IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 477/97 ~~T.A. No.~~ ~~XXX~~

DATE OF DECISION 20/5/2002

Uma Shankar-J _____ Petitioner

Mr. S. C. Sethi _____ Advocate for the Petitioner (s)

Versus

U.O.I. & Ors. _____ Respondent

Mr. Manish Bhandari _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. K. Agarwal, Judicial Member.

The Hon'ble Mr. A. P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

(A. P. NAGRATH)
MEMBER (A)

(S. K. AGARWAL)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 20/5/2002

O.A. NO. 477/97.

Uma Shankar-J, Goods Driver, Kota c/o CTFO(R), Kota.

... APPLICANT.

v e r s u s

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.

2. Divisional Rly. Manager (Estt.) W/Rly, Kota Division, Kota Jn.

3. Sr. Divisional Mechanical Engineer, W/Rly, Kota Division, Kota Jn.

... RESPONDENTS.

CORAM

Hon'ble Mr. S. K. Agarwal, Judicial Member.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

For the Applicant ... Mr. S. C. Sethi
For the respondents ... Mr. Manish Bhandari

: O R D E R :
(per Hon'ble Mr A. P. Nagrath)

The applicant, while working as a Goods Driver, was removed from service by the disciplinary authority vide order dated 12.2.96 (Annex. A/1). In appeal, the order has been upheld by the appellate authority by order dated 23.10.1996(Annex. A/2). Aggrieved with this penalty, the applicant has filed this OA seeking quashing of the orders and reinstatement in service with all consequential benefits.

2. When the matter was taking up for hearing, the learned counsel for the respondents, Shri Manish Bhandari, raised preliminary objections on legal grounds

regarding maintainability of this OA. He submitted that the applicant has not exhausted all the departmental remedies before approaching this Tribunal. Section 20 of the Administrative Tribunals Act, 1985, (for short, the Act), lays down a mandate that the Tirbunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Referring to Rule-24 of the Railway Servants (Discipline & Appeal) Rules, 1968, (for short, DAR), the learned counsel stated that when a penalty of dismissal, removal or compulsory retirement is imposed on a Group-C railway servant and if he wants to appeal against the order of the appellate authority, he is required to submit a revision petition addressed to the General Manager. In this revision petition the delinquent official may also request the General Manager to refer the matter to the Railway Rates Tribunal for advice and to decide the matter on receipt of such an advice. Contention of the learned counsel was that before the applicant could come to the Tribunal, he should have availed of this statutory remedy. The applicant has not availed of this provision and has approached this Tribunal. In these circumstances, the learned counsel asserted that this OA was not maintainable.

3. This interpretation of the rules was strongly contested by the learned counsel for the applicant, Sh. S. C. Sethi, by taking us through the DAR Rules 18 to 25. While submitting that the 'appeal' against the orders of

the disciplinary authority is an essential requirement, the same cannot be said about 'revision'. According to the learned counsel for the applicant, it is an option available to the charged official and he is free to avail of this provision under DAR, if he himself so choses. It is not a binding requirement. To support his contention, he referred to judgements of some Benches of the Tribunal on this issue itself and stated that applications in the disciplinary matters are being entertained by the Tribunal after a charged official from the Department of Railways has availed of the remedy only of appeal and not of revision.

4. Shri Sethi forcefully argued that the Tribunal had already admitted this OA and having admitted the same, this question should now not arise at this stage. Shri Manish Bhandari opposed this contention of the opposite side on the ground that the OA had been admitted ex-parte and the respondents had no occasion to raise any objection, legal or otherwise, on maintainability of this OA. The learned counsel was of the view that even if the OA has been admitted, it cannot result into overcoming the legal infirmity which has arisen in this case on the ground of non-compliance of the provisions of Section-20 of the Act. On the other hand, Shri Sethi contended that once the application has been admitted, there is a presumption that the Tribunal is satisfied that the requirements of Section-20 have been fully met. In support of his contention Shri Sethi referred to a catena of decisions given by various benches of the Tribunal on this point. Cases cited are :

"1. 1989(9) ATC 710 - Para 5 & 6.

