

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1151 of 1999

DATE OF JUDGMENT: 27th JUNE, 2000

BETWEEN:

N.NOOKA RAJU

.. APPLICANT

AND

1. Union of India rep. by its
General Manager,
South Eastern Railway,
Garden Beach,
Calcutta, AND OTHERS

RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.N.RAMA MOHAN RAO

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

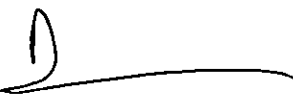
CORAM:


HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether the Judgment is to be circulated to the other Benches.

JUDGMENT DELIVERED BY HON'BLE SRI R.RANGARAJAN, MEMBER(A)


HRRN
M(A)


HDHN.J
VC

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N.NOOKA RAJU

.. APPLICANT

AND

1. Union of India rep. by its
General Manager,
South Eastern Railway,
Garden Beach,
Calcutta,
2. The Divisional Railway Manager,
South Eastern Railway (Operations),
Waltair,
3. The Chief Operating Manager
S.E.Railway,
Waltair,
4. The Senior Divisional Safety Officer,
S.E.Railway,
Waltair,
5. The Additional Divisional Railway Manager,
S.E.Railway,
Waltair.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.N.RAMA MOHAN RAO

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

Contd....2



JUDGEMENT

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

Learned counsel for the applicant has filed written arguments which is taken on record.

2. Heard Mr.N.R.Devaraj, learned standing counsel for the respondents.

3. The applicant in this OA is an Yard Master posted at Waltair Marshalling Yard of Visakhapatnam, a division of South Eastern Railway. It is stated that the applicant was responsible for not pinning down the hand brakes of Cuttack Fertiliser Special Train which was admitted on Line NO.1 of the Station Yard at 0725 hours on 23.7.1996. The applicant submits that he was not available at that time and went out after finishing his duty as per the orders of his superiors and he handedover the charge at 8 AM on that day. Hence he was not responsible for not properly pinning down the brakes of the Cuttack Fertiliser Special train. The Cuttack Fertiliser Special Train stabled in the departure yard Line No.1 due to the alleged improper securing of brakes, rolled down and collided with the Passenger Train No.TNEB 49 departing from the Departure Yard Line No.II. The applicant submits that he is not responsible for the pinning down of brakes of the Cuttack Special train and it has to be done by the Pilotmen who are under the control of the Station Master of the 'D' Cabin. He has not been provided with any Pilotmen to perform those duties. He is exclusively meant for fuelling of the detached engine at the diesel fuelling point and to ensure that the engines are not detained. The applicant also submits that he has ~~not signed the station working orders for safe working and~~


station working orders for not signed the safe working ~~orders~~ and he was not entrusted with the safe working duties. His duties are entirely different from the regular Yard Masters.

4. In view of the above, he submits that the issue of the charge sheet bearing NO.WTA/3/155/96, dated 27.8.96 (Annexure A3 at page 16 to the OA) itself is irregular. The charge as framed against him reads as follows:-

"That the said Shri N.Nookaraju, YM/WMY while working as such on 23.7.96 at DYD by CTC Ft. Spl. had failed to secure the brackets properly resulting in derailment of wagon No.SR 35266 BCX 1d and thereby committed an act of misconduct in violation of rule No.3(i)(ii) of RS conduct rules 1968 and thus rendered himself liable for disciplinary action under RS(D&A) rules 1968 as amended from time to time.

He had thus failed to maintain devotion to duty and thereby committed an act of serious misconduct in violation of rule 3.1(ii)(iii) of RS (Conduct) rules-1968 and rendered himself liable for disciplinary action."


5. The applicant states that the inquiry report is biased whereby he was held responsible for the accident. The inquiry report is enclosed at Annexure A-11 at pge 33



to the OA. The applicant further submits that issue of the impugned penalty order by R-4 imposing a penalty of reduction to the post of Assistant Yard Master in the scale of pay of Rs.1400-2300 on the pay of Rs.1680/- for a period of three years with non-cumulative effect is not sustainable. That penalty order is enclosed at Annexure A/14 at page 39 to the OA. His appeal to R-5 dated 3.9.97 which was rejected by the impugned order No.WTA/3/155/95/529, dated 21.11.97 (Annexure A-16 at page 46 to the OA) is also not sustainable. He further adds that rejection of his review petition dated 16.1.98 enclosed as Annexure A-17 at page 47 to the OA by the order of R-3 bearing No.P/D/11/Optg./N.N.Raju/98, dated 16.9.98 (Annexure A-18 at page 52 to the OA) cannot also be said to be a proper order as the same was passed without considering his submissions.

6. This OA is filed to set-aside the above said orders dated 6.8.97 of R-4, 21.11.97 of R-5 and 16.9.98 of R-3.

7. In the reply, it is stated that the applicant cannot escape ^{the} responsibilities of not pinning down the brakes of Cuttack Fertiliser Special train as he was on duty. The train was received on Line No.I. He should have ensured that the breaks are pinned properly. A Supervisor cannot escape from the responsibilities of safe working duties even if he had not signed the station work order. They further submit that rolling down of the Fertiliser Special Train because of non pinning of the brakes had resulted in collision with TNEB 49 and for that accident



the applicant is responsible. They also submit that GR 5.23.01 sub-para(c) is violated by the applicant. These points have been considered by the inquiry committee and held that the applicant was responsible for that accident. In view of that, the disciplinary, appellate and reviewing authorities had accepted the findings and passed the impugned orders. Taking humanitarian grounds, R-5 reduced the punishment passed against the applicant by the disciplinary authority for reversion to the post of Assistant Yard Master for a period of one year non-cumulative effect from three years with non-cumulative effect imposed by R-4. Hence there is no reason to set-aside the orders and the applicant has to suffer the punishment for his negligence.

