

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

O.A. No. 342/86

Mr. Bhagwan Narayan Kapure
Central Railway Quarters
NO. RB/III/Bolck 175/A
Wadi Junction
AT & Post WADI
Dist. Gulbarga

Applicant

V/s.

1. The General Manager
Central Railway
Bombay V.T.
2. The Chief Operating Superintendent
Central Railway
Bombay V.T.
3. The Divisional Railway Manager
Central Railway
Sholapur

Respondents

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

Appearance:

Shri C. Nathan
Advocate
for the applicant

Shri V G Rege
Advocate
for the respondents

JUDGMENT

(PER: P Srinivasan, Member(A))

DATED: 26.8.1988

The applicant who was working as Diver Gr. 'B' in the Central Railway, Wadi, was removed from service by way of punishment by order dated 24/30-12-85 passed by the Divisional Railway Manager (DRM), Central Railway, Sholapur (Ex. A/5 to the application). An appeal filed by the applicant against this order was dismissed by the Chief Operating Superintendent (COPS), Bombay, by an order communicated to the applicant by letter dated 28.4.86 (Ex. A/7 to the application) issued by the DRM, Sholapur. Both these orders are challenged in this application.

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2. ^A The memorandum dated 28.10.1985 was served on the applicant by the Divisional Office of the Central Railway at Sholapur along with an article of charge against him into which an inquiry was proposed to be held. The charge reads as follows:

That the said Shri B. Narayana, while working as Driver of UP YA Coal special goods Ex. Chitapur to Yerraguntla, at CGTA station passed 2nd loop starter signal no. 22 at danger which resulted in derailment of train Engine No. 17625 and adjacent 3 loaded Box wagons at trap point no. 27 at about 23.20 hours on 11.9.85, due to his failure to controlling the speed of the train while entering the loop line. Thus he violated GR. 4.10(1) GR. 3.81(1&2) & 3.83(1).

The statement of imputation of misconduct narrated that on 11.9.1985, the applicant was driving coal Special goods train (UPYA) from Chitapur to Yerraguntla. When the train was about to enter Yerraguntal station on the 2nd loopline, the applicant failed to observe the speed limit of 15 kmph. As a result, he passed starter signal no. 22 on the 2nd loop line and the engine and 3 loaded box wagons of the train were derailed. The applicant gave a written reply dated 9.11.1985 to the Memorandum of charges which appears as Ex. I to the reply of the respondents and reads as follows:

" With due respect, I the undersigned, beg to submit the following appeal for your sympathetic consideration please.

In connection with the above derailment, a enquiry was conducted at RC and I explained correctly about the derailment and to pass the 2nd loop starter no. 22 in danger at CGTA.

I once again beg to state that I was informed to clear the Section of NRPD-CGTA quickly without any time loss, since 13 Dn was following closely. I left NRPD at 23.05. I was running with permissible speed with full control of train. My train was admitted in IInd loop at CGTA. The train was running normal speed but my judgement was missed when I approached the starter no. 22 as the required amount of brake power was not available when I control to stop the train. Since the brake power was less than 60% and the Loco was rushed by loaded wagons when I tried to stop the train. So the train entered the 2nd loop line and the pointsman reversed the point before stopping the train which resulted for the derailment of Loco and the wagon."

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On receipt of the applicant's reply, the disciplinary authority, viz., the DRM, Sholapur passed the impugned order dt.24/30.12.85 removing the applicant from service as a penalty. The DRM wrote: "whereas the article of charge communicated to you under Office memorandum no. even dated 20.10.1985 has been admitted by you in your representation dated 9.11.1985 in reply to the memorandum, the undersigned considers that there is no necessity for holding enquiry into the article of charge in view of Rule 9(9)(a)(iii). The undersigned has carefully considered the relevant records and aforesaid representation and holds that the article of charge is proved". ^{He therefore} He further proceeded to impose the penalty of removal from service on the applicant.

