

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 263/2000  
T.A. No.

199

DATE OF DECISION 10/02/2002

Bishan Lal

Petitioner

Mr. Shiv Kumar

Advocate for the Petitioner (s)

Versus

Union of India and 3 others

Respondent

Advocate for the Respondent (s)

May 1st 2002  
In  
110

Hon'ble  
J. K.

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not? yes

3. Whether their Lordships wish to see the fair copy of the Judgement ?

✓ 4. Whether it needs to be circulated to other Benches of the Tribunal? yes

J. K.

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH JAIPUR

Original Application No. 263/2000

Bishan Lal  
S/o Shri Bhagirath  
R/o New Railway Colony  
Qr. No. 672-A Kota, Junction. : Applicant.

rep. by Mr. Shiv Kumar : Counsel for the applicant

-verses-

1. Union of India through  
General Manager,  
Western Railway  
ChurchGate Bombay.
2. Divisional Railway Manager  
Western Railway,  
Kota Division  
Kota.
3. Senior Divisional Electrical  
Engineer ( TRO )  
Western Railway, Kota  
Division, Kota.
4. Chief Operations Manager,  
Western Railway, ~~Churchgate, Mumbai~~ : Respondents.

rep. by Mr. S.S. Hassan : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

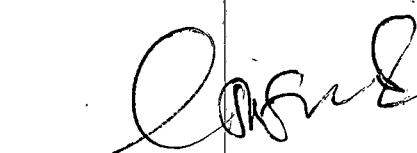
The Hon'ble Mr. A.P. Nagrath, Administrative Member

Date of the Order: 1.10.02

Per Mr. Justice G.L.Gupta,

ORDER

The applicant was working as Goods Driver 'B' in Western Railway, Kota. A Charge sheet (Annex.A.6) for major penalty was issued upon him on 28.6.94, wherein it was alleged that he had violated G.R. 3.74(i) (b), 3.78 1 (a)&(b), 3.83(i) and (3) G.R. 4.40, S.R. 4.40(2) and (3), ~~as~~ while working as



Driver of 5063 UP Avadh Express on 16.2.94, he had passed UP/Home Signal of BO on blank position and dashed from rear with goods train GIT UP which resulted in derailment causing loss of property and lives.

(ii) The applicant filed his reply to the charge sheet. After conclusion of the inquiry, the Disciplinary Authority vide order dated 27.6.95 (Annex. A.7) imposed the penalty of removal on the applicant. The applicant preferred an appeal (Annex. A.8) against that order. After considering the appeal, the Appellate Authority vide communication dated 31.10.95 (Annex. A.5) quashed the order of removal and directed denovo enquiry, whereupon a fresh charge sheet was issued by the Disciplinary Authority on 9/31.10.95.

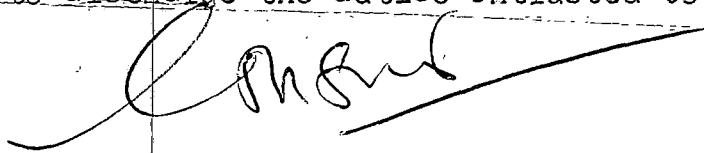
(iii) In the charge sheet (Annex. A.1) it was alleged that the applicant while working as Driver in train No. 5063 UP Avadh Express on 16.2.94, passed UP/Home Signal on blank position and entered the train wrongly into the UP loop line at Bangrod which was already occupied by the stationary UP GIT train and thus he contravened G.R. 3.74 (i) (b) 3.78 1 (a) & (b), 3.83 (i) and (3) G.R. 4.40, S.R. 4.40 (2) and (3). Shri V.K. Shamma, who was the earlier Enquiry Officer in the earlier enquiry, was again appointed as Enquiry Officer. The applicant wanted a change of the Enquiry Officer by making an application, but his request was not accepted. After the inquiry was conducted, the Enquiry Officer gave a report. The

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Disciplinary Authority, vide order dated 21.4.97 (Annex. A.2) imposed the penalty of removal. The applicant preferred an appeal against that order which was rejected by order dated 26.8.97 (Annex. A.3). The applicant preferred a revision petition also but that was rejected vide communication dated April 99 (Annex. A.4).

(iv) In this O.A the applicant calls in question the enquiry as also the punishment order on various grounds including that the order is arbitrary and against the principles of natural justice, the Appellate Authority had acted beyond its jurisdiction when it ordered issuance of fresh charge sheet on 31.10.95, and that without cancelling the earlier charge sheet, a fresh charge sheet could not be issued by the Appellate Authority.

