CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 1090/94, 7/96 and 108/98.

Dated this Friday the 15th day of February, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

B. S. Rath,
Residing at 4B, Ganesh Bhavan,
434, Senapati Bapat Marg,
Mahim, Mumbai - 400 076. .... Applicant in all the three O.As.

(By Advocate Shri S. Dighe)

VERSUS

1. Union of India through
the General Manager,
Western Railway,
Churchgate, Bombay-400 020.

2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central
Bombay - 400 008. . Respondents in all the three O.As.

3. Shri K. K. Bhardwaj,
Sr. Divisional Electrical
Engineer (SUB),
Bombay Division,
Western Railway,
Bombay Central,
Bombay - 400 008. ... Respondent No. 3 in O.A. No. 1090/94 and 108/98.

4. Chief Electrical Distri-
bution Engineer,
Western Railway,
Churchgate, Bombay-400 020. .... Respondent No. 4 in O.A. No. 1090/94.

5. Sr. DEE (Sub) BCT, now Known
as Sr. DEE (TRO)(BCT),
Divisional Railway Manager's
Office, Bombay Central,
Bombay - 400 034.

6. Shri V. Ramgopal,
Motorman Inspector,
Churchgate,
Bombay - 400 020. .. Respondent No. 3 & 4 in O.A. No. 7/96.

7. Shri B. K. Sonawane,
Sr. Division Elect. Engr.(Op.),
Mumbai Central, Divisional
Railway Manager's Office. .. Respondent No. 4 in O.A. No. 108/98.

8. Addl. Div. Railway Manager, Mumbai Central. .. Respondents No. 5 in O.A. No. 108/98.

(By Advocate Shri M.S. Ramamurthy in O.A. No. 1090/94 and Shri V.S. Masurkar in O.A. Nos. 7/96 and 108/98).

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The above three O.As. have been heard and are being disposed of together, with the consent of parties, as the O.As. are inter-connected and are filed by the same Applicant. (The facts and issues will nevertheless be differentiated as and when needed). Let us take the O.A. filed first, namely - O.A. No. 1090/94 wherein the Applicant has come up to the Tribunal challenging the penalty imposed on him vide order dated 14.12.1993, and has asked for setting aside of the charge-sheet. The Applicant has further challenged the order dated 26.08.1994, through an amendment, which order has been passed by Respondent No. 4 rejecting the appeal preferred by the Applicant. Consequential reliefs, as set out in the remaining sub-paras of para 8, are also sought.

2. The facts of the case, as brought out in the O.A. (No. 1090/94) by Applicant are that he was working as Motorman on the Bombay Division of Western Railway since 1969, and plying suburban trains on the Bombay Division. On 08.08.1992 when he stopped his train at Naigaon Railway Station, the train shot ahead by few meters. It is the averment of the Applicant that this cannot be considered as an accident as per Railway Accident Manual and the Railways cannot take any exception against this incident. The Applicant further goes on to describe that there was no complaint from any passengers travelling in the train, nor

any report in this regard was made by the Guard of the concerned train nor by the Station Master of the Naigaon Railway Station. The Applicant has submitted that many times the brake system does not work and hence even though the brakes are applied in time for the train to stop at the marked place, they overshoot by a few feet. It is the contention of the Applicant that bad maintenance and disconnection of brake application indication is the major reason for delay in application of emergency brakes. He further describes that he had made complaints regarding this but the Railway Administration has paid no heed. The Applicant further states that there is some false reporting against him on the above incident and complaints were lodged whereby the Applicant was asked by Motorman Inspector to attend Safety Camp at Valsad as a special case. However, since no reason was given, Applicant did not join the Safety Camp especially since only one day's notice was given. Further contentions are raised in the application and it is described how Applicant has been served with a charge-sheet (exhibit 'A'). Even later in March, 1993, when he was booked for Safety Camp he has refused to attend the same alleging that other similarly defaulting, were not sent, etc. The Applicant has further stated that the charge-sheet smacks of malafide. Through amendments made vide M.P. the further developments leading upto the point of rejection of his application has been dealt with and an additional relief sought, as described above.

