IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 702/94

Date of Decision: 22/7/99

N.K.P.Khan — Applicant.

Shri P.G.Zare — Advocate for Applicant.

Versus

Union of India & Ors. — Respondent(s)

Shri Suresh Kumar — Advocate for Respondent(s)

CORAM:

Hon'ble Shri.Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri.D.S.Baweja, Member (A)

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal? ✗

(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 702/94

Dated this the 22nd day of July,1999

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Nathe Khan Pir Khan,
Diesel Driver,
Central Railway,
Bhusawal. ... Applicant

By Advocate Shri P.G.Zare

V/S.

1. Union of India through
the General Manager,
Central Railway,
Bombay V.T., Bombay.

2. The Divisional Railway Manager,
Central Railway,
Bhusawal. ... Respondents

By Advocate Shri Suresh Kumar

O R D E R

(Per: Shri D.S.Baweja, Member (A)

The applicant while working as a Goods Driver on Central Railway was issued major penalty chargesheet dated 1.4.1991 with the charge of causing serious accident which resulted in collision and derailment of engine and 21 wagons and causing injuries to six persons. An enquiry officer was nominated and enquiry was conducted in which the applicant had participated.

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The report of the enquiry officer was given to the applicant and the applicant made a defence against the same. The disciplinary authority as per order dated 4.6.1991 based on the enquiry officer's report imposed punishment of removal from service. The applicant made an appeal against the same dated 2.7.1991 but the same was rejected as per the order dated 18.7.1991. The applicant thereafter made a revision application on 11.8.1991 and this too was rejected as per order dated 11.10.1991. The applicant then made a review application dated 31-1-1992 and the same was replied as per letter dated 12.8.1992 advising the applicant that since he had already availed all the channels provided under D&A Rules for his defence, there is no avenue open to consider the case of the applicant. Feeling aggrieved by the punishment imposed, the present OA. has been filed by the applicant on 27.5.1994 seeking the following reliefs :- (a) to set aside the order of penalty of removal from service. (b) to direct the respondents to review the case of the applicant on humanitarian grounds and modify the penalty.

2. The applicant has based his defence in assailing the impugned punishment order on the following grounds :- (a) The punishment has not been imposed by the competent authority and therefore the penalty imposed is in violation of provisions of Article 311 of the Constitution of India. (b) The

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enquiry officer, the disciplinary authority and the reviewing authority have not passed speaking orders discussing the evidence on record. The train could not be stopped due to some defects with the engine inspite of the best efforts of the applicant and this aspect had not been taken into consideration.

(c) The penalty imposed is harsh and the same deserves to be reviewed on humanitarian grounds. Further, the guidelines laid down as per letter dated 28.6.1988 for imposing major penalty taking into account the length of service had not been followed. The applicant had completed 30 years of service and was due to retire shortly and therefore the penalty of compulsory retirement should have been imposed.

3. The respondents in the written reply have contested the contention of the applicant with regard to competence of the disciplinary authority. The respondents have submitted that the applicant was promoted as per the order dated 7.6.1988 by Divisional Personnel Officer and the penalty of removal from service had been imposed by the Divisional Mechanical Engineer who is equivalent in rank and therefore no illegality has been committed. The respondents further submit that the enquiry had been conducted giving reasonable opportunity to the applicant and the enquiry officer had held the applicant guilty of the charges.

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A copy of the enquiry report was furnished to the applicant and he had submitted his defence against the same. The disciplinary authority had passed the order imposing the punishment after due consideration of the defence of the applicant and findings of the enquiry officer. Similarly, the appellate authority had disposed of his appeal after due application of mind by considering all the aspects through a speaking order. It is further submitted that the reviewing authority, i.e. Divisional Railway Manager had given a personal hearing to the applicant and the reviewing authority did not find any merit in his case. The respondents further submit that the applicant had made gross violation of the operating rules which caused serious accident and therefore the punishment imposed is in-commensurate with the gravity of the charges and no review of the punishment is called for. In view of these facts, the respondents plead that the application is devoid of merits and deserves to be dismissed. The respondents have also taken a plea that the application is barred by limitation as the order dated 11.10.1992 is challenged through this OA. filed in 1994.

