

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 2 AUG 1988

APPLICATION NO.

295

/87(F)

W.P. NO.

Applicant(s)

Shri N.S. Balakrishnan
To

1. Shri N.S. Balakrishnan
Perumalputhenpura House
Puzhikol B.P.O.
Kaduthuruthy S.O.
Kottayam District (Kerala State)
2. Shri M.C. Narasimhan
Advocate
27, VI Cross, IV Main
Mall eswaram
Bangalore - 560 003
3. The Divisional Railway Manager
South Central Railway
Hubli

Respondent(s)

V/s
The Divisional Railway Manager, South Central
Railway, Hubli & 2 Ors

4. The Divisional Safety Officer
South Central Railway
Hubli
5. The Secretary
Ministry of Railways
Rail Bhavan
New Delhi - 110 001
6. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Building, 10th Cross
Cubbonpet Main Road
Bangalore - 560 002

Subject:

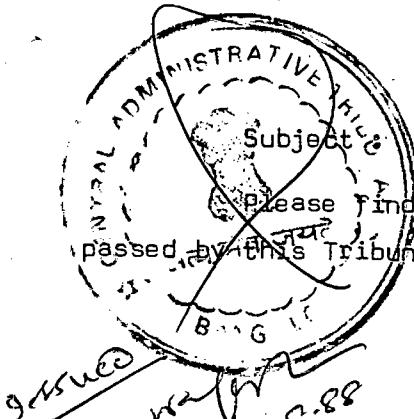
SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STRAK/EXTRADITION ORDER
passed by this Tribunal in the above said application(s) on 22-7-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THE 22ND DAY OF JULY, 1988.

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY: VICE CHAIRMAN

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

APPLICATION NO.295 OF 1987 (F)

Sri N.S.Balakrishnan
Ex-Assistant Station Master,
Kudithini, South Central Railway,
Bellary District. ... Applicant

(By Shri M.C.Narasimhan, Advocate for the Applicant)

-vs.-

1. The Divisional Railway Manager,
S.C. Railway, Hubli.

2. The Divisional Safety Officer,
S.C.Railway, Hubli.

3. Union of India, by its
Secretary to Ministry of
Railways, New Delhi. .. Respondents.

(By Shri M.Sreerangaiah, Advocate for the respts.)

This application coming on for hearing,
Hon'ble Shri L.H.A.Rego, Member(A), made the
following:

Order



ORDER

The applicant prays herein, that the Order dated 24-1-1986, passed by Respondent(R)2, in his capacity as the Disciplinary Authority ('DA' for short), imposing on him the penalty of removal from service from that date, and the Order dated 25-1-1987 by R-1 affirming the same, in the capacity as Appellate Authority ('AA' for short), be set aside, with a direction to reinstate him in service, with all consequential benefits.

2. The following is a portrait of the salient features of the case, which brings out its perspective to help determine the questions raised. The applicant entered service in the Indian Railways on 10-1-1962, as a Temporary Works Mistry, in the then pay scale of Rs.130-212, at Waltair, under the Dandakaranya Bolangir Kimburu Railway Project ("DBK - Project", for short) and was appointed by the General Manager of that Project. He was relieved from this Project on 14-4-1967, on transfer, to the South Central Railway ("SC Railway" for short) as Trainee Assistant Station Master, by the Chief Administrative Officer and Chief Engineer, DBK Project, Waltair. He was confirmed as Assistant Station Master ('ASM' for short) in the Grade of Rs.130-240, with effect from 1-12-1971.



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3. At the material time, he was working as ASM in SC Railway at Kudathini (abbreviated as 'KDN'). The respondents state, that during his period of duty in this post, from 1900 hrs on 21-6-1982 to 0730 hrs on 22-6-1982, he had authorised ASM at Daroji (abbreviated as 'DRJ') to despatch the Down Diesel Light Engine ('DLE' for short) on Paper Line Clearance ('PLC' for short), assigning Private No.41 without verifying as to whether Down Goods Train No.KGW-14 ('KGW' for short) had cleared the Station between the DAJ to KDN Broad - Gauge Section or not.

4. It is alleged, that as a result of slackness and carelessness on the part of the applicant, the DLE despatched from DAJ on his clearance, collided at KDN Down Outer (BG) on 22-6-1982, early in the morning with the rear of KGW, despatched from DAJ earlier, which had actually not arrived home at KDN, but was gradually passing down the "outer". This accident occurred on BG Section of Guntakal Division, resulting in the tragic death of the Guard of KGW, besides dislocation of rail traffic and considerable expenditure to the railway administration in restoring the railway track.

5. For this grave negligence, the applicant was placed under suspension on 26-6-1982 and a Fact Finding Inquiry ('FFI', for short) was held by a Committee of Senior Railway Officials. This Committee held the



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applicant

applicant responsible for serious lapses on his part. Action was therefore initiated against him, under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 ('1968 Rules', for short) and a charge sheet was served on him by R-2, by his Memo dated 31-8-1982, along with the article of charge, a statement of imputations of misconduct in support and a list of documents and witnesses, on the basis of which, the charge was proposed to be substantiated.

