

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1018/90

Date of Order: 27.12.93

BETWEEN :

Mallaiah

.. Applicant.

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1. Union of India per General Manager,
South Central Railway, Rail nilayam,
Secunderabad.

2. Divisional Rly. Manager,
(Broad Guage), S.C.Rly.,
Rail Nilayam, Secunderabad.

3. Senior Divisional Mechanical Engineer ,
(P) (Broad-Guage), S.C.Rly.,
Secunderabad.

4. Assistant Mechanical Engineer (L),
South Central Railway, Kazipet.

.. Respondents.

Counsel for the Applicant

.. Mr. G. Ramachandra Rao
&
Mr. M. Rama Rao

Counsel for the Respondents

.. Mr. N. V. Ramana, S.C for
Rly.

CORAM:

HON'BLE Mr. V. NEELADRI RAO : VICE CHAIRMAN

HON'BLE Mr. R. RAGARAJAN : MEMBER (ADMN.)

OA 1018/90

Judgement dated 27-12-93

X AS PER JUSTICE SHRI V. NEELADRI RAO, VICE-CHAIRMAN I

Heard Shri G. Ramachandra Rao, learned counsel for the applicant and also Shri N.V. Ramana, learned standing counsel for the respondents.

The applicant is working as Crane Driver Gr. I in South Central Railway, Bellampalli. Charge memo. dated 23-7-88 was issued to him. After departmental enquiry by the Respondent 4, the disciplinary authority passed order dated 5-4-89 withholding annual increments of the applicant for a period of 2 years with cumulative effect, by way of punishment. The appeal thereon was dismissed by Respondent 3 on 29-3-90. It is challenged in this OA.

One of the contentions raised for the applicant is that the charge is vague and ambiguous. To appreciate the said contention it is convenient to refer to Annexure I(a), Annexure II of the charge, which reads as under:

Article I in Annexure I(a)

"That the said Shri Mallaiah Sayanna while (Break down) Driver functioning as 75 tonnes steam Crane / during the period from 1.30 p.m. of 19-7-1988 at SKZR and while undertaking rerailment work of Engine No. 8176 WG at SKZR with 75 tonnes steam crane, he did not obey the instructions of his S.D. Track in charge Sri G. Rajanarsu and also did not cooperate with him in rerailing work inspite of advising him by JCI/BPA Sri Sk. Mahboob, to obey the instructions of his incharge and wilfully delayed the restoration work upto 14 hours of 22-7-1988 till the arrival of ART/MK/KZI Sri K.N. Bhaskar Rao to SKZR which has resulted in heavy detention to restoration work of Engine No. 8176 WG i.e. from 19-7-1988 to 22.7.1988.

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Article I in Annexure II:

For serious misconduct in that while working as 75 tonnes Steam Engine Driver with BPA 75 tonnes Steam Crane at SKZR from 1.30 hours of 19-7-1988 for re-railment of engine No. 8176 WG, he has wilfully disobeyed the instructions of B.D. incharge and not cooperated with him and delayed the restoration work upto 14.00 hours of 22.7.1988, till the arrival of BRI/MK/KZI Sri K.N. Bhaskar Rao to SKZR on 22.7.1988 which has resulted in heavy detention for restoration work on engine No. 8176 WG at SKZR."

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Even in Annexure the article does not disclose the instructions that are said to have been dis- obeyed by the applicant. But as Annexure III refers to the reports of Shri Rajanarasu, Sk. Mahaboob and Shri K.N. Bhaskar Rao, those reports can be referred to for noting the instructions given by Shri Rajanarsu to the applicant and which were said to have been dis-obeyed. The report of Shri Rajanarsu is to the effect that the applicant was asked to raise one side of the tender of the engine so that Draw bar pins can be removed. The difficulty ~~which~~ of the applicant is that if the tender of the engine is raised without ~~any~~ uncoupling, the tender from the engine, there will be damage to the crane, and in support of the said plea he is relying upon Para 12 at page 35 of the crane Manual. The Enquiry officer without adverting to the said para in Crane Manual held the applicant guilty for the charge on the basis of the evidences of the various witnesses examined during the enquiry. The disciplinary authority who has accepted the said finding of the Inquiry Officer had also not referred to the relevant instructions in the Crane Manual. But the appellate authority had discussed about it.

