

In the Central Administrative Tribunal
Mumbai Bench, Mumbai

Camp at Nagpur

O.A. No. 1026 of 1993

Decided on 9/11/98

Shri U.G. Ambade through Applicant
LRs
(By Advocate: Shri S.C. Shrimali)

Versus

D.R.M. Central Railway, Nagpur & Ors.
(By Advocate: Shri P.N. Chandurkar)

Coram

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. RATAN PRAKASH, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches
of the Tribunal? No

Adige
(S.R. Adige)
Vice Chairman (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Mumbai Bench, Mumbai

CAMP AT NAGPUR

O.A. No. 1026 of 1993

Nagpur, dated this the 9th day of November, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. RATAN PRAKASH, MEMBER (J)

Shri Udaybhanu Govindrao Ambade,
Retd. Driver 'A' Special,
Central Railway,
Nagpur (since deceased) through L.Rs

1. Smt. Rajni,
W/o late Shri Udaybhanu Ambade,
2. Kum. Priti,
D/o late Shri Udaybhanu Ambade
3. Kum. Rashmi,
D/o late Shri Udaybhanu Ambade
4. Mr. Hemant,
S/o Shri Udaybhanu Ambade Applicant

(By Advocate: Shri S.C. Shrimali)

Versus

1. Union of India through
The Divl. Railway Manager, Central Rly.,
Kingway, Nagpur.
2. The Additional Divl. Railway Manager,
Central Central, Kingsway,
Nagpur.
3. The Sr. Divl. Mechanical Enginner (Power),
Central Rly., Kingway, Nagpur.
4. The General Manager,
Central Railway, Bombay V.T. Respondents

(By Advocate: Shri P.N. Chandurkar)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' orders
dated 20.12.91 (Ann. 1) imposing the penalty of
compulsory retirement and the revision order dated
16.12.93 (Ann. 5) rejecting the appeal.

2. Applicant (who meanwhile unfortunately expired on 21.4.95 and whose legal heirs have been brought on record) was proceeded against departmentally vide charge sheet dated 29.4.91 (Ann. II) on the charge that (i) as Driver 'A' Ajni while working on the Tamil Nadu Express proceeding from Nagpur to BPQ (Ballaharshah) on 1.4.91 he displayed serious neglect of duty, in as much as he failed to observe aspect of the signal while approaching WRR (Warora) station and passed distant signal and down home signal in blank position and also passed Main Line starter at danger at WRR Station, and (ii) he permitted an unauthorised driver Shri K.L. Grover to handle the locomotive and call out signal aspects in the section for which Shri Grover had no experience or training.

3. The E.O. in his findings dated 13.8.91 held that applicant and his assistant had passed the Down Distant and Down Main Line Home Signal in "Green" position, but in the face of approaching train, approaching signals might have gone blank, but seeing the departure signal at Danger, applicant and his assistant had controlled and stopped the train in the minimum braking distance, resulting in passing Down Main Line Starter Signal at Danger which was proved. However, in regard to the second part of the charge, he held that Shri Grover had proper authority to handle the locomotive, and hence this part of the charge was not proved.

4. Accepting those findings the Disciplinary Authority imposed the penalty of compulsory retirement with immediate effect vide impugned order dated 20.12.91, against which applicant claims to have filed an appeal to appellate authority viz ADRM, Nagpur on 20.2.92 (Ann. V), but on receiving no reply he sent a representation dated 14.5.92 addressed to the G.M., C.R., Bombay with a copy to ADRM, Nagpur, followed by a reminder to ADRM, Nagpur on 28.1.93 (Ann. VII) to which he states also he received no reply. The G.M., Central Railway by his order dated 16.12.93 treated applicant's representation as a review petition and dismissing the same, which was filed subsequently by applicant. That order dated 16.12.93 disposed of not only applicant's representation, dated 14.5.92 but also an earlier representation against the penalty of reduction of a lower post for period one year (non-cumulative) for a similar instance of alleged misconduct of crossing the danger signal at danger, while working on the Geetanjali Express at Badnera.

5. Applicant whose date of birth is stated to be 19.7.37 would in the normal course have retired on superannuation on 31.7.95. Instead he was compulsorily retired by way of penalty on 20.12.91 and unfortunately expired on 21.4.95. Normally this O.A. would have abated with

applicant's demise, but in the event the O.A. would succeed the period 20.12.91 to 21.4.95 might have had to be reckoned in the calculation of the final emoluments admissible to applicant (and now to his heirs) and it is for this reason that we heard applicant's counsel Shri Shrimalli and respondents' counsel Shri Chandurkar in some detail.

