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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.1151/92

Dt. of order: 18.10.1994

Puran Chand Sharma

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.P.V.Calla

: Counsel for applicant

Mr.Manish Bhandari

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant Puran Chand Sharma, in this application under Sec.19 of the Administrative Tribunals Act, 1985, has prayed that the findings of the Inquiry Officer (Annx.A11) be declared as perverse and may be quashed, the penalty order dated 26.12.90 (Annx.A1) read with order dated 2.5.91 passed by the Appellate Authority dismissing the appeal of the applicant may be declared as illegal and may be quashed with all consequential benefits.

2. The case of the applicant is that he was working on the post of Electrical Signal Maintainer (ESM) Gr.I at Phulera Fly. Station on 12.8.88, when an accident occurred. A goods train coming from Sambar Lake entered Road No.2 on that date and collided against a stationary shunting engine. The Charge sheet which is material for the purpose of this application was issued to the applicant vide memorandum dated 16.1.90 (Annx.A7) whereby the applicant was charged with having failed to maintain the signal system at the Railway Station properly and the accident having been caused due to his carelessness and irresponsible conduct. The Inquiry Officer vide his report Annx.A11 dated 4.10.90, held the charge as proved to some extent. Thereafter the Disciplinary Authority vide the order dated 26.12.90, imposed on the applicant the penalty of with-holding of next increment due on 1.1.91 for a period of 2 years with future effect. The Appellate Authority up-held the penalty imposed on the applicant.

3. The applicant's case is that in fact there was no evidence <sup>been</sup> led during the enquiry which could have ~~the~~ basis for the finding of the Inquiry Officer that the charge against the applicant was proved to a certain extent. A preliminary enquiry had been conducted after the accident, a reference to which has also been made in the charge sheet but copy of the report of the said enquiry was not made available to him despite the applicant's demand for the same. The charge proved against the applicant by the Inquiry Officer was that there was a tampering of the circuit gear and none other than the applicant could have been responsible for the said tampering. According to the applicant, in fact there was no evidence in support of this inference of the Inquiry Officer. Therefore, the Disciplinary Authority was not justified in imposing any penalty on the applicant and for the same reason the order of the Appellate Authority is also not maintainable.

4. No reply has been filed on behalf of the respondents. We however, heard the learned counsel for the parties and have gone through the records. The conclusion of the Inquiry Officer is as under:

"Conclusion:

From the evidence of the two listed witnesses in the list of witness and the evidence of the delinquent employee and that of the written brief it is clear that there is no reason to establish the charge of irresponsible function of the ESM. He is also not concerned for bad maintenance of track No.4 & 6 because it was maintained by Shri O.P.Gupta, ESM as confirmed by Shri Dinesh Gupta, S.I. in reply to Q. No.12. Shri Pooran Chand, ESM can also directly not held responsible for any other track circuits and signals being bad maintained and for their unsafe adjustments though all these defects were noticed by the CSI, FL on the very day after inspection but neither the inspection note of the CSI has been cited as document relied upon nor the CSI has been listed as witness in this case and in absence of the same no inference against Shri Pooran Chand can be drawn. However the charge against Shri Pooran Chand for negligent on duty is proved against him for the simple reason that track circuiting prohibits taking off any conflicting signals which could lead to any train entering the occupied road. Since no interlocking failure at FL was reported on 12.8.88 and in face of the fact that the track circuiting is reported to be in working order yet the movement of TTA Spl. being received on an occupied Road No.2 and then to its collision with Coaching Pilot No. 1548 WD. These infers to conclude that some tampering of the track circuiting gear might have been resorted to by some one which cannot be done by any one else other than the person i.e. ESM on duty and to that extent Shri

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Pooran Chand Sharma, ESM is considered responsible for the negligent working which resulted into this yard accident."

From the conclusion of the Inquiry Officer it is apparent that the only thing held against the applicant by him is that some tampering of the track circuiting gear might have been resorted to by some one which cannot be done by any one other than the ESM on duty and to that extent the applicant was considered by the Inquiry Officer to be responsible for the negligent working which resulted in this accident. The conclusion of the Inquiry Officer in effect is that since there was an accident there must have been some tampering with the track circuit gear and none other than the applicant could be responsible for that. Therefore, two inferences <sup>are</sup> contained in this finding of the Inquiry Officer. Ordinarily this Tribunal does not act as an Appellate Authority and is not expected to reappraise the evidence led before the Inquiry Officer, to arrive at its own conclusion. However, since the applicant's case is that this is a case of no evidence whatsoever in support of this conclusion of the Inquiry Officer, we went through the report of the Inquiry Officer carefully and also the statements of two prosecution witnesses recorded during the enquiry. The 2 prosecution witnesses were S/Shri Dinesh Gupta whose statement is at Annx.A8 and Jagmohan Singh, whose statement is at Annx.A9. The learned counsel for the respondents drew our attention to replies to questions Nos.4 and 5 in the statement of Shri Dinesh Gupta, according to which in the case of any failures the ESM on duty is responsible for the entire jurisdiction of the Cabins and the maintenance of the relevant track signal was the responsibility of the applicant. Therefore, the learned counsel for the respondents sought to draw an inference that since the applicant was on duty at the relevant time as ESM, the accident occurred due to negligence, etc. on his part. In the first instance it may be noted that this is not the charge as held as established by the Inquiry Officer, <sup>which</sup> is of a positive nature namely that none other than the applicant may have been responsible for tampering with the track circuiting gear. From the statement of Shri

Jagmohan (Annx.A9) it is seen from the reply to question No.1 that the ASM(P) had allowed the train in question to go on road No.2 where the accident took place, after changing the original schedule as per which this train was to come on road No.12. Therefore, the applicant could not be considered to be responsible for any malfunctioning of the system due to which this train came on road No.2. From various other replies given to various questions put to these two prosecution witnesses, it is clear that there was no malfunctioning of the signalling system. In reply to question No.9, Shri Dinesh Gupta, stated that he was of the opinion that the accident did not occur due to any defect of S&T Gears. Thus, we find that none of these two prosecution witnesses has stated that there was any negligence in the performance of duties by the applicant, with regard to maintain of the Tracks Circuiting Gear, much less any tampering by him with the system. Therefore, the Inquiry Officer's conclusion that there was tampering with the system by the applicant is perverse as being based on no evidence whatsoever. The order of the Disciplinary Authority does not record any independent findings on reappreciating the evidence to come to the conclusion that the applicant was guilty of the charge framed against him. While, the Inquiry Officer has held the applicant as guilty of tampering with the track circuit gear, the Disciplinary Authority has found him to be responsible for the accident due to his carelessness, etc. There is no evidence about the applicant being careless about maintenance of the track circuiting gear. In these circumstances, the findings of the Inquiry Officer, to the accident these hold the applicant as guilty of the charge or part of the charge framed against him are not sustainable. The order of the Disciplinary Authority is also not sustainable for the same reason. Accordingly, the order of the Disciplinary Authority (Annx.A1) and the order of the Appellate Authority dated 2.5.91 are quashed. The applicant shall be entitled to all consequential benefits.

5. The application is allowed accordingly with no order as to costs.

  
(O.P. Sharma)  
Member (A).

  
(Gopal Krishna)  
Member (J).