CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH: JAIPUR

O.A. No. 106/2003

DATE OF DECISION 31.5.2004

Hari Singh _____ Petitioner

Mr. P.V. Calla

_____ Advocate for the Petitioner(s)

Versus

UOI and two others. _____ Respondent

Mr. N.C. Goyal _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. M.K. Misra, 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? X
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND—12 CAT/86—3-12-86—15,000

(M.K. Misra)
Member (A)

(J K Kaushik)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH: JAIPUR

Original Application No. 106/2003

Date of Decision: 31.5.2004

Hon'ble Mr. J.K. Kaushik, Judicial Member

Hon'ble Mr. M.K. Misra, Administrative Member

Hari Singh S/o Sh. Ghasi Ram Aged about 46 years, at present working On the post of Senior Diesel Assistant, Office of Loco Foreman Phulera (Mechanical Department) Jaipur Division, Jaipur R/o VIIIth Bareyal Khurd Ki Dhani, Post Kolana, Via Bandi Kui, District Dausa.

[By Advocate Mr. P.V.Calla for applicant]

...Applicant.

Versus

1. Union of India through General Manager North-West Railway, Headquarter Office, Jaipur.

2. The Divisional Railway Manager, Jaipur Division, Jaipur.

3. The Senior Divisional Mechanical Engineer (Estt.) Jaipur Division, Jaipur.

[By advocate Mr. N.C. Goyal, for respondents]

...Respondents.

Order
[By J.K.Kaushik, Judicial Member]

Shri Hari Singh has invoked the jurisdiction of this Tribunal and filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. He has prayed for the following relief:

"It is, therefore, prayed that the Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate writ, order or direction the impugned orders dated Annex. A/1 dated 23.9.1998 Annex.A/2 dated 8.6.1999 and Annex.A/2-A dated 26.6.2002 may kindly be declared illegal. The penalty imposed vides office order dated 26.6.2002 may also directed illegal. The respondents may be directed to release the pay of the applicant for the period he remain out of employment due to impugned orders Annexure A/1 and A/2. Further the respondents may be directed to release all dues and restore the seniority position of the applicant on the post of Senior Diesel Assistant as if the impugned orders have never been issued.

Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicant.

The original application may kindly be allowed with costs."

2. The brief facts of this case necessary for adjudication of the controversy involved are that the applicant was initially appointed to the post of Coal Man on dated 21.9.1974. In due course, he earned his promotions and became Senior Diesel Assistant. While working on the said post he was issued with a Charge Sheet for major penalty (SF-5) vide Memo dated 29.9.1997, alleging that on 12.7.97 the Driver of 181 Dn Passenger Train passed the down home signal No. S-1 of Bandi Kui Station in 'On' position and stopped the train after crossing the signal which was indicating the signal which was indicating danger. He denied the charges and a detailed inquiry was conducted by Inquiry Officer (for brevity the 'IO'). The IO examined four witnesses, namely. Serv/Sh R.P. Vijay, Ram Karan, Umesh Sharma and Vijay Singh Shekhawat, on behalf of the prosecution.

3. The further case of the applicant is that the IO concluded the inquiry proceedings on 7.4.1998 and held all the charges as proved. He submitted a detailed representation against the findings of the inquiry officer and inter alia stated that the train was stopped for two minutes at home signal and thereafter Shri Ram Swaroop, Driver took the train crossing the red signal. The applicant informed him the factum of signal being red but the Driver still took the train. The Driver without any authority also took the same back. He was only assisting the Driver. For the same charges, the disciplinary proceedings were also conducted against the Driver but he was left of with premature retirement, which was otherwise also due within few months. On the basis of the findings of IO, the Disciplinary Authority (for brevity 'DA') imposed the penalty of removal from service on the applicant vide NIP dated 23.9.1998.

4. The applicant preferred an appeal, which came to be rejected, vide letter-dated 23.9.1998. He also preferred a revision petition which came to be accepted in part vide order dated 26.6.2002 and the penalty was reduced from removal to reduction in the pay to the lowest stage in the lowest grade for a period of three years with cumulative effect i.e. at Rs. 3,050/- p.m. in the pay scale of Rs. 3050-4590 and loss of seniority. The impugned orders have been assailed on numerous grounds enunciated in para 5 and its sub-paras; significant of them being

the ground of discrimination between applicant and Driver, Appellate authority did not consider the points raised in the appeal, it has not come the statements of witnesses that the applicant was at fault etc.