3. The Respondents have filed a Written Statement of reply contesting the claims of the Applicant and describing, in detail, the incident of overshooting of suburban train at Naigaon Station, when the Applicant was a Motorman. It is stated that

the Motorman's coach travelled over 22 meters ahead resulting in other coaches following it and that had resulted in great inconvenience to the passengers. It is further stated that whenever such lack of alertness is shown, the motormen are sent to Safety Camp and reasons why these are done is set out in the Reply Statement. It is alleged that Applicant did not attend the Safety Camp and this is stated to be on account of his ego as Union Leader. Instead he organised a morcha to D.R.M.'s office. A separate Safety Camp was later ordered for him at Mahalaxmi instead of Valsad, which could not be taken up due to law and order in the city but was taken up only in February, 1993. It is alleged that the Applicant did not attend the Camp but instead instigated others not to ply suburban trains, which instigation resulted in commotion and disorder. However, it is stated that all others who were asked to attend the Safety Camp at Mahalaxmi attended so, except the Applicant. Further details and allegations are then recounted in the Written Statement.

4. We have carefully considered the papers in the case and have considered the written arguments which have been presented by the Applicant and are on record. We have heard the Learned Counsel, Shri M.S. Ramamurthy for the Respondents. The applicant has filed written submissions in the case. We must add that Applicant was present as also Shri S. Dighe, his Learned Counsel, and clarifications were obtained as and when found necessary in the interest of justice. Learned Counsel for Respondents took us to page 50 of the Paper Book, which is a letter written by the Applicant to Chief Electrical Distribution Engineer and also drew our attention to another letter which is available at pages 31 and 32 of the paper book, the latter

bearing the date 02.03.1993. It was argued by Learned Counsel that the Applicant has himself admitted the incident and default of overshooting, and is now making up stories and distorting facts. Even in the letter at page 29, the Learned Counsel argued, that the Applicant had clearly admitted himself that the driving cab was beyond the platform. Learned Counsel for Applicant argued that an enquiry had been taken and there was no ground for accepting the contentions of the Applicant.

5. We would now come to the written arguments on record, as submitted by the Applicant. It is stated that the present O.A. is clubbed with O.A. No. 108/98 and that these two have a certain link, in that, another charge sheet dated 25.01.1994 was issued for the same incident on 08.08.1992 for which charge sheet of 25.09.1992 was issued. It is alleged that the disciplinary authority has imposed the punishment without proper procedure and show cause notice and without considering the defence standard by Applicant. It is argued that the reasons for overshooting was clearly stated and that the failure was that of the brake system and not that of the Applicant. The Applicant then argues the fact which have been stated in the O.A. He also makes a point that the Disciplinary Authority had found him guilty of all four charges but the Appellate Authority which had found him guilty of only one charge had made no reduction in penalty and that the order is, therefore, wrong and illegal. It was also argued on behalf of the Applicant that the Applicant was not provided the documents he had sought, as would be clear from the letter at page 33 and 34 and this was a flaw in the departmental procedure. Further, that the order at page 45 made by the Disciplinary Authority was a non-reasoned order and that the Applicant could

not be held guilty for something that was purely a mechanical failure and not a infirmity on the part of Applicant.

6. Before analysing the matter in O.A. No. 1090/94 we take up the facts in O.A. No. 108/98. Since the Applicant seeks that it be held that Applicant was not absent from 25.06.1993 to 23.01.1995.. This O.A. is somewhat in sequence in terms of time. The relief sought in this O.A. are as follows :

> "(a) call for records and proceedings leading to the impugned order and after examining the same, quash and set aside the impugned order (Exhibit 'A') being order dated 20.10.1997 and Exhibit 'A2' being order dated 9.4.1997.
>
> (b) That this Hon'ble Tribunal be pleased to hold and declare that the Applicant was not absent from 25.6.93 to 23.1.95 and direct the Respondents to pay wages and other benefits for the said period.
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> (c) That this Hon'ble Tribunal be pleased to club the application alongwith O.A. 1090/94 and hear both the applications simultaneously."