6. The article of charge framed against him is reproduced below:

"That the said Sri N.S.Balakrishna, while functioning as ASM at KDN station from 19/00 hrs on 21-6-1982 to 7/30 hrs on 22-6-82, has authorised ASM/DAJ to despatch down diesel light engine WDM-2/17690 on paper Line Clear by giving private No.41 without verifying whether KGW-14 down goods had actually cleared the DAJ-KDN Section (BG) or not on 22-6-1982.

As a result of his slack and careless working, when KGW-14 down goods was slowly passing the down outer signal of KDN station which was lowered then the down light diesel engine No.WLM-2/17690 which was despatched from DAJ station came and collided against KGW-14 down goods in rear at about 3/10 hrs at Km 186/11-12 at KDM down outer(BG) on 22.6.82.

As a result of the accident, front portion of the brake van of KGW-14 down goods lifted and was resting on the next box wagon. Front wheels were detached and travelled on ballast and stuck with the rear wheels and Sri A.Subramaniam, Guard of KGW-14 down goods was thrown out and died on the spot. There was damage to light engine as well as to rolling stock. In the impact the formation

of KGW-14 down goods was pushed forward making a gap of 46 meters between the brake van and down diesel light engine knuckle of 25th wagon from the brake van was broken.

Sri N.S.Balakrishnan has thus failed to observe Rule No.359 and 254 of G & SR."

7. The applicant denied the charge and on 7-9-1982 requested for copies of the documents relied upon in the chargesheet, which are said to have been furnished to him on 13-10-1982.

8. The applicant was arrested by the Police on 25-11-1982 and released ^{him} on bail on 25-11-1982. Criminal Case bearing No.CC 631 of 1983 was lodged against him in connection with the above accident, which resulted in the death of the Guard of KGW. This case was tried by the Chief Judicial Magistrate, Bellary ('CJM' for short), who by his order dated 20-11-1985, acquitted the applicant of the offence, under the relevant Sections of the Criminal Procedure Code and the Indian Railways Act.

9. The applicant states that he requested R-2 to postpone the DE till the decision of the above Criminal Case, but as there was no response, he was ^{constrained} to file Writ Petition No.536 of 1986, in the High Court of Judicature, Andhra Pradesh, which by its Order dated 5-7-1984, permitted the IO to continue the DE, with a direction not to pass final orders



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till the disposal of the proceedings before the Criminal Court, so that the applicant may have the advantage of placing the findings and the approach of the Criminal Court in the matter, before the IO and the DA. The High Court further directed, that on receipt of the judgment of the Criminal Court, it was open to the DA, to pass final orders as required under the 1968 Rules.

10. An Inquiry Officer (IO, for short) was appointed and a regular Departmental Enquiry ('DE' for short) was conducted. As the applicant did not co-operate with the same, the respondents aver, that it was commenced on 11-1-1983 and completed on 1-5-1985, after as many as 7 sittings.

11. The following ten prosecution witnesses (PW, for short) were examined in the DE:

Sl. No.	Name	Post held at the relevant time.
(1)	(2)	(3)
PW-1	Shri Y. Kothandaramudu	Driver KGW
PW-2	" R. Jayaraman	Diesel Assistant, KGW
PW-3	" S. Honnur Sahib	Driver DLE
PW-4	" Abdul Yusuf	Diesel Assistant, DLE
PW-5	" V. Sriramulu	Guard 'C'
PW-6	" David Ratnaraj	ASM, DAJ
PW-7	" B. S. Nagesh ..	Signalman, KDN
PW-8	" M. C. A. Reddy ..	Pointsman, KDN
PW-9	" Abdul Razzak ..	SM, KDN
PW-10	" Abdul Sattar ..	SI/Gr. III/Guntakal.

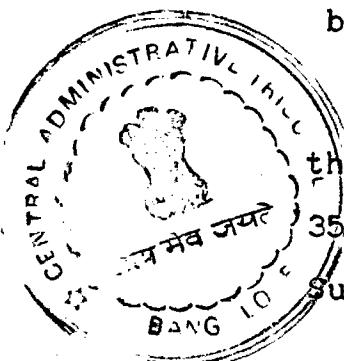
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12. In the Criminal Case filed against the applicant, before the CJM, under CC No. 631 of 1983, he was charge-sheeted by the Inspector of Police, Railways, Wadi for the following offences:

- "(1) He being the Assistant Station Master at Kuditini Station on 22-6-1982 at 2-30 hours gave line clearance to the Assistant Station Master, Daroji, by informing his Private No. 41, though the goods train KGW-14 was waiting at the out of Kuditini station. That due to his negligent act, the light engine which was sent from Daroji went and collided with brake-van and as a result a Guard died on spot. By this, he committed an offence punishable under S-304-A, IPC as well as Sec. 101(c) of the Indian Railways Act.
- (2) He, while on duty at Kudatini station on that day consumed alcohol and thereby contravened the provisions of Rule 182 punishable under Sec. 100 and 101 of the Indian Railways Act.
- (3) By allowing the light engine to pass while the Goods train was standing he disobeyed Rule 244 and committed an offence under Section 101(A)(B) of the Indian Railways Act."