5. The respondents have resisted the case of the applicant and have filed an exhaustive reply to the Original Application. It has been averred that the IO after conducting the inquiry found all the charges as proved. The applicant has admitted that the Engine being long hood side and home signal was towards his side and was down and informed the Driver regarding down home signal. He has not given any proof of not passing home signal in danger condition. The disciplinary authority is well within its power to impose any of the penalties in accordance with Railway Servants (Discipline &Appeal) Rules 1968 whether covered under the Railway Board's Circular or not. The further ground of the defence as set out in the reply is that the penalty of removal was subsequently reduced to that the reduction to the lowest grade and post by the revising authority looking to the nature of negligence of the applicant. The grounds have been generally denied. No rejoinder to reply has been filed.

6. We have heard the elaborate arguments advanced by the learned counsel for both the parties and have bestowed our earnest consideration to the pleadings and records of the case. The respondents have made available the disciplinary case files,

which of course did not contain the proceedings of Major Joint Enquiry.

7. The learned counsel for the applicant has taken us through the statement of defence submitted by the applicant in reply to the charge -sheet. He emphasised and endeavoured to show that complete case was foisted and the applicant was implicated. The applicant has not committed any misconduct. He also tried to persuade us that the complete control of the train remains with the Driver and the Diesel Assistant is only to assist him and obey his orders, which the applicant sincerely did. The applicant informed the correct position to the Driver. The Driver of its own took back the train. But the applicant has been given a discriminatory treatment in as much as the Driver was just to retire within few months and has been imposed the penalty of compulsory retirement; with the result he enjoyed all the retrial benefits. On the other hand the applicant has been imposed the capital punishment of removal from service. It is a case of no evidence. There is absolutely no evidence in support of the main charge that the applicant did not inform the Driver regarding the position of the signal. The findings of IO are perverse and faulty besides being without any foundation. He has also made us to go through the order passed by the revising authority wherein it has been clearly observed that the Diesel Assistant was not directly responsible. But still he has been made to suffer major penalty having multi-dimensional

adversities on his service career. It has also been contended that he has been held guilty on a charge the he did not make any effort at his own level to stop the train, whereas such was not the charge against him.

8. Per contra, the learned counsel for the respondents has vociferously opposed the contentions put forward on behalf of the applicant. He has contended that the applicant has himself admitted that the Engine was long hood and the signal was towards his side, therefore, it was his duty to inform the driver regarding the correct position of the signal which he did not and this resulted in overshooting the danger signal. The learned counsel for the respondents, despite not being an expert of technicalities, has strived hard to demonstrate the genus of the whole episode. He also tried to fill up certain missing links. He has reiterated the defence of the respondents as mentioned in the reply. We were also made to travel certain documents forming part of the paper book. He next contended that there was no question of any discrimination and the Driver had already been inflicted with a major penalty of compulsory retirement. The matter involves public safety and cannot be taken lightly. The revising authority has already taken the lenient view. Lastly, he has submitted that the scope of judicial review in the disciplinary matters by the Courts is very limited and this Tribunal would not like to interfere in the instant case.

9. We have considered the rival submission made on behalf of both the parties. Before proceeding further in the matter we would like to ascertain the scope of judicial review by this Tribunal. It is settled legal position that strict rules of evidences are not applicable to the departmental inquiries and every violation of procedure does not vitiate the inquiry. See **R.S.Saini vs. State of Punjab [1999** SCC (L&S) **1424] K.L. Shinde vs. State of Mysore [AIR 1976 SC 1080]; Rae Bareli Kshetriya Gramin Bank vs. Bhola Nath Singh and others [AIR 1997 SC 1908]; Bank of India and another vs. Degala Suryanarayana [1999 SCC (L&S) 1036]; Inspector General of Police vs. Thavasiappan [JT 1996 (6) SC 450].** The Apex Court in case of **Kuldeep Singh Vs Commissioner of Police; [AIR 1999 SC 677]** has lucidly illustrated the scope of judicial review. The following paras are relevant:-

> "It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. In Nand Kishore vs. State of Bihar, AIR 1978 SC 1277 = (1978) 3 SCC 366 = 1978 (3) SCR 708, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If,

> therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.
>
> Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.
>
> A broad distinction has, therefore, to be maintained between the decisions, which are perverse, and those, which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with."

