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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 54/92

Transfar Application No: --

DATE OF DECISION: 6.12.95

Xavier Francis Fernandes

-----Petitioner

Mr.G.S.Walia

-----Advocate for the Petitioners

Versus

U.C.I. & Ors.

-----Respondent

Mr.N.K.Srinivasan

-----Advocate for the Respondent(s)

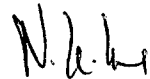
CORAM :

The Hon'ble Shri B.S.Hegde, Member(J)

The Hon'ble Shri N.K.Verma, Member(A)

1. To be referred to the Reporter or not ? ~~Y~~
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

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(N.K.VERMA)
Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 54/92

6th this day of December 1995

Hon'ble Shri B.S.Hegde, Member(J)

Hon'ble Shri N.K.Verma, Member(A)

Xavier Francis Fernandes,
Lineman Grade II,
Western Railway,
Borivali, Bombay.

.. Applicant

(By advocate Shri G.S.Walia)

-vs-

Union of India and Ors.

.. Respondents

(By advocate Shri N.K.Srinivasan)

O R D E R

(Per N.K.Verma, Member(A))

In this O.A. the applicant Xavier Francis Fernandes working as Lineman Gr.II, under Chief Traction Foreman, Western Railway, has assailed impugned order at Ex.'E' dt. 18-4-1990 by which he was reverted to the post of Lineman Gr.II at the initial stage of pay of Rs.1200/-p.m. with a direction that he would never be considered for promotion to the post of Tower Wagon Driver in future.

2. The applicant's case in brief is that he was appointed to the post of Tower Wagon Driver in the scale of Rs.1320-2040(RP) and while working as such he met with an accident on 5/6-3-89 with a stationary goods train. An enquiry was conducted by the Divisional Electrical Engineer(TRD)

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Western Railway, Bombay Central along with Divisional Safety Officer, Western Railway, Bombay Central to inquire into the accident and the Enquiry Committee held the applicant responsible for that accident. The applicant was placed under suspension on 3-4-89 and subsequently chargesheeted on 31-5-89. An Inquiry Officer was also nominated who conducted the enquiry and submitted the report to the disciplinary authority. The disciplinary authority accepted the findings of the Inquiry Officer and removed the applicant from service vide order dt. 19-10-89. The applicant preferred an appeal against the removal from service to the appellate authority i.e. Additional Divisional Railway Manager (Suburban) Western Railway, Bombay Central. The attention of the appellate authority was pointed towards the serious lacunae in the conduct of departmental enquiry and therefore a prayer was made for quashing and setting aside of the enquiry report and order of removal from service. However, the appellate authority by an order dated 18-4-90 on appeal reduced the punishment of removal from service to that of reversion from the post of Tower Wagon Driver to Lineman Gr. II fixing the applicant's pay at the minimum of Rs. 1200/- The period of suspension from 3-4-89 to 22-10-89 was treated as not spent on duty. The impugned order has been assailed on the ground that it is bad in law inasmuch as it is vitiated by double jeopardy

and the fact that Inquiry Officer's report was not furnished to the applicant when the disciplinary authority took the decision to remove the applicant from service. The fact finding enquiry was conducted by Senior Electrical Engineer whereas the departmental enquiry was conducted by an Assistant Electrical Engineer.

3. The respondents in their reply have taken the preliminary objection to the O.A. that it is barred by limitation u/s. 21 of the A.T. Act. The order of the appellate authority was passed on 2-4-90 which was received by the applicant on 10-4-90 but the present O.A. was filed only in December '91. No application has been made for condonation of delay. Moreover the impugned order dt. 18-4-1990, Ex. 'E', is only a posting order issued by the respondents and this is not the appellate order by which the penalty of removal from service has been modified to that of reduction in rank to a lower grade. The appellate authority's order has been annexed now at Annexure R-1 dt. 2nd April, 1990. Respondents also brought to the notice that the applicant has not chosen to file any appeal against the order passed by the appellate authority or the order dt. 15-10-90 at Ex. 'F' i.e. the order regarding treatment of the suspension period as 'Not spent on duty'. The doctrine of double jeopardy has been denied by the respondents. They have also denied that the disciplinary authority's order was vitiated because of non-supply of the enquiry report since the effect of Hon'ble Supreme Court judgment in Mohammed Ramzan Khan's case is only prospective in its

application but case of the applicant was decided on 2-4-90 much before Ramzan Khan's case came into operation. They have also sought that the Inquiry Officer in the disciplinary proceedings can be of a lower status than the officer who conducted the fact finding enquiry.

