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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 23.05.2000

O.A. No. 979/1992

(Old No. OA 184/88)

Mool Chand Murjani son of Shri Bhagwan Das Murjani, resident of 10/1 Double Storied, Vaishali Nagar, Ajmer - Legal representatives of deceased Shri Mool Chand Murjani :-

1. Shri Ramesh Murjani aged about 33 years (son).
2. Shri Rajendra Murjani, aged about 31 years (son).
3. Shri Dinesh Murjani, aged about 22 years (son).
4. Shri Vinod Murjani, aged about 20 years (son).
5. Miss Sunita Murjani, aged about 19 years (daughter).

... Applicants.

v e r s u s

1. General Manager, Western Railway, Church Gate, Bombay.
2. Divisional Railway Manager, Western Railway, Ajmer.
3. Senior Divisional Operating Superintendent, Western Railway, Ajmer.
4. The Union of India through the General Manager, Western Railway, Church Gate, Bombay.
5. Chief Operating Superintendent, Headquarters Office, Church Gate, Bombay.

Mr. P.P. Mathur, Advocate, Brief holder for Mr. R.N. Mathur, Counsel for the applicants.

Mr. Manish Bhandari, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. N.P. Nawani, Administrative Member.

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: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

Applicant, Mool Chand Murjani, has preferred this application being aggrieved by the order of the appellate authority dated 29.4.87 (Annexure A/11) confirming the order of disciplinary authority dated 18.7.86 (/annexure A/8) removing him from service. By both the orders the applicant had been removed from service on the basis of the enquiry conducted with reference to certain charges. It is alleged against the applicant that on 25.10.94, while he was working as ASM (P) at AII Station at 22.05 hrs., the applicant concurred line with Private Number 42 for reception of COR-AII Juggler Down goods on Line No. 7 and PNU-KLL Down goods was concurred by him at 23.15 hours, with Private No.50. As per prescribed procedure for reception of trains in non-interlocked territory at Ajmer (which extends from line No. 4 to 8) personal instructions are required to be given to both side P/Jamadars as well as exchange of line labels and badges. This procedure was not properly followed by the applicant resulting into averted collision of PNU-KLL 1 Dn goods with load of COR-AII Juggler Down goods on line No.7. For this averted collision, the applicant was considered to be responsible. On the basis of these allegations, the applicant was charged for failure to give personal instructions to both sides of P/Jamadars as well as line labels and badges. The applicant also was charged for failure to follow the prescribed procedure as per para VII of S.W.R. of Ajmer Station. On the basis of these charges, about 12 witnesses were examined by the enquiry officer and consequently, it was held that those charges were proved beyond doubt and the applicant was held to be responsible for the averted collision. On the basis of the findings, the disciplinary authority ordered for his removal from service and the said order has been confirmed by the appellate authority. Hence, the applicant has approached this Tribunal with the present application.

2. It is brought to our notice that during the pendency of the OA, the applicant - Mool Chand Murjani, died and his legal representatives were brought on record as applicants.

3. Heard the learned counsel for both the sides.

4. The learned counsel appearing for the applicant contended that entire enquiry proceedings are vitiated for the reason that the charges were not framed by the competent authority. In respect of Class-III employess, the General Manager is the competent authority, and the delinquent employee also is a Class-III employee. Therefore, the order passed by the Senior Divisional Operating Superintendent was one without jurisdiction. He further contended that a major joint enquiry was conducted immediately after the averted collision by the officers lower in rank to the applicant and on the basis of such an enquiry, the

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applicant could not have been dismissed from the service. He further contended that certain documents demanded by the applicant were not furnished to him, therefore, the findings are vitiated. He also contended that both the disciplinary authority as well as the appellate authority did not consider his appeal statement vide Annexure A/7, therefore, the findings are vitiated. He also stated that the Point Jamadar, Shri Bahadur Singh was not competent to speak regarding the incident. He was also intoxicated at the time of accident and his evidence should not have been considered in proof of the charges. He further stated that certain documents were altered subsequently to the prejudice to the applicant, therefore, the findings are liable to be set aside.

