

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.283 of 1998

Jabalpur, this the 26 day of February, 2003.

Hon'ble Mr.R.K.Upadhyaya, Member (A)
Hon'ble Mr.S.Meera Chhibber, Member (J)

Chain Singh, aged 42 years, S/o late
Banta Singh, House No.427 (Old)
New No.1203, Belbagh, Chauvi Mohalla,
Chamapur, Jabalpur.

-APPLICANT

(By Advocate- Mr.S.K.Nagpal)

Versus

1. Union of India through
General Manager, Central Railway,
Bombay CST, Mumbai.
2. The Divisional Railway Manager,
Central Railway, Jabalpur.
3. Senior Divisional Mechanical
Engineer, Central Railway, Jabalpur.
4. Divisional Mechanical Engineer,
Central Railway, Jabalpur.

-RESPONDENTS

(By Advocate- Mr.N.S.Ruprah)

O R D E R

By R.K.Upadhyaya, Member (Adminv.):

The applicant has challenged the order of penalty of removal from service dated 26.11.1997/5.12.1997 (Annexure A-1) and the Appellate Order dated 11.02.1998 (Annexure A-2) pursuant to the issue of charge sheet dated 27.2.1997 (Annexure A-3).

2. It is stated that the applicant joined in Indian Railway in 1973 as Coal Man and subsequently was promoted to higher post. In due course, he became Train Driver Grade 'C' in March 1995. It is stated by the applicant that while functioning in the above capacity, he was issued a charge sheet by Divisional Mechanical Engineer

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as per memorandum dated 27.2.1997 (Annexure A-3). This charge sheet contained the following article of charge:-

"Article-I

Shri Chain Singh Driver JBP while working as Driver of DN NKJ Oil Tank spl. Engine No.17369 WDM2(ET) on 10.2.97 Ex ET failed to keep his train under control and passed DN Outer Signal of GRO Station at ON position and causing head on collision with the part load of DN STA Oil Tank spl. engine No. 16214 WDM* (ET) which was standing between DN Outer and Dn Home Signal at GRO station while performing shunting. This he violated GR 3.80 (1) SR 3.80 (1)."

Since the applicant denied the charges levelled against him, an Enquiry Officer was appointed to enquire into the charges. The claim of the applicant is that he had asked for certain documents to be made available to him, but the same was not supplied to him by the Disciplinary Authority. The applicant further claims that he had asked for examination of certain witnesses, but they were also not examined. The applicant claims that Divisional Mechanical Engineer Shri Deepak Nigam was one of the members of Joint Senior Scale Enquiry Officer Committee, who had submitted his reports immediately after the incident. The charge sheet has also been issued by the same person as Disciplinary Authority. Therefore, the claim of the applicant is that the Disciplinary Authority was prejudiced person. Therefore, the whole proceedings deserve to be quashed.

2.1 The learned counsel of the applicant invited attention to order of promotion of the applicant as Driver as per order dated 15.3.1995 (Annexure A-11), This promotion order has been issued by Sr.DPO, who is Junior Administrative Grade Officer. The Divisional Mechanical Engineer is only Sr.Scale Officer lower in rank than the Sr.DPO, who is the Junior Administrative Grade Officer. Referring

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to the order dated 1.4.1997 in OA No.1242/1996 in the case of B.D.Lamba Vs. Union of India & others, (1997)36 ATC 270, it was urged that the Disciplinary Authority being lower in rank than the Appointing Authority cannot order the penalty. Therefore, the penalty order as well as appellate order thereon deserve to be quashed.

2.2 The learned counsel for the applicant further stated that even in the preliminary enquiry several persons were held responsible for the incident. The punishment given to others is relatively very small whereas the applicant has been awarded the punishment of removal from service. In the rejoinder, the applicant has quoted several instances where railway employees/^{were} given minor penalties for more serious offences than that of the applicant. Therefore, it was urged that the punishment awarded deserves to be substantially reduced.

3. The learned counsel for the respondents invited attention to the reply filed, wherein it has been stated that the applicant was the Driver of Down NKJ Oil Tank Special Engine No.17369 WDM2(ET), and passed the Down Outer Signal at 'ON' position and collided with part Load of Down STA Oil Tank Special Engine. Collision between two train engines is not a matter, which can be dealt with lightly and therefore, the department immediately appointed a Fact Finding Enquiry Committee. As there was a prima-facie case of misconduct of the applicant, he was issued a charge sheet on 27.2.1997 (Annexure A-3). The learned counsel for the respondents invited attention to Schedule of Powers on Establishment Matters, wherein it has been stated that ^{Gr.C & D} Sr.Scale Officer has full powers in respect of/posts upto Rs.455-700. The scale of the applicant was only Rs.425-700. Therefore, the Senior Scale Officer was the Appointing

