

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 1078 of 2000

Jabalpur, this the 17th day of June 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Mahesh Chandra Jain, Switchman,
Central Railway, Obedullaganj,
Bhopal (MP).

... Applicant

(By Advocate - Shri Sanjay Yadav)

V e r s u s

1. Union of India, through its
General Manager, Central Railway,
Mumbai CST.

2. Divisional Railway Manager,
Central Railway, Bhopal.

... Respondents

(By Advocate - Shri S.P. Sinha)

O R D E R

By Madan Mohan, Judicial Member -

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

"6. to set aside the order of removal Annexure A-10
and the appellate order Annexure A-12."

2. The brief facts of the case are that the applicant has
put in more than 10 years of service as Switchman without there
being any complaint against him. The primary gate of the Gatekeeper
posted on non-interlocked gate is to keep the gate closed for
vehicular traffic. Between Obedullaganj and Itayakala there are
two level crossing gate No. 241 A and 241 C. The applicant
submitted that the normal position of the above mentioned gates
are closed for road traffic and that before permitting each
train to enter the block section, the SM/ASM/Cabin ASM/S Man on
duty shall ask the Gatekeeper on telephone whether the gate is
closed to the road traffic for the passage of the train. The
Gatekeeper after ensuring that the gate is actually closed to road
traffic and locked shall give private No. to the SM/ASM/Cabin
ASM/ S Man on duty in assurance of the gate being actually



closed and locked to the road traffic. It is further provided that the SM/ASM/Cabin ASM/S Man on duty shall not permit any train to enter the block section unless he is assured of the closure and locking of the gate against the road traffic by the gateman supported by a private number. The practice adopted for grant of private number for passing of train through level crossing gate is that the gateman gives the private number and only then the Switchmen permits the train to enter the block section. In the instant case, also, it was only after receiving the private numbers from the Gatemen at Gate No. 241A and 241C, the applicant permitted the train to enter the block section. The Switchman has no control over the passing of private number which are given by the gateman and the switchman has to believe the same and enter the train in block section. On 7.6.1998 the applicant while discharging his duties as Switchman at 'B' Cabin Obedullaganj entered four trains in block sections on the basis of private numbers given by the Gatemen at G 241 A and G 241 C. The train entered by the applicant in block section at 12.37 dash against tempo (Auto) No. MPB-4200 at Gate No. 241 A at about 12.45. The applicant was placed under suspension on 7.6.1998. The said suspension was revoked vide order dated 16.6.1998. The applicant thereafter was served with a charge sheet dated 4.3.1998 holding the applicant solely responsible for the accident. The documents relied upon in the charge sheet was not supplied and the applicant requested for the same. The statement of witnesses recorded during the preliminary enquiry was not supplied, despite repeated request of the applicant. A criminal case was also registered against the applicant and he had requested the authorities to delay the departmental proceedings because the same would cause prejudice to the applicant. However, no heed was paid by the authorities and the enquiry officer without even waiting for the decision by the competent authority compelled the applicant to participate in the enquiry.



The enquiry officer has taken an extra interest while conducting the case and in such hasty enthusiasm a right of proper defence was denied to the applicant. Certain leading questions were asked by the enquiry officer from the prosecution witness. The enquiry officer had acted as a Judge and prosecutor. The enquiry officer was highly prejudiced against the applicant. The applicant made representations to the disciplinary authority on 18.2.1999. No decision was taken by the competent authority and no speaking order was passed. The enquiry officer without appreciating the facts on record finalised the enquiry report holding the applicant guilty of the charges. The enquiry officer had failed to appreciate that the gate where the accident took place was a gate which was interlocked and was required to be kept closed for vehicular traffic but was kept open by the Gatekeeper which was contrary to the rules. The enquiry officer has also failed to appreciate that the private numbers are given by a Gatekeeper and the Switchman has to depend on the Gatekeeper for the private number and it was on the basis of private number given to the applicant that the applicant blocked the train in Section. The entire evidence on record would show that the Gatekeeper gave a wrong statement when he was examined and cross examined stating that he had planted red flag at a distance of 6 meters on both the tracks. The applicant preferred an appeal which was also rejected by a non-speaking order. Hence he has filed this Original Application claiming the aforesaid relief.

3. Heard the learned counsel for the parties at some length and have carefully perused the records.

4. It is argued on behalf of the applicant that the impugned orders passed by the disciplinary authority and by the appellate authority are non-speaking orders. Hence on this ground alone this OA deserves to be allowed. The learned

