtd. Nil/11/1985. In our view the GM should have given a copy of the Inquiry Officer's report to the applicant. He should have also given a copy of the note in which he had given his reasons as to why he disagreeing with the finding of the Inquiry Officer. Thereafter he should have also given an opportunity to the applicant to submit his written representation and then pass appropriate orders. This is the view taken by a Full Bench of this Tribunal in P.K.Sharma's case(1988(6)ATC 904).

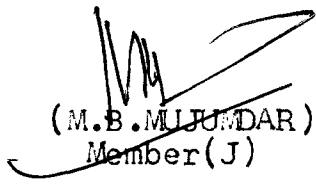
10. However, the respondents in P.K.Sharma's case have approached the Supreme Court by filing SLP. That SLP is allowed and the appeal is directed to be heard by a Constitutional Bench of the Supreme Court. The Supreme Court has also stayed the operation of the judgment in P.K.Sharma's case.


11. In view of this position two courses are open to us - one, to adjourn this case as we have done in similar other cases till the Supreme Court decides the appeal; and the second is to decide this case on the basis of the arguments advanced before us. After hearing the arguments and considering the peculiar facts we feel that we should follow the second course and set aside the impugned order of penalty and remit the case back to the GM for deciding the matter afresh after supplying him a copy of the Inquiry Officer's report and a

copy of the note giving reasons why he disagreed with the findings of the Inquiry Officer and also after considering the representation which the applicant may make. We are taking this view because the Disciplinary Authority had disagreed with the finding of the Inquiry Officer and also because the penalty imposed upon the applicant is a minor one. To wait in such cases till the Supreme Court decides the appeal preferred against the decision in P.K.Sharma's case will, in our opinion, be not in the interest of justice. We, therefore, pass the following order:

- (a) The impugned order of penalty dtd. Nil/11/1985 passed by the GM of the Central Railway (a copy of which is at Ex.A/7 to the application) is quashed and set aside with consequential benefits due according to rules.
- (b) The Disciplinary Authority will be at liberty to start fresh proceedings from the stage of vitiation. If the Disciplinary Authority decides to start further enquiry then he shall supply a copy of the Inquiry Officer's report, a copy of the note giving reasons why he is disagreeing with the finding of the Inquiry Officer's report and give an opportunity to the applicant to make his representation within a particular period. Thereafter, after considering his representation the Disciplinary Authority may pass appropriate orders which may deem proper.

12. The application is disposed of on these lines with no order as to costs.


(M.B. MUKUNDAR)
Member(J)


(J. ANJANI DAYANAND)
Member(A)