13. As stated earlier, the applicant was acquitted by the CJM, by his Order dated 20-11-1985.

14. In the DE however, the respondents state, that the charge viz., failure to observe Rules 254 and 359 of the General Rules for Indian Railways, read with Subsidiary Rules and Special Instructions of the South



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To See Rule
and SGRSS ('GRS' for short) was proved. These Rules are extracted below, for reference at a glance:

"254. Conditions under which permission to approach may be given.-- The line shall not be considered clear, and permission to approach shall not be given, unless--

(a) the whole of the last preceding train has passed within the Home - signal, if any, or has arrived at the place at which trains usually come to a stand,

(b) the Home, if any, and the Outer have been put to "on", and

(c) the line is clear--

(i) to the shunting Board or Advanced Starter (if any), at that end of the station nearest the expected train, or

(ii) to the Home signal, if there is no Shunting Board or Advanced - Starter, or

(iii) to the outermost facing points, if there is no Shunting - Board or Advanced Starter and no Home signal.

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359. The "Train out of Section or Obstruction Removed" signal.--(a) When the Block section is cleared by the arrival of the train or by the removal of the cause of blocking, the "Train out of Section or Obstruction Removed" signal shall be given by the Block station in advance.

(b) Before the "Train out of Section" signal is given, the Station Master shall--

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(i)



- (i) satisfy himself that the train has arrived complete; and
- (ii) satisfy himself that the conditions under which permission to approach may be given are complied with.
- (c) the provisions of clause(ii) of sub-rule(b) may be relaxed at "A" class signal line crossing stations. In such cases, the Station Master shall satisfy himself that the train is standing at its Starter clear of the line on which the second train is to run."

15. The respondents aver that in the DE after carefully going through the report of the I.O., and the evidence-oral and documentary and taking duly into account the judgment dated 5-7-1984 of the High Court of Judicature, Andhra Pradesh, in Writ Petition No.536 of 1983, and that dated 20-11-1985 of the CJM in CC No. 631 of 1983, ~~R-2~~, and the gravity of the lapse on the part of the applicant, which resulted in the death of the Guard of KNGⁱⁿ imposed on him, by his Order dated 24-1-1986, the punishment of removal from service, with effect from the date of that Order.



16. Aggrieved, the applicant filed an appeal on 31-1-1986, before R-1. As there was no response to the appeal within a period of 6 months, as specified under the 1968 Rules, he filed Application No.1823 of 1986 before this Tribunal, which was disposed of on 7-11-1986, in the following terms:

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"In the light of our above discussion, we make the following orders and directions:

- (i) We reject this application directed against the order dated 24-1-86 of the DSO without examining its merits at this stage.
- (ii) We direct the Divisional Railway Manager, South Central Railway, Hubli, respondent No.1, to dispose of the appeal filed by the applicant on 31-1-1986 against order dated 24-1-1986 of DSO(Annexure-A), bearing in mind the principles enunciated by the Supreme Court in Ram Chander v. Union of India - 1986(2) SLR 608, with all such expedition as is possible in the circumstances of the case and in any event within a period of 3 months from the date of receipt of the order of this Tribunal.
13. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs.
14. Let this order be communicated to respondent No.1 within 10 days from this date without fail."

17. In compliance with the above direction of this Tribunal, R-1 as AA, by his Order dated 25-1-1987 upheld the punishment of removal from service, imposed on the applicant by R-2 as DA, by his Order dated 24-1-1986.

18. Yet dissatisfied by this Order, the applicant has again approached this Tribunal for redress, through his present application.

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19. Shri M.C.Narasimhan, learned Counsel for the applicant, passionately pleaded the case of his client on a large number of grounds.

20. At the outset, he challenged the above Order dated 25-1-1987 of the AA, on the score, that it did not comply faithfully with the directions given by this Tribunal on 7-11-1986, in the earlier Application No. 1823 of 1986, filed by his client. He contended, that according to the principles enunciated by the Supreme Court in RAM CHANDER's case, which were to be complied with by the AA as enjoined by this Tribunal, his client ^{by} sought to have been given a personal hearing by the AA, before passing the order on 25-1-1987. This he said was not complied with but on the contrary, R-1 merely iterated the substance of the order of the I.O. without appraising ^{initially} the evidence on record.

21. Besides, he submitted, that the Order of removal passed by R-2 as DA, was inchoote and taciturn and did not take into account, the direction of the High Court of Judicature, Andhra Pradesh, in Writ Petition No.536 of 1983, specially, in regard to considering the approach of the CJM in his Order dated 20-11-1985 in C.C.No.631 of 1983, whereby his client was acquitted of the charge of negligence.



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copies of the above documents were not furnished to his client and that they were not properly marked. In the background of the specific dates and the facts cited as above, by Shri Sreerangaiah, we cannot disbelieve his assertion that the relevant documents were shown to the applicant and that he had taken copies of the same.