counsel for the applicant has drawn our attention towards Annexure A-1 a letter dated 27.2.1992 in which certain guidelines are mentioned. In its para 5.(i) it is mentioned that before permitting each train to enter the block section, the SM/ASM/Cabin ASM/S Man on duty shall ask the gateman on telephone whether the gate is closed to the road traffic for the passage of train. The gateman after ensuring that the Gate is actually closed to road traffic and locked shall give private No. to the SM/ASM/Cabin ASM/SMAN on duty on assurance of gate being actually closed and locked to the road traffic. The SM/ASM/Cabin ASM/SMAN on duty shall not permit any train to enter the block section unless he is assured of the closure and locking of the gate against the road traffic by the gateman supported by a private number. The gateman on duty did not give the private number to the applicant. Hence the applicant was not at fault. The alleged accident occurred due to sole negligence and fault of the gateman on duty while he is not punished by the respondents. The private numbers shown by the respondents are forged because they are kept with them. He further argued that the enquiry officer was highly prejudiced against the applicant and also submitted that the statements of the witnesses recorded does not support the case of the respondents. He has also drawn our attention towards the various witnesses examined during the disciplinary proceedings. The applicant also submitted that when a criminal case is pending in a court, the present enquiry proceedings should have been stayed till final decision of the criminal trial. But the enquiry officer was in hurry and he did not wait for the result of the criminal court. The applicant also argued that the penalty of removal from service of the applicant is too harsh. Our attention was drawn towards the judgment of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another.

(1999) 3 SCOC 679.

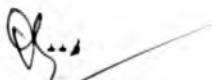
5. The learned counsel for the respondents argued that both the orders passed by the disciplinary authority and also the appellate authority are speaking orders and disciplinary authority has clearly mentioned that it is the duty of the Switchman of B-Cabin that before allowing despatch of any Down train towards Itayakalan, he must advise the Gatekeeper of LC Gate No. 241/A-C for closure of the gate and after obtaining private number from the Gatekeeper as a assurance of the closure of the gate, then only the Switchman/B-Cabin can allow down trains towards Itayakalan as per G & SR Rule No. 16-03-2 (b) ii. as well as SWR of Obaidullaganj. The applicant failed to obtain the private number from Gatekeeper of Gate No. 241/A-C. Thus he violated above rules which amounts to serious misconduct. This resulted in dash between Tempo and BCN/E Goods train which caused loss of 8 human lives. The minimum punishment for this type of lapse should be dismissal from Railway Service. But after taking a lenient view due to 18 years service & his satisfactory work, the applicant was removed from Railway service with effect from 1.5.1999. In this case 8 persons have died on the spot by the fault of the applicant. The private number given by the applicant in respect of BCN/Empty goods train does not find place in the private number sheet of the Gatekeeper which mean that the applicant did not obtain private number from the Gatekeeper. It appears that after the accident the switchman entered false private number in the Train Signal Register/Gate Log Book. The relevant documents were duly supplied to the applicant on 5.11.1998. Since other documents were not in the list of documents relied upon, there was no question of supplying the same. The statements of the witnesses were supplied to the applicant. The respondents has followed the rules and regulations. The minimum punishment in the case of accident is

removal. Hence the punishment is proper. So far as the reply to the argument raised on behalf of the applicant that on pendency of the criminal trial the disciplinary proceeding should be stayed, it is submitted on behalf of the respondents that there is no bar for holding the departmental enquiry when the criminal case is pending. Regarding this plea the applicant has also not submitted any application to the disciplinary authority. Now after the punishment has been awarded the said plea cannot be taken and cannot be considered in the present case. Regarding the aforesaid ruling of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony (supra), the Hon'ble Supreme Court has held that "Departmental Enquiry - Simultaneous continuance of with criminal proceedings - Law on this point restated that scope of these two proceedings is different and they can be continued independently." The facts of the said case is not similar to the facts of the present case. Hence it is not applicable.

6. After hearing the learned counsel for both the parties and on careful perusal of the record, we find that the copies of the relevant documents were duly supplied to the applicant and he was given opportunity of hearing and both the orders passed by the disciplinary authority as well as by the appellate authority are speaking orders. The applicant has failed to prove that the alleged Gateman did not give the private numbers to him and so far as the evidence recorded by the Enquiry Officer is concerned, it is a settled legal proposition that the Courts/Tribunals cannot reapprise the evidence. It is not a case of no evidence. After due enquiry the charges against the applicant are proved. Hence no principles of natural justice has been violated. The charges levelled against the applicant are very serious and grave as eight human lives were lost due to the fault of the applicant.

The disciplinary authority after taking a lenient view due to 18 years service and his satisfactory work, passed the punishment of removal on the applicant. It is also a settled legal proposition that the Courts/Tribunals cannot go into the quantum of punishment unless it shocks the conscience of the Courts/Tribunals.

7. Thus, we are of the considered opinion that the applicant has failed to prove his case and the Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member

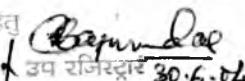

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकज सं ओ/व्या..... जलालाबाद, दि.....

प्रतिलिपि दानी दिनांक:-

- (1) सचिव, उच्च न्यायालय नियन्त्रण विभाग, लखनपुर
- (2) उच्चायक वी/प्रिवेट/दृष्टि..... दो उच्चस्ति S. Yadav.
- (3) प्रदर्शनी शी/श्रीमती/गान्धी..... दो कार्यसल SP Sinha
- (4) कार्यसल, कार्यालय, लखनपुर व्याकरण देतु


उप रजिस्ट्रार 30.6.84

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