

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH**

O.A. No. 341 of 05 with MA 262 of 05

Date of order : 23. 4. 2008

C O R A M

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Shri Amit Kushari, Member (A)**

Ganga Dayal Yadav, S/o late Lakshman Yadav, R/o Opposite Jagjivan College, Anand Hardware, West Pakri Para, District – Bhojpur.

....Applicant

By Advocate : Shri Gautam Bose assisted by Shri Vikash Jha

Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The Divisional Railway Manager, Western Railway, Vadodara.
3. The Additional Divisional Railway Manager, Western Railway, Vadodara.
4. Senior divisional Engineer [South] Western Railway, Vadodara.
5. The Chief Principal Engineer, E.C. Railway, Hajipur.

....Respondents

By Advocate : Shri M.N. Parbat.

O R D E R

Sadhna Srivastava, M [J] :- This application is directed against the order dated 7.11.03 confirmed in appeal vide order dated 24.3.04 whereby the applicant has been awarded punishment of withholding of two increments next due without future effect.

2. MA 202 of 05 has also been filed for condonation of delay in filing the OA.
3. The facts are that the Survey and Construction Department of



Railways laid down two new loop lines at Lakodara Railway Station in or about Feb, 03. The applicant was posted as PWI having jurisdiction over the area. According to the applicant, there were deficiencies in the points and crossings of the track. He, therefore, pointed out the same to his superior as early as on 24.4.03 [A/3], pointing out the details of various defects. The request was made by him to ask the Survey and Construction Department to rectify the defects or to make a suitable arrangement for removal of defects, implying that the track was ~~unsuitable~~ for traffic. The Chief PWI, Bharauch possibly also pointed out the same. The letter of Chief PWI, Bharauch is not available on record. However, its reference is found in the letter of Assistant Divisional Engineer dated 29.4.03, addressed to the Deputy Chief engineer [Survey & Construction] [A/4], requesting to attend to the deficiencies to the track. However, there is no material available on record for us to know whether any step was taken to remove the deficiencies pointed out by the applicant. The applicant kept on reminding the authorities about the poor conditions of the track. One such letter dated 11.7.03 [A/5] is also available on record. Thereafter, the charge-sheet dated 22.7.03 was served on the applicant for lack of devotion to duty, punishable under Railway Service [conduct] rules, para 3.1[ii] [iii].

4. The applicant submitted detailed reply [A/7] to the charge sheet. He again pointed out that no care was taken to set the track right, as pointed out

A

earlier, after the track was laid. It implied that the track was not fit for traffic. The disciplinary authority, not being satisfied with the written representation of the applicant, awarded punishment of withholding two increments, and the appellate authority has confirmed it.

5. We have heard learned counsel for the parties and perused the record. Despite sufficient time granted to the respondents, they chose not to file reply. The learned counsel for the applicant has submitted before us that there was no material on record to fasten liability on the applicant. It has been pointed out that no inspection of track was made to certify that track has no defects, as pointed out by the applicant. It has further been urged that as and when construction of track was completed, certificate must have been issued by the authority about its satisfactory completion. If so, the report has not been produced. It is true that we do not find any material on record to enable us to hold that the track as laid down had no defects, as pointed out by the applicant. There is also no material on record to show as to in what respect the applicant failed to maintain the track. There are self serving assertions on the part of the applicant as well as department. The applicant says that the track was not properly laid down. The department alleges carelessness on the part of the applicant to maintain it. The department has also failed to show as to in what respect the applicant has failed to perform his duties.

There is ^{not an} iota of evidence in this regard. The orders of disciplinary as well as

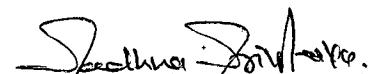


appellate authority also do not throw any light over it. Charge report has also not been produced before us. Therefore, we are constrained to say that the reasons for punishment awarded have been withheld from the Tribunal. Thus, the only inference that can be drawn is that the punishment is based on surmises and conjectures. Therefore, the same cannot be upheld.

6. Resultantly, the OA is allowed. The impugned order dated 7.11.03 and 24.3.04 passed by disciplinary authority and appellate authority respectively are hereby quashed and set aside. The applicant will be entitled for all consequential benefits. There shall, however, be no order as to the costs.



[Amit Kushari] M [A]



[Sadhna Srivastava] M [J]

/cbs/