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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

D.A.No.1067 OF 1997.

DATE OF ORDER:31-3-1999.

BETWEEN:

G.Subba Rao.

....Applicant

a n d

1. Union of India, rep. by its  
General Manager, Rail Nilayam,  
South Central Railway, Secunderabad.

2. Chief Engineer,  
Rail Nilayam, S.C.Railway,  
Secunderabad.

3. Divisional Railway Manager,  
Sanchalan Bhavan, Secunderabad Division,  
South Central Railway, Secunderabad.

4. Senior Divisional Engineer(Coordination),  
Sanchalan Bhavan, Secunderabad Division,  
South Central Railway, Secunderabad.

....Respondents

COUNSEL FOR THE APPLICANT :: Mr.S.Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS :: Mr.K.Siva Reddy

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

A N D

THE HON'BLE SRI B.S.JAI PARAMESHWAR , MEMBER (JUD)

: O R D E R :

ORAL ORDER (PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J))

Heard Mr.S.Ramakrishna Rao, learned Counsel for  
the Applicant and Mr.K.Siva Reddy, learned Standing  
Counsel for the Respondents.

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2. The applicant while working as Chief Permanent Way Inspector, Ongole, was served with a Charge Memo No.B/T5/94/9/12/1, dated:28-1-1995 (Annexure.A-VI, page.24 to the DA). The misconduct alleged against the applicant reads as follows:-

"ARTICLE-I

That the said Sri G.Subba Rao, while functioning as Chief Permanent Way Inspector/Ongole failed to maintain devotion to duty, in that while performing duty on 11-9-94 he had failed to ensure to impose speed restriction of 30 KMPH on Up line at KM 259/15-13 as per Rule No.6.3.4 of Manual of Instructions on Long Welded Rails, which resulted in derailment of No.7054 Exp. at KM 259/15-13 between SKM-UPO on 12-9-94.

Thus he violated Rule 3(1)(ii) of Railway Servants(Conduct)Rules,1966."

3. The applicant denied the charges and a detailed enquiry was conducted by AEN, Bezawada. The Enquiry Officer recorded his findings as under:-

"From the above, I hold the Article No.I of charge Rule No.6.3.4. of Manual of instructions on long welded Rails contained in the charge sheet No.B/T.5/94/9/12/1, dated:28-1-1995 issued by Sr.DEN/South/BZA framed against Shri. G.Subba Rao is NOT PROVED AND HENCE NOT GUILTY.

Article No.I of charge Rule 3(i)(ii) of Railway Servants(Conduct Rules),1966 contained in the charge sheet No.B/T.5/94/9/12/1 dated:28-1-1995 issued by Sr.DEB/South/BZA framed against Shri. G.Subba Rao is PROVED AND HENCE GUILTY."

A copy of the report of the Enquiry Officer was furnished to the applicant. However, he had not submitted any representation against the findings recorded by the Enquiry Officer.

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4. The Disciplinary Authority after considering the report of the Enquiry Officer in his Order bearing No.CW/3/W.II/DAR/G.S., dated:12-3-1996 (Annexure.II, page.15 to the OA), observed as follows:-

"7. Only one article is indicated in the charge sheet. Whereas Enquiry Officer in the findings concluded as not proved and proved also against the same article and hence the findings are defective.  
xxx      x\*\*      \*\*\*

9. On going through the DAR case, it is observed that Delinquent Employee has submitted a representation addressed to the Disciplinary Authority through Enquiry Officer before finalisation of the findings by Enquiry Officer. Probably, this may be the defence note submitted by Delinquent Employee in his view on completion of the enquiry proceedings. This should not have been considered by the Enquiry Officer since there is no necessary for Delinquent Employee to submit any representation through Enquiry Officer while conducting the enquiry."

