

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 280 of 2000

Jabalpur, this the 4<sup>th</sup> day of February, 2004

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

D.P. Umre, S/o. Late Shri  
Hari Shanker Umre, Compulsory  
Retired Mechanic-II, T.No. 208,  
R/o. RB-II/243-A, Rly. Colony,  
New Katni, Distt. Katni.

... Applicant

(By Advocate - Applicant in person)

V e r s u s

1. Union of India,  
Through Secretary,  
Ministry of Railway, New Delhi.

2. The Sr. DME (D),  
Central Railway, New Katni  
JN.

3. The AME(D), Central Railway,  
New Katni JN.

... Respondents

(By Advocate - Shri N.S. Ruprah)

O R D E R

By G. Shanthappa, Judicial Member -

The said Original Application is filed seeking the relief to quash the order of punishment dated 18.06.1999 (Annexure A-1) and appellate/ order dated 08.09.1999 (Annexure A-8) and for direction to reinstate the applicant in service with all consequential benefits.

2. The brief facts of the case as stated by the applicant are that he was charge sheeted under Rule 9 of the Railway Servants (Discipline and appeal) Rules, 1968 alleging that even after checking by applicant on 10.01.1996, the suspension bearing of Loco No. 18124 was seized on 20.01.1996 due to fault in wicks pad. The applicant denied the charges. There

after an enquiry officer was appointed and full fledged enquiry was conducted. The applicant submitted that the enquiry report was not supplied to him. Subsequently on the objection of the applicant, the <sup>3rd respondent has disagree with the</sup> enquiry was ~~not stopped~~ <sup>report</sup> and ~~it was continued.~~ <sup>he has ordered for 2nd fresh enquiry.</sup> A fresh enquiry was conducted which was not a second enquiry and the same was concluded on 10.01.1997. On the basis of the enquiry report the disciplinary authority has passed the order vide Annexure A-1 dated 18.06.1999 imposing the penalty of compulsory retirement on the applicant. The applicant preferred an appeal being aggrieved by the said order of the disciplinary authority. The appeal was dismissed by confirming the orders of the disciplinary authority. The applicant preferred a revision. The said revision was also dismissed. Against this, the applicant has filed this Original Application claiming the aforesaid reliefs. The case of the applicant is that there are some lacunas while conducting the enquiry and which has not been considered by the disciplinary authority, appellate authority and the revisional authority. Hence the impugned order <sup>are</sup> ~~is~~ <sup>is</sup> bad in law. It is also submitted <sup>to</sup> that the authorities have violated the principles of natural justice during the proceedings of the enquiry and the disciplinary authority, appellate authority and the revisional authority had not considered this aspect. Accordingly, the impugned orders are liable to be quashed and there shall be a direction to the respondents for reinstatement of the applicant in <sup>to</sup> service.

3. Per contra the respondents have filed their return denying the averments made in the applicant. It is specific case of the respondents that the applicant was given proper opportunity in the enquiry. He has cross-examined the main


witnesses. The main witnesses have stated that the applicant has opened the wicks pad and had refixed them. The applicant had also adjusted the cardiam compound level of gear cases. The applicant attended the driver booking and had checked the loco motive. This very loco motive suffered a failure on 20.01.1996 because of the seizure of the suspension bearing. When it was checked in the shed it was found that the wicks pad of the loco motive was faulty. It was a gross negligent on the part of the applicant. This action of the applicant had resulted great financial loss to the Railway administration, <sup>and</sup> ~~hence~~ he has violated the Railway Conduct Rules 3.1 and 3.11. <sup>of..</sup> The respondents have submitted the original enquiry proceedings in which they have referred page 65 of the enquiry file. All the opportunity was given to the applicant to defend his case and a full fledged enquiry was conducted and the disciplinary authority has passed the order by invoking his powers. In view of the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. P. Thyagarajan reported in AIR 1999 SC 449, it was held that "when important evidence <sup>to be shown</sup> either <sup>by</sup> ~~relied~~ upon by the Department or by the delinquent official is shut out, this would not result in any advancement of any justice but on the other hand results in miscarriage thereof. Therefore Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a denovo inquiry in a case of instant nature." The said judgment is squarely applicable to the instant case. When the applicant was given full opportunity to cross-examine the witnesses Shri M.N. Yadav, Charge Man, Bogie Section and Shri S.K. Upadhyaya, Senior Sectional Engineer (Bogie), at this stage the applicant cannot say that no opportunity of cross-examination of the witnesses was <sup>not</sup> ~~given~~ <sup>in</sup>.

4. After filing the reply the applicant has submitted a rejoinder to the reply in which he has not brought out any clarificatory statement in pursuance to the reply.

5. After hearing the either sides and perusal of the pleadings and documents including the original enquiry file we decide the case finally.

6. The admitted facts are that the applicant attended on 10.01.1996 for repairing the wicks pad of loco motive 18126 WM2. The said locomotive suffered a failure on 20.01.1996 because of seizure of the suspension bearing. The relevant witnesses attended the enquiry proceedings. The applicant has submitted the objection to his charge and he was given opportunity to cross-examine the witnesses. The competent authority i.e. the disciplinary authority has passed the impugned order for imposing the penalty of compulsory retirement on the applicant, on the basis of the enquiry report submitted by the <sup>enquiry</sup> ~~office~~. The appellate authority has also passed a considered and reasoned order by confirming the orders of the disciplinary authority. The punishment was imposed on the basis of the loss caused to the Railway administration. Hence all authorities have applied their mind have and ~~passed~~ considered orders for which this Tribunal cannot interfere in their discretionary powers. The applicant has submitted that there was lapses while conducting the enquiry. This Tribunal cannot <sup>re-</sup> appreciate the evidence given before the enquiry officer.

7. We have referred the original file of the enquiry proceedings at page No. 108 and 114, and we find that the applicant has cross-examined the witnesses and the charges



against the applicant has been proved in the enquiry.

8. We find that the authorities have considered the case of the applicant in detail and there is no procedural irregularity or illegality committed by the respondents.

9. Hence we find that the Original Application is bereft of any merit and the same is accordingly, dismissed. No costs.

(G. Shanthappa)  
Judicial Member

(M.P. Singh)  
Vice Chairman

**SA**

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उप राजस्त्रार 11/02/04

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11/2/04