4. The applicant has filed rejoinder affidavit controverting the submissions of the respondents and reiterating the stand in the OA. The applicant has placed great emphasis on the review of the punishment. The

applicant has again pleaded that there is a case for review of the punishment imposed and in view of his 30 years of service and being close to retirement, the penalty deserves to be converted from removal to compulsory retirement.

5. The applicant has filed a Misc. Petition(M.P.) No. 217/98 through which he has brought out that a criminal case No. 611/92 was filed before the Court of Railway Magistrate, Khandwa for the same accident and he has been acquitted in the said criminal case as per the judgement dated 22.12.1997. The applicant through this M.P. brought on record a copy of the judgement dated 22.12.1997 with a prayer that the same may be taken into consideration while considering the case of the applicant for the reliefs prayed for.

6. We have heard the arguments of Shri P.G.Zare, learned counsel for the applicant and Shri Suresh Kumar, learned counsel for the respondents.

7. The first ground taken by the applicant is that the order dated 4.6.1991 imposing the punishment of removal from service had been passed by an authority who is not competent as he was not the appointing authority for the applicant. The applicant therefore pleads that the order is not sustainable as it is in violation of provisions of Article 311 of the Constitution of India. The applicant has further brought out that as per the delegation of powers in the establishment matters

as published in Central Railway Gazettee dated 1.11.1983, only Divisional Railway Manager (DRM) has been given full powers in respect of appointments against the posts controlled by the Division. In view of this delegation of power, the Divisional Railway Manager is the appointing authority for the applicant and therefore the punishment order passed by Divisional Mechanical Engineer is not legally valid since he is lower in authority than the DRM. The respondents, on the other hand, have controverted this submission of the applicant stating that promotion order of the applicant as Goods Driver was issued on 7.6.1988 under the signature of Divisional Personnel Officer and therefore he is the appointing authority for the applicant. It is further stated that the punishment order has been passed by Divisional Mechanical Engineer who is in the equivalent rank as that of Divisional Personnel Officer and therefore competent to impose the punishment under challenge. After considering the rival contentions and taking into account the material brought on record, we are unable to find any substance in the contention of the applicant. We note that the applicant has not controverted the submissions of the respondents in Para 5 of the written statement in the rejoinder reply. The applicant has brought on record the Gazettee Notification dated 1.11.1982 and on questioning the learned counsel for the applicant, could not confirm whether these

delegation of powers were still valid at the time when the punishment was imposed. From the promotion order dated 20.2.1988 brought on record by the respondents, it is noted that the same had been issued under the signature of Divisional Personnel Officer. No other authority has been indicated as to the approval of the promotion of the applicant. The counsel for the applicant during the oral submission sought to argue that the Divisional Personnel Officer had no role in the promotion of the applicant as the applicant belongs to Mechanical Department. We are not impressed by this submission. If no authority who had approved the promotion of employees covered in the order is mentioned, then the authority under whose signature the promotion order is issued is to be taken as the concerned authority ordering the promotion. Since the Divisional Mechanical Engineer who has passed the impugned punishment order is equal in rank to the Divisional Personnel Officer, we do not find that the disciplinary authority is not competent authority to impose the punishment. In view of this, we do not consider that there is any illegality in the punishment order on account of competence of disciplinary authority and the ground taken by the applicant is devoid of merit.

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8. The second ground taken by the applicant is that the enquiry officer had not taken the evidence on record while arriving at the findings that the charge against the applicant was proved. The applicant has submitted that he could not stop the train inspite of his best efforts due to some defects in the engine and this aspect had not been taken into consideration. On going through the enquiry report and the statement of applicant recorded during the enquiry, we find that this contention of the applicant is not tenable. The applicant in his statement has not brought out that he could not control the train on account of some defects with the engine. In fact, he had admitted the charges stating that he misjudged the spot from where he should have applied brakes to control the train after seeing the signal aspects. We further find from the defence statement submitted against the findings of the enquiry officer's report that he had not brought this aspect and in fact had stated that he accepts his fault and only prays for sympathetic consideration. No such plea had also been taken in his appeal dated 2.7.1991. In view of these facts, the applicant cannot take a plea now that the findings of the enquiry officer did not take into consideration the fact of some defects with the engine on account of which the applicant could

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not control the train. If this was his defence, then the same should have been put forward before the enquiry officer and not now while challenging the punishment order through this OA. We therefore do not find any fault with the findings of the enquiry officer. Further the orders of the disciplinary authority as well as appellate and revision authorities are based on the admission of the charges by the applicant. We therefore do not find any infirmity in their orders also.

