

OA.No.170/00737/2015/CAT/Bangalore Bench
 CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00737/2015

DATED THIS THE 03rd DAY OF JANUARY, 2018

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

M.Gabriel
 S/o.Barnabas
 Aged about 53 years
 Loco Pilot (Passenger)
 South Western Railway, Hubli
 Residing at No.53
 Vinuthana Colony
 Near ABM Church, Gadag Road
 Hubli.Applicant

(By Advocate Sri T.N.Swamy)

Vs.

1. The Union of India
 Represented by its General Manager
 South Western Railway, Hubli.
2. The Chief Operational Manager
 Revision Authority
 South Western Railway, Hubli.
3. The Divisional Railway Manager
 Appellate Authority
 Divisional Office
 South Western Railway, Hubli.
4. The Sr.Divisional Mechanical Engineer(Power)
 Disciplinary Authority
 South Western Railway, Hubli.
Respondents

(By Advocate Sri.J.Bhaskar Reddy)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

"Quash and set aside the order bearing No.H/M.348/I/HPT dated 12/4/2013 issued by the 4th respondent Annexure-A11 and the order

bearing No.H/P.90/N/2013/MG dated 24/7/2013 issued by the 3rd respondent Annexure-A14 and the order bearing No.SWR/P/HS/227/MG (UBL) dated 22/7/2015 Annexure-A18 passed by the 2nd respondent with all the consequential and monetary benefits.”

2. It is submitted that the applicant joined the services as Loco Khalasi in July 1983 and received, from time to time, promotions to various posts such as Engine Cleaner, 2nd Fireman, Diesel Assistant, Driver(Goods), Sr. Goods Driver and finally as Passenger Driver(Loco Pilot Passenger) on 31.12.2009. While working as Loco Pilot, he was placed under suspension on 1.9.2012 which was subsequently revoked vide order dtd.11.9.2012(Annexures-A1 & A2). The applicant was issued with charge memorandum by the 4th respondent under Rule 9 of RS (D&A) Rules,1968 on 15.10.2012(Annexure-A3). The charges primarily relate to his failure to stop the train at Virapur Station and it passed the main line starter of Virapur Station at ‘ON’ position. On receipt of the charge memo, the applicant submitted his explanation on 29.10.2012 denying the allegations(Annexure-A4). However, the 4th respondent decided to proceed with the departmental proceedings and appointed the enquiry officer. According to the applicant, the allegations made against him leads to SPAD(Signal Passing At Danger) and as per the railway accident manual, if the accident is classified as H1, the said accident is required to be intimated to various authorities. Though the case of the applicant is classified as H1, it was not intimated to the authorities as required. It was also not reported to the Commissioner of Railway Safety. He has also referred to various actions to be taken in such cases in terms of the accident manual.
3. The applicant further submits that the inquiring authority is lower in grade

OA.No.170/00737/2015/CAT/Bangalore Bench than that of the Members of the fact finding committee. As per the Railway Board clarification, the inquiring authority should be superior in status than that of the committee members of the fact finding committee. He further submits that the inquiry officer did not conduct the enquiry fairly and properly. He proceeded without furnishing the relevant documents sought for by the applicant. He also examined and cross examined the witnesses in the guise of clarification. None from the fact finding committee has been examined. In the enquiry, three witnesses were examined on behalf of the department and the applicant examined himself and those persons have been re-examined by the inquiry officer as would be evident from the proceedings(Annexure-A6). At the conclusion of the evidence on 18.3.2013, the applicant requested 15 days' time to submit defence brief. But without considering his request, the inquiry officer submitted his report on the next day. The 4th respondent forwarded the report of the IO to the applicant on 22.3.2013. He submitted a letter on 28.3.2013(Annexure-A8) to the IO alleging bias against him. He also further submitted a representation to the disciplinary authority on 24.4.2013 referring to his earlier communication alleging bias against the IO. On receiving his communication alleging bias, the disciplinary authority without referring the matter to the revisionary authority proceeded and passed the order of penalty dtd.12.4.2013. The applicant had earlier filed OA.No.362/2013 before this Tribunal and the Tribunal vide order dtd.19.4.2013 directed that the applicant is to make representation to the authority on allegation made against the inquiry officer and if submitted the DA will decide in accordance with rules. The Tribunal in its order dtd.12.6.2016(Annexure-A12) observed that the order of penalty was passed on 12.4.2013 and there is provision for statutory appeal on or before 45 days and hence the