3. The applicant filed an appeal dated 13.2.1986 to the COPs, Bombay VT in which he submitted that he had overshot the starter signal on the 2nd loopline at Erraguntla beyond the "danger" point "due to the momentum of the heavy trailing load and the inadequacy of the brake power which was later found to be only 61% as against the prescribed 85%." The fact finding enquiry had established that the derailment was solely due to the negligence of the Assistant Station Master (ASM) who had directed switching of the rails before the train could stop ^{on} the 2nd loop line and the Cabin man on duty who actually switched the rails. Therefore he (the applicant) was not solely responsible for the accident. He had put in 37 years of service, had to bear "the entire responsibility of bringing up and maintaining my family" and the punishment would deprive him of all retirement benefits. He, therefore, requested that his application for voluntary retirement dated 9.11.1985 be accepted. The appellate authority, viz., the COPS dismissed the appeal by a two line order: "I have gone through the case. I do not find any grounds to modify or set off the punishment already imposed", and this order was communicated to the applicant by the DRM in his letter dated 28.4.1986.

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4. A review petition dated 1.10.1986 addressed by the applicant to the General Manager, Central Railway, Bombay was pending when the present application was filed on 9.10.1986.

5. Shri C Nathan, Learned Counsel appearing for the applicant submitted that the disciplinary authority ought to have held an inquiry and given the applicant an opportunity of being heard before rushing to the conclusion of guilt and punishing the applicant. The applicant had not admitted the charge levelled against him. His reply dated 9.11.1985 to the Memorandum of charges was not an admission of guilt. He had asserted therein that he was running at permissible speed while the charge was that he failed to control the speed. He had ^{explained} ~~pleaded~~ that his judgment while applying the brakes had gone wrong as the brake of the engine was defective at less than 60% efficiency and the rush of loaded wagons had taken the train past the signal point. In other words, he blamed the accident on the defective brakes in the engine and not on his failure to apply them. The disciplinary authority was thus clearly in the wrong in assuming that the applicant had admitted his fault and on that ground ^{dispensing} ~~dispensing~~ with the enquiry. The entire proceedings ^{were} ~~was~~ therefore vitiated as the principles of natural justice had been vilated.

6. At this stage Shri Nathan pleaded that since the date on which the applicant would have superannuated in the normal course, i.e., 31.1.1988 had already passed, the matter should not be remanded back to the Disciplinary Authority to hold a fresh enquiry as that would prolong the misery of the applicant, into his old age. The applicant had himself submitted an application dated 9.11.1985 to the authorities seeking voluntary retirement. He could be allowed to retire voluntarily from that date with all retirement benefits and that would meet the ends of justice. Even on the basis of the findings of spot enquiry by senior officers of the railway which had been attached to the memorandum of charges, the applicant was not

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solely responsible for the accident of derailment. Therefore, denying him all the retirement benefits which had ^{by accrued} ~~accrued~~ to him over 37 years of service by imposing the punishment of removal from service was disproportionate to the offence with which the applicant can rightly be charged.

7. Shri Rege for the respondents contended that the applicant had admitted the charge. He had ^{by confirmed} ~~contended~~ that the accident of derailment had occurred when he was driving the train and nothing more was required to show that he had admitted to his guilt. Therefore, the disciplinary authority was right in dispensing with a formal enquiry into the charge and imposing the penalty which he did.

8. After careful consideration we have no hesitation in upholding Shri Nathan's contention that the applicant did not accept the charge levelled against him. His letter of 9.11.85 which we have extracted above clearly denies that he was responsible for the accident. On the contrary he contended that it was brake failure which caused the train to overshoot the signal point. He had denied that he exceeded the permissible speed limit while driving the train. This being so, the disciplinary authority was not right in dispensing with an inquiry and imposing the penalty straight away. The order of the appellate authority is by no stretch of imagination a speaking order. It does not consider any of the objections raised by the applicant in his ^{by fairly} ~~final~~ detailed appeal petition.