6. Shri Shrimalli has dealt at length on the fact that E.O. had noted that although the distant as well as the home signal were in green position and applicant was justified in passing through the station at speed, it was his presence of mind that upon seeing the departure signal at danger he controlled and stopped the train in the minimum braking distance, averting a serious collision even if it meant crossing the main line starter signal. Hence he contended that applicant been unjustly and unfairly penalised.

7. We note that respondents in their reply have stated that applicant never submitted any appeal to Respondent No.2 (ADRM, Nagpur), but the appeal petition dated 20.2.92 as well as the reminder dated 28.1.93 are on record and we have no reason to believe that applicant did not send the same. Respondents have also taken the ground of limitation, but we notice that this O.A. was filed on 13.9.93, which in fact is well before his

representation was disposed of by order dated 16.12.93. After receipt of that order, which respondents state he received vide acknowledgment dated 12.1.94, applicant also filed M.A. No. N-109/94 dated 2.9.94 to amend the O.A. so as to impugn the aforesaid order dated 16.12.93 which was allowed by order dated 20.7.95. Under the circumstances we hold that we would not be justified in rejecting the O.A. on grounds of limitation.

8. A perusal of the impugned order dated 16.12.93 reveals that it is a bald and cryptic order and gives no reason why the G.M., C.R. saw it fit to reject applicant's representation. In fact, as noted above, by the impugned order dated 16.12.93 the G.M., C.Rly. has disposed of not only applicant's representation against the penalty of compulsory retirement, but also an earlier representation against the punishment of reduction to a lower post for one year (N.C) for an allegedly similar incident and the language used in the impugned order dated 16.12.93 makes it clear that the G.M. was influenced by the penalty imposed on applicant in the earlier incident in deciding to reject his representation against the penalty of compulsory retirement.

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9. It is well settled that orders in disciplinary proceedings are quasi judicial orders and Railway Board themselves have issued detailed instructions that orders in disciplinary proceedings should be self-contained, reasoned and speaking orders whether at the disciplinary, appellate or review stage and should discuss the various grounds taken by the charged official. In the present case, respondents have contended that applicant had not filed any appeal (although applicant states that he had and a copy of the same is also on record), & it was all the more necessary that the G.M., Central Railway should have passed a self-contained and reasoned order which discussed the various grounds taken by the applicant in his representation (review) to him. This has not been done by the G.M., Central Railway while passing the impugned order dated 16.12.93 and furthermore, while rejecting applicant's representation against compulsory retirement he has been influenced by the earlier punishment of reduction to a lower post for one year (NC) meted out to applicant which was not the subject matter of the departmental proceedings initiated vide charge sheet dated 29.4.91.

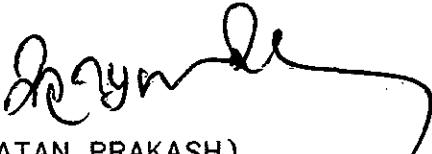
10. Various judgments have been cited by Shri Shrimalli but the foregoing discussion is sufficient to persuade us to hold that the impugned order dated 16.2.93 suffers from serious infirmity and cannot be sustained in law.

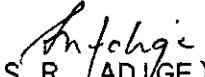
11. Under the circumstances without interfering with the Disciplinary Authority's order dated 20.12.91 at this stage, the impugned order dated 16.2.93 passed by respondents is quashed and set aside. The case is remanded back to the respondents for disposal of the applicant's appeal dated 20.2.92 by the ADRM, Nagpur by ^a~~✓~~ detailed, speaking and reasoned order, in accordance with rules and instructions, within three months from the date of receipt of a copy of this order under intimation to late applicant's legal heirs after giving them a reasonable opportunity of being heard in person.

12. Thereafter if any grievance still survives it will be open to late applicant's legal heirs to press their representation dated 14.5.92, and in the event that they do so, the G.M., Central Railway should, after treating it as review petition, similarly dispose of the same by detailed, speaking and reasoned orders under intimation to late applicant's legal heirs, in accordance with rules and instructions within

three months of its being so pressed, after giving them a reasonable opportunity of being heard in person.

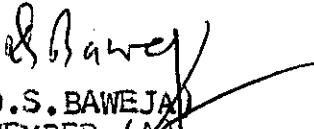
13. This O.A. stands disposed of in terms of Paras 11 & 12 above. No costs.

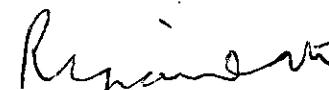

(RATAN PRAKASH)
Member (J)


(S.R. ADVANI)
Vice Chairman (A)

Dated: 9.11.1998:

This Judgment is pronounced in the open Court to day by the Bench comprising of Justice Shri R.G.Vaidyanatha, Vice-Chairman and Shri D.S.Baweja, Member(A) under Rule 106 of the CAT Rules of Practice at Mumbai.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE - CHAIRMAN

9.11.98