So it can be taken on the basis of the material on record that the instructions which were said to have been disobeyed by the applicant are that he had not ~~admitted~~ ^{made some efforts} to raise one side of the tender so that Draw Bar Pins can be removed. It had come in evidence that 3 chains of the Crane were broken when efforts were made by the applicant for re-railing the engine which was stuck in 2½ feet deep mud water on derailing. The appellate authority observed as under:

Para 2: XXXXXX

Without making the tender free from the earth work, obviously, the draw bar could not have been uncoupled and the entire lifting of the tender was out of question. It is also a fact from the evidence on record that 3 chains were broken during the operation of releasing the tender, but nowhere Sri Mallaiah Sayanna had indicated either in his appeal or during the enquiry stage the capacity of the chains which were broken. The records reveal that none of the B/D numbered chains broke at site. The non-standard chains used were broken. As an experienced Crane Driver with 22 years of service, the least I expect of him was to use proper chains/slings in order to free the tender from the ground resistance, in which he had apparently failed. He is trying to put the onus on the supervisors in the garb of their not possessing the Crane Competency Certificate, as provided for in the Crane Manual, which is the least expected of the delinquent employee. The question of any disaster will arise only if the crane was not packed properly or the crane driver was attempting to lift a load with slings/chains not capable of doing it or beyond

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the capacity of the crane. Unfortunately, no such situation has been brought out during the enquiry or even in his own statement".

It can be seen from the order of the appellate authority that the proper ~~charge~~ ^{allegations} that should have been referred to in the Annexure II Article I of the charge, ~~that is~~ statement of imputations of mis-conduct and mis-behaviour, should be that even though B/D numbered chains of sufficient strength were available, the applicant had not chosen to lift one side of the tender as instructed by Shri Rajanarsu. It is for the department to prove the charge and then only the burden shifted ^{is} ~~on~~ the delinquent official. But on the other hand, the appellate authority observed that the applicant had not stated either in his own statement or during the enquiry about the situations under which one side of the tender of the engine could not be lifted without causing damage to the crane. In fact, if the allegations in the statement of imputations are specific, then the delinquent employee will be in a position to understand what the case is and then he can come up with his own version. If the allegations are not specific, then the delinquent employee would not be in a position to know what the case is and then it is not open to the disciplinary authority/appellate authority to turn round and say that he could have come up with his own version, ^{by visualising all possibilities}. Thus when the charge is neither specific nor clear, or if it is not intelligible and it is merely vague and ambiguous, then it is to be inferred that proper opportunity is not given to the delinquent employee to defend his case, and on that basis, the entire enquiry has to be held as void and accordingly it has to be quashed.

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It is to be further seen that the tools provided may not be of proper type. Even Shri Bhaskara Rao in his report dated 23-7-88 stated that ordering only crane spl. without MPO Van (Bellampalli) at BPA will not serve any fruitful purpose.

It is not clear as to whether the crane that was brought ~~out~~ by the applicant on 19-7-88 was in proper condition or not. In fact, in the report dated 23-7-88 Shri Bhaskara Rao stated that till such time tool van arrangements are made, utilisation of MRDX MFD requirement along with crane required consideration. If the crane was not in proper condition or if the ~~broken~~ B/D down chains of sufficient strength were not available, the applicant cannot be blamed when he had not lifted one side of the tender of the engine as instructed by his superiors. A question may arises as to whether an employee of normal efficiency can be held guilty when he could not discharge the duty which a more experienced employee can discharge.

Thus when the charge is not clear, and further when it ~~is~~ known as to whether on the basis of want of efficiency on the part of the applicant or on the ground that the crane was not properly equipped with the B/D numbered chains of sufficient strength, the applicant could not lift one side or whether applicant delayed though he could lift with crane available of the tender of the engine as instructed, As such, the charge has to be held as defective and the entire enquiry proceedings has to be quashed.

view of the material on record and and especially the report dated 23.7.88 of Shri Bhaskara Rao at page 16 of the material papers,

we feel it not a proper case to permit the respondents to proceed with the enquiry after making proper allegations in Annexure II of chage memo.

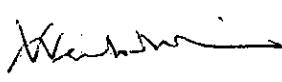
In the result, the order dated 5.4.89 of Respondent 4 imposing the penalty of withholding ~~of~~ increment for 2 years with cumulative effect, which was confirmed by the Respondent 3 as per order dated 23-9-90 is set aside.

The increment amounts withheld as per the said order have to be repaid to the applicant and the pay of the applicant has to be re-fixed.

The OA is ordered accordingly with no costs.



(R. RANGARAJAN)
Member (Admn.)



(V. NEELADRI RAO)
Vice-Chairman

(Open court dictation)

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8/1/94
Deputy Registrar (J)

To

1. The General Manager, S.C.Rly, Railnilayam, Union of India, Secunderabad.
2. The Divisional Railway Manager (Broad Guage) S.C.Rly, Railnilayam, Secunderabad.
3. The Senior Divisional Mechanical Engineer, (P) (Broad Guage) S.C.Rly, Secunderabad.
4. Assistant Mechanical Engineer (L) S.C.Rly, Kazipet.
5. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.V.Ramana, ~~MEM~~ SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR.R.RANGARAJAN : MEMBER(A)

Dated: 27-12-1993

ORDER/JUDGMENT:

M.A/R.A/C.A.No.

in
O.A.No. 1018/90

T.A.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

pvm

