

(13)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 399/86
~~TAX~~ No.

198

DATE OF DECISION 4.1.1990

Shri S.T.Shimpi. Petitioner

Shri C.Nathan Advocate for the Petitioner(s)

Versus

The General Manager, Central Rly. & Ors. Respondent

Shri V.G.Bege. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B.Mujumdar, Member(J),

The Hon'ble Mr. M.Y.Priolkar, Member(A).

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

(M.B.MUJUMDAR)
MEMBER(J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 399/86.

Shri S.T.Shimpi.

... Applicant.

V/s.

The General Manager,
Central Railway,
Bombay V.T. and Others.

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Mr.C.Nathan.
Respondents by Mr.V.G.rege.

Oral Judgment:-

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

Dated: 4.1.1990

The applicant Mr.S.T.Shimpi, was working as Permanent Way Inspector (PWI) Gr.II in Ahmednagar Division. Along with memorandum dt. 29.7.1985 a statement containing one charge was served on him. The charge was that while working as PWI Gr.II at Ahmednagar, incharge of welding work at KMs 384-388 between Padegaon and Rahuri on 25.7.1985, he left a dip lorry in the section without securing its wheels chained and padlocked and thereby violated GR 15.28. In the statement of imputations of mis-conduct, mis-behaviour in support of the above charge it was alleged that amongst other equipment of track tools, welding equipments, etc. the applicant had a push trolley and dip lorry and after close of ^{the} work he left the push trolley and the dip lorry at the site of work and returned to headquarters. The dip lorry was not secured with a chain and pad lock as required under G.R. 15.28. It was further mentioned in the statement that on the same date at about 8.30 p.m. some

...2.

unknown miscreants placed one leg of the dip lorry on track and created conditions which were dangerous to traffic. A serious accident to 321 Down Passenger was narrowly averted by timely action taken by the Watchman Shri Sukhadeo Shivram and the Gateman at Level Crossing No.38. List of documents and witnesses were also supplied to the applicant along with the memorandum.

2. As the applicant denied the charges one Mr.B.D.Panchal, Assistant Engineer, Central Railway, Daund was appointed as Inquiry Officer. No Presenting Officer was appointed. The applicant had appointed one Mr.P.V.Sidharthan, Assistant Station Master, Padegaon as his defence assistant.

3. The Inquiry Officer examined the applicant first. On the same day between 12.45 to 04.20 p.m. 6 witnesses were examined by the Inquiry Officer. Some of them were also cross-examined by the Defence Assistant. However, after examining the six witnesses the Inquiry Officer adjourned the remaining inquiry because he thought that Mr.Kashiram Dagdod who was working as Permanent Way Inspector was essential to be examined. However, he was never examined thereafter. On 6.2.1986 the applicant submitted his report dt. 6.2.1986. After referring to the articles of charge and statement of imputations he gave his findings as follows:

"I hold Shri S.T.Shimpi, PWI, Gr.II, guilty of the charge with doubt that while working as PWI, Gr.II at ANG in charge of welding work at Kms. 384-388 between Padegaon and Rahuri on 25th July 1985, had left a dip lorry in section without securing its wheels chained and pad locked. Thus Shri S.T.Shimpi, PWI, Gr.II/ANG violated GR 15.28."

...3.

4. In para 2 of the report the Inquiry Officer pointed out that the applicant had accepted in his reply dt. 29.8.1985 to the memorandum that the dip lorry was not secured with a chain and pad lock, but in the absence of chain and pad lock a watchman was posted to guard the dip lorry. In the last paragraph the Inquiry Officer held as under:

"I am holding Shri S.T.Shimpi, PWI, Gr.II guilty of charge with doubt on the written commitments made by the DRE in reply to the memorandum as stated in para 2 above only."

5. Accepting the finding the Disciplinary Authority by his order dt. 17.3.1986 imposed the penalty of compulsory retirement on the applicant. The appellate authority confirmed the order of penalty. However, Revisional Authority i.e. the General Manager, Central Railway, Bombay reduced the penalty from compulsory retirement to that of reduction to a lower post for a period of one year without any future effect and reduced the applicant from P.W.I. Gr.II in the scale of Rs.1400-2660 to the post of P.W.I. Gr.III in the scale of Rs.1400-2300 at the rate of pay which the applicant would have drawn had he been continued in the grade of Rs.1400-2300 as P.W.I. Gr.III. The Revisional Authority further directed that the period from the date of compulsory retirement to the date the applicant would join duty as P.W.I. Gr.III would be treated as leave due to him.

