

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 55 of 1999

Jabalpur, this the 10th day of September, 2003.

Hon'ble Mr. D.C. Verma, Vice Chairman (Judicial)
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Nav Ratan Upadhyay,
aged about 34 years,
S/o Shri Prem Narayan Upadhyay,
Technician, Vikramgarh Alot,
District Ratlam, Kota Division,
Western Railway,
R/o Quarter No. 81-B, Railway Colony
Vikramgarh Alot, District Ratlam (MP)

APPLICANT

(By Advocate - Shri S. Nagu)

VERSUS

1. Union of India,
through the Secretary
Ministry of Railways,
Government of India,
New Delhi.
2. Additional Divisional Railway Manager
Western Railway, Kota (Rajasthan)
3. Senior Divisional Electrical
Engineer, TRD, Kota (Rajasthan)
Western Railway
4. Divisional Electrical Engineer
(South), TRD, Kota (Rajasthan)
Western Railway

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

O R D E R (ORAL)

By D.C. Verma, Vice Chairman (Judicial) -

By this Original Application the applicant has prayed
for quashing of the penalty order and the appellate order.

2. The brief facts of the case is that on 6.12.1994 the
applicant, along with members of the Maintenance Group, was
assigned the job of Schedule Preventive Maintenance of Auto
Tension Devise in between the stations of Thuria and Talawali.
For this job, 40 minutes time was fixed. In the first location
the applicant completed the job in 20 minutes but at the second

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location the applicant took some extra time on account of having detected a defect in the Regulating Equipment Drum which had to be rectified so as to ensure effective functioning of Overhead Equipment (OHE). The applicant exceeded the time allowed to him by 30 minutes. After completing the job the applicant reported on 6.12.1994 (Annexure-A-1). The authorities instead of appreciating the bona fide and sincerity of the applicant suspended the applicant vide order dated 6.12.1994. The suspension order was, however, revoked on 23.12.1994 but the applicant was served with a charge sheet under Railway Servants (Discipline & Appeal) Rules, 1968 on the charge that the applicant brusted power block by 33 minutes without sufficient and good reasons and thereby causing unnecessary hinderance in railway working (Annexure-A-2). After the applicant's reply and conclusion of the enquiry, the applicant's pay was reduced in the scale of Rs.4000-6000 from Rs.4300/- by one stage to Rs.4200/- without cumulative effect for a period of four years. On appeal, the appellate authority issued a show cause and enhanced the penalty to reduction of pay by two stages from Rs.4300/- to Rs.4100/- for a period of four years with cumulative effect. His revision-petition was also rejected. Hence the present OA.

3. The penalty orders have been challenged on various grounds - (i) that the applicant was not furnished with the copies of statements of some witnesses viz. Abdul Gani, and Kailash Bairwa though they were named in the charge memo; (ii) that copy of remote printer which records the duration of power block was not supplied even on demand; (iii) that except one, other defence witnesses were not permitted to be examined; (iv) that the appellate authority did not indicate any reasons in the show cause for enhancing the penalty; (v) that even if there was delay in completing the job, there was no hinderance in the railway working; and

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(vi) that the punishment awarded is not commensurate with the gravity of the charge.

4. The counsel for the respondents has vehemently opposed the applicant's claim challenging the enquiry report and the penalty orders and has submitted that from the evidence on record the article of charge has been fully proved. Consequently, the respondents have, in their wisdom, awarded the punishment. Further submission is that all the relevant documents were given to the applicant and copy of the statement of preliminary enquiry of such witnesses was not required to be supplied who were not relied upon by the enquiry officer.

5. Counsel for the parties have been heard at length. We have examined the enquiry file also. It is on record that the applicant was supplied the lock sheet which indicates about the power block period. Even if the copy of the report printer was not supplied it has not caused any prejudice to the applicant. The fact is admitted in the OA itself that the applicant over-shooted the period by 30 minutes. The overshooting according to the applicant is because the Regulating Equipment Drum was to be repaired. This fact as per the OA finds support as the Regulating Equipment Drum was replaced by the maintenance staff by new one on the very next day i.e. 7.12.1994. However, on examining the respondents' reply we find that this fact is not admitted. There is nowhere on record to show that the Regulating Equipment Drum required ~~over~~ repair on 6.12.1994 or it was changed on 7.12.1994. The respondents have in their reply denied that the Regulating Equipment Drum was required to be replaced. Reply further states that the applicant never complained about the defect in the Regulating Equipment Drum at any time. Thus, the cause for delay given by the applicant finds no basis.

6. The learned counsel of the applicant has also placed reliance on the special maintenance instructions issued by the Research Design & Standard Organisation on 3.6.1998. In our

view this is not required to be considered as the incident is of the year 1994 and these instructions were issued in 1998.

7. From the evidence of the witnesses it is established that the Power Block was over shot by 33 minutes. As per the charge memo itself the two witnesses, namely, R.P.Mourya and Sitaram requested the applicant to clear the block but the applicant did not come down. The fact that the Power Block over shot ~~over 40 minutes~~ is not denied. Consequently this part of the charge stands fully proved.

8. The other part of the charge memo is that the over-shooting caused unnecessary hinderance in railway working. We, however, find that there has actually not been any hinderance because there was no movement of train during the said period. The applicant himself has mentioned that over-shooting would have caused delay in movement of train. It is not in evidence that actually there was any hinderance in the railway working or in the movement of train.

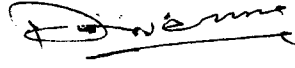
9. We find that the penalty imposed by the disciplinary authority was proposed to be enhanced by the appellate authority who issued a show cause notice on 16.7.1998 (Annexure-A-12). However, a reading of the same does not indicate any ground for enhancement of the punishment. When punishment is proposed to be enhanced, it is necessary to indicate the tentative grounds for enhancing the punishment so that the applicant may explain the same. In absence thereof in our view the enhanced punishment awarded by the appellate authority cannot be maintained.

10. The submission of the learned counsel of the applicant that except one, other defence witnesses were not examined also has no merit. Only on one point, examination of several witnesses is not necessary. In this case the delay is admitted. Consequently, the examination of other witnesses

would have not been material.

11. In view of the discussion made above, the OA is partly allowed. The order passed by the disciplinary authority is fully maintained. The order passed by the appellate authority is upheld to the extent of establishing the first part of the charge proved against the applicant but the quantum of punishment awarded is set aside. The quantum of punishment awarded by the disciplinary authority is held valid. The applicant would be entitled to all consequential benefits to which he would be entitled thereof. Costs easy.


(Anand Kumar Bhatt)
Administrative Member


(D.C. Verma)
Vice Chairman (Judicial)

rkv.

पूरांकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अन्वेषित:-

(1) सचिव, उच्च न्यायालय बार एग्जिक्यूटिव, जबलपुर

(2) सचिव, उच्च न्यायालय बार एग्जिक्यूटिव, जबलपुर

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(23) सचिव, उच्च न्यायालय बार एग्जिक्यूटिव, जबलपुर

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