2. 1995(30) ATC 672 - Para 12.

3. 1996(32) ATC 461 - Para 16.

4. 1987(3) SLR 503 - Para 2.

5. 1992(21) ATC 358

6. 1987(4) ATC 477."

5. This very issue whether the revision under Rule-24(2)&(3) of DAR is a statutory remedy provided under the rules, came up for consideration of the Jodhpur Bench in which one of us, Mr. A. P. Nagrath, was a member ; in OA No. 12/2000. After extensive discussion of the DAR Rules and judicial pronouncements, the Bench came to a conclusion that filing a revision petition is a statutory remedy available under DAR which has necessarily to be availed of by the applicant before he files an OA. In that order, observations of HOn'ble the Supreme Court in the case of S.S. Rathore vs. State of Madhya Pradesh, 1990 SCC (L&S) 50, were relied upon to reach the conclusion supra. In the face of that decision and the fact that the applicant has not availed of all the statutory remedies, the question arises whether the OA is still maintainable.

6. This issue had also come up for consideration before Jodhpur Bench in OA No. 12/2000, in which it was held that since the OA had been admitted the question of not having exhausted the departmental remedies would not render the OA as not maintainable. That OA was decided

on merits. The same view has been consistently held by various Benches of this Tribunal whenever this question has arisen, whether after admission of the OA, the question of accepting the departmental remedies still survives. In this context, a reference can be made to Para 11 of the judgement of Sheikh Mushtaque Ahmad vs. Union of India and Ors. (1997) 36 Administrative Tribunals Cases 148, reads as under :-

> 11. We would first addrss ourselves to the objection of the learned counsel for the respondents as to the maintainability of this application on the ground that the alternative remedies have not been exhausted before filing this application. Admittedly the applicant did not file any appeal against the order of removal from the appellant authority as provided under the Railway Servants (Discipline and Appeal) Rules, 1968. According to Section 20(1) of the Administrative Tribunals Act, 1985 applications under Section 19 of the Act are not to be admitted unless other remedies available have been exhausted. Sub-Section (1) of Section 20 of the said Act reads as follows :
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> "20. APPLICATION NOT TO BE ADMITTED UNLESS OTHER REMEDIES EXHAUSTED-(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed all the remedies available to him under the relevant service rules as to redressal of grievances."
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> The language of the Section 20(1) of the Act as extracted above, leaves no room for doubt that bar against filing application without exhausting alternative remedies is doubt that bar against filing application without exhausting alternative rmedies is not absolute. The Tribunal, in appropriate cases, may waive the necessity of filing departmental appeal. A similar question came up for consideration before a Bench of this Tribunal in Ghanshyam Krishna Shukla (Dr) v. State of U.P. The Tribunal has held that: "It is true that under sub-Section (1) of Section 20 of the Administrative Tribunals Act, XIII, 1985, a petitio under Section 19 of this Act is not ordinarily to be admitted unless the departmental remedies are availed of by t the applicant. The sub-section has used the word'ordinarily' and has granted a discretion to the Tribunal in proper cases to waive the condition of exhausting the departmental remedies to save the applicant from the resultant hardships. Further, the

law by now has been well-settled in this connection and the question of exhausting the departmental remedies loses all its importance as soon as the petition is admitted by the Tribunal."

7. Having thus decided the preliminary objections raised by the learned counsel for the respondents, we now proceed to decide this case on its facts and merits.

8. A chargesheet dated 06.01.1994 was issued to the applicant under Rule 9 of the Railway Servants (Disciplinar & Appeal) Rules, 1968. A statement of allegations reads as under :-

Statement of allegations :-

On 8.7.93 while working C.L.E. (Diesal) 18770+18094 WDM-2 Engines were stopped at Ruthiyai on line No.2 for crossing at 19.45hrs. AT 20.22 Hrs. Line clear granted vide Token No. 1 but Engines started by an un-known person.

You and assistant both were not on Engine. Finally it was tried to stop Loco at MUG in Dead-End but Engines derailed by breaking Dead-End. You were held responsible for leaving the loco and allowing un-authorised person in loco resulting in to such serious mis-hap."