7. The facts brought out by the Applicant in brief first describe the 08.08.1992 incident and then goes on to describe the subsequent developments where the Applicant submits that he had taken up the issue with Respondents about the overshooting of trains by a letter of 30.06.1992. He then goes on to describe,in detail, partly on technical points regarding the weakness in the brake system, etc. and how the system was responsible for brake failures very often and that no action has been taken. The facts of his being deputed to Valsad for training, etc. are reiterated. The main point, however, is that the Applicant is challenging the order dated 20.10.1997 and 19.04.1997. Copies of these orders are at Exhibit 'A' and Exhibit 'A2' respectively. Through the

order dated 20.10.1997 the appeal of the Applicant has been disposed of with the order that the penalty imposed is justified and, therefore, upheld. The order of the Disciplinary Authority dated 09.04.1997 has awarded the penalty of reduction to lower time scale of 1600-2660 with pay fixation at Rs. 2660/- till found fit after a period of two years from the date of order. The reasons for imposing of this penalty is given in the annexure at page 49.

8. The Reply Statement of the Respondents in this O.A., (No. 108/98) resists the claims of the Applicant. The action taken by Respondents is sought to be justified and the long statement tries to meet the Applicant's contention, parawise. Some of these are repetition of the points made earlier at one place or the other. It must be recalled at this stage that the articles of charge relate basically to unauthorised absence from 25.6.1993, non-observance of proper leave rules for obtaining leave during the aforesaid period.

9. In this case also, the applicant has filed a written argument. This has been carefully considered by us. In the beginning, the Applicant alleges that Respondents have fabricated memorandum of "Safety Class", and that it does not tally with booking chart or booking register. Refusing the charge that he has committed any misconduct, it is argued that Applicant is required to follow only lawful and reasonable orders and that the order to go to SMC was illegal. Even so it has not been proved that SMC was arranged. He has further argued on the detailed aspect of the evidence and has tried to find faults in the

evidence in his Written submission of arguments. It is alleged that relevant and material documents in the possession of Respondents were not provided and the effort is only to victimize the Applicant for no good reasons. Others who violated such stop marks were not sent. Further on, in this somewhat detailed statement, only incidents and names have been given.

10. Arguing the O.A. No. 108/98 the Learned Counsel for Respondents drew our attention to the prayers made, and the charges against the Applicant. He referred to the enquiry report at pages 95 to 97 and stated that all legal formalities of giving of copies of enquiry report and considering representations had been gone through. He alleged that the language in the representation was totally irrelevant, and that in the context of the recent case decided by the Hon'ble Supreme Court in the matter of Punjab National Bank, the prejudice if any to the Applicant had to be examined by the Tribunal. Shri Masurkar argued that the order of the Disciplinary Authority (pages 48 & 49) was a well argued order and that there were no objections taken to appointment of Enquiry Officer at those treshhold. Similarly, Shri Masurkar took us over the Appellate Authority's order and papers relevant thereto and stated that no points were raised in the representation to Enquiry Officer's report, which is the appropriate stage for making contentions. Learned Counsel reiterated the argument that public safety was a highly important aspect when trains are being run and it was necessary that a motorman should be well trained at all times. Learned Counsel for Respondents sought to depend on the following case law :

(i) State of Tamil Nadu & Another V/s. S. Subramaniam reported at AIR 1996 SCC 1232.

(ii) State Bank of Patiala & Ors. V/s. S. K. Sharma reported at 1996 (1) ATJ 664.

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11. Rearguing the case briefly, Shri Dighe, Learned Counsel for Applicant again took up issues regarding classes for the Applicant and sought to argue that rules should be furnished as to which class was to be attended for which failure and shortcomings. It was argued that the citations depended upon by Shri Masurkar were not relevant.

12. The third O.A. filed by Applicant on 01.01.1996 numbered 7/1996 was argued by the Applicant himself, at his own request. Here the relief sought by the Applicant is by way of direction to Respondents to treat the Applicant as on duty from 10.04.1995 and provide him all wages and benefits till he is allowed to report for work. In fact, the challenge is to an action of Respondents in not permitting the Applicant to report on work w.e.f. 10.04.1995. It is also prayed that the Tribunal direct the Respondents to treat the Applicant as in continuous service for the period that he was denied duty from 10.04.1995.