4. During the course of arguments Mr. Walia brought to our notice that the report of the fact finding committee was not served on the applicant. Besides the fact finding committee was composed of Shri P.C. Saigal who is also the disciplinary authority in the case and therefore the punishment order passed by the disciplinary authority has been influenced by his personal bias. Shri Walia, however, was not able to substantiate his allegation that Shri Saigal was associated with the fact finding committee as he had not annexed the copy of the fact finding committee's report. It has been averred by the applicant in the O.A. that the fact finding report was conducted by Divisional Electrical Engineer (TRD) who was also assisted by a Divisional Safety Officer. Having said so in para 4.2 of the O.A. he also mentions that the disciplinary authority in the matter was Senior Divisional Electrical Engineer (Suburban), Western Railway. Since the copy of the fact finding report has not been annexed by the applicant Shri Walia was not able to substantiate that in fact the officer who conducted the enquiry was the same Shri Saigal as Divisional Electrical Engineer (TRD) who later on assumed the responsibility

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of the disciplinary authority in the status of Sr.Divisional Electrical Engineer(Suburban)Western Railway. Other argument by Shri Walia was in relation to the enquiry report having been vitiated by the non production of witnesses quoted in the chargesheet and the facility of examining them during the course of enquiry. Further more Shri Walia argued non application of mind by the appellate authority while disposing of the appeal filed by the applicant on 4-12-1989. In this connection Shri Walia strenuously argued that the appellate authority was required to apply his mind as stated in para⁴/of the judgment in the case of Ram Chander vs. U.O.I., 1986 SCC(L&S)383 decided on 2-5-1986. In this para the Supreme Court has reiterated that "It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty or remit back the case to the authority which imposed the same. It was held that the word 'consider' in Rule 27(2) of the Rules implied 'due application of mind'. The court emphasized that the Appellate Authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision." Shri Walia stated that

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a perusal of Ex.'E' would indicate that no due application of mind was made by the appellate authority and he therefore argued that the appellate order impugned at Annexure 'E' must be quashed in the light of Supreme Court's judgment.

5. Shri N.K.Srinivasan, learned counsel for the respondents ~~refuted~~ ~~xxxxxx~~ all the averments made by the applicant in the reply to the O.A. and also reiterated that the appellate order cannot be faulted on account of due application of mind. He stated that the impugned order at Ex.E was not the appellate order. He drew our attention to the appellate order at R-1 which was a reasoned order giving the grounds on which the appellate order was passed after hearing the applicant in person. He also produced the personal file dealing with the departmental enquiry of the applicant. The appellate order very clearly has indicated that the conclusion arrived at is based on the evidence on record. During the personal hearing the applicant himself had admitted that he was unable to stop his vehicle in time to avoid collision with stationary goods train which was on track. So he was found to be fully responsible for the accident. However, considering the fact that he was promoted from the post of Khalasi to Tower Wagon Driver the punishment ^{was} ~~reduced~~ by reverting to the previous post of Lineman Gr.II in the scale of pay of Rs.1200-1800 at the initial stage of pay of Rs.1200/- per month. ^{The DAR file was also produced for our perusal} In the notings of this file it has also been brought out that as per ~~xxxxxx~~

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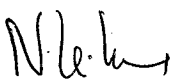
Rule 6 of Railway Servants (D&A) Rules, 1968 in cases of person found guilty of any act or omission which resulted or would have ordinarily resulted in collision of railway train one of the penalties specified in clauses VIII & IX i.e. Removal from service, dismissal from service shall ordinarily be imposed and when such penalty is not imposed, the reasons therefore shall be recorded in writing. The appellate authority has done exactly this. He has given a hearing to the applicant who prayed mercy and as a result thereof instead of imposing the extreme penalty of removal from service the same was modified to that of reduction in rank to the lowest scale of pay. This order of the appellate authority could ^{by} no stretch of imagination be said to be lacking any due application of mind. This file also contains the entire proceedings of the enquiry wherein it is seen that witnesses as required by the applicant were called and examined. Wherever such witnesses had no relevance to the enquiry, examination of that witness was denied. Lastly Shri Srinivasan also stated that the applicant had the opportunity of making a revision petition to the General Manager which opportunity he has not availed of and he has come to the Tribunal without exhausting the alternative remedies.


6. We have given serious consideration to all averments, pleadings and arguments of both the sides. The applicant was found at fault for the collision with the stationary goods train which was proved during the enquiry. As per the rules of

N. K. Gupta

departmental proceedings existing at that time a copy of the inquiry report was not to be supplied to the applicant and he was imposed the penalty of removal from service which had to be given in view of the provision of Rule 6 of the Railway Servants (D&A) Rules, 1968. The points made by the applicant in regard to the lacuna in the departmental proceedings were gone into by the appellate authority as per his orders at R-1 and he found that the findings was arrived at on the basis of evidence on record. However, in view of the past service of the applicant extreme penalty of removal was reduced to that of reduction in rank at the initial stage of Rs.1200/-per month. To our mind the appellate order does not suffer from the lack of due application of mind. It is a speaking and reasoned order in which the appellate authority has been generous to reduce the penalty as enjoined in the rules. ^{We} ~~They~~ have also found that the preliminary fact finding ^{Committee} did not have Shri Saigal as one of the Member of that committee. Therefore the question of disciplinary authority having a bias mind did not arise. It is now well settled point of law that Inquiry Officer can be a junior officer compared to the fact finding officer and hence the other points raised by the applicant does not merit any consideration.

7. In view this we find that the O.A. has no merit and therefore it fails. Accordingly the O.A. is dismissed with no order as to costs.


(N.K.VERMA)
Member(A)


(B.S.HEGDE)
Member(J)