IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 07.02.02

OA No.14/2001

Ami Chand s/o Bhorilal Ji, r/o Plot No.G.G.376, Rajiv Gandhi Marg, Santosh Nagar, Kacchi Basti, Hasanpura, Jaipur.

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Manager, Western Railway, Jaipur
3. Senior Divisional Mechnical Engineer, Western Railway, Jaipur
4. Chief Loco Inspector, Western Railway, Jaipur Division, Jaipur.
5. Divisional Security Officer, Western Railway, Jaipur
6. Kamal Singh, Safety Counsellor Loco, Western Railway, Division Jaipur.
7. Mahavir Prasad, Crew Controller, Western Railway, Jaipur.

.. Respondents

Mr.Yogesh Shastri, counsel for the applicant.

Mr. S.S.Hasan, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Member (Judicial)

Hon'ble Mr. H.O.Gupta, Member (Administrative)

ORDER

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the chargesheet dated 09.12.99 (Ann.A1) and penalty dated 10.8.2000 (Ann.A2) whereby a major penalty of reduction in rank has been imposed upon him. In relief, he has prayed for appropriate directions to allow him to work on the same post on which he was working earlier with all consequential benefits after the date of issue of the chargesheet.

2. The case of the applicant as made out, in brief, is that:-

2.1 On 8.11.99 he was booked on train No.194 Dn from Jaipur to Sawaimadhopur. He completed all the booking formalities and took charge of the said train. The Assistant Driver was also present at that time. When only 13 minutes were left for the departure of the train, the respondent No. 3 and 4 came and asked him for breath analyser test. After testing him they told him that he has consumed alcohol. He replied in the negative and told that he was fully concious. The respondent No.3 directed him to come to Crew Controller Office where the respondent No.4 repeated the breath analyser test on the other instrument which showed negative result. This was also told by the respondent No.4 in the statement before the Inquiry Officer. The respondent No.4 took alcohol bottle from the shelf and put the alcohol on the breath analyser on the request of the respondent No.3. The breath analyser sounded and at the same time the respondent No.3 directed him to exhale in the instrument. He objected for the wrong process adopted and requested the respondent No.3 and 4

for his medical examination or filing F.I.R. against him, but the respondent No. 3 and 4 told him that they have no time and they have to arrange a new driver. He was asked to sit and was told that ambulance is coming. He again requested the respondent No. 3 and 4 to either give him a written order or to come with him for his medical examination at railway hospital. The respondent No. 3 and 4 told him that they have to arrange a new driver and they have no time and that the ambulance is coming and he should get checked himself. Thereafter, he went to the loco to bring his box and came back to booking office and sat in the office. At about 0045 hours, the respondent No. 5 came. When the applicant asked for his medical examination, he was told that since the respondent No.4 has not been given any written order to test, so you go to your house. He waited for ambulance.

2.2 On 9.9.2000, (sic) respondent No.1 called him in his office where both the respondent No. 3 and 4 were present. He was asked that if he accepts the offence and gives in writing, they will not proceed against him and he will be voluntarily retired. When he did not agree for the same, a chargesheet was issued to him. On 15.2.2000 after the chargesheet, he had gone to respondent No.1 and agreed to accept the offence and for voluntary retirement and by verbal order dated 22.2.2000, he was allowed to drive the passenger train again. He worked as passenger train driver till 26.3.2000 when his charge was again taken back by the order of respondent No.1. The Inquiry Officer was appointed and inquiry report dated 17.6.2000 (Ann.A6) was submitted. Based on the inquiry report the impugned order

dated 10.8.2000 demcting him, was issued.

3. The main grounds taken by the applicant are that:-

3.1 He was neither sent for medical check-up nor he was issued a written order. The charge on the applicant is based on the statement of the respondent No. 2 and 4.

3.2 The Inquiry Officer is required to be above the grade of D.M.E., since the charge is based on the statement of D.M.E.

3.3 Independent witnesses like Railway Guard and Assistant Engine Driver were not examined.

3.4 The chargesheet itself is not valid as the breath analyser is an instrument which is only a proof of mouth smell and not specific proof of alcohol drinking. The analyser gives positive results for many type of smells coming out of the mouth. Only by a Doctor certificate or laboratory report, the type of food and drink can be proved.

3.5 All the proceedings were completed in 13 minutes' time by the respondent No. 3 and 4. The respondent No.4, which is the main base of the charge, has also stated before the Inquiry Officer that those drivers which are found fit, no report is made or submitted.

4. The respondents have contested this application

and have submitted that:

4.1 The applicant came on duty on 8.11.99 under intoxication condition of country liquor for running the train No. 194 Dn. The impugned orders Ann.A1 and A2 are not sought to be quashed and set-aside as per the relief prayed for. Therefore, the OA in this view of the situation, is liable to be dismissed. The applicant got indulged in an activity which could endanger the lives of hundreds of passengers. When he came on duty to take charge of engine of train No. 194 Dn, in the presence of Divisional Security Officer (sic), the respondent No.4, the Safety Counsellor got him down, since on breath analyser he was found to be under intoxication of liquor and, therefore, another driver was put to duty.

4.2 If the applicant had not taken liquor or was not under intoxication he could move writing to higher authorities that he was not allowed to run the train, but he did not do so for long and rather he admitted in reply to question No. 20 before the Inquiry Officer, that at the time when he got down from the engine, he was told that it was done so because he was under intoxication.