2. In the reply (it is stated that the appointment of Shri V.K. Sharma as Enquiry Officer was as per the Rules. It is averred that the Enquiry Officer has not violated any rules or provisions while conducting the inquiry. It is further averred that the applicant failed to appear before the Enquiry Officer and full opportunity of hearing was given to him. It is stated that the Enquiry Officer conducted the inquiry in a fair manner as per Rules and there is no illegality in the issuance of the fresh charge sheet. It is averred that the Appellate Authority had ample power to order denove enquiry against the applicant as it had came to the conclusion that the applicant had not been supplied sufficient information as to how and in what manner he had failed to discharge the duties entrusted to him.



3. We have heard the learned counsel for the parties and perused the documents placed on record.

4. The contention of Mr. Shiv Kumar was three fold. One, the Appellate Authority had no power to direct de novo inquiry by issuing a fresh charge-sheet. Two, the Disciplinary Authority had prepared the charge sheet on 9.10.95, i.e. before the order dated 31.10.95 (Annex A.5) passed by the Appellate Authority, which shows that the Disciplinary Authority and the Appellate Authority had conspired to damage the career of the applicant. Three, the penalty imposed is very severe.

5. On the other hand, Mr. Hassan, learned counsel for the respondents contended that the scope of judicial interference in such matter is very limited and the Court should not set aside the order of the Disciplinary Authority, upheld by the Appellate Authority and the Revisional Authority even if some irregularity is noticed.

6. We have given the matter our thoughtful consideration. There cannot be any dispute in this legal position that the scope of judicial review in the matter of disciplinary proceedings is very limited and the Court cannot be justified in imposing its opinion on the findings recorded by the Disciplinary Authority as confirmed by the higher authorities. It is also true that even with regard to quantum of penalty normally the Court should not interfere.



7. However, when startling facts in the conduct of the disciplinary proceedings came to the notice of the Court, it cannot shut its eyes on the basis of the principles aforesaid.

8. The facts indicate that the charge sheet had been issued to the applicant on 28.6.94 for violating the provisions of the G.R and S.R when he was driver of the train on 16.2.94, enquiry was completed and the Disciplinary Authority agreed with the findings recorded by the Enquiry Officer holding that the charges were proved against the applicant. The Disciplinary Authority imposed the penalty of removal vide order dated 27.6.95 (Annex. A.7). The applicant challenged the said order by preferring appeal (Annex. A.8)

In the memorandum of appeal various grounds were stated, including that no witness had been cited in the memorandum of charges, that the applicant was not allowed to inspect certain vital documents and that he was not allowed an opportunity of submitting his written statement of defence etc. The Appellate Authority vide order dated 31.10.95 allowed the appeal of the applicant and quashed the charge sheet. The order passed by the Appellate Authority read as under:



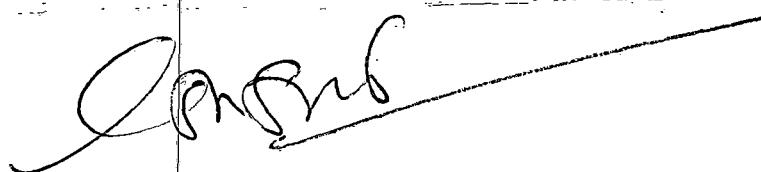
" Having gone through the case, I find that there is merit in the appeal. The employee has not been given sufficient information about how and in what manner he failed to discharge duties entrusted to him. Under these circumstances I must quash the orders pass by disciplinary authority with immediate effect and place the employee under suspension! The employee is thus reinstated and placed under suspension on a simultaneous basis. Denovo action be taken against the employee by issuing a fresh charge sheet."

Please acknowledge the receipt.

Sd/.....  
( M. Sirajuddin)  
DRM- Kota.  
(emphasis supplied).

9. A reading of the order shows that the Appellate Authority was satisfied that there was merit in the appeal preferred by the applicant. The Appellate Authority further found that the applicant had not been given sufficient information as to how and in what manner he had failed to discharge his duties. The Appellate Authority in clear terms quashed the order of the Disciplinary Authority. The quashing of the order of the Disciplinary Authority by the Appellate Authority meant that the charge-sheet as well as the penalty order were quashed. The Appellate Authority in clear terms ordered the reinstatement of the applicant.