applicant was directed to file statutory appeal. It was also ordered that if such an appeal is filed by him, the appellate authority shall decide within a period of one(1) month and after giving an opportunity for personal hearing. Thereafter, the applicant submitted further appeal on 27/28.6.2013 to the appellate authority urging all the facts and grounds. Thereafter, in continuation of the appeal, he submitted the additional points by a further appeal dtd.19.7.2013. However, the 3rd respondent without considering all the aspects mechanically passed order dtd.24.7.2013 and modifying the order of the disciplinary authority from removal from service to that of compulsory retirement from the services(Annexure-A14). The applicant had further submitted a revision petition to the revisionary authority on 19.3.2014(Annexure-A15). This was followed by subsequent reminders on 5.8.2014 and 20.10.2014. However, at the time of filing of the OA, the said revision petition had not been considered. It was passed later on 22.7.2015. The applicant subsequently filed an MA enclosing the order passed by the revisionary authority dtd.22.7.2015(Annexure-A18) upholding the order passed by the appellate authority and challenging the same. Aggrieved by the said orders of the disciplinary authority, appellate authority and revisionary authority, the applicant has filed the present OA seeking the relief mentioned above.

4. The applicant submits that the penalty orders are not sustainable on the ground that the alleged violation on which the proceeding was taken up is categorised as accident and all the required formalities were not undertaken. The inquiry authority was lower in status than the Members of the fact finding committee. Another person who was Sr.ALPO against whom similar inquiry should have been initiated was not done. Rather the said person was cited as witness. Conduct of the inquiry officer also speaks of

OA.No.170/00737/2015/CAT/Bangalore Bench bias. The inquiry officer did not grant 15 days' time to the applicant for submitting his written defence brief. He has also mentioned in detail various technical aspects which resulted in stoppage of train at Virapur station and the action taken by him in the matter. He submits that all the essential facts were not taken into consideration by the IO as well as the disciplinary authority. His contentions were also not considered by the appellate authority and revisionary authority. Hence he submitted that the penalty imposed against him is unjustified and the said orders are liable to be set aside and he is entitled to the relief sought by him.

5. The respondents have filed a reply statement in which they submitted that the applicant while working as Loco Pilot on Passenger Train No.56502 on 1.9.2012, passed the starter signal at 'Danger' at Virapur station in Guntakal Division. A fact finding enquiry was conducted by the committee comprising of officers from the Guntakal Division which concluded in its finding that the applicant is primarily held responsible for passing the starter signal at danger. Accordingly, the disciplinary authority under whom the applicant is working has issued charge memorandum under major penalty proceedings. Since the explanation submitted by the applicant was not acceptable, the DA ordered for enquiry and appointed the inquiry officer. The IO submitted his report to the disciplinary authority which was then served on the applicant. They further submitted that the fact finding enquiry was conducted by the committee consisting of officers from the Guntakal Division under South Central Railway, since the accident occurred there. However, the applicant comes under the jurisdiction of South Western Railway and the IO does not work under the administrative control of officers who conducted the fact finding enquiry. Hence there is no question of the IO being influenced by the findings of the committee.

They further submitted that the Railway Board letter dtd.10.4.1962 referred to by the applicant is not applicable in the present case since it is not arising consequent to Audit report for disciplinary action. The inquiry officer started enquiry on 17.11.2012 and concluded