9. In the light of the discussions above we would normally have set aside the orders of the Disciplinary Authority and appellate authority and directed a fresh enquiry into the matter in accordance with law. But here we have to consider the hardship that would be caused to the applicant by an enquiry extending beyond the age of his superannuation which he has already passed. Bearing this in mind we accept Shri Nathan's contention that we should not send the matter back to the disciplinary authority. We, however, do not agree with him

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that the applicant should be let off by merely accepting his request for voluntary retirement with effect from 9.11.1985. We may now refer to the evidence of the spot enquiry conducted by senior officers of the Railway which appears as an enclosure to the memorandum of charges. This is what the senior officers found in regard to the incident of derailment:

5.2 Staff responsibility:

We hold prima facie the following staff responsible for this accident.

a) Shri B.Narayan, DSL, Driver 'C'/WD (SUR Division of Central Railway) for having failed to control the speed of the train while entering the cross over and turn out on 2nd loop line of CGTA and for having failed to stop the train short of UP 2nd loop starter no. 22. He has violated GR.4.10(i), GR. 3.78(i), GR. 3.81(1&2) and 3.83(1).

b) Shri S J S Shankar, ASM/CGTA on duty

For failing to ensure complete stoppage of UP YA coal special on 2nd loop line, before authorising the Cabinman to alter (point no.27) the existing route for a particular movement. He has thus violated SR.3.36(2) and para 11.1.6 of SWI No. 837 of 12.5.83 pertaining to CGTA. Extract of rules violated is enclosed.

This case falls under classification "Human failure - Mechanical and Traffic."

It will be noticed that while the applicant is blamed for failure to control the speed of the train and to stop it at the right time, the Assistant Station Master (ASM) on duty has been held guilty of failing to ensure that the train had completely stopped on the 2nd loop line before authorising the cabin man to switch the tracks. From these findings, it is fairly clear that if the Station Master had not ordered switching of tracks, the train would at worst have overshoot signal no.22 on the 2nd loop line and stopped at some point beyond signal and would not have derailed. In a sense, therefore, the primary responsibility for derailment was of the ASM. The applicant was, however, still guilty of over speeding and failing to stop the train where he should have. It is here that the applicant's complaint of failure of brakes in the engine becomes relevant. In his appeal to the appellate

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authority, the applicant admits that he discovered ^{that} the ^{by soon} braking power of the engine was weaker ~~since~~ after the train left Chitapur Station but could not get the defect rectified before reaching Yerraguntla. Having known that the brakes were weak, he should have applied the brakes earlier than he did so that the train could stop at the required point. He was thus guilty of an error of judgment which could have resulted in tragedy. The failure was, however, in the face of mechanical failure of the engine. We are satisfied that his negligence, which could have led to a more serious accident deserved a major penalty. At the same time we feel that removal from service was too drastic a penalty. If the authorities had accepted the applicant's request for voluntary retirement with effect from 9.11.1985, the element of punishment would be absent since they would only be acceding to the request of the applicant. We, therefore, cannot accept Shri Nathan's contention that the applicant be ^{by allowed} ~~held~~ to retire voluntarily from 9.11.1985. In our opinion it would meet the ends of justice if the punishment imposed by the disciplinary and appellate authorities is modified to that of compulsory retirement of the applicant with effect from ^{by 30} ~~24~~.12.1985 and reduction of the pension for a period of two years there after to 50% of the amount to which he would otherwise have been eligible. The applicant should however be allowed all other retirement benefits like gratuity, encashment of utilised leave and so on. ~~in~~ ^{by}

In the result we pass the following order:

ORDER

- i) The impugned order of the disciplinary and appellate authorities is set aside so far as the penalty imposed by them is concerned.

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The findings of guilty^H is, however, upheld.

- ii) The penalty imposed on the applicant is modified to that of compulsory retirement with effect from ^{H 30} 24.12.1985 and a reduction of the pension due to him there after for a period of two years to 50% of the amount to which he would otherwise have been eligible. After the expiry of the said period of two years, he should be paid normal pension. He should also be paid all other retirement benefits like gratuity, encashment of utilised leave and so on as if he had retired from service ^{H 30} on superannuation on 24.12.1985.
- iii) The application is disposed on the above terms. But in the circumstances of the case parties to bear their own costs.

ff (iv) This order should be implemented within 3 months from the date it is served on the respondents

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

P. Srinivasan
(P. Srinivasan)
Member (A)