13. The Applicant has stated in this O.A. that he challenges the letter dated 09.11.1995 demanding a medical fitness document from Applicant and alleges that such requirement is arbitrary and illegal and the Motorman Inspector should have straightaway allotted him duty on 04.04.1995 and not marked him absent. The Applicant states that a medical certificate was issued to him on 31.01.1995 after he had attended the Safety Camp. He alleges that road learning was not given at a stretch but in fragments and he approached the Motorman Inspector on 03.04.1995 at Churchgate with instructions on the subject. What happened according to the Applicant in assigning or not assigning duty is then described and it is stated that on 03.04.1995 there was no entry of duty in the relevant chart for the Applicant on

04.04.1995. In the meanwhile, he had applied for nine days leave from 05.04.1995 to 13.04.1995 in view of need to perform certain rites and the leave had been sanctioned. He, however, wanted to advance his leave by one day and give it effect from 04.04.1995 and since he was not provided with any duty in the chart on 04.04.1995, he presumed that his leave request for preponement was sanctioned. Further details are then made out and the action taken in contacting senior officers is then described. The main point made is that no duty was allotted to him and letters to very senior officers have brought him no reply and that, all this was done to harass and victimize the Applicant. He could have been marked absent only if he was given duty and he did not report for duty. It is with these grievances that the Applicant comes to the Tribunal seeking the relief as described above.

14. The Respondents have filed a reply resisting the claims of the Applicant, first stating that the Applicant is challenging Respondents' letter dated 09.11.1995 (exhibit 'A') whereas there is no prayer challenging the letter. Even so, it is stated that the letter is not an order but a mere notice to bring medical fitness certificate. This letter is, in fact, reply to the Applicant's representation dated 26.10.1995 (exhibit-O) where several baseless allegations had been made and demand to allow him to join duty was made. It is stated that Respondent No. 4 had advised him to join duty with necessary documents in support of medical fitness, as the Applicant was absent from duty from 04.04.1995 and that the period of absence will be treated as per rules. Further details of reply to various letters have been provided, and the stand taken that the Applicant should have come up to report for duty subject to medical fitness, and that he

could present himself before the Railway Doctor. It is stated that medical fitness of the Applicant is directly related to the Safety of thousands of commuters, and the existing systems cannot be dispensed with in the interest of commuters.

15. The Written Statement further gives details to the various points made in the O.A. trying to meet the points parawise. It is stated that the Applicant has created a dispute, which is deliberate, wilful and shows non-co.operative attitude. It is further added that Applicant is free to renew the validity of his medical certificate which was issued on 31.01.1995 by presenting himself before a Railway Doctor. In the connection, we note that the Reply statement is dated 22.02.1996. Details of the scheme of road learning, etc. are then described.

16. The Applicant had argued his case in detail before us, first explaining the system of how duties are assigned, how leave is sanctioned to Drivers and what the programme of learning road was viz-a-viz one month. He then spent a major amount of his time going into the evidence that was on record and point out how the chart was kept blank and no duty assigned to him, as discussed above, and how there was tampering of the document. He referred us to the various documents on record and also provided us a copy of Safety Folder for Motormen issued by the Western Railway in 1990 regarding learning road rules. He stated that he was working till 03.04.1995 and that leave was sanctioned from 05.04.1995 and had assumed that in view of his request made for one further day's leave on 04.04.1995 that leave was granted. Since no remark was made in the register he had presumed the grant of such leave. He is, therefore, surprised that he is now being asked to a produce medical fitness certificate. He even

questions as to what medical fitness means, since he was not sick, and takes us to different correspondence made by him on his record. He made the point that Respondents should show the rule which demands that medical fitness documents are to be produced.

17. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri Masurkar, made the point again that the contentions of the Applicant have to be considered with reference to the relief sought in the O.A. at para 8 and the point made by him at the very start on page 1 of the O.A. It was argued that no higher authority was approached by the Applicant till 24.01.1995, when the letter dated 24.01.1995 was written to the D.R.M. by the Applicant. If such a thing had happened, has his letter been torn, as alleged, he should have come up immediately in the matter to higher authorities. Shri Masurkar took us over the reply statement and depended on it on various important points. The system by which a motorman has to present himself before a Railway Doctor, even if he takes leave for other than medical reasons, has been described at page 24 and the stand taken that the safety of the travelling commuters is vital, and hence the need to ensure medical and psychological fitness of motormen.

