

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 32/92

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DATE OF DECISION 19-6-92

Abdul Razak

Petitioner

Mr. G S Walia

Advocate for the Petitioner(s)

Versus

Union of India &amp; ors

Respondent

Mr. N K Srinivasan

Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. Justice S K Dhaon, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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v.c.

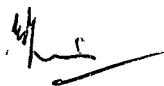
the relevant portion of the Fact Finding Committee's report in the charges furnished to the applicant.

6. The question to be decided by us is as to whether the applicant was really prejudiced by the failure of the authority concerned to furnish him a copy of report of the Fact Finding Committee. It appears to be an admitted position that an accident took place in a fraction of a second and that the applicant had to act with utmost promptitude to avert the same. In that situation, the distance, as mentioned in the Fact Finding Committee report, which has been referred to above, assumed significance. Had the applicant been told of the finding regarding the distance, possibly he could have given some probable explanation. There can be no getting away from the fact that the report of the fact finding committee has been used against the applicant by the punishing authority. In fact it has been utilised as a relevant material.

7. We have considered the matter with due care. We feel that in this case, the principles of natural justice have been violated by the failure of the authority concerned to furnish the applicant with the copy of Fact Finding Committee Report. If that be so, the order of punishing authority has to be struck down. Since the two authorities, the appellate authority and the revisional authority upheld the order of the punishing authority, nothing will turn upon the findings of the two said authorities.

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8. The application succeeds and is allowed. The order dated 10.1.1990 passed by the punishing authority and confirmed vide order dated 2.5.90 passed by the appellate authority and the order dated 17.12.90 passed by the revisional authority are quashed. There shall be no order as to costs.



( M Y Priolkar )  
Member (A)



( S K Dhaon )  
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
PRESCOT ROAD, BOMBAY-1

OA No. 32/92

Abdul Razak  
Motorman, Western Railway  
C/o. G S Walia  
Advocate High Court  
16 Maharashtra Bhavan  
Mazzanine floor; Bora Masjid  
Street; Behind Handloom House;  
Fort; Bombay 400001 ..Applicant

V/s.

Union of India through

1. The General Manager  
Western Railway  
Churchgate  
Bombay 20
2. Divisional Railway Manager  
Western Railway; Bombay Central  
Bombay 400008
3. Senior Divisional Electrical  
Engineer (TRO)  
Western Railway  
Bombay Central  
Bombay 400008 ..Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.  
Hon. Shri M Y Priolkar, Member(A)

APPEARANCE:

Mr. G S Walia  
Advocate  
for the applicant

Mr. N K Srinivasan  
Counsel  
for the respondents

ORAL JUDGMENT: DATED: 19.6.1992  
(PER: S K Dhaon, Vice Chairman)

The applicant, a driver of a train, was awarded a minor punishment in departmental proceedings. His increment for a period of two years had been stopped. He remained unsuccessful in the appeal as well as in the revision. Hence this application under Section 19 of the Administrative Tribunals Act, 1985.

2. Only one charge was levelled against him and that was that on 26.8.89, he, while working, 315 Dn, with unit nos. 653/654, failed to apply auto brakes promptly from coach no.654/C, when the EP brakes had failed. This resulted in the dashing of the train with dead-end of ADH PF No.6, causing injuries to 3 persons.

3. The defence taken was that that the applicant acted with due delegece and there was hardly any time available to him to apply the auto-break.

4. It appears that prior to the initiation of the departmental proceedings a Fact Finding Committee had met and investigated the matter. Shri P C Sehgal, the officer who has passed the punishment, was also a Member of the Fact Finding Committee. The Committee, it appears, inter alia recorded the finding that a distance of 5.18 m was available for the motorman (the applicant) as against the distance of 4.5 m required for applying the break at the dead-end. The punishing authority categorically recorded the finding that the accident could have been averted, if the applicant was prompt enough to apply the auto-break.

5. One of the contentions, on behalf of the applicant, of Mr. GS Walia is that admittedly a copy of the report of the Fact Finding Committee had not been given to the applicant and admittedly the punishing authority had placed reliance on the same. We may note that there is not a whisper of

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