23. As regards the ruling relied upon by Shri Narasimhan, in DIXITAR's case, though it governs that cases in facts and circumstances peculiar to it, it has been held in other cases, that ordinarily it is not necessary to furnish copies of the various documents and it would suffice if the employee is permitted such access under the rules and the law. According to Shri Sreerangaiah, the applicant was not denied this facility, in that the documents apart from those listed in the chargesheet were obtained by the IO from the Criminal Court, through special permission of the CJM, they were shown to the applicant on specific dates and he had taken copies thereof. Besides, he was not denied the opportunity to even cross-examine the various witnesses. In this background, we feel that no travesty of justice has been caused to the applicant and that he is merely picking out holes, in a vain attempt to wriggle out of the punishment meted to him. In view of the foregoing, we hold that no injustice was caused to the applicant on this account and therefore, we reject this contention of Shri Narasimhan.



24. Shri Narasimhan next endeavoured to show that the defence of his client was seriously prejudiced, as the IO, in the course of the DE, disallowed certain questions vital to his defence, i.e., Question Nos. 120 and 168 of the PB, without reasons. Question No. 168, he said, was intended to elicit the truth about the veracity of the documents in question.

25. The relevant questions and answers are extracted below for ease of reference:

"Q.120: I put it you that you had a doubt about the whereabouts of KGW-14 because you were not in the habit of filling up the C.Col. and B.Col. of your line clear enquiry book. This is evident from the entries for PKL 8 goods on 2.9.81 HPT special on 2.9.81 and 1888 goods on 25.9.81 which are the only entries available in the Enquiry Book apart from KGW-14 and Dsl.LE. The 'C' col. and 'D' col. for these two trains were filled up after the accident only. The book may be examined by the Enquiry Officer as well as the witness before answering of this question?

E.O: I am disallowing this question, since the Defence is citing from the records of 1981 which are irrelevant to this Enquiry. I suggest to Defence to confine to the records maintained for train passing duties at DAJ and KDN for the transaction done between the stations on 21/22.6.82."



"Q. 168: You are a station master in grade 450-700(RS) with 19 years of service. I hope you are an experienced enough to refer some records pertaining train passing duties and give your observations. Please examine the line clear Enquiry book of DAJ station and PLC tickets issued by DAJ station for train No. KGW-14 and Dsl.L.E. on 22.6.82 especially consisting your attention to the stamps used on this documents and state whether the two line clear tickets are from the Enquiry book before you?

E.O. This question is disallowed since SM/KDN can verify this records of his station and not maintained at other stations."

26. Shri Sreerangaiah countered this contention on the score, that the reply given by the IO to the above two questions in the course of the DE, are self-explanatory.

27. We have perused both these questions and answers. We notice that Question No. 120 was rather far-fetched and not directly in point and therefore by disallowing the same, we do not feel that the IO caused any prejudice to the applicant. As regards Question No. 168, though it had some relevance, we are not convinced, that on account of it being disallowed by the IO on the score, that the Paper Line Clearance ticket ('PLC' for short) pertained to another railway station, namely, DAJ, the defence of the applicant was jeopardised. At best, this may be regarded as an error of discretion on the part of the IO. We, therefore, negative this contention of Shri Narasimhan.



28. Shri Narasimhan then drew our attention to violation of the rules and of fairplay by the IO and the DA,in denying the applicant ,the opportunity to examine his witnesses. He cited specific reference to page 49 of the disciplinary proceedings, and pages 126 and 127 of the PB,to show that Shri P. Raman, DSO, Guntakal, whom the applicant wanted to examine,specially when he was examined by the CJM in the Criminal Court, was not listed as one of the witnesses in the chargesheet. The request of his client to examine Shri Raman, he said, was summarily rejected on the cryptic ground,that it was not relevant.

29. Shri Sreerangaiah explained,that the IO found that the request of the applicant to examine Shri Raman, had no direct bearing on the case and therefore, he disallowed the same.

30. We have seen the representation addressed by the applicant to R-2 on 21-1-1983 (pages 126-127 of PB) wherefrom we notice,that his intention to examine Shri Raman was on the premise,that he made ¹⁴ leading and suggestive remarks,in station records at KDN on 22.6.1982. Shri Narasimhan could not demonstrate and/or elaborate,in the course of the hearing ,what these remarks were and what nexus they had with the charge framed against the applicant. As a result, this episode remains ⁴ and nebulous and in these circumstances, we do not feel any injustice was caused to the applicant on this account and therefore, we find this plea of Shri Narasimhan meritless.



31. The next target of attack of Shri Narasimhan was, that the IO did not permit the applicant to examine himself, which controversy he said was apparent from the proceedings of the DE at pages 81 to 92 of the PB. Finally, the IO drove a nail on the applicant's coffin, he alleged, by treating the DE ex parte. This was in gross violation of Rules 9(19) and 9(20) of the 1968 Rules, he stated, with vehemence. He also alleged, that evidence was recorded, nearly $2\frac{1}{2}$ years, after the incident and that some of the witnesses ^{in fact} were previously examined before the CJM, ^{to} who deposed differently, in the course of the DE, which prejudiced the defence of his client.

