

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 765 of 2002

Jabalpur, this the 23rd day of March, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G. Shanthappa, Judicial Member

Girdhari Lal Sen S/o Shri Ram Charan,
aged about 50 years Ex Rly. Driver
under CCOR Cr NKJ RB/II-193/A, Railway Colony
New Katni Junction(MP)

APPLICANT

(By Advocate - Shri S.N. Khare)

VERSUS

1. The Union of India, through
the General Manager, C Rly CSTM
Mumbai.
2. The Chief Operating Manager,
C.Rly CSTM Mumbai.
3. The Divl. Rly Manager,
CR Jabalpur.
4. The Senior DEE(TRD)
CR Jabalpur.

RESPONDENTS

(By Advocate - Shri N.S. Ruprah)

O R D E R

By G. Shanthappa, Judicial Member -

By filing this Original Application the applicant has
following main
claimed the/reliefs :

"(a) to quash the impugned order bearing No. JBP/
T/106/TAD/1/2001-2002 dt. 23/10/01, passed by the
Sr. DEE(TRD) CR JBP as Disciplinary authority (res-
pondent No. 4 in the petition) being null and void,

(b) to quash the impugned order bearing No. JBP/T/
106/TAD/1/2001-2002 dt. 5.2.2002 passed by the Divl.
Rly Manager Central Railway, Jabalpur as Appellate
Authority (respondent No. 3 in this petition) being
null and void,

(c) to quash the impugned order bearing No. HPB/309/
T-DAR/GL/JBP dt. 14.8.02 passed by the Chief Opera-
ting Manager as Revisional Authority (respondent No.
2 in this petition) being null and void,

(d) to order the respondents Nos. 4, 3 and 2 to
treat the intervening period from removal/compulsory
retirement to the date of final order of this Hon'ble
Tribunal as duty for all purposes."

2. The brief facts of the case are that the applicant
was working as Diesel Driver in Jabalpur Division of Central

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Railway. While he was working on NKM goods train, on 16.4.2001 it met with an incident at Bandakpur Railway Station. A joint enquiry was held on 16.4.2001. Subsequently a charge sheet dated 14.5.2001 (Annexure A-7) was issued to the applicant. The applicant submitted his representation dated 22.5.2001 to the charge sheet denying the charges levelled against him. Subsequently an enquiry was held. The applicant participated in the enquiry and an opportunity to cross-examine the witnesses was given to the applicant. The enquiry officer has submitted his findings that the charges are proved. The applicant has admitted that he felt asleep and due to that the incident took place. The disciplinary authority imposed the punishment of removal from service with immediate effect with the benefit of 2/3rd pension as compassionate allowance admissible under Rule 309 and 310 of Manual of Railway Pension Rules, 1950. The impugned order is illegal and there is no consideration of the contents of the enquiry report and the representation of the applicant. Hence the impugned order is liable to be set aside. The punishment imposed is disproportionate to the alleged misconduct. Against the order of the disciplinary authority the applicant preferred an appeal before the appellate authority and the appellate authority has dismissed the appeal by considering the grounds of appeal on 5.2.2002. The appellate authority also has not considered the case of the applicant and without assigning the reasons the appeal was dismissed which is illegal and against law. Against the orders of the appellate authority the applicant preferred a revision petition before the revisional authority and the revisional authority has modified the penalty of removal from service with 2/3rd pensionary benefits to that of Compulsory retirement. The revisional authority has shown a lineant view and modified the impugned order of punishment dated 23.10.2001, vide order dated 14.8.2002. Being aggrieved by the said orders the



applicant has approached this Tribunal claiming the aforesaid reliefs.

3. The respondents have filed their reply denying the averments made in the Original Application. The respondents submitted that the charges levelled against the applicant are proved by admitting the mistake committed by the applicant. The negligence on the part of the applicant has been proved before the enquiry officer. The applicant was served with a charge sheet with documents. For that the applicant has submitted his representation denying the allegations and the charges. The enquiry officer was appointed. The applicant participated in the enquiry proceedings and also cross-examined the witnesses. The applicant has admitted the charge and on that basis the enquiry officer has submitted the report. The enquiry report was supplied to the applicant and on that basis the applicant has submitted his representation. On the basis of the enquiry report and the submission made by the applicant the disciplinary authority has imposed the penalty of removal from service, with immediate effect and with the benefit of 2/3rd pension as compassionate allowance admissible under rule 309 and 310 of the Manual of Railway Pension Rules, 1950. While imposing the penalty the gravity of misconduct of the applicant has been considered. Due to negligence on the part of the applicant the applicant has become unfit to be a Railway servant. The reasons assigned in the impugned order of punishment speaks that the disciplinary authority has considered the case of the applicant. The disciplinary authority has examined all the aspects including the principles of natural justice, since he could not find any violation of principles of natural justice he has imposed the penalty. The applicant preferred an appeal urging many grounds including the principles of natural justice. The



appellate authority has considered the grounds of appeal and dismissed the appeal by confirming the orders of the disciplinary authority. While dismissing the appeal proper reasons were assigned. Against the orders of the appellate authority the applicant preferred a revision petition. The revisional authority has considered the revision petition and a lineant view has been shown and modified the penalty of removal from service with 2/3rd pensionary benefits to that of compulsory retirement. Only after application of mind the revisional authority has passed the orders. Hence this Tribunal shall not interfere in respect of the impugned orders passed by the competent authority and they have exercised their powers. Accordingly the applicant has failed to prove his case and the Original Application is liable to be dismissed.