10. It is different thing that in the same order the Appellate Authority again placed the applicant under suspension and directed denovo enquiry. It is beyond our comprehension as



to how the Appellate Authority, having allowed the appeal of the applicant and having quashed the disciplinary action could pass an order placing the applicant under suspension and direct            denovo inquiry by issuing a fresh charge sheet.

It is obvious, the Appellate Authority directed initiation of disciplinary action again, against the applicant for the mis-conduct in which it had already found merit in the        appeal of the Applicant and it had quashed the penalty order and the charge sheet. When the Appellate Authority was of the view that there was merit        in the appeal of the Applicant and the charge sheet issued to him was not sustainable, in our opinion it had no power to direct the issuance of the fresh charge sheet for the same alleged mis-conduct.

11. The powers of Appellate Authority are stated in Rule 22 of the Railway Servants (Discipline & Appeal ) Rules, 1968. ( RSDA Rules for short ). The relevant part of Sub-rule (2) of Rule 22 of the RSDA Rules is read hereunder:

" 22 (2)(c)           

(i) confirming enhancing reducing or setting aside the penalty or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

When the Appellate Authority set aside the orders passed by the Disciplinary Authority it meant that it had exercised power conferred under sub-clause (i) of clause (c) of Sub-Rule 2 of Rule 22 of the RSDA Rules.

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12. True it is, under sub-clause (ii) the Appellate Authority can remit the case to the authority which imposed the penalty and the Appellate Authority may give directions as it may deem fit in the circumstances of the case.

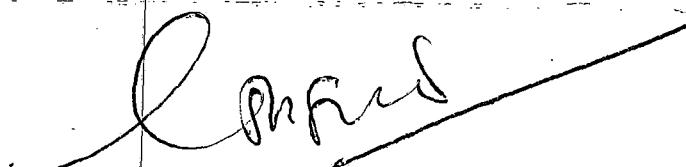
But ~~in~~ our opinion, the power to give directions in sub-clause (ii) does not imply that the Appellate Authority can direct *de novo* inquiry by issuing a fresh charge sheet for the same mis-conduct when it orders the quashment of the charge sheet already issued and penalty order in exercise of power under sub-clause (i). What can be directed by the Appellate Authority under sub-clause (ii) is to allow cross examination of witnesses of the Department if it is found that the delinquent was not given an opportunity of cross-examination or effective cross examination during the inquiry. Under this clause it can also be directed to afford an opportunity to the delinquent to lead evidence in defence if it is found that he was not given enough opportunity to lead evidence. In other words, while remitting the case, if the Appellate Authority is satisfied that prejudice was caused to the delinquent due to the fault of the Enquiry Officer or Disciplinary Authority, in the conduct of inquiry, suitable directions can be given. But in that case, the charge sheet remains the same. It is not permissible that a direction can be given by the Appellate Authority to issue fresh charge sheet for the same misconduct and held *de novo* inquiry.



13. If there was any defect in the charge-sheet the applicant was not responsible for the same. The applicant cannot be made to suffer the rigour of denovo inquiry for no fault on his part. If the Appellate Authority was of the view that proper charge sheet had not been given to the applicant by the Disciplinary Authority, action ought to have been directed against the Disciplinary Authority itself, for issuing defective or incomplete charge sheet.

14. It is significant to point out that in the Scheme of RSDA Rules, it is nowhere envisaged that an order of exoneration in favour of a delinquent employee can be challenged by the Railways. It follows that delinquent employee cannot be placed in a disadvantageous position by the Appellate Authority, when it is approached against the order of the Disciplinary Authority.

15. The Appellate Authority certainly has a power to enhance the penalty under proviso to sub-Rule (2) of Rule 22, after following the procedure prescribed therein. But in the instant case, the Appellate Authority was not satisfied with the charge sheet itself and quashed the same vide order dated 31.10.1995. Having quashed the charge sheet, the Appellate Authority could not be justified in placing the applicant in worse situation by directing denovo inquiry against him for the same misconduct.



16. The learned counsel for the respondents could not cite any authority in support of the order of the Appellate Authority that denovo inquiry by issuing ~~a~~ fresh charge sheet could be ordered by the Appellate Authority. The order of the Appellate Authority directing denovo inquiry against the applicant by issuing fresh charge sheet was nothing but a nullity and the proceedings taken thereon and the orders passed are not sustainable in law.