18. The Applicant reargued the matter briefly only to reiterate that there was no justification in his being asked to give a medical certificate and that this was done without there being any requirement of rules in this regard.

19. We have carefully considered the papers in all three O.As. as also the arguments made on behalf of rival parties. As

could be seen on a broad reading, there is element of continuity of time and events in the three O.As. which is clearly brought out in the descriptive paras above. The basic genesis lies in the incident of 08.08.1992 where the Motorman's alleged fault/inaction had resulted in the train overshooting the stipulated mark on the platform. Thereafter, the process of sending him for training, his not agreeing to go there, then the period of absence in the second O.A., the departmental enquiries and finally the dispute about not allowing the Applicant to join work. This has been the sequence of the broad dispute, which have led to the grievance on the part of the Applicant. While portraying this overall view, as it were, we shall now take up the matter O.A. by O.A. without repeating the facts which have been set out in considerable detail above.

20. In regard to the first O.A. numbered 1090/94, we must focus at once to the relief sought, which basically relates to the challenge to the penalty imposed on the Applicant, and the challenge to the Appellate Authority's order confirming the penalty. At this stage, we must firmly and clearly remind ourselves that the Tribunal follows the law as settled by the Hon'ble Supreme Court in matters in regard to enquiries and penalties. When such penalties are awarded after departmental enquiries, we have to restrict ourselves in examining as to whether there has been any violation of principles of natural justice, whether there is any perversity in the orders made or any breach of rule. In this regard, there is specific indication and guidance by the Apex Court that Tribunals like ours are not expected to reappreciate evidence and take independent views except to the extent noted above. On going through the

allegations/facts as made out in the O.A. and especially the entire tenor of arguments raised, it is seen that the basic stress is to pinpoint flaws in the system and the arguments raised throughout are to ask the Tribunal to reassess the evidence. Minute details in regard to evidence and documents have been gone through. While we have looked at this evidence carefully with a view to find out if there is any gross injustice, perversity or breach of principles of natural justice, we have desisted from reappreciating evidence as if an Appellate Authority. Admittedly, it is not a case of no evidence. There is plenty of evidence to the effect that the Applicant has over stretched the stipulated mark causing inconvenience to commuters. Not only the inconvenience to the commuters but the need for safety in such critical posts, as a motorman, cannot be overlooked.

21. We have also carefully studied the order of Disciplinary Authority and the Appellate Authority and find no truth in the allegation that they are not speaking orders. There is no allegation of violation of principles of natural justice except that some vague points about some documents not provided have been made. Such kind of vague allegation cannot help the Applicant. There is no violation of principles of natural justice evident. It is not for us to take a stand as to what standard of Railway Safety should be set by the Railways. If at all, the Tribunal can only take a stand that ensuring safety is a very justifiable aim of the Railways and all steps taken to strengthen security and convenience to commuters is, to say the least, very justiable. We are also not prepared to take the view that the whole thing has come about because the Railways did not heed to the applicant's warning on safety system or go into

technicalities of railway break systems,etc. Further, by no stretch of imagination can it be said that the penalty imposed on Applicant is in any way grossly disproportionate to the charges. Similarly, we find nothing illegal in the order of the Appellate Authority. In view of this, we do not find any justification for interfering in the matter or providing relief, as sought in this O.A.(No. 1090/94)

22. We now turn our attention to the second O.A. numbered 108/98 where the relief sought again is for quashing of the impugned orders dated 20.10.1997 and 09.04.1997, at exhibit 'A' and exhibit 'A2' respectively. Here also, we note that the matter relates to an enquiry and the relief sought is for quashing of both penalty order and order of Appellate Authority.