4. Heard the learned counsel for the parties and perused the records carefully.

5. The applicant was served with a charge sheet on the misconduct committed by him. The charge sheet was for negligence leading to passing signal at "ON2 position, resulting in derailment. The said misconduct was alleged on 16.4.2001. The applicant was working as Driver of goods train No. NKM Spl. Multiple Engine No. 23592 and 23292 WAG-5. The applicant was admitted on Bandakpur station Down Loop line for stopping. But he failed to control the train and passed the danger signal because of which the train dashed against the sand hump and derailed. The applicant has submitted his representation to the charges and he has denied the ^{charges in the} representation. The enquiry officer was appointed and the applicant has participated in the enquiry. In the enquiry he has admitted the guilt. In the enquiry proceedings the applicant was allowed to cross-examine the witnesses.

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Main witnesses PW-5, Shri Mahmood Khan, Cabinman (B Cabin) Bandakpur, PW-4 Shri Asgar Khan, Pointsman, Bandakpur, PW-6, Shri Mahendra Kumar, Cabinman, (A Cabin) Bandakpur, PW-3 Shri KR Meena, ASM, Bandakpur, PW-2 Shri Dayashankar, Asstt. Driver, DW Shri IC Gahiya, Sr. Loco Inspector and others were examined ^{and} ~~by~~ the applicant was allowed to cross-examine. On the basis of the finding of the enquiry report the disciplinary authority has passed a reasoned order dated 23.10.2001. We perused the enquiry proceedings and also the impugned order of the disciplinary authority. The disciplinary authority has found negligence on the part of the applicant. It is observed in the impugned order that "I find that you have been in drowsy condition while approaching the down loop starter signal at BNU station and awoken at the foot of the signal. Due to drowsiness, you had not applied the brakes at all before passing the signal and train finally went into sand hump and derailed. Due to your above lapses, I have decided to impose upon you the penalty of Removal from service with immediate effect with the benefit of 2/3rd pension as compassionate allowances admissible under rule 309 and 310 of Manual of Railway Pension Rules, 1950." Before coming to the conclusion the disciplinary authority has recorded the reasons that due to negligence of the applicant the Department has to suffer loss. Only to prevent the future loss to the Department he has decided to impose the penalty as per the order. We find that there is no illegality or irregularity and he has exercised his powers while imposing the penalty. Accordingly, we decline to interfere with the orders of the disciplinary authority. The applicant has preferred an appeal before the appellate authority and the appellate authority has confirmed the orders of the disciplinary authority and while rejecting the appeal the appellate authority has also assigned reasons and

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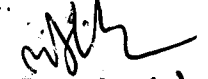
decided the grounds of appeal. The appellate authority has also followed the principles of natural justice while deciding the appeal. Against the orders of the appellate authority the applicant preferred a revision petition before the revisional authority. The revisional authority after examining the grounds raised in the revision has shown a lineant view and modified the penalty imposed on the applicant by the disciplinary authority. While modifying the penalty the proper reasons are assigned. Before coming to the conclusion the revisional authority has looked into the service records of the applicant and noticed that he has been punished on number of occasions on the various charges of careless and negligent working. The said act itself proves that the applicant is potentially unsafe and careless worker. The revisional authority has modified the punishment from Removal from service with 2/3rd pensionary benefits to that of Compulsory retirement. The revisional authority has powers to modify the orders. Accordingly he has exercised his powers and imposed the punishment by reducing the same.

6. After careful examination of the orders passed by the disciplinary authority, appellate authority and the revisional authority, we find that the authorities have followed the principles of natural justice. The advocate for the applicant has submitted that since the punishment is disproportionate to the charges, this Tribunal shall direct the respondents to impose lesser punishment on the basis of the gravity of the charges. The Hon'ble Supreme Court has time and again directed the Courts/Tribunals not to interfere with the punishment imposed by the authorities. The Tribunals/courts can interfere with the orders only when it shocks the conscience of the Tribunals/Courts. In the present case it of the Tribunal, ~~Respondent~~ does not shock the conscience and we ~~have~~ declined to direct the respondents to modify the penalty.

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7. For the reasons assigned above, we do not find any merit in this Original Application and we also find that the applicant has failed to prove his case. Accordingly, the Original Application is dismissed. No costs.


(G. Shanthappa)
Judicial Member

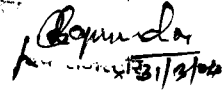

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठंकन से जो/न्या.....जबलपुर, दि.....
पतिलिपि अद्योचितः:-

- (1) सचिव, उच्च न्यायालय मार हॉस्टेलियन, जबलपुर
- (2) आवेदक श्री/श्रीमती/पु.के काउंसल SN Khare
- (3) प्रत्यक्षी श्री/श्रीमती/पु.के ल. NS Raghav
- (4) जज (न्या. वि. अ.), जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु


B. S. Raghav

Issued
31.3.04