32. Countering the above attack, Shri Sreerangaiah retorted, that the applicant was most non-cooperative in the DE, picking out holes now and then, without rhyme or reason and in the process, the DE got prolonged avoidably, he said, for a period of two and a half years, with as many as seven sittings. The IO he said, extended all assistance and co-operation to the applicant to participate in the DE but to little avail.

33. We have carefully gone through the relevant proceedings of the DE. We notice that the IO has not in any manner, deterred the applicant from taking effective part in the DE. On the contrary, we find that the applicant himself was recalcitrant and evasive in not assisting speedy conclusion of the DE. We see



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no grounds, to impute any blame to the IO in this respect and are convinced, that the applicant was hoist with his own petard in this case for not participating in the DE. In the premise, we find no substance in this contention of Shri Narasimhan.

34. Dwelling on one of the crucial facets of evidence in regard to the railway accident episode, Shri Narasimhan alleged, that the PLC, said to be given to one Shri S. Honnur Sahib, Driver, DLE (P.W.3) was not produced in the Criminal Court before the CJM, despite request of the applicant (page No. 108 of the PB). He said, that the IO had mentioned about the difficulty in securing the PLC and that even the CJM had also referred to this in the judgment, but all of a sudden, these PLCs appeared as exhibits marked. Strange enough, he averred, that they did not bear the metal stamp of DAJ, as affixed on the counterfoils of these PLCs, as also in the unused foils of the PLC book. This led to infer, he said, that the foils of the PLC book were pre-stamped in all respects and therefore, the PLCs in question marked as exhibits in the DE, which were not alike, were actually counter-foils taken out from another PLC book, and as such, should not have been accepted as evidence. PW-3 he averred, had clearly stated that the PLCs were handed over to AME/DSL/GR, but that official is said to have disclaimed knowledge of the same in the Criminal Court. Nevertheless, Shri Narasimhan maintained, that



as these PLCs were not produced before the CJM and were not listed as documents, in the chargesheet. served on his client on 31-8-1982, it was not fair to produce these PLCs at this stage.

35. Shri M.Sreerangaiah refuted the above contention of Shri Narasimhan, that the two PLCs in question, were fake and planted, with an ulterior motive to implicate the applicant and remarked, that this was nothing but an overwrought figment of his imagination in a vain attempt to shield his client. Minute scrutiny of these PLCs with their counterfoils he said, would at once reveal, that the contour of their severed ends, paired well and the particulars in either foils corroborated and the shade of ball-point entries too perfectly matched, which led to an irresistible conclusion, he asserted, that the PLCs in question, were not spurious as alleged. Besides, he affirmed, that these PLCs were actually shown to the applicant earlier and he was not taken by surprise, as alleged.

36. We are now entering the realm of evidence and therefore, we must make it clear that we are not oblivious, that the power conferred on this Tribunal, is that of judicial review, over the decision of Government and other authorities and that we must necessarily bear this in mind, while examining the contentions urged, specially in the arena of appreciation of evidence. A finding based on "no evidence" which is regarded as an error of law, envisages a finding which no person of reason and sanity would arrive at, on the evidence on

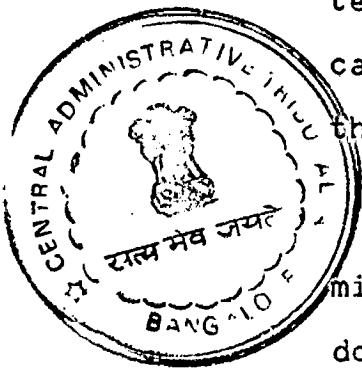


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record. We have expatiated on this at length in our judgment in Application No.1653 of 1986(T) /S.N.SRINIVASAN v. DIRECTOR GENERAL ESIC & ORS. [7] pronounced on 13-1-1987. We are conscious, that this Tribunal cannot sit as a Court of Appeal to re-appreciate evidence, if there is any, and reach a conclusion different from that of the ultimate fact-finding authority, under the rules. Keeping this in mind, we have endeavoured to examine the various contentions urged before us.

37. We have bestowed utmost consideration on the rival pleadings and have heard this case in extenso for as many as 4 days, namely, on 8-6-1988, 9-6-1988 and on 15 and 16-7-1988(a holiday) and have carefully examined the voluminous record and other material placed before us. The learned Counsel for the respondents was assisted by Shri M.Keshavalu, the then Area Officer, S.C. Railway, Vasco-da-Gama, and a qualified railway technical hand, who was the IO in the DE, conducted against the applicant, who was of no little help to the Tribunal, in explicating the complexities of the various railway technical operations and explaining the relevant technical terms, which made our task easier in understanding the crucial facets of this case.