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Authority and therefore a Disciplinary Authority in the case of the applicant. He invited attention to the decision of Hon'ble Supreme Court in the case of State of U.P. & Ors. Vs. Bihari L.L. Mishra & others, (1997) 11 SCC 400, where the respondents Lekhpals were appointed by the Collector, but were removed from service by the Sub-Divisional Officer consequent upon departmental enquiry. Before the High Court they contended that Sub-Divisional Officer being an Authority subordinate to the Appointing Authority could not remove them from service, ^{being} ~~/-~~ ^{an} violative of Article 311(1) of the Constitution. When the High Court accepted the plea, the State Government came in appeal before the Hon'ble Supreme Court, where it has been held that appointment of Lekhpals could be made by an Assistant Collector Incharge of Sub-Division (S.D.O.). Therefore, the removal from service was justified by the Disciplinary Authority being the Sub-Divisional Officer. The learned counsel for the respondents also relied on the order of this Tribunal in the case of W.J. Massey Vs. Union of India and others in OA No.173/1996 decided on 12.10.2001, wherein similar plea was raised ~~and~~ placing reliance on the decision of Principal Bench of this Tribunal in the case of B.D. Lamba (supra). In that case, this Tribunal observed that the person who signs or conveys the order is not material. "What is to be seen is who was the Appointing Authority under the statutory Rules at the time of imposition of the said penalty." It was also held that "..... the said penalty can only be imposed by the Appointing Authority and unless it is specifically established by the applicant that the senior scale officer was not the Appointing Authority of the applicant, we are not inclined to agree with this contention of the applicant."

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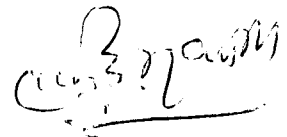
The learned counsel of the respondents, therefore, urged that there was no infirmity in initiation of proceedings by the Appointing Authority. The order of punishment has been passed by the another person (other than Deepak Nigam, D.M.E.). Therefore, the apprehension of the applicant that the Disciplinary Authority was a prejudiced person has to be rejected. In view of the legal position explained, the D.M.E. was competent to issue a charge sheet and imposed the penalty. Regarding quantum of punishment, it was reiterated that collision of two engines is very severe offence. Therefore, the punishment imposed cannot be said to be disproportionately harsh. Accordingly, he urged that the present O.A. being devoid of merits be dismissed.

4. We have heard the learned counsel of both the parties and have perused the material available on record.

5. We find that the order of promotion dated 15.3.1995 (Annexure A-11) indicates that the applicant was promoted purely on adhoc-basis in the scale of Rs.1350-2200 and the order was issued under the signature of "for Sr.DPO/JBP". However, in view of the provisions contained in the Scheduled of Powers on Establishment Matters, we find that D.M.E. was the competent authority for disciplinary purposes. Even the decision of Hon'ble Supreme Court in the case of State of U.P. & others (supra) and the order of this Tribunal in the case of W.J.Massey (supra), we do not find any merit in the contention of the applicant regarding the claim of competence of the Disciplinary Authority. We also do not find that the Disciplinary Authority was a prejudiced person. The applicant has been given adequate opportunity to state his case and there is no violation of any principles of natural justice. Regarding quantum of punishment, we are of the

view that the same also does not deserve any reconsideration. There may be several persons responsible for an incident. However, the ⁽¹⁾extent to which they are responsible may differ on account of their duties. The applicant was responsible for running the engine, admittedly he over-shot ON signal. There is some evidence that the mechanical failure regarding inadequacy brake power is not acceptable. This Tribunal may not interfere with the orders of departmental authorities, if there is some evidence and the principles of natural justice are not violated. We have also considered the claim of the applicant regarding non-supply of documents and non-production of witnesses. We do not find that either of these two have materially influence the proceeding. If the applicant wanted certain documents to be produced, he should have asked the Enquiry Officer to produce them, but no such request was made by him. The prosecution witnesses have been examined in his presence. On the basis of their statements, the Enquiry Officer has found the charge proved. In this view of the matter, we do not find any infirmity in the orders of the Disciplinary Authority and the Appellate Authority. Therefore, this application is dismissed without any order as to costs.


(Mrs. Meera Chhibber)
Member (J)


(R.K. Upadhyaya)
Member (A)

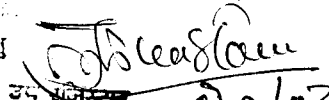
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पृष्ठकन सं ओ/या.....जबलपुर, दि.....
पतिवि/ये अयो शिल:-

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- (4) ...

S. K. Nagpal, Adm.
H. B. Ruprah, Adm.


S. K. Nagpal

Issued
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RS