

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO 348 OF 1996

Date of Decision: 1-8-2001

Shri M.R. Gupta.

Applicant(s)

Shri H.A. Sawant with Shri H.T. Ameta. Advocate for  
Applicants

Versus

Union of India & 2 others

.. Respondents

Shri V.S. Masurkar with Shri Yelwe

Advocate for  
Respondents

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library

*Shanta* f  
(SHANTA SHAstry)  
MEMBER (A)

Gaja

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.334/1996  
THIS THE ~~THIRTEEN~~ First August  
DAY OF JULY, 2001

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

Shri M.R. Gupta,  
Retired as DCWI, Western Railway,  
R/o Sarla Gupta Chawl,  
Behind Mathirabai Bhavan,  
Beturkar Pada, At Post: Kalyan City,  
District: Thane,  
Pin: 421 301. ... Applicant

By Advocate H.A. Sawant with Shri H.T. Ameta.

Vs.

1. The Union of India  
through the Secretary,  
Railway Board,  
Ministry of Railways,  
Rail Bhavan, New Delhi.
2. The General Manager,  
Western Railway Headquarters,  
Churchgate, Bombay-20.
3. The Divisional Railway Manager,  
Rajkot Division,  
Western Railway, Rajkot,  
Gujrat State. ... Respondents

By Advocate Shri V.S. Masurkar through Shri Yelwe.

O R D E R

Hon'ble Smt. Shanta Shastry. ... Member (A)

The applicant is aggrieved by the two penalties imposed upon him of withholding of two increments for 2 years without future effect and further withholding of 2 increments with future effect. This has affected his pensionary benefits.

*M*

2. The applicant was working as DCWI/Hapa at the relevant time. While he was so working, an accident took place on 11.3.1990 Train No.HAPA-PBR Empty Jumbo Dn Goods while proceeding from KNLS North Cabin to Lalpur via Bye-pass met with an accident at Km.851/14-16 resulting into derailment of wagon No.69842 NR and 71000 NR both CRTES. The first wagon No.69842 NR after derailment went off the track and on ground below the blank and wheels on the ground. The second wagon No.71000 NR derailed by its all four wheels. The applicant visited the site and took joint observation along with senior subordinates on 13.3.1990. Again, joint observation was taken by CWS/Hapa on 4.4.90 along with other senior subordinates without the applicant being present. There was vast variation in readings of the wagon. Therefore, a chargesheet was issued to the applicant on 30.5.90 on the charge of incompetency and careless working. The statement of imputations read as follows:

"Two CRTE No.69842 NR and 71000 NR were derailed by Goods train No.HXP-PBR/EL/Spl. on 11.3.90 on KNLS-PBR section. You attended these Wagons and taken joint observation alongwith other senior subordinates on 13.3.90.

Again joint observations were taken by CWS/Hapa on 4.4.90 along with other senior subordinates without attending or repairing the same wagons. In the observations taken on 4.4.90, vast variation in readings of these wagons were found in regards of wheel diameter, clearance between Axle box groove and axle guard free camber of springs, camber of springs under load, clearance between shackle plate and pin and buffer heights as shown in the Annexure I."

3. A regular enquiry for major penalty was conducted against the applicant on his denying the charges. The enquiry report was submitted by the inquiry officer on 29.1.92, holding the applicant guilty of the charges of incompetence and careless working. Based on the findings of the inquiry officer, the Disciplinary Authority imposed the punishment of withholding of increments for 2 years with future effect vide order dated 9.10.92. The applicant preferred an appeal against the same on 20.5.93. The same was rejected on 22.6.1993. He had sent reminders also on 30.8.93, 21.9.93, 23.8.94 and 6.10.94, but received no reply.

4. Prior to this, the applicant was punished separately on a chargesheet issued on 4.5.90 and he was given minor penalty of withholding of increments for 2 years without future effect. He was held responsible for his irresponsible and irregular working and incompetence.

5. It is the contention of the applicant that the Accident Enquiry Committee clearly held one Shri Prabhu Singh and a gangman responsible for the wagon derailment who belong to the Civil Engineering Department and the fault was of that department. The applicant belongs to Mechanical Engineering Department and that department or

none from that department has been held responsible by the Accident Enquiry Committee and therefore, issuing him the charge sheet and punishing him is illegal.

6. No doubt, he had taken the observations of the wagon on 13.3.90 along with other senior subordinates. But thereafter, the joint observations were taken by CWS/HAPA on 4.4.90 along with other senior subordinates without the applicant being called for the same. Thus, these observations were taken behind his back. He should have been also called. It is not proper, therefore, to say that there is variation in the observations made by himself and those made by the other party.

