

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 18th day of February, 2010

ORIGINAL APPLICATION No.420/2008

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER
HON'BLE Dr.K.B.SURESH, JUDICIAL MEMBER

Bhagwan Sahai Meena,
Station Master,
Rajgarh,
Alwar.

... Applicant

(By Advocate : Shri Amit Mathur)

Versus

1. Union of India through
General Manager,
North Western Railway,
Hasanpura,
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Jaipur.
3. Sr.DOM,
North Western Railway,
Hasanpura,
Jaipur.

... Respondents

(By Advocate : Shri T.P.Sharma)

ORDER

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA against the Charge-Sheet dated 23.2.2007 (Ann.A/4), the punishment order passed by the disciplinary authority dated 10.10.2007 (Ann.A/3), the

order passed by the appellate authority dated 21.11.2007 (Ann.A/2) and the order passed by the reviewing authority dated 15.4.2008 (Ann.A/1). Through this OA, the applicant has prayed for the following relief :

"The order Ann.A/1 to A/4 may kindly be quashed and set aside. The applicant may be given all consequential benefits including promotion to the post of Station Superintendent and further he may be allowed the pay-scale of the same with all arrears. The applicant may be allowed interest @ 18% per annum. The period declared as dies-non may also be treated as period spent on duty and all the benefits including the pay for that period alongwith the allowance and interest may kindly be allowed to applicant."

2. As per the charge-sheet dated 23.2.2007 (Ann.A/4), three charges were levelled against the applicant. Firstly, the applicant [Shri Bhagwan Sahai Meena] while working as Station Superintendent at Ghatla Station, on 5.2.2007, had consumed liquor during duty hours. Secondly, he abused Shri Babl Lal Sharma, and thirdly, he was not able to handle the railway traffic properly; for instance the Controller ordered him to cancel the line clear of 2016 Dn, but he did not do so on time. Thereafter, the Controller again ordered him to let depart 2016 Line Clear from Khairthal 2016 to Khairthal, but he also did not do so on time. Resultantly, Train No.2016 Dn, Shatabdi Express, and 188 Up, Fast Passenger, got late unnecessarily. The Station Master, Padisal, repeatedly asked him to receive the message regarding speed limit of the rail fracture in the Padisal Yard, sustained at 1948 Hrs., but he did not receive this important message even upto 21.00 Hrs., whereas according to the Safety Train Operation he should have immediately received the message and taken the necessary action. He also

did not make entries of the Train No.HSR Dn Goods, 2413 Dn Express and 2016 Dn Shatabdi Express in the Train Signal Register.

3. It was submitted by the applicant that he took charge of the duty in the morning of 5.2.2007 and he was scheduled to be relieved from duty at 14.00 hrs. However, as the person who was supposed to relieve the applicant did not turn up on duty upto 18.00 hrs., he continued to perform his duty upto 18.00 hrs. The applicant was working without having food as his family was not at the same station. After working continuously, at around 15.00 hrs., the applicant felt uncomfortable and he took some medicine while empty stomach, due to which he felt giddiness. He also submitted that he was not drunk and did not misbehave with anybody. Copy of the reply to the charge-sheet has been filed as Ann.A/5.

4. During the course of inquiry, Shri Babulal Sharma appeared in the evidence and in his testimony he accepted that the applicant did not consume alcohol before him. Another person, Shri Sitaram, also stated during the course of inquiry that he was on duty from 7.00 AM to 7.00 PM and upto 7.00 PM he did not find the applicant in drunken position. But the inquiry officer without considering the statement of the witnesses as well as reply of the applicant, submitted his report (Ann.A/6) to the disciplinary authority giving finding that the applicant was in the state of drunkenness. The applicant had

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also submitted his comments on the inquiry report, as per Ann.A/7. In the comments, the applicant stated that no medical test, as per rules, was conducted establishing that he was drunk. The applicant followed the direction issued by the Controller and cancelled the clear-line. At around 7.55 PM he was informed about the rail-fracture. He asked the Station Master, Padisal, to accept the message but there was electricity breakdown and the Controller was asking for canceling the clear-line for Shatabdi Express and for giving line to 188 Passenger Train. During this period the route remained locked and as soon as it cleared caution order was issued. Thus, despite his poor health and continuous working for more than 15 hours, he performed his duty with utmost care and abundant precaution. However, may be because of continuous working for so many hours, he might have made incorrect entry in the books. Copy of the said statement of the applicant is annexed as Ann.A/8. This statement of the applicant was not taken into account by the inquiry officer. The disciplinary authority also without considering the submission made by the applicant and without considering the facts of the case passed the penalty order removing the applicant from service. The disciplinary authority, without getting conducted any medical test, came to the conclusion that the applicant was drunk. Going beyond the allegations and the contents of the charge-sheet, the disciplinary authority also opined that if the employee working under him remains absent from duty then that is also the fault of the applicant. It was also stated that the applicant was getting different instructions from the Control

for operating and releasing the trains. The applicant also issued the precaution note, which prove that he was vigilant about his duty. The appeal submitted by the applicant was partly accepted by the appellate authority and the order of removal was converted into reversion of the applicant to the lower post in the lower scale with cumulative effect. The period from removal to reinstatement was treated as dies-non. The reviewing authority had confirmed the order of the appellate authority.