17. It is true that the applicant could challenge the order Annex. A.5 at that time but that does not debar the applicant from challenging the order in this O.A for the simple reason that that part of the order Annex. A.5 was passed without jurisdiction. It is non-est in the eye of law and the bar of limitation cannot be applied in such a case.

18. There is yet another aspect of the matter. Even on assuming that the Appellate Authority had the power to direct denovo ~~inquiry~~ by issuing a fresh charge sheet after quashing the earlier proceedings, the applicant is entitled to succeed in this case.

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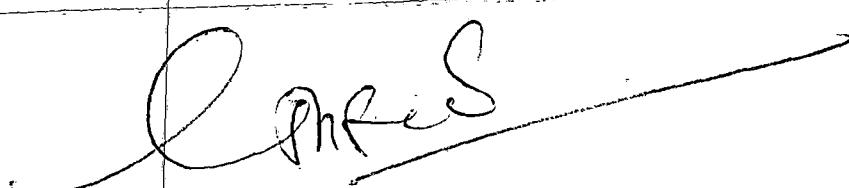
19. It is evident from the second charge sheet, Annex. A.1 issued to the applicant that it has been despatched on 9.10.95, and it had been prepared and signed by the Disciplinary Authority on 7.10.95. What was done while sending it to the applicant that figure '31' was written below '9' to make the charge sheet dated 31.10.95. We have seen that the Appellate Authority had passed the order of denovo inquiry on 31.10.95. Evidently there was no order of the Appellate Authority until 7.10.95, the date on which the charge sheet was signed by the Disciplinary Authority.

20. The learned counsel for the respondents was asked to explain as to how the charge sheet could be prepared and signed on 7.10.95, when the appeal of the applicant had not been disposed of by that date. He placed before us the office file relating to the case and tried to explain that the Appellate Authority had already passed the order on the appeal of the applicant on 20.7.95. He pointed out from the notings that the file had reached the Sr. DEE, the Disciplinary Authority on 31.7.95. This explanation of the learned counsel for the respondents cannot be accepted for obvious reasons. The Appellate Order Annex. A.5 dated 31.10.95 bears the signatures of the D.RM. himself who was the Appellate Authority. When the letter Annex. A.5 dated 31.10.95 does not show that this letter was issued with reference to any

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order passed on an earlier date, it will have to be presumed that the Appellate Authority had decided the appeal on 31.10.95 itself. It may be pointed out that in the reply to the O.A. the respondents have categorically stated at para 4 that the D.R.M. vide order dated 31.10.95 had quashed the order of removal dated 27.6.95 and ordered denovo inquiry against the applicant for issuing a fresh charge sheet. The respondents have nowhere stated that the DRM had decided the appeal prior to 31.10.95. That being so, the contention that the appeal preferred by the applicant had already been decided by the Appellate Authority before 7.10.95 cannot be accepted.

21. It is also noticed that the date below the signatures of the Appellate Authority can be read as 20.9.95. As a matter of fact, it seems that the date 20.9.95 was written by the Appellate Authority. An attempt seems to have been made to change the date to 20.7.95. There is an obvious over-writing on the figure '9' which has been made as '7'. It may be pointed out that there are no effective proceedings recorded in the office file after 9.10.95. In such circumstances the contention of the learned counsel for the applicant that the notings in ~~the file~~ could be recorded after this Court noticed the discrepancy on 1.5.2002, cannot be lightly brushed aside.



22. The fact remains that the disciplinary action against the applicant was initiated vide Annex. A.1 on 7.10.95 for the mis-conduct for which he had already been punished by the Disciplinary Authority and his appeal was pending with the Appellate Authority. The action of the respondents in the circumstances, in our view, is illegal and cannot be sustained.

23. For the reasons stated above, we allow this application and quash the charge sheet Annex. A.1 and the order of penalty passed by the Disciplinary Authority and upheld by the Appellate Authority and the Revisional Authority. We are conscious of the fact that the mis-conduct alleged ~~against~~ <sup>by</sup> the applicant was of grave nature ~~yet~~ he goes unpunished. But that cannot justify the upholding of the order of penalty because the entire proceedings after the order of the Appellate Authority dated 31.10.95 are without jurisdiction.

24. No order as to costs.

*lmpd*  
( A.P. Nagrath )  
Administrative Member

*G.L.Gupta*  
( G.L.Gupta )  
Vice Chairman.

jsv.