38. We have examined the two PLCs in question minutely and are convinced, that they are not spurious documents taken out from another PLC book as alleged by Shri Narasimhan, Shri Sreerangaiah has convincingly explained their genuineness on the material points

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advanced

advanced by him, in the context of which, we find, that the counsel for the applicant is ⁴ captious and is only seizing on minor points, in regard to the seeming discrepancy of metal and rubber stamps, which in our view, does not go to the heart of the matter and prove that the PLCs referred to above were false. We, therefore, find no merit in this contention.

39. Shri Narasimhan next questioned the IOs report which he said, was inchoate, as it did not appraise the evidence adduced in the DE. His findings were not cogent and reasoned, he stated, as evidence of which, he referred to the comparison drawn by him between the applicant, who was then ASM/KDN and his counterpart Shri David Ratanraj, the then ASM/DAJ, who was PW-6 in the DE. Comparison of their alertness and mental ⁴ ^{ac} equity, while on duty on 22-6-1982, when the fatal accident took place, he stated, was based on irrelevant criteria, such as slovenliness, scorings and hesitency in making entries in the pertinent registers at the relevant time and was there out of place. His client was equally preoccupied with the despatch of trains, as the very trains he cleared from KDN reached DAJ, which was borne out, he said, by the evidence of PW-9 Shri Abdul Razzak, in answer to Question No.167 (page 78 of the PB).

40. Shri Sreerangaiah maintained that the reasoning given by the IO as above, could not be said to be

irrelevant, as the manner in which the entries were made and their incompleteness, was an index of alertness and presence of mind of the applicant, in complying with his important duty, which had a crucial bearing on the movement of the trains and their safety in transit.

41. Since this was a technical matter, we requested Shri Keshavalu, who was the IO in the DE, held against the applicant and who was present in the Court, to give us an insight into the finer details. He explained, that DAJ and KDN railway stations, fall within the purview of the Guntakal to Hospet Control Section and that receipt and despatch of trains was the primary responsibility of the SMs/ASMs on duty. Among the seven systems of controlling movement of trains between stations, the Absolute Block System was one, he said, which is operated electrically and was normally in operation between DAJ and KDN stations. Before despatching a train from one railway station to another, the SM/ASM of the despatching station, he said, is invariably required to obtain prior clearance from the SM/ASM of the receiving station and there has to be perfect coordination between the two. Rules 254 and 359, he said, explained in a nutshell, the obligatory requirement in this regard, both at the despatching and receiving ends (vide para 14 supra).



42. On the fateful day, namely 26-2-1982, Shri Kesavulu pointed out, that due to electrical failure at 00.05 hrs, ^{As} ~~As~~ Absolute Block System got out of commission, between DAJ and KDN and in that emergent situation, the Manual System had to be resorted to, which meant extra caution and alertness on the part of all concerned and particularly the SMS and ASMs on duty, round the clock, minute to minute, as this imposed greater responsibility in regard to safe movement of trains, with likelihood of human error. The pertinent registers had to be maintained up-to-date, he said, with meticulous attention to detail and their completeness and to promptitude in making the entries.

43. With the above background, Shri Sreerangaiah with the assistance of Shri Keshavalu, explained to us, that consequent to failure of the Block System the applicant failed to exchange the block failure message in the TSR, according to the instructions contained in the Indian Railways Block Working Manual and that there was no record to show, that he had phoned to the concerned Signal Inspector of the Section, about the block failure. There was no message recorded in the Control Message Book at KDN. Shri Sreerangaiah stated, that it was evident therefrom, that the applicant was not alert to his duty, and this negligence was grave, specially when the Absolute Block System had gone out of commission.



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44. Besides, he pointed out, that the relevant timings recorded by the applicant in regard to KGW in the TSR at KDN, did not accord with that of DAJ.

45. Both Shri Sreerangaiah and Shri Keshavalu then showed us the TSR and the Private Number Sheet Book of KDN. It was seen therefrom, that the Private Number given to DAJ to clear KGW was 38, against the printed number 20, which was actually altered in manuscript as 38. This was questionable he said, as the corresponding PLC, given to the driver of DLE revealed the Private Number given, as 41 and there was no such printed Private Number after Private No. 20, which was altered by hand as 38 and given to DAJ for KGW.

46. We notice that in the totality of evidence, there is more than what meets the eye as to the manner in which the entries were made and tampered with, by the applicant in these vital registers and the fact that the applicant was preoccupied with these registers at a critical time, even when the Guard of KGW was fatally injured, in the railway accident and that he did not care to rush to his aid, despite urgent intimation to him, of the seriousness of the condition of the Guard by PW3, PW4 and others, not only bewrays his detestable inhuman behaviour, but a questionable motive of being obsessed with these registers at such a critical moment. In these circumstances, we are of the view that the inference drawn by the IO, from the manner in



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which

which those registers were entered by the applicant, cannot be said to be without relevance, as contended by Shri Narasimhan.