7. The applicant has further contended that as far as the proper enquiry is concerning the enquiry officer did not examine all the five witnesses listed in the charge sheet. He examined only two out of the five witnesses listed. Also examined other witnesses who were not listed. One Mr. Malaviya who was present at both the observations and who was a material witness was not examined at all inspite of asking for his presence. Since the material witness was not examined, the enquiry is vitiated. The applicant states that there was no written complaint against him, nor was any preliminary enquiry held. No misconduct was proved by the Accident Inquiry Committee. No explanation was called from the applicant before issuing charge sheet. Even the charge

of misconduct is vague. No financial loss has been caused to the Railway Administration. Nowhere has it been proved that the reading taken by the applicant on 13.3.90 was wrong. The applicant has, therefore, prayed to set aside the DAR ENQUIRY and the consequential punishment given to him and to restore his increments which were stopped and then to refix his pay and pay the consequential arrears of balance payment based on the refixation of his pay and make payment of retiral benefits on that basis.

8. The respondents state that the application is not maintainable as multiple reliefs have been claimed by the applicant. This is not permissible as per Rule 10 of the CAT (Procedure) Rules. The applicant is challenging the orders dated 31.7.90 which pertains to an earlier charge sheet of 4.5.90 and the orders dated 30.5.90, 29.1.92 and 9.10.92 pertaining to the second charge sheet. The applicant, could at the most, have asked for only one relief.

9. According to the respondents, the application is hit by limitation as the enquiry was completed and the punishment was given to the applicant way back in 1992. The applicant retired on 30.4.95 and has filed this application only in November, 1995. Even his prayer clause (a) is very vague, it does not refer to the specific orders, which the applicant wants to be quashed and set aside.

*M*

10. On merits, the respondents submit that the action taken against the applicant is strictly in accordance with the Railway Servants (Appeal & Discipline) Rules, 1968. The applicant was afforded sufficient opportunity at all relevant stages. What the applicant is doing now is, to request the Tribunal to reappreciate the evidence. This is not permissible in a judicial review. The applicant was held responsible in major joint enquiry and was, therefore, correctly issued the charge sheet dated 30.5.90. The applicant has confused the issue by referring to different punishments and charge sheets. Actually two charge sheets were issued separately to the applicant and punishment orders were also issued separately.

11. We have given careful consideration to the arguments advanced on both sides. We have also perused the relevant pleadings.

12. At the outset we agree with the respondents that the applicant has clubbed two different causes of action while challenging two different sets of orders in two different charge sheets. One charge sheet was for a minor penalty and other was for a major penalty. Two reliefs being different, the application is not maintainable. Since the matter is very old, instead of dismissing the application on this ground, we are

*M*

proceeding on the basis of relief pertaining to major penalty awarded as a result of charge sheet issued on 30.5.90.

13. Though the applicant stated that his appeal has not been decided, actually it was decided on 22.6.93. Therefore, the applicant should have approached this Tribunal within one year of the passing of this order. He has approached much later. The application is, thus barred by limitation and therefore, deserves to be dismissed on the ground of limitation.

14. Coming to the merits of the case, we are satisfied that the respondents have conducted the enquiry fairly as per the procedure laid down in the rules. Adequate opportunity was given to the applicant to defend himself. The only major ground taken by the applicant is that the material witness Mr. Malaviya who was present on both the occasions of observation of the wagon, was not examined. We find from the report of the enquiry officer that Mr. Malaviya was called upon to be present at the enquiry several times but he chose to not to attend. Further, it has been recorded that he was not a prosecution witness and was not a material witness either. This point has been dealt with in the order of the Appellate Authority dated 9.10.92. In fact, the applicant had cited Mr. Malaviya as his defence witness, but he too could not procure the attendance of

Mr. Malaviya at the enquiry. Therefore, the applicant cannot make this as an issue for setting aside the enquiry.

15. As regards not being called for joint observation taken on 4.4.90, the applicant was available and nothing prevented him from joining the others in the observation. He cannot take this ground. The applicant's stand that it has not been proved that his observations were wrong is also not tenable as the joint observations taken on 4.4.90 clearly brought out that the earlier observations taken by the applicant were wrong and the applicant also has agreed during questioning that those who have taken the observations were competent people. We, therefore, do not find any material to interfere with the order of the Disciplinary Authority or the Appellate Authority. The OA thus being devoid of merit, in our considered view, fails. Accordingly, it is dismissed without any order as to costs.

*Shanta Shastray*  
(Ms)(SHANTA SHAstry)  
MEMBER (A)

*Lakshmi Swaminathan*  
(Ms) LAKSHMI SWAMINATHAN  
VICE CHAIRMAN (J)