5. As against these arguments, the learned counsel for the respondents submitted that the charge-sheet was furnished to the applicant by a competent authority. The applicant has not furnished any material to show that the Senior Divisional Operating Supdt. was not competent. He further stated that this point is urged for the first time in his appeal without there being any basis for that. If the applicant thought that there is substance in this point, then the same should have been raised before the disciplinary authority, but he has not done. This question would be a question of fact and no finding can be recorded as on today without any material on record. He further stated that the Tribunal does not exercise its jurisdiction as a second appellate authority, therefore, this point cannot be allowed to be raised at this stage. Learned counsel for the respondents further contended that the major joint enquiry was held immediately after the accident only to find out the nature of the averted collision as a preliminary enquiry and the said enquiry was not the basis for charges. Charges are framed against the applicant on the basis of the joint observations and the statements regarding joint observations have been furnished to the applicant and also the documents that were relied upon, were furnished to the applicant. Therefore, no illegality was committed in the enquiry. He further submitted that the statements of Point Jamadar, Shri Bahadur Singh, was a statement even relied upon by the applicant in his appeal statement. The applicant cannot say now that either there was no certificate as to his competency from the Inspector of Area Training School or he was intoxicated etc. Regarding the alleged alteration of the statement, he contended that there was a typographical mistake and it was corrected. The counsel appearing for the respondents stated that the appellate authority has considered all these aspects and held that there was no illegality in the order of the disciplinary authority, and the findings recorded by both the authorities do not call for any interference. He submitted that this is a case in which the findings are based on evidences. There are

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ample evidences both the oral and documentary and on the basis of the entire evidence on record, both the authorities held that the charges against the applicant have been proved and therefore, the impugned orders do not call for any interference by the Tribunal.

6. Learned counsel for both the sides ~~raised~~ relied upon various judgements of Hon'ble Supreme Court in support of their contentions.

7. We have given anxious consideration to the facts of the case, The point that the charges are not framed by the competent authority is not specifically raised before the disciplinary authority or before the appellate authority. The applicant has not produced any material, like appointment order etc., to show that the authority who has framed the charges, i.e., the Senior Divisional Operating Supdt., was not competent to frame the charges. If this issue was raised before the disciplinary authority or before the appellate authority, they would have recorded their findings on this aspect so that we could apply our mind and consider the legality of the issue. In this view of the matter, it is not possible to accept the contention of the applicant that the authority who has framed the charges, was not competent. The official actions are presumed to be correct unless the contrary is proved and no material is produced before us showing that the authority who has framed the charges, was not competent. In this view of the matter, the point No. 1 urged by the learned counsel for the applicant has no legs to stand. The next point urged by the learned counsel for the applicant that the major joint enquiry report submitted by the officers were lower in rank to the applicant. This point also was not raised before the disciplinary authority or before the appellate authority. It was now brought to our notice that that major joint enquiry was conducted only to have a prima facie view of the matter as to nature of the incident. It is submitted by the learned counsel for the respondents that the said major joint enquiry report was not relied upon in proof of his charges. However, the applicant contended that in the enquiry report vide Annexure A/9, the statement of major joint enquiry was relied upon. But the learned counsel for the respondents brought to our notice that the applicant has been confusing the joint observations with the major joint enquiry. He invited our attention to Annexure A/5, a letter given by the applicant, to peruse certain documents. The said letter is at page 28 of the case file, and we find that at item No. 1, the applicant has prayed for findings of the Major Joint Enquiry and at item No.2, he sought for copies of Joint Observation recorded by the SS, Ajmer and SS (P), Ajmer. He also sought vide item No. 12 findings of the SS, Ajmer. Now the argument on both sides are addressed only with reference to these items. A reply was given to this application vide Annexure R/1, stating that the

