

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

O.A. 407 of 2001

Date of Decision : 15.06.2004

Mr. Dudh Nath Yadav : Applicant (s)

Mr. L. S. Rajput : Advocate for the Applicant (s)

Versus

Union of India & Ors. : Respondent (s)

Mr. H. B. Shrivastava : Advocate for the Respondent (s)

CORAM:

THE HON'BLE MR. M. P. SINGH : VICE CHAIRMAN

THE HON'BLE MR. A. S. SANGHVI : MEMBER (J)

ORDER

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 it needs to be circulated to other Benches of the Tribunal?

Dudh Nath Yadav,
Aged about 53 years,
S/o. Shri. Sahthi Ram Yadav,
Goods Guard,
Central Railway Resident of House No.1865,
Behind Police Lines, Kanch-Ghar,
Jabalpur (M.P).

- Applicant -

Advocate : Mr. L. S. Rajput

Versus

1. Union of India,
Through, General Manager,
Central Railway,
Mumbai - CST,
Maharashtra.
2. Divisional Railway Manager,
Central Railway,
Jabalpur (M.P.) 482 001.
3. Senior Divisional Operating Manager,
DRM's Office,
Central Railway,
Jabalpur (M.P.) - 482 001.

- Respondents -

Advocate : Mr. H. B. Shrivastava

ORDER
O.A. 407 of 2001

Date : 15/06/2004

Hon'ble Shri. A. S. Sanghvi : Member (J).

On dated 25.7.97 when the applicant was working as a Goods Guard on 1027 Down Goods Train, the Engine of the train failed due to mechanical defects and train came to stop between GMD-SGP block section at Km 788/9. While the train was standing on the section, the relief engine no. 18940 sent for pushing this train came from behind and collided with the rear of the 1027 down resulting into heavy damages to the engine as well as the rear portion of the train. The applicant was subsequently served with a charge sheet on dated 14.10.97 leveling the imputations that due to his failure and negligence to protect the rear portion of last vehicle of 1027 down by putting up detonators at 1200 mtrs of the train, the collision had occurred. On his denial of the charges leveled against him, the inquiry was conducted in the charges and the inquiry officer in his report dated 30th December 1997 exonerated the applicant of the charges leveled against him. The disciplinary authority did not agree with the findings of the inquiry officer and holding that the applicant was negligent in his duties imposed the penalty of removal from service on

the applicant. An appeal preferred by the applicant was also rejected by the appellate authority. The applicant thereupon approached the Tribunal by moving the O.A. no. 52 of 99 and the Tribunal vide its judgment and order dated 23.2.2001 quashed and set aside the penalty imposed on the applicant by the disciplinary authority and directed the reinstatement of the applicant in the service. The Tribunal however gave liberty to the disciplinary authority, if he felt necessary to further conduct the proceedings from the stage immediately after receipt of the inquiry report and pass such orders as he considered appropriate in accordance with the rules and keeping in view the observations made in para 5.2. of the judgment within 4 months from the date of his reinstatement. The applicant was thereafter reinstated in service and the disciplinary authority proceeded further with the inquiry as per the liberty given by the Tribunal. He furnished the copy of the inquiry report to the applicant and invited his representation thereon. After the applicant submitted his representation, he held the applicant guilty of the charges leveled against him and imposed the penalty of reduction of 3 stages below in the same time scale for a period of 3 years with cumulative effect. He also directed that the pay of the

applicant be fixed at the scale of Rs.5625/- and that the punishment would be operative with effect from 2.10.2000. The applicant preferred appeal against the order of the disciplinary authority but the same also had come to be rejected. Hence, the applicant has approached this Tribunal.

2. The grounds, on which, the penalty imposed on him is assailed by the applicant, are that the order passed by the disciplinary authority is without considering the evidence on record and that even though the independent main witness had clearly stated that the applicant had placed the detonators at the exact distance, the disciplinary authority believing only the testimony of one Mr. Vaishnav that one detonator was placed at approximate distance has imposed the penalty which is not in consonance with the guilt of the applicant. It is also contended that the responsibility of the Driver of the engine for the accident was held by the inquiry authorities and therefore the applicant could not have been held guilty for this accident and punished for the same. He has prayed for quashing and setting aside the penalty imposed on him with consequential benefits.

3. The respondents on the other hand in their reply have maintained that the inquiry was conducted as per the rules and regulations and that the disciplinary authority had on the basis of the evidence on record passed the impugned order which cannot be faulted. They have also maintained that punishment is in accordance with the gravity of the charges leveled against the applicant. They have prayed for dismissal of the O.A.