9. A departmental enquiry was held and the charge against the applicant was found established by the Enquiry Officer. Agreeing with the report of the Enguiry Officer, the Deisciplinary Authority imposed a penalty of removal from service vide order dated 12/26-2-96 (AnnexureA-1). The applicant preferred an appeal on 19.03.1996 and the Appellate Authority i.e. DRM, Kota, rejected the same vide order dated 03.10.1996 (Annexure A-2). This order was communicated to the applicant on 16.10.1996.

10. The case of the applicant is that the enquiry was

a mere formality as the Enquiry Officer, before examining the witnesses listed in the chargesheet, first examined the defence witnesses and thereafter the departmental witnesses. According to him, the Enquiry Officer assumed the role of presenting officer and by his extensive questioning, by leading questions and cross examining all the departmental and defence witnesses, he went all out to prove the charge against the applicant. Another major ground raised by the applicant is that the entire case is of no evidence as he was not guilty of causing accident as he was not driving the engine when it derailed. He had left the engine for some time when some unknown person, who was later found drunken had driven the engine to the next station which got derailed into the Dead-End Siding at the next station Mahuguda. Yet another defence of the applicant is that the Disciplinary Authority and the Appellate Authority did not apply their minds to the merits of the case and grounds of appeal and that his appeal was rejected in a routine manner.

11. A detailed reply has been filed by the respondents.

12. It has been stated that the applicant was on duty on a coupled loco and there was an Assistant Driver with him. While on duty, the Driver is not expected to leave the engine unmanned. If for certain reasons the driver was required to send the assistant driver to the second loco-motive, he should himself have remained available on the loco-motive. The very fact that some unknown person manage to drive the loco is indication of the extreme negligance on the part of the applicant. This resulted into the loco motive derailing at the next station where the Station Master had no alternative but to receive it

on a Dead-End Siding.

13. In the rejoinder filed by the applicant, the applicant has only reiterated his averments in the OA and has taken a plea that in this case rules and principles of natural justice have not been followed.

14. We have heard the learned counsel for the parties and the entire record including the averments in the OA and annexures attached thereto, the reply of the respondents and rejoinder filed by the applicant.

15. It is not in dispute that on 08.07.1993, the applicant was on duty as a Driver on a copuled light engine. The engine was stopped at Ruthiyai Station. The applicant admits that he had deputed the Assistant Driver to the second loco motive and himself got down for what he states in the 'call of nature'. During this period, the applicant accepts that some unknown person drove away the engine. If these are the facts which are not in dispute we do not find any merit whatsoever in all the contentions raised by the applicant and the learned counsel on his behalf. It could have been possible for an unknown person to driver away the loco motive only in a situation when the Driver incharge i.e., the applicant in this case, was negligant in his duties. Manning an engine is a very sensitive task, directly related to safety of train operations. It can not even be remotely accepted that Driver of the engine would cause a situation where some unauthorised person would enter into the loco motive cab and drive it away, with the driver

incharge remaining totally oblivious of the same. The charge has been duly established in a departmental enquiry and we do not find any scope for interference. It is a settled legal position that the scope for intervention in disciplinary proceedings by the Courts and Tribunals is rather limited. If there was a gross violation of certain basic statutory provisions or if it were a case of no evidence, the scope of judicial scruitny could arise. But in this case the evidence fully suggests that the applicant was himself responsible for leaving the coupled light engine unmanned and the unauthorised person driving it away to the next station Mahuguda, where it was received on a Dead-End Siding. The primary responsibility for the entire episode lies on the applicant and he cannot be seen to be taking shelter in mere technicalities, which even otherwise are not at all relevant to the charge clearly established in this case. We do not find any infirmity in the procedure adopted. The applicant has failed to make out any case whatsoever in his favour.

16. We dismiss this OA as totally devoid of merits. However, there is no order as to costs.

(A. P. NAGRATH)
MEMBER (A)

(S. K. AGARWAL)
MEMBER (J)