4. Learned counsel for the applicant had mainly relied upon the submissions made through this OA. He submitted that the inquiry officer did not at all consider the submissions of the applicant during the course of inquiry. The inquiry officer did not at all discuss the defence of the applicant in its report. He also did not appreciate the testimony of the witnesses who stated before the inquiry officer that they had not seen the applicant drinking any alcohol. Secondly, the inquiry officer did not at all appreciate the fact that no medical test was conducted by any authority even when the applicant was on duty. The medical test should have been conducted as per Rule-565, 566 & 567 of the Indian Railway Medical Manual and the charge of intoxication cannot be proved on the basis of hearsay. Thirdly, while imposing the penalty, the respondents had not appreciated the fact that the applicant was performing the duty in most difficult circumstances and he was receiving contradictory messages from the controlling authority. Precaution note was given to the passing trains, which facts

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was not denied by the authorities. Thus, the applicant was vigilant about his duty. The applicant, who was performing his duty even after his duty hours due to absence of his reliever, has been held negligent in supervisory capacity merely because his subordinate officer remained absent without information.

5. Notice of this OA was given to the respondents, who have filed their reply contesting the claim of the applicant. Learned counsel for the respondents had mainly relied upon the reply filed by the respondents and submitted that the disciplinary authority had imposed penalty after proper appreciation of facts of the case and after relying upon the report of the inquiry officer. The appellate authority has also reduced the penalty by reverting him to the lower post.

6. Learned counsel for the applicant has also filed rejoinder and rebutted all the contentions raised by the respondents.

7. We have heard the rival submissions and perused the record. While imposing the penalty, the disciplinary authority had admitted in the order that though no medical test as per rules was conducted, however, the witnesses had suspected that the applicant was in drunken position. Therefore, having regard to the facts of the case, the applicant was not absolved from the allegation.

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8. In this connection, it is pertinent to refer to Rule-565, 566 & 567 of the Indian Railway Medical Manual, which read as under :

"565. Definition of "drunk" :- A person is 'drunk' when he is so much under the influence of an intoxicating drink or drug as to lose control of his faculties to such an extent as to render him unable to execute safely the occupation at which he is engaged at the material time.

566. All drunkenness cases to be examined carefully :-

- (1) Every case of drunkenness is a potential medico-legal case and the railway doctor called upon to certify such a case should make a careful examination and should note down every important particular.
- (2) Railway doctor may also have to issue drunkenness certificate to persons presented by police at places where there is no civil hospitals or dispensaries and only a Railway hospital or health unit exists.
- (3) In places where prohibition is in force, it is an offence even if one has imbibed alcohol, let alone getting drunk. When such a case is brought, the Railway doctor should carefully examine the case and certify as to whether (a) the person has imbibed alcohol but not drunk or (b) the person is actually drunk i.e. under the influence of alcohol.
- (4) The proforma for recording of particulars of a suspected case of drunkenness is given in annexure XXI to this chapter. This form should always be kept handy as the Railway doctor may be called upon to certify drunkenness at any moment and sometimes away from his head quarters.
- (5) It is desirable that a Railway doctor, when certifying cases of drunkenness, should base his opinion on the following considerations :-
 - (i) Whether the person concerned has recently consumed alcohol.
 - (ii) Whether the person concerned is so much under the influence of alcohol as to have lost control of his faculties to such

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an extent as to render him unable to execute safely the occupation in which he was engaged at the material time.

(iii) Whether his state is due, wholly or partially, to a pathological condition which has caused symptoms similar to those of alcoholic intoxication, irrespective of the amount of alcohol consumed.

(6) He should not certify the case as drunk just because the patient is smelling of alcohol. The quantity taken is also no guide, but the fact of impairment of his capacity to perform his duties has to be taken into account.

567. Instructions regarding issue of certificate of drunkenness :-

(1) When a railway doctor is called upon to certify a case of drunkenness in a Railway employee, he should after careful examination, immediately report by a telegram or urgent letter his opinion to the immediate superior or Divisional Officer of the employee concerned intimating whether the employee has to be put off duty or not.

(2) When a Railway doctor is asked to certify the crew of a running locomotive and if on examination he finds a member of the same under the influence of alcohol, he should immediately issue a memo to the authority concerned to put the person off his duty.

(3) As far as possible, a senior doctor should undertake to examine such cases of drunkenness rather than depute the juniors, and in case of doubt, should refer the case to the CMS/MS in-charge of the division."