4. We have heard the learned counsel of both the parties and duly considered the rival contentions.

5. So far the factum of the case is concerned, there is no dispute that applicant was working as a Guard on the relevant date and that when his train had stopped due to engine failure, a relief engine coming from behind had collided with the rear of the train. We note that while disposing of the O.A. 52 of 99 vide judgment and order dated 22.03.2000 this Tribunal had directed as under :-

In view of what has been stated in para 5 above and the facts and circumstances of the case, we quash the orders of the disciplinary authority (Annexure A-1) and of the appellate authority (Annexure A-2) and that the applicant be reinstated within a period of 15 days from the date of receipt of a copy of this order. The applicant shall also be entitled to

all consequential benefits as may be available to him as per rules. It is further ordered that the disciplinary authority shall be at liberty, if he feels necessary, to further conduct the proceedings from the stage immediately after receipt of Inquiry Report and as such orders as he considers appropriate in accordance with the rules and keeping in view our observation at para 5.2 above within 4 months from the date of his reinstatement.

6. It is a common ground that after the applicant was reinstated in service the disciplinary authority had proceeded further with the inquiry as per the liberty given to him by the Tribunal and after furnishing the copy of the inquiry report to the applicant and obtaining his representation thereon the disciplinary authority had passed the impugned penalty order. It is contended by the applicant that while passing the penalty order the disciplinary authority has not considered the evidence recorded during the inquiry and relying on the evidence of one Mr. Vaishnav concluded that he had not placed the detonators at the prescribed distances. It appears that the same arguments were advanced in earlier O.A. by the applicant. In para 5.2 of the judgment the Tribunal had observed as under :-

5.2 The learned counsel for the applicant also argued that the authorities have based their decision on the statement of Moti Khan, Driver who was responsible for the accident and therefore interested party. The respondents also accept that only one detonator was placed at approximate distances while others were placed at exact distances. The authorities

have not taken into account the statements of independent and main witnesses, but relied on the statement of interested parties. He further argued that as per the Joint Note of the Senior Officer of Railways annexed with the charge sheet, the Driver dashed the L.V. with a speed of about 50 K.M./hr. He applied brakes late and was not cautious. In such condition, the Driver is required to run at a speed not exceeding 15 K.M./hr. Since the applicant placed all other detonators at exact and specified distances, it was immaterial if one detonator was placed on approximate distance since with the established speed of 50 K.M./hr, incorrect placement of even 20 M is not of any consequences because of braking distance required at a speed of 50 K.M./hr. The learned counsel also repeated several averments already available on records. He also argued that even if it is assumed that the applicant was negligent in not properly placing one of the detonators exactly at the specified distance, he is out of service for the last 3 years, suffered humiliation and huge financial loss and is leading a miserable life and this itself is sufficient penalty for the neglect of applicant if any, we do not wish to comment on each of them but feel that they have force and cannot be ignored summarily."

7. It is quite evident from the above observations of the Tribunal that merely because one detonator was not placed at the exact distance of 1200 Mtrs and was placed at approximate distance, the applicant is held guilty of negligence in performing his duty to protect the train. The evidence clearly establishes that the applicant had placed the detonators on the track as required under the rules, but he had failed to measure that distances and one detonator was placed at appropriate distance. The evidence also discloses

that it would have not made much difference as the engine was coming at the speed of 50 K.M./hr. instead of 15 K.M./hr. Since it was the fault of the Driver of the engine and in all probability even if the detonators had been placed at the exact distance, as per the rules the accident could not have been averted in view of the high speed of the engine, we are of the opinion that the penalty imposed on the applicant is not in consonance with the gravity of the charges leveled against him. He has been penalised with reduction of 3 stages below in the same time scale for a period of 3 years with cumulative effect. The penalty of reduction of 3 stages with cumulative effect runs all through out the service and hence the same cannot be said to be a minor penalty or nominal penalty. The effect of this penalty will be felt all through out his service by the applicant and can ruin his career and therefore for a negligence in not placing the detonators at the right place, the applicant is being excessively penalised. We have however, no hesitation in upholding the findings of guilt so far the order of the disciplinary authority is concerned, but we are of the considered opinion that the penalty imposed is excessive, harsh and unreasonable. The same therefore deserves to be interfered with and hence in the conclusion we partially allow

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this O.A. and direct that the penalty imposed by the disciplinary authority shall stand modified to reduction to 3 stages below in the same time scale for a period of 3 years without cumulative effect. With this direction the O.A. stands disposed of. No order as to costs.

A. S. Sanghvi
(A. S. Sanghvi)
Member (J)

M. P. Singh
(M. P. Singh)
Vice Chairman

MBT

पृष्ठंकन सं ओ/न्या.....जयपुर, दि.....

एविलिपि आदेशित:-

(1) सचिव, उच्च न्यायालय तार एविलिपि, जयपुर

(2) आवेदक श्री/श्रीमती/शु.....के काउंसल

(3) प्रत्यर्प श्री/श्रीमती/शु.....के काउंसल

(4) वायपाल, कोएअ., जयपुर न्यायापीठ

सूचना एवं आवश्यक कार्यवाही हेतु

Chandras
उप सचिव
24.6.04

LS Rajput
HB Shrivastava

Issued
On 24.6.04
BS