8. The submission of both the parties are considered. We have perused the depositions of the witnesses and also the inquiry report.

9. In the reply, nowhere it is stated as to the exact duties of the applicant as a Fuelling Yard Master. No doubt, a supervisor is responsible for safe working. But that does not mean that he would be punished even if he is not connected with the duties even remotely. Non submission of any duty list makes us believe that the respondents have not given the applicant the duty of pinning down of the brakes of the train received on the departure yard after the engine is detached for fuelling. The inquiry report also does not indicate that he was given the duty of pinning down the brakes of the Fertiliser Special train in the yard. Further he should have been



provided with supporting staff subordinate to him for ensuring the pinning down of the brakes. The applicant submits that the Pilotmen have to execute the duties of pinning down of the brakes. No Pilotman has been attached to him. Though there is a strength of 6 Pilotmen for pinning down, they were attached to the Station Master 'D' & 'E' cabin and hence it is the duty of the Station Master to ensure that the brakes are pinned down by deputing Pilotmen suitably. Without any assistance, the applicant may not be able to discharge the duties of pinning down of the brakes even though he is Supervisor. In that view of the matter, we feel that non-issue of the duty list of the fuelling yard master and also not attaching any Pilotmen under him, the charges framed against the applicant cannot be sustained.

10. The applicant was on duty from odd hours to 0800 hours on 23.7.96. It is an admitted fact. But in the imputation of misconduct it is stated that he worked from 1600 hrs to 2400. Though it is stated by the respondents that it is a clerical mistake, in a judicial proceedings such errors are fatal. If he had worked from 1600 to 2400 hours on 23.7.96, the question of pinning down the brakes of Cuttack Fertiliser Special which arrived at 0725 hrs on that day may not arise. Hence, in that view also, the erroneous charge sheet cannot be sustained.

11. Even presuming that the applicant had worked from odd hours to 0800 hours on 23.7.96, the accident took place in the night. In between the arrival of the Cuttack Fertiliser Train and the time when the accident took place,



there was a gap of about 10 to 12 hours. During that period, it is not understood as to why non pinning of the brakes had not resulted in any collusion. This point does not appear to have been examined in full depth. That leads us to believe that the brakes could have been pinned but got loosened due to the movement of the train during the period in day time and hence in the loosened brakes position, the Cuttack Fertiliser Special train rolled down and collided with TNEB train. This point, in our opinion, has not been considered fully or even slightly in the discussion portion of the inquiry report. This vital point is essential to be taken note of while fixing responsibility on the applicant. That was not done.

12. The applicant submits that he was asked by the area controller Mr.N.Ramachandran at about 7.00 hours to go to Main Sick Line to secure correct placement of sick wagon and hence he was not available at site when Cuttack Fertiliser Special train arrived. That has been refuted by MrjRamachandran. When such a deposition is made by Mr.N.Ramachandran, some responsible official or officials working in the MSL could have been summoned to verify the above point. But that was not done. Merely believing on the rebuttal statement of Mr.N.Ramachandran, the area Controller, the submission of the applicant was rejected. Such a rejection without properly ascertaining the facts is not a conducive inquiry.

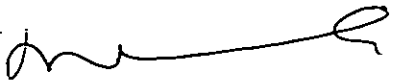
13. The applicant was charged on violation of GR 5.23.01 sub-para (c). In the reply the substance of the said GR has been quoted. It is stated that "As per GR




5.23.01 sub-para (c) the securing the vehicles should be done under the direct supervision of Yard Master by properly pinning down of hand brakes of stabled wagons to ensure the same EPMS are also available at his control at fuelling point. The Enquiry Report thus held Yard Master on duty at fuelling point responsibility for rolling down of the wagons on the CTC Platform on the day in question."

14. A reading of the GR indicates that some EPMS are posted for proper pinning down of the brakes under the control of the Yard Masters. But as stated earlier, it is seen that no Pilotmen were posted under the applicant herein and the Pilotmen were under the control of the Station Master of the D&E cabins. Hence blaming the applicant without giving him proper staff cannot be a reason for charging him for violation of the said GR.

15. Considering the above points, we are of the opinion that the charge sheet was disposed of without any evidence by punishing the applicant as stated earlier. The case is to be treated as a case of no evidence. In that view of the matter, we are of the opinion that the application is to be allowed by setting aside the punishment orders of the disciplinary, appellate and reviewing authorities. Accordingly, we set aside the above orders and allow this application. The applicant is entitled to all consequential benefits arising out of the above direction and it should be granted to him expeditiously. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)


(D.H. NASIR)
VICE CHAIRMAN

DATED: 27th JUNE, 2000

vsn

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

COPY TO

1. HDHND
2. HRRN (ADMN.) MEMBER
3. HBSJP (JUDL.) MEMBER
4. D.R. (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

IST AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE-CHAIRMAN

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

THE HON'BLE MR. S. S. JAI PARAMESHWAR
MEMBER (JUDL.)

DATE OF ORDER

27/6/00

MA/RA/CP.NO.

IN

CA. NO.

1151/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

- 5 JUL 2000

हैदराबाद न्यायपीठ
HYDERABAD BENCH