9. Thus, there are specific rules which provide that as far as possible a senior doctor should examine such cases of drunkenness. In this case, the disciplinary authority had not referred this case to the doctor and no certificate of doctor was obtained as provided by the rules referred to above. He had proceeded only on the basis of doubts expressed by the witnesses about the state of drunkenness of the applicant and these witnesses had subsequently stated that they had not seen the applicant while consuming alcohol during duty hours. Therefore, the charge of consumption of alcohol or being under the state of drunkenness during duty hours could not be proved

by the inquiry officer or by the disciplinary authority. Secondly, the charge of abusing Shri Babulal Sharma has also not been proved as no specific evidence has been brought on record to the effect that he abused or misbehaved with Shri Babulal Sharma. As regards the third charge i.e. not properly handling the railway traffic, as stated in the charge-sheet, the applicant had submitted a detailed reply which had not been considered by the inquiry officer or by the disciplinary authority and they have also not rejected the explanation submitted by the applicant.

10. It is a trite that it is the duty of the inquiry officer to submit report on the basis of examination of documents and on the basis of statement of witnesses that charges have been proved or not. But, in the present case, the inquiry officer without appreciation of facts of the case, without going into the statement of witnesses and without considering the explanation/reasons stated by the applicant had stated that the charge levelled had been proved and the disciplinary authority had also without appreciating the evidence collected by the inquiry officer had blindly relied upon the inquiry report and imposed penalty of removal from service upon the applicant. This fact had also not been appreciated by the appellate or the reviewing authorities.

11. From perusal of the order passed by the reviewing authority, it is evident that he has not considered all the contentions raised before him. Under sub-rule (3) of Rule-25 of the Railway Servants (Discipline & Appeal) Rules, 1968, an application for revision shall be dealt with in the same manner as if it were an appeal under these rules. Order passed by the Appellate and Revisional authorities must be speaking. Appellate and Revisional authorities should apply their mind to

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the records of the case and should then pass a speaking order giving reasons therefor. Orders of the Appellate and Revisional authorities, which are cryptic and without brief reasons, is liable to be set aside by the court of law, as held in the case of **Divisional Forest Officer, Kothagudem and Others v. Madhusudhan Rao** [(2008) 1 SCC (L&S) 788]. In the said order it was held that Appellate and Revisional authorities are required to give reasons, albeit brief reasons, while confirming views of the disciplinary authority/appellate authority.

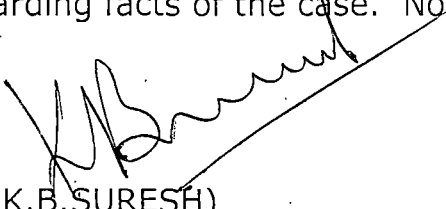
12. In the present case, the applicant had submitted detailed reasons, in his defence, in the revision petition for consideration of the reviewing authority, but the same appears to have not been considered by the reviewing authority. Relevant portion of the revision petition submitted by the applicant reads as under :

"Vide para II of his speaking orders he had held me responsible for detention of trains. He has further not mentioned No. or name of the train which was detained. Similarly, in the same para I have been held responsible for not acknowledging C/o relating to Rail fracture. Statement of ASM/PSL is itself an evidence that the C/o of 10 KMPH S/R was imposed at 20/32 hrs.

As regards detention to 2016 DN and 188 Up, I explained the reason in person to Sr.DOM, signals 2016 had been taken off through signals and zing of 2016 DN 188 Up was arranged at Khairthal station. Later on 2016 was detained at PSL due to rail fracture and controller changed orders to cancel L/C of 2016 DN and grant L/C to 188 up to arrange xing at Ghatla. In the meantime the light went off. It took me time to go to Generator room to start Generator and there bring no light on panel it took time to cancel L/C of 2016 Div. and to grant I/C to 188 up.

In the meantime the light came and the Generator was shutdown but the controller again changed his orders to cancel the L/C of 188 up and grant L/C again to 2016 DN thus the frequent change of orders by controller and electric failure were the now cause of detention to the rains to which Sr.DOM/JP has not rightly considered. As regards non receipt of C/o Message, I had spoken to PSL to wait till light comes. Marcos there was no train at my station to dispatch to PSL stn. Immediately after passing 2016 DN 188 Up wailing at Khairthal was the first train which was sent after issue of C/o by my reliever who came by that time and received message also before dispatching 188 up."

13. In the facts and circumstances of the present case, order passed by the reviewing authority, dated 15.4.2008 (Ann.A/1), is hereby quashed and set aside. The reviewing authority is directed to pass a fresh reasoned and speaking order, within a period of two months from the date of passing of this order, after having considered the detailed reasons given by the applicant in the revision petition [reproduced above]. While passing the fresh order, he should also take into account the statements of the witnesses as also the relevant record regarding facts of the case. No order as to costs.


(Dr.K.B.SURESH)
MEMBER (J)


(B.L.KHATRI)
MEMBER (A)

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