4.3 The Divisional Safety Officer and Safety Counsellor are supposed to carry out random and surprise check on the running staff to confirm that running staff has not consumed intoxicants/alcoholic substance before reporting on duty. This is vital because the consumption of alcoholic substance by them may result into heavy loss of human lives as well as loss of railway property. So the

check was part of the duty of the said officers during which they found the applicant under intoxication of country liquor.

4.4 When the applicant was smelling alcoholic and seemed to be under intoxication of liquor, he was not allowed to go on duty for running the passenger train No. 194 Dn. He was asked to accompany to crew office where he was subjected to breath analyser test on the other instrument, which confirmed him under intoxication of liquor by positive signal. By giving alcoholic flavour, the cross checking of breath analyser was also done to be sure about proper functioning of the instrument. The effect of flavour gets off in two-three seconds. It is necessary to cross check the proper functioning of the breath analyser by using alcoholic flavour to the instrument before testing the breath of the suspected employee on the breath analyser. It is wrong to state that just after giving alcoholic flavour to the instrument, the applicant was asked to exhale into the breath analyser. In fact after the instrument confirmed the applicant to be under intoxication of liquor, he slipped away from the crew office to avoid any further proceedings. He had no courage to give in writing to any of the higher authority if anything wrong was done to the applicant by not allowing him to work on the train. The applicant after the breath analyser gave positive signal ran away from the crew office when he was asked to sit and wait. This way the applicant avoided his medical examination. Since the applicant ran away from the crew office, there was no question of his medical examination. The contention of the

applicant that he had gone back to take his driver box is false on its face as the driver boxes are kept on locomotives and removed from the locomotives by Box Boy and not by the running staff. Exibit A/4 containing the statement of the Call Boy is of no worth to the applicant and carries no legal weight, since it is a mere after thought.

4.5 The inquiry was conducted as per the laid down procedure. The respondent No.1 being in the administrative position thought it proper and in the administrative interest in view of the pendency of D.A.R., not to continue the applicant under suspension and, therefore, took him back on duty, which was very much in his power. Therefore, work of driving the rail from 22.2.2000 to 26.3.2000 is of no help to the applicant as the event of misconduct is of 8.11.99 and not of said duration.

4.6 The delinquent employee himself accepted before the Inquiry Officer that he consumed country liquor at around 10.00 AM in the morning of 8.11.99 which might be smelling. Therefore, no further proof after this confession was required.

5. Heard the learned counsel for the parties and perused the record.

During the course of arguments, the learned counsel for the applicant submitted that notwithstanding the avements otherwise, even if the breath analyser showed positive results, it can never be construed as evidence

for having comsumed alcohol. The breath analyser gives positive indication even when a person has consumed alcohol 10 to 15 hours earlier. The breath analyser only picks up the smells and even in case of heavy smokers, the breath analyser will give a positive indication. He further submitted that drinking alcohol by any government employee, per-se, cannot be construed as against his conduct. It be only a misconduct when a person consumes alcohol during the duty hours or he is found in intoxication condition during the duty hours as per Conduct rules. The prescribed tests to establish that a government employee is under intoxication condition would be physical test and chemical tests conducted from the contents of stomach. It is ~~not~~ only the smell which was the basis of taking him off the duty from the said train. Therefore, the respondent No. 3 and 4 have put him off the duty merely based on assumptions that the applicant was under intoxication. He further submitted that it is strange that respondents submit that the applicant fled away from the office of the respondent No.4. It was the duty of the respondents to put him to the medical test. Moreso, he could not be allowed to move around to go if he was under intoxication condition. The evidence of the Call Boy at Ann.A4 who has seen him in the office upto about 1.30 AM cannot be ignored. He further submitted that the applicant himself being a truthful employee has accepted that he consumed liquor in the morning of that day i.e. 13 hours before the departure of the train, which the respondents are themselves relying. In rule 2.09 (2) of Indian Railway (Running Lines) General Rules, 1976, which the railway servants are required to follow on day today

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basis, it has been mentioned that persons having direct link with the control of the train, would not consume alcohol or any other intoxicative drink within 8 hours of the start of the duty. Since the applicant consumed alcohol 13 hours before the start of the duty, the respondents cannot proceed against the applicant. The learned counsel for the applicant also brought to our notice the contention of the respondents wherein they have stated that since the applicant has admitted to have consumed alcohol in the morning, no further proof after his confession in required. He submitted that this itself is sufficient to establish that respondents do not consider medical examination essential to establish the intoxication condition of an employee and, therefore, it is established that the respondents did not send him for medical examination although he waited for a long time. Lastly, he submitted that notwithstanding his submissions that no penalty can be imposed on him, the penalty as imposed on the applicant itself is grossly harsh, inasmuch as, he has not only been reduced in rank but also reduced at the lowest pay point of the reduced rank. He has been made junior in the scale of Goods Driver and also his demotion is with future effect.

6. We have considered the submissions of the parties. There is no averment by parties whether the appeal of the applicant dated 26.8.2000 has been decided or still pending. In the circumstances, without commenting on the merit of the case, we feel that the case of the applicant is required to be considered by the Revising Authority. Accordingly, we dispose of this OA with a

direction to the applicant to file a revision petition before the Revising Authority within a period of four weeks from today alongwith copy of this order and with a copy to respondent No.1 for information and in that event, the Revising Authority shall consider his revision petition keeping in view the contention of the learned counsel for the applicant in Para 5 above also and dispose of the revision petition by a speaking order within a period of eight weeks from the date of its receipt and inform the applicant promptly.

7. With the above direction, this OA is disposed of with no order as to costs.

(H.O.GUPTA)
Member (Administrative)

(S.K.AGARWAL)
Member (Judicial)