10. Now, adverting to the facts of this case and examining the same on the touchstone of aforesaid principles of law, we find that the main charge against the applicant is that he did not inform the correct position regarding danger signal to the Driver and with the result the Driver passed the train by crossing the danger signal. It has been held as proved that the trained passed the danger signal and it was also the duty of applicant to keep the Driver informed regarding signal position since the Engine was on long hood and signal was on left side i.e. applicant's side. The applicant in Original Application has averred that he apprised the correct position to the Driver but the Driver still moved the train. The total control of the train was with the Driver and he was required to obey the orders of Driver, which he did. We have waded the whole evidences on the records, we do not find that any of the witness has supported the said charge. Rightly so, it was the only Driver who could

complain that the Diesel Assistant did not inform him, the correct position of the signal. None of the other witnesses, least to say the witnesses examined in this case, could give any evidence on this. Unfortunately, the Driver has not been called as a witness in this case by any of the party. As a matter of fact it was a case where a joint inquiry ought to have been conducted.

11. We are unable to persuade as to why the material witness i.e. Driver of the train was neither cited as a witness not examined as such during the inquiry. It also stroked to our mind that once there is no evidence regarding non-informing the position of danger signal by the applicant to the Driver, how the charge could have been held as proved. We confess, we felt bit dismayed when we noticed that the applicant could have called the concerned Driver in support of defence to disprove the said charge. But the law position is that the prosecution should stand on its own legs and prove the charges and it is not for the defence to disprove the charges. The prosecution could have very called and examined the material witness in support of allegation. But they have failed to discharge their duty and the applicant cannot be made to suffer for the fault of the respondents. We are conscious of the standard of proof required in the disciplinary proceedings which is the preponderance of probabilities but that is not there. The whole findings are based

on precarious assertion and suspicion howsoever great may be cannot take the place of proof.

12. Now we would turn to another facet of the episode, the IO has said it and DA that the applicant did not make any effort to stop the train and he would have applied the emergency breaks to stop the train when the Driver was crossing the danger signal. But this observation is coming only subsequent to the inquiry and was not the part of the charge sheet. Had it been one of the part of the charges, the evidences would have been adduced by prosecution and the applicant submitted his defence. One cannot be taken by surprise and such finding could not have been the basis of inflicting the penalty on the applicant. Thus, the IO has acted so arbitrarily in the matter and has found the appellant guilty in such a coarse manner that the conclusion is one to which no reasonable man could come and the finding of guilt can aptly be described as perverse. The inescapable conclusion would be that the impugned orders cannot be sustained.

13. The law in cases of no evidence is also settled by the Apex Court in case of H. C. Goel Vs. Union of India AIR 1964 SC 364 =1964 SCR (4) 718 wherein their Lordships of Supreme Court has held as under:

> "In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226 has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true

> that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence."

Applying the aforesaid principles of law to the instant case, none of the impugned orders can be sustained in law.

14. The learned counsel for the applicant has tried to lay great emphasis on the ground of discrimination by submitting that applicant was inflicted the penalty of removal from service but the Driver was retired from service. We have not been equipped with the requisite details on this point in as much as we do not know as to what was the charge against the Driver. Definitely, the charge must have been different from that of applicant. There is also fallacy in the submissions which has been correctly projected by the learned counsel for the respondents that subsequently, the penalty has been reduced and there could thus be no question of discrimination. The plea of the learned counsel for the applicant is only to be rejected being groundless and untenable.

15. Having come the conclusion that there was no evidence in support of the charges against the applicant and the finding are

perverse, the penalty order itself can not stand the scrutiny of law, there is hardly any necessity to examine the subsequent orders passed by the appellate or revising authorities. Since the basic order itself is not sustainable, the subsequent orders cannot have any better status shall also be inoperative and illegal.

16. In view of what has been said and discussed above, we find ample merits and substance in this Original Application and the same stands allowed accordingly. The impugned orders at Annexs. A/1, A/2 and A/2-A dated 23.9.1998, 8.6.1999 and 26.6.2002 are herby quashed. The applicant shall be entitled for all the consequential benefits. This order shall be complied with within a period of three months from the date of its communication. The parties shall bear their respective costs.

[M.K.Misra]
Adm.Member

[J.K.Kaushik]
Judl. Member

jrm