5. However, the learned Counsel for the Respondents submits that the reading of Para.8, which is reproduced below, the Disciplinary Authority has decided in accordance with the rules. The said Para.8 reads as follows:-

"It is a fact that Sri G.Subba Rao is incharge CPWI and he should ensure safe working in his jurisdiction. The derailment occurred at KM.259/15-13 on left hand at BZA end of a cut rail of length 6.62 M. The critical joint was provided with a pair of fish plates with one bolt and nut at BZA end of joint and one clamp set and bolt and nut at GDR end. On either side of joint 10 rail panels were provided. At the accident spot the rail renewal was done on 07-09-1994. This type of temporary arrangement requires round the clock watching and speed restriction as per LWR Manual which has not been imposed. As Watchman posted was also absenting himself on the day of derailment and

due to repeated passage of wheel loads and without periodical tightening the bolts must have worked out the fish plates must have fallen out. The rail end was thus not held and it became free to oscillate in the lateral and vertical direction and rail piece got dislodged. In case no speed restriction is imposed, then it gives unsafe condition to passage of trains which can cause heavy loss to human life and Railway property. Regarding removal of cut rail at derialment spot by somebody, I also do agree with the Enquiry Officer's opinion."

6. That view has been taken in view of the discussions of evidence and reasons for findings as stated in Page.33 of the Enquiry Report.

7. The Disciplinary Authority after considering the Enquiry Records and Enquiry Report imposed the penalty of removal from service on the applicant. The Order of the Disciplinary Authority is dated: 12-3-1996 and is at Annexure.II to the OA.

8. Against the said punishment the applicant submitted an appeal dated:29-3-1996 (Annexure.A-III) to the Respondent No.3. The Respondent No.3 by his Proceedings No.CW/3/W.II/DAR/GS, dated:15-7-1996 (Annexure.A-IV to the OA), considered the appeal and modified the punishment of removal from service imposed on the applicant to that of compulsory retirement.

9. Against the Order passed by the Appellate Authority, the applicant submitted a Revision Petition under Rule.25

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of the Rules to the Respondent No.3. The Respondent No.3 considered the Revision Petition and rejected the same.

10. The applicant has filed this DA to set aside the impugned Order No.P.88/SC/GSR/2223, dated:11-7-1997 passed by the Respondent No.2, the Order dated:15-7-1996 passed by the Appellate Authority and the Order dated:12-3-1996 passed by the Respondent No.4 imposing the penalty of removal from service as illegal, unwarranted, and for a consequential direction to the respondents to reinstate the applicant into service with all consequential benefits including seniority, pay and allowances etc.,.

11. The respondents have filed their reply justifying the action taken by the respondent-authorities on the basis of the Charge Memo dated:28-1-1995.

12. The first contention raised by the Applicant is that the Disciplinary Authority has found that the primary charge contained in the Article of Charge is not proved whereas the consequential effect of the primary charge stands proved. That means the Enquiry Officer has divided the charge into two, which in <sup>his</sup> ~~our~~ opinion is inadmissible. He also contended that when the primary charge is not proved, the secondary charge of not showing devotion to duty does not arise. Hence, the whole charge stands unproved.

(2) The learned Counsel for the Applicant further submits that the Disciplinary Authority differed with

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the findings of the Enquiry Officer. When such is the case then the Disciplinary Authority has to issue a show cause notice to the applicant before coming to a final conclusion whether the charges are proved or not. Unfortunately, the Disciplinary Authority did not follow that rule and took the responsibility of passing Orders against the applicant without following the Principles of Natural Justice.

(3) The third contention of the applicant is that the respondents acted irresponsibly without following the rules and they are trying to justify their stand by saying that the rule is followed fully.

13. On the otherhand, the learned Counsel for the Respondents submits that the rule has been fully followed. The charges are proved by the Enquiry Officer. That has been accepted by the Disciplinary Authority. That is evident from Para.8 of the Order of the Disciplinary Authority dated:12-3-1996. That para has been extracted above. That view was taken not on mere surmises but on the basis of material available in the Enquiry Proceedings and that too material available in Page.33 of the Enquiry Report. The respondents acted in accordance with the findings of the Enquiry Officer which showed the applicant as guilty of charges and the penalty Order was passed. of Natural Justice Hence, there is no violation of Principles/ and on that count the OA cannot be allowed.