47. Shri Narasimhan then dwelt on the aspect of the timings, recorded by the ASMs/DAJ and KDN as well as by the drivers of KGW and DLE in the pertinent documents/registers, in regard to the arrivals/departures of the respective trains. These details are juxtaposed below, as ascertained by us, from these registers and relevant statements to facilitate comparison at a glance:

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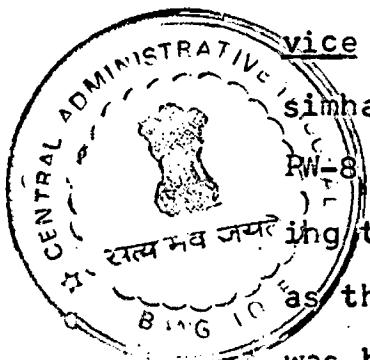
By whom entered.	Timings recorded for	
	KGW	DLE
(1)	(2)	(3)
ASM/DAJ	0215 hrs in TSR, Line Clear Enquiry Book and Statement of ASM/DAJ.	0300 hrs in PLC and TSR.
ASM/KDN	.. 0225 hrs in TSR and Reply Book.	No entry
PW-1/PW3	.. 0228 hrs, later altered to 0220 hrs by PW-1 according to his statement and Driver's Rough Journal.	
In Control Chart:	0215 hrs	No entry, as Control is said to have gone out of commission, from 0220 hrs as seen from the Control Chart.

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The above entries are revealing. The Control Chart in original, was shown to us by the IO, wherefrom we could notice, the actual time from which the Control became inoperative, owing to electric failure. We were told by counsel for the respondents, that Control plays a key note in regulating the movement of trains. From the figures in the tabular statement above, we notice that the timing of 0215 hrs recorded by ASM/DAJ, corroborates with that of Control in respect of KGW. Prima facie, these entries seem⁴⁸ credible.

48. It is noticed, that with normal speed, a train should take only 15 minutes to traverse between DAJ to KDN. If that be the case, it could be inferred that KGW arrived on the "outer" of KDN at 0230 hrs, if not slightly earlier, not having entered the platform straightaway. If so, it is not clear to us as to how the applicant expected KGW to arrive on KDN station at 0245 hrs, when by his own statement he admits, that it was blocked at 0235 hrs, and as to why he could not promptly convey, to the ASM/DAJ, that KGW was held up on the "outer" at KDN. This, in our view, was all the more urgent, as the trains between DAJ and KDN and vice versa were "unscheduled" (as told to us by Shri Narasimhan) and the Absolute Block System had failed and PW-8 is said to have experienced difficulty in operating the signals. Therefore, every minute was important, as the normal running time of a train between DAJ and KDN was barely 15 minutes. The applicant has not explained satisfactorily his inertia, during this crucial intervening period of 10 to 15 minutes.



49. We cannot imagine that ASM/DAJ would have despatched DLE from DAJ to KDN at 0300 hrs, without clearance by the applicant, specially when Control had failed from 0220 hrs as could be seen by us from the Control Chart. It needs to be realised, that the trains between Stations cannot run in a vaccum and their smooth running can be ensured, only by all concerned working as a team in concert, specially in the present case, when the Absolute Block System had failed. PW-7 and PW-8 were subordinate to the applicant and their deposition needs to be viewed in in the totality of evidence and in its reality. Mere ⁴⁴ netpicking of disparities in timings of the trains as deposed by various witnesses, without examining the evidence in its entire gamut, would only lead to "missing the woods for the trees" and not help unravel the truth.

50. We are convinced in the light of the foregoing, that the applicant was palpably remiss in his duty as ASM/KDN, particularly at a time when the Absolute Block System had failed and it was imperative that in those circumstances, he should have been extra vigilant and cautious. We have no doubt that this led to the fatal accident of DLE colliding with KGW on 22-6-1982, resulting in the unfortunate death of the Guard of KGW.



51. We are indeed shocked at the callous and nonchalant behaviour of the applicant bordering on inhumanity, in not rushing to the aid of the Guard of

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KGW presto, when he lay mortally wounded, and the seriousness of his condition was promptly brought to his notice, by PW3 and others. God alone knows what kept the applicant so engrossed and preoccupied, rather obsessed with his registers, at this critical moment and for what motive? This surely does not fit in with the natural sequence of human conduct.

52. Shri Narasimhan pointed out the negligence on the part of ASM/DAJ, in not having ascertained, that KGW had a red tail lamp at its rear, in accordance with the railway regulations. He pleaded, that if at all, his client was to be adjudged guilty of the charge, contributory negligence of the like by ASM/DAJ and others, as brought out by him earlier, in regard to record of timings, securing clearance of the trains ~~at~~. ^{it} should not be lost sight of, by us. He fervently pleaded, that his client had undergone no little mental strain and trauma, during the rather inordinate period of 4 years of his suspension and had suffered the ignominy of arrest. Besides, proximate to the date of the accident, he said, he was on long hours of duty at a station, which must have told on his nerves and impaired his mental concentration. All these factors he urged, need to be considered by us with due sympathy.



53. He also pleaded, that the Tribunal should before deciding this case, take into account the findings of the CJM, Bellary, in Criminal Case No. 631 of 1983 wherein he had given detailed reasons for acquitting his client.