9. As brought out earlier, the applicant through a Misc.Petition (MP) has brought on record a copy of the judgement dated 22.12.1997 in the criminal case filed against the applicant for the same accident before the Railway Magistrate, Khandwa. The applicant in this M.P. has brought out that since the applicant had been acquitted in the criminal case, this fact needs to be taken into consideration while going into merits in the reliefs prayed for through this OA. During the oral arguments, the learned counsel for the applicant placed strong emphasis on this aspect and pleaded that the findings of the enquiry officer and the punishment imposed based on the same is not sustainable as the charge of causing train accident had not been proved in the criminal case. After careful consideration of the judgement dated 22.12.1997 and the proceedings of the disciplinary action, we are unable to find any merit in the contention

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of the applicant. It is noted that the disciplinary proceedings were started by issue of chargesheet in 1991 and the punishment imposed by order dated 4.6.1991 much before the judgement in the criminal case on 21.12.1997. We do not also find any averment that applicant had asked for with holding disciplinary proceedings till the criminal proceedings are concluded. The punishment in the disciplinary proceedings has been imposed based on the admission of charges by the applicant. The judgement in the criminal case is based on the evidence led by the prosecution side. On going through Para 16 of the judgement dated 21.12.1997, it is noted that prosecution had failed to establish the charge against the applicant on account of lack of adequate evidence. Since the punishment through disciplinary proceedings had been imposed based on the admission of charge by the applicant himself, the findings in the criminal case which were based on the evidence led by the prosecution is therefore of no consequence and the applicant cannot make a plea that the punishment order through the disciplinary proceedings is not sustainable. It is a settled law as held by the Hon'ble Supreme Court through several judgements that the departmental enquiry and criminal trial can go on together as the nature of evidence and standard of proof required in two types of proceedings are entirely different. In this connection, we refer to one of such judgement of the Hon'ble Supreme Court in the case of Depot Manager, A.P.State Road

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Transport Corporation vs. Mohd. Yusuf Mia & Ors. 1997 SCC (L&S) 548. The Hon'ble Supreme Court in Para 8 of this judgement has brought out the difference between the two types of proceedings, i.e. criminal trial and departmental enquiry and has indicated that there is no bar to proceed simultaneously in the Departmental enquiry and trial in criminal case. In the present case, as brought out earlier, the departmental proceedings were finalised much earlier than the criminal proceedings and it is not the case of the applicant that he had asked for staying the departmental proceedings. Further, the applicant had admitted the charge in the departmental proceedings and the punishment is imposed based on the same. Therefore, in our view, acquittal of the applicant in the criminal case is of no consequence and the punishment imposed based on the disciplinary proceedings cannot be set aside on this count.

10. The last ground raised by the applicant is with regard to quantum of punishment. The applicant has pleaded that the punishment imposed is very harsh and he has made a prayer that the respondents be directed to review the same. In fact, on going through his defence and the appeal, we find that after admitting the charges, his entire emphasis had been on the quantum of punishment. In fact in the rejoinder reply he has come out that the punishment of removal from service

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should be converted into compulsory retirement in view of his more than 30 years of service and being close to retirement. The applicant has also sought to make out a case that he has been discriminated in respect of quantum of punishment as for the similar type of accidents, lesser punishment had been imposed. The applicant through Misc. Application No. 75/99 has brought out that in the 22 listed cases involving similar accidents resulting in derailment, the punishment of compulsory retirement had been awarded while the applicant has been awarded the harsh punishment of removal from service. The learned counsel for respondents however strongly opposed this plea of the applicant pleading that in the matter of punishment the provisions of Articles 14 and 16 of the Constitution of India are not applicable as each case is to be decided on its own merits and no comparison can be made in the matter of punishment imposed. We are in agreement with the stand of the respondents. The applicant has given the instances of the accident cases where in his opinion for the same nature of accident the punishment of compulsory retirement had been imposed. However, on questioning the counsel for applicant fairly conceded that there are many cases where for same type of accident, the punishment of removal from service had also been imposed, and the applicant had given the details of those cases only where lesser punishment had been given and applicant has prayed for similar consideration. We are not impressed by the contention of the applicant. Each case of disciplinary proceedings may be involving the

same type of accident has to be decided on its own merits considering the facts and circumstances of the case and no comparison can be made in the matter of punishment imposed. If such a comparison is to be permitted, then the penalty to be imposed for each type of accident or any other negligence or misconduct would have to be laid down with no discretion left to the disciplinary authority. This is not the intention of the disciplinary proceedings which are based on the principles of natural justice. The disciplinary authority has to decide the punishment to be imposed based on the circumstances and the facts in each case and the gravity of the charges and not act mechanically.

11. The applicant has filed one more M.P.No. 244/99 bringing out that for the same accident the other staff who had been held responsible for accident had been imposed lesser punishment while the applicant has been discriminated by imposing the punishment of removal from service. The applicant through this Misc. application has made a prayer that the respondents be directed to clarify as to why this discrimination has been meted to the applicant. The learned counsel for the respondents while reacting to this Misc. application has made the same argument as detailed earlier in respect of discrimination in punishment for similar type of accidents alleged by the applicant. The counsel for the respondents further brought out that the case of each employee held responsible for the accident under reference had been decided based on gravity of the charge framed

against him and no comparison can be made. We are in agreement with this submission. The punishment has to be in commensurate with the gravity of charge and no discrimination can be alleged in respect of the penalty imposed. The applicant has also brought out that guidelines have been laid down as per Headquarters letter dated 28.1.1988 wherein it has been provided that keeping in view the length of service of an employee and on humanitarian grounds the punishment of compulsory retirement should be imposed instead of removal from service, but these guidelines had not been followed in the case of the applicant. We do not find any substance in this contention as these are only guidelines as brought out by the applicant and cannot be enforced as a matter of right. It is for the competent authority to keep these in view and decide the quantum of punishment in each case depending on the merits of the case. We therefore find no substance in these pleadings.

12. It is now a well settled legal position that the imposition of punishment is the right of disciplinary authority consistent with the gravity of the misconduct imputed and the evidence in support thereof. High Court/Tribunal in exercise of review power cannot normally interfere with the punishment imposed. Hon'ble Supreme Court in the case of B.C.Chaturvedi vs. Union of India, 1996(32) ATC 44 has laid down that interference with the punishment imposed may be called for where it shocks the judicial

conscience. The scope of judicial review with regard to quantum of punishment and when the interference is called for has been summed up in Para 18 of this judgement as under :-

> " 18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty.imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Similar view has been expressed by the Hon'ble Supreme Court in the recent judgement in the case of Apparel Export Promotion Council vs. A.K.Chopra, AIR 1999 SC 625. In the presnet case, the charge against the applicant is of causing a serious railway accident which resulted in derailment of engine and 21 wagons and casuing injury to six persons. The respondents have strongly opposed any review of the punishment submitting that the applicant has committed serious misconduct by violation of the operating

rules and causing a serious accident. After careful consideration of the facts of the case and the charge levelled against the applicant, we do not find that the punishment imposed shocks the judicial conscience. There is no doubt that the charge against the applicant is grave. The same is also proved on his own admission. Under such a situation, it is within the domain of competent authority to impose the punishment ~~keeping~~ taking into account account the seriousness of the accident caused by the applicant and endangering the safety of railway operation. The applicant has made a plea for conversion of the punishment into compulsory retirement. We find that this plea had been made before the appellate authority as well as revision authority and this plea had not been accepted by them keeping in view the serious ness of the accident caused by the applicant. The applicant has not made out any new grounds which persuade us to take a different view that review of the punishment is called for. In our considered view the punishment imposed does not shock the judicial conscience. Keeping in view the law laid down by the Hon'ble Supreme Court as brought out above and the seriousness of the charge levelled against the applicant, we do not find any case for review of the punishment or give any direction to the appellate or revision authority to review the punishment already imposed.

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13. In the light of the above discussion, we come to the conclusion that there is no merit in the OA. and the same is accordingly dismissed. No order as to costs. MPs 75/99 and 244/99 stand disposed of accordingly

(D.S.BAWEJA)
MEMBER (A)

24/7/99
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.