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applicant has been shown the documents vide item Nos. 2 to 9 (i) to (vii) and also supplied the copies of documents vide item No.9 (i) to (vii) and those documents would again be shown during the course of DAR enquiry. It is also stated that item Nos. 1, 10, 11 and 12 were not relevant and hence could not be supplied. From this fact, it is clear that the applicant has been furnished with the copies of Joint Observations Report recorded by the SS, Ajmer and SS (P), Ajmer vide item No.2, and the findings of the Major Joint Enquiry was not furnished to the applicant since it was not relied upon during the enquiry. The learned counsel for the respondents invited our attention to the evidence recorded of P.W.9 etc., stating that the evidence was tested with the help of Joint Observations. As we have already pointed out, the statements of Joint Observations have been furnished to the applicant and the statement of the Major Joint Enquiry was not furnished to the applicant, since the same has not been relied upon either by the enquiry officer or by the disciplinary authority. When the statement of the Major Joint Enquiry was not relied upon during the enquiry, non-furnishing of the same did not prejudice to the applicant. The applicant has not shown any prejudice thereby. In (1997) 4 SCC 422, Hon'ble the Supreme Court has clearly laid down a law that the delinquent officer should demonstrate the prejudice caused to him in case a document is relied upon and the copy of the same was not furnished to him. As we have stated above, the statements made during the Major Joint Enquiry were not relied upon, therefore, the applicant has not shown any prejudice in terms of the law laid down by Hon'ble the Supreme Court in the case referred to above. What is relied upon is the statements of Joint Observations made during enquiry at Ajmer, copies of which were sought vide item No.2 at Annexure A/5 and the same has been furnished to him vide Annexure R/1. Therefore, this point urged by the learned counsel for the applicant is liable to be rejected.

8. Learned counsel for the applicant further submitted that his statement at Annexure A/7 filed before the enquiry officer as a written brief was not considered. From the records, it is clear that Annexure A/7 was filed by the applicant immediately after framing the charges, before the enquiry officer. His entire defence has been considered by the both the enquiry officer as well as the disciplinary authority. The appellate authority also considered all the points urged before him one after the other. Moreover, before the appellate authority, the applicant did not contend that his written statement at Annexure A/7 was not considered. In this view of the matter, we find no substance on this point. Accordingly, the same also is liable to be rejected,

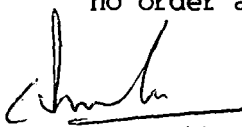
9. The learned counsel for the applicant further contended that the


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Point Jamadar, Shri Bahadur Singh was not competent to speak regarding the incident. The competency certificate issued by the Station Superintendent was not proper since he was not competent. He stated that it is the Area Training School, which was competent to issue such certificate. He further stated that the said Bahadur Singh was under intoxication at the time of accident. This point also is raised by him for the first time before us. The fact remains that Shri Bahadur Singh was the Point Jamadar at the time of averted accident. Moreover, the applicant himself relied upon the statement of Shri Bahadur Singh before the disciplinary authority to show that the charges were not proved. The veracity of his statement was not challenged before both the authorities. At any rate, we are not sitting as a second appellate authority for reappreciation of the entire episode. What we have to find out is whether there is any error apparent on the face of the record. From the reasons stated above, we do not find that it is a case for any interference. Even regarding the alleged alteration in the statement of Shri Bahadur Singh, Point Jamadar, the appellate authority has considered this aspect and held that there was some typographical error, which has been corrected, and there were other evidences on record to substantiate the statements of Shri Bahadur Singh and accordingly, rejected this point of the applicant. We do not find any other ground for interference in this finding. We accordingly find that there is no procedural error or any illegality in the impugned orders. The order of the appellate authority is a speaking order and it is a considered decision, meeting every point put forth by the applicant before him. Therefore, it was not a non-speaking order.

10. For the above reasons, we do not find any substance in any one of the arguments advanced by the learned counsel for the applicant. Accordingly, we pass the order as under :-

" Application is dismissed. But in the circumstances,
no order as to costs."


(N.P. Nawani)
Adm. Member


(B.S. Raikote)
Vice Chairman

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