[Signature]

54. We have duly taken into account, the above submissions of Shri Narasimhan. We have carefully gone through the judgment of the CJM, Bellary in the above case. We are of the view that the decision of the CJM in C.C.No.631 of 1983 does not touch the various aspects, which we have discussed and analysed above. In our view, the IO, DA and the AA have cogently and dispassionately articulated the reasons for their findings/decisions. The DA and the AA have reached their decision in accordance with law and there is nothing to show, that it was the result of whim, caprice or fancy. They have taken due care to ascertain the facts and to ensure that the relevant law was correctly applied and that their decision was just and proper and the punishment imposed commensurate with the guilt. We are, therefore, convinced, that all of them applied their mind to the case and that their decisions/conclusions, were not without evidence and that the applicant was guilty of the charges framed against him in the DE. We shall give due thought to the instances of contributory negligence on the part of others referred to by Shri Narasimhan, while deciding on the ^{quantum} ~~question~~ of penalty.

55. As a last resort, Shri Narasimhan pleaded for compassion on his client, in the award of punishment, which he said was far too severe and disproportionate, as compared to the nature of his so called



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lapse

lapse or negligence. But, for the sad incident of demise of the Guard of KGW in the accident, this lapse or negligence on the part of his client, he passionately urged, would not have been viewed by the railway administration, so gravely. He also pleaded that the past service record of the applicant be taken into account, which he said was without blemish, while considering the severity of the punishment meted out to him.

56. Shri Sreerangaiah strongly opposed this submission of Shri Narasimhan inviting our attention to Rule 6(ix) and its proviso, which he said, statutorily ordained, that the minimum punishment in case of accidents of the like was removal or dismissal from service. He further submitted, that this Tribunal has no power to modify the punishment imposed, to fortify which, he relied on the following decisions of the Supreme Court:

- (i) AIR 1962 SC 1130 (A.N.D'SILVA v. UNION OF INDIA); and
- (ii) AIR 1963 SC 779 (STATE OF ORISSA v. VIDYABHUSHAN).

57. As regards the contention of Shri Sreerangaiah, that this Tribunal has no power to modify punishment, we would invite attention to the observations of the Supreme Court, in AIR 1987 SC 386 (S.P.SAMPATHKUMAR v. UNION OF INDIA & ORS.) where it pointedly remarked, that the Central Administrative Tribunal is a substitute for the High Court not only in form and de jure,



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but

but also in content and de facto. We therefore maintain, that this Tribunal has the power to modify punishment, as justifiable in the circumstances of each case and we have in fact exercised that power in a number of cases in the past. We, therefore, reject the above contention of Shri Sree-rangaiah.

58. We have perused the Service Book of the applicant. We notice, that the submission of Shri Narasimhan that the service record of his client is not without blemish, does not accord with facts. There seem to be quitesome "red entries", in his Service Book, which are not complementary to him:

(i) He was warned on 5-4-1972, for detaining a train unduly, while he was on duty.

(ii) He was found to have imbibed liquor while on duty and not to have maintained the Station records properly for which he was placed under suspension, from 10-4-1981 to 14-5-1981 and punishment, by stoppage of his increment for a period of two years.

(iii) He was again placed under suspension, from 9-12-1981 to 26-1-1982.

59. John Stuart Blacket, an eminent Jurist has expressed eloquently, as to where justice should be tempered with mercy. He states thus almost in the form of an aphorism:

"Sympathy without judgment, is like water, apt to degenerate into intoxication, Judgment without sympathy, is like water without heat, destined to end in ice"



60. We have carefully pondered over the fervent alternative plea of Shri Narasimhan, to take into account, all extenuating circumstances he explained at length, to minimise the severity of the punishment imposed on his client. We are moved by this plea, even though the past service record of the applicant does not inspire one to edify. Nevertheless, we feel, taking an overall view of the case, the applicant who had put in more than two decades of service and had yet another eight years of service ahead of him, should not be sent home without some recompense for this long service. Though it is tragic, ^{as far} a Railway Guard lost his life in this accident, our judicial conscience prompts us, that there is yet a warrant for a compassionate view, taking into account various factors as passionately pleaded by Shri Narasimhan. We do so, keeping before our mind the above aphorism of Blacket.

61. In the light of our above discussion, we make the following orders and directions:

(i) We uphold the impugned orders of the AA and DA, to the extent they hold the applicant guilty of the charge levelled against him and dismiss this application to that extent.

(ii) We allow this application in part and modify the impugned orders of the AA and DA, to that of compulsory retirement of the applicant from service from 24-1-1986.

(iii) We direct the respondents to determine the pension and other retiral benefits due to the applicant on the basis of this order, in accordance with law and arrange for their payment to him, subject to recovery of any amount due from him to Government, from out of the same, with all such expedition as is possible in the circumstances of the case and in any event, within a period of four months, from the date of receipt of this order.

62. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties, to bear their own costs.



Sd/-

(K. S. PUTTASWAMY) 22/11
VICE CHAIRMAN.

Sd/-

(L. H. A. REGO) 22/11/1988
MEMBER(A).

TRUE COPY

R. Venkatesh
DEPUTY REGISTRAR (JDL) 2785
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE