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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH AT
HYDERABAD.

O.A.No.340 of 1987.

Date of Decision:

Between:

Mr. Mohd. Shaik Bashu. .. Applicant.

Vs.

Union of India represented by the
General Manager, S.C.Railway,
Secunderabad and 2 others. Respondents.

Sri B.Nalnikumar, Counsel for the Applicant.

Sri N.R.Devaraj, Standing Counsel for Railways.

CORAM:

Hon'ble Sri B.N.Jayasimha, Vice-Chairman.

Hon'ble Sri J.Narasimhamurty, Member(Judicial).

Judgment of the Bench delivered by
Hon'ble Sri J.Narasimhamurty,
Member(Judicial).

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The applicant filed this application for quashing the Order dated 11--3--1987 bearing No.C/T/S/G/A-4/1 issued by the 2nd respondent confirming the removal of the applicant from service by order dated 10--12--1986 bearing No.C/T/S/G/A-4/1 issued by the 3rd respondent and to direct the respondents to reinstate the applicant into service with all back wages and all incidental benefits.

The averments in the application briefly are as follows:

The applicant was working as Diesel Assistant at the material time and has put in 21 years of service.

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Ever since his appointment ~~he~~ he had been performing his duties to the best of his ability and to the satisfaction of the superiors, without any adverse remarks or report against him. A charge Memo N.C/T/5/G/A-4/1 dated 30-9-1986 was issued to him while he was functioning as Diesel Assistant of Train No.DN SNF.Jumbo Goods Engine No.18254 on 28-7-1986 along with one Mr.G.A.Sukkaiah as his driver had failed to warn the driver while passing down main Home signal at danger at Kazipet "E" Cabin resulting in head ^{on} and collision with coupled engines No.17537 and 18897 at Chord Line No.2 going to Kazipet shed and Mr.Sriramulu, driver of the coupled engines succumbed to injuries.

Subsequently an enquiry was held by Mr.M.Bhaskar Rao, S.L.I., who by his report dated 25--11--1986 found the applicant guilty of the charges alleged. The 3rd respondent accepting the report of the enquiry Officer passed the impugned order dated 10--12--1986 removing the applicant from service.

The applicant submits that the findings of the enquiry officer are not supported by any evidence and the same is perverse. The applicant submits that this is a case of no evidence on the basis of which it cannot be held that the applicant is guilty of the charges framed and the same is arbitrary.

The driver Mr.G.A.Shukkaiah in his evidence categorically stated that the applicant called out the aspect of home signal as at Danger which totally falsifies the charge alleged. The applicant also submits that all the witnesses examined in the enquiry against the applicant did not implicate the applicant.

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The applicant states that Mr.M.A.Shookur and Mr. Babu Khan, Diesel Driver Instructor and the the Chief Train Examiner respectively were examined at the enquiry to speak about the condition of the vehicle. Mr.M.A.Shookur stated in the cross-examination that he did not check the brake power certificate and did not take the readings of the piston stroke and clearance between the stuffing box on the crank. He also stated that he was at the spot for only 25 minutes and did not take readings of the inspection since he was asked to proceed to M.G.M. Hospital by the officials to know the welfare of the injured driver late Sriramulu. Mr. Babu Khan in his evidence merely asserted that there was no brake failure but failed to produce the readings conducted by him. The whole inspection was conducted in just about 25 minutes without maintaining any record. The applicant therefore states that they failed to disprove that the accident was not due to mechanical failure of brakes due to floating obstruction as stated by the driver.

The Disciplinary authority erred in blindly accepting the report of the Enquiry Officer without applying its mind to the case. The applicant submits that the appellate authority also failed to apply its mind to the case and passed a mechanical order. The Authorities ought to have decided the case in the light of the evidence and ought not to have passed the impugned orders on surmises and suspicions.

The applicant states that the appointing authority is the General Manager and therefore the impugned orders passed by his subordinates in his case are invalid. He states that he was not supplied with legible and typed

true copies of the entire proceedings which caused him prejudice to his defence. The counsel for the applicant issued a registered letter dated 5-4-1987 calling upon the respondents to supply the applicant with true typed copies of the proceedings but they have not supplied.

The applicant states that the punishment imposed is excessive, arbitrary and grossly disproportionate to the charges alleged. The authorities ought to have seen that the applicant had put in 21 years of unblemished service and in the circumstances of the case, the impugned order is unwarranted. The applicant states that the impugned order is illegal, arbitrary and violative of Articles 14, 16, 21 and 311 of the Constitution and principles of natural justice. Hence this application.

The respondents have not filed their counter.

We have heard Sri B.Nalinikumar, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for the Railways.

The main contention of the applicant is that there is no evidence on record to pass the impugned order against him and he also contended that the respondents did not supply him with the legible and typed true copies of the proceedings inspite of a registered notice. Due to this he was not in a position to argue his case before the punishing authority. He contends that there is no evidence at all against him to prove the case. The respondents have not properly appreciated the evidence on record and without considering and weighing the evidence on record passed the impugned order. Therefore, the impugned order is liable to be quashed.

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Shri Nalini Kumar, counsel for the applicant, however rests his case on the ground that the disciplinary authority

84
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did not furnish a copy of the Enquiry Officer's report and give an opportunity to the applicant to represent on the report of the Enquiry Officer before he passed the penalty orders.

For this the learned counsel for the applicant relied upon a decision of the Full Bench decision of the Bombay Bench of the Central Administrative Tribunal in SHRI PREMNATH K. SHARMA V. UNION OF INDIA (1988(6)A.T.C.904) in support of his contention.

We have considered the above submission. In the above referred decision of the Bombay Bench, it was held as follows:

"Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry; But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charge. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It therefore follows that furnishing a copy of the enquiry report to the charged officer is obligatory.

To:

1. The General Manager, (Union of India) south central Railway, Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager, Transportation Branch (BG) South central railway, Rail Nilayam, Secunderabad.
3. The Senior Divisional Mechanical Engineer (P) Sec'bad. South central railway, Rail Nilayam, Sec'bad.
4. One copy to Mr. B. Nalin Kumar, Advocate, 10-3-29/2, East Marredpally, Secunderabad.
5. One copy to Mr. N. R. Devaraj, SC for Rlys., CAT, Hyderabad.
6. One spare copy.

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Following the above decision, we hold that the enquiry is vitiated and the orders imposing the penalty of removal of service upon the applicant dated 10-12-1986 as confirmed by the 2nd respondent in his order dated 11-3-1987 are quashed. This, however, will not preclude the respondents from supplying true and legible copies of the proceedings and enquiry report to the applicant and give him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. If the respondents choose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate result. Nothing said herein would affect the decision of the Disciplinary authority. At the same time, this order is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the Disciplinary Authority.

In the result, the application is allowed to the extent indicated above. No costs.


(B.N. JAYASIMHA)
Vice-Chairman.


(J. NARASIMHAMURTY)
Member (Judicial).

Dated: 24 -- 11 -- 1989.


DEPUTY REGISTRAR(A)

SSS.