23. The matter here also is a sequel to the first enquiry. Here also the Applicant is charge sheeted and the articles I and II are as per page 44 of the O.A. The charges mainly relate to unauthorised absence of the Applicant and for violation of rules in view of his unauthorised absence from the dates stated i.e. 25.06.1993. The Memorandum of Charges is dated 25.01.1994 and hence the period of absence is appreciable. Here again the entire tenor of the arguments taken by the Applicant is such as would urge us to reassess the evidence and question the decisions taken in the enquiry. In fact, the Applicant makes an organic link with the first case very clearly and questions the relevant rules of the Railways. Again, without avoiding repetition, we would like to state that our examination of the challenge is in accordance with the settled law. We have seen some of the registers to. Our appreciation of evidence is limited to the extent whether there is any perversity in the order. We find no

such infirmity. Besides, some vague allegations regarding violation of principles of natural justice, there is nothing that would show such violation. No malice to any particular person could be traced and hence it can be stated after careful consideration of all the points made by either side that we are not impelled to interfere in the penalty that has been imposed on the Applicant.

24. Once again the effort has been to question the rules of the Railways and to state that he is being harassed. Once again it could be stated that the effort of Railway Administration to demand certain conditions is in the interest of security. We see no weakness in the decision of the Respondents nor is a case made out that these actions of requirement of training, etc. are directed only and pointedly at the Applicant. Some stray incidents of others having received discriminating treatment have been made out but no details are provided and in any case, this cannot help the cause of the applicant.

25. The quantum of penalty, as it does in the background of charges levelled, cannot be at all said to be excessive. The fixation is at the highest level in the lower pay scale. We also find no infirmity in the orders of the Appellate Authority. Since he has agreed with the Disciplinary Authority, we find no reason as to why we should write a long winded order. In view of this discussions and the fact that this Tribunal cannot and will not reappreciate evidence like an appellate authority, we are not convinced that we can provide any relief to the Applicant in this O.A. (No. 108/98).

26. Now we come to the third O.A. in the batch, namely - O.A. No. 7/96. Here the Applicant states that he is not being allowed to join duty and this is the crux of the entire matter. He seeks direction not only that Respondents be asked to take him on duty but that the entire period of absence from 10.04.1995 be treated as duty. Here also the challenge is to the demand of the Respondents asking for medical fitness. Repeatedly the point made in argument by the Applicant, was that there is no rule which should require such medical fitness to be produced and that he had undergone all training, etc. that was required as per rules.

27. Respondents have first taken some legal/technical objections. However, on merit, the point made by them is that the medical certificate issued to the Applicant on 31.01.1995 was valid for two years, only in case of continuous working of the Applicant or if the Applicant had to remain away from duty for short periods, with due sanction of leave. It is further stated that in case of accident, sickness or absence from duty without proper sanction, the validity of this certificate is over, and it can be renewed by a motorman only by presenting himself before a Railway Doctor. Also that he will have to be given training as per rules. The safety aspect has been underlined. It is stated that Railway Board's letter dated 23.02.1984 is misquoted and that training schedule for direct recruits and in-service persons were different. Now, this is a matter in which unless we are shown some proof or by way of instructions, etc. that the Respondents' asking for certificate of medical fitness is against some statutory rules. We are unable to conclude that the requirement is unreasonable. No statutory rules have been

conclusively shown to be infringed despite applicant quoting a Manual, nor any evidence available that only the present Applicant is being singled out for what he claims is harassment. In the absence of this, we will have to go by the detailed assertion made by the Respondents in the Written Statement and the justification advanced for giving training and for medical assessment of persons who have been away unauthorisedly. The importance of safety of commuters and to the railway system at large and the fact that the post of Motorman is very critical to safety cannot be overlooked. No reasonable person would say that unreasonable requirements are being made. It would appear that the Applicant is making an issue and not agreeing to go for medical test or training especially when viewed in the background of the facts of earlier two O.As. In the light of the above discussions, in this O.A. also we do not find any justification for interference.

28. In view of the detailed discussions above, we are not convinced that a case has been made out for our interference in any one of the three O.As. being considered together here. In the consequence, these three O.As. bearing No. 1090/94, 7/96 and 108/98 are hereby dismissed. There will be no orders as to costs.

(S. L. JAIN)
MEMBER (J)

(B. N. BAHADUR)
MEMBER (A).

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Order/Judgement despatched to Applicant/Respondent (s) on 14.2.2002. 14.2.2002
or kept in O.A. 1090/94
16/4.