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14. We have heard both sides. Already Para.7 and Para.9 of the Order of the Disciplinary Authority have been extracted/ <sup>above.</sup> In Para.7 it has been stated that the findings of the Enquiry Officer is defective, and once again in Para.9, the Disciplinary Authority feels that some details should not have been considered by the Enquiry Officer since there was no necessary for the delinquent employee to submit any representation through the Enquiry Officer while conducting the enquiry. The para.8 cannot be read in isolation. It has to be read fully on the basis of the full remarks made by the Disciplinary Authority in his Order dated:12-3-1996. Hence, para.9 has been observed on the basis of some materials available on record in the Enquiry Proceedings. It does not vitiate the other views expressed by the Disciplinary Authority. The Disciplinary Authority in our opinion has seen the full proceedings and has come to the conclusion that the Enquiry Officer has not passed an Order judiciously and it is a defective order. Because of that only he had held that the part of the charge is proved and the other part is not proved. When that is the case, it has to be held that the Disciplinary Authority had disagreed with the findings of the Enquiry Officer and hence he has to follow the rules stipulated in this connection in the DAR Rules. The rule clearly states that, when a Disciplinary Authority disagrees with the findings of the Enquiry Officer then the view of the Disciplinary Authority should be spelt out and a show cause notice has to be given detailing the reasons for disagreeing with the findings of the Enquiry Officer and ask for explanation

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from the delinquent employee before finally deciding this case. This is incorporated in the Railway Boards letter dated: 4-4-1996. Unfortunately, the Disciplinary Authority did not follow the rules as stipulated by the Railway Board. Hence, it has to be held that the Order of the Disciplinary Authority is defective and needs to be set aside, as the Principles of Natural Justice was not followed in this case. This above views of ours is also in accordance with the Judgment of the Apex Court in PUNJAB NATIONAL BANK Vs KUNJ BIHARI MISRA (reported in 1998 SCC(L&S) 1783) & (reported in 1998 (L & IC) 3012).

15. In view of the above, we are of the opinion that the Order of the Disciplinary Authority has to be set aside. Once the Order of the Disciplinary Authority is set aside, naturally the Orders of the higher authorities also deemed to have been set aside, and a direction has to be given to the Disciplinary Authority to follow the rules before finalising the Disciplinary Proceedings. A doubt had arisen in the minds of the applicant as to the correct Disciplinary Authority. The Railway ~~boasts~~ itself of a long legacy in dealing with Staff matters. Hence, they know very well who the Disciplinary Authority is/<sup>with</sup> regard to the applicant. It is not necessary for us to spelt out the Disciplinary Authority in this case.

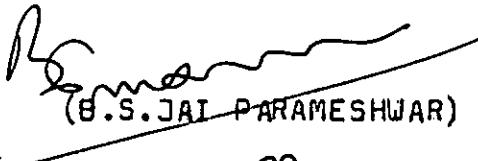
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16. In view of what is stated above, the following directions are given:-

- i) The Order of the Disciplinary Authority bearing No.CW/3/W.II/DAR/G.S., dated: 12-3-1996, the Appellate Authority Order bearing No.CW/3/W.II/DAR/GS, dated:15-7-1996, and the Revision Authority Order dated:11-7-1997 are hereby set aside; and
- ii) The applicant should be reinstated in accordance with law. However, this reinstatement will not stand in the way of the respondents to proceed against the applicant from the stage of considering the report of the Enquiry Officer.

17. With the above directions, the OA is disposed of. No costs.

  
(R. S. JAI PARAMESHWAR)

MEMBER (JUD)

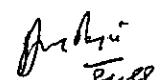
  
(R. RANGARAJAN)

MEMBER (ADMN)

DATED: this the 31st day of March, 1999

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Dictated to steno in the Open Court

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DSN

  
Anil  
Suresh