6. The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985 on 11.11.1986 challenging the orders of the Disciplinary Authority, the Appellate Authority and Revisional Authority

7. The respondents have resisted the application by filing their written statement.

8. We have heard Mr.C.Nathan with Mr.S.M.Shetty, learned advocate for the applicant and Mr.V.G.Rege, learned advocate for the respondents.

9. Mr.Nathan took us through the entire evidence led before the Inquiry Officer, as well as the initial reply of the applicant to the charges and his defence statement submitted after the prosecution evidence was closed.

10. The defence of the applicant from the beginning was that the dip lorry in question was not issued to him. However, at the end of his work on the relevant day i.e. 25.7.1985 he entrusted it along with other materials to the watchman on duty viz. Mr.Sukhdev Shivram. According to the applicant he could not chain the dip lorry and pad lock it because neither chain nor pad lock was provided with the dip lorry. We think that the defence was justified and should have been accepted by the Inquiry Officer and the Disciplinary Authority. For understanding the charge as well as the defence of the applicant we may quote GR 15.28 which according to the ^{charge} respondents was violated by the applicant. It reads as under:

"15.28. Lorries and trollies out of use. - A lorry or trolly, when not in use, shall be placed clear of the line, and the wheels thereof be secured with a chain and padlock."

11. Mr.B.F.Singhvi, P.W.I. II under whom the applicant was working has admitted in his examination that the dip lorry was not issued to the applicant and no chain and padlock were issued to the dip lorry in question. The question whether the dip lorry was issued to the applicant or not is not material in this case because according to the applicant himself after the close of the work on the relevant day he had kept it in charge of the watchman.

However, when admittedly no chain and padlock were issued to the applicant because they were not available, we fail to understand how the applicant was to secure the dip lorry by chaining and padlocking the same. It was argued by Mr.Rege that the applicant should have demanded the chain and padloc. But when Mr.Singhvi has admitted that the same were not available at all no purpose would have been served even if the applicant had demanded the same. Moreover, we find from the inquiry papers which were made available to us by Mr.Rege that the watchman Mr.Sukdev Shivram in his statement recorded on 26.7.1985 i.e. on next day of the incident had stated that at about 10.00 p.m. on 25.7.1985 about 10 or 11 persons with their faces covered approached him and one of them demanded tobacco from him. As he was not having tobacco two of them beat him and after he ran away these persons placed the dip lorry on the track. He ran to the Assistant Station Master and informed him about what had happened.

12. Apart from this we are of the opinion that the charge against the applicant for breach of G.R. 15.28 should not have been held as proved in the absence of proof that the chain and padlock were supplied along with it. We therefore, hold that the charge was not established.

13. We may point out that Mr.Nathan, learned advocate for the applicant relied on the words "with doubt" used by the inquiry officer in his findings as well as in para 6 of his report. Mr.Nathan, submitted that in view of these words we should hold that even the Inquiry Officer was doubtful about his findings.


But after going through the entire report we feel that the inquiry officer has used these words wrongly. What he wanted to mean was probably that he was arriving at his findings without any doubt.

14. However, in view of our finding that the charge was not established we pass the following order:

ORDER

- (i) The order dt. 2.6.1987 passed by the General Manager, Central Railway, Bombay V.T. is hereby quashed and set aside.
- (ii) The order dt. 17.3.1986 passed by the Divisional Railway Manager, Central Railway, Sholapur as well as the order on appeal passed by the Chief Traction Engineer and which was communicated to the applicant by letter dt. 13.8.1986 from the Chief Personnel Officer already stated set aside by the order of the General Manager dt. 2.6.1987. Still to avoid complications, we also set aside the above order dt. 17.3.1986 as well as order of the appellate authority which was communicated to the applicant by letter dt. 13.8.1986.
- (iii) The applicant should be given all consequential benefits due to him according to rules within four months from the date of receipt of a copy of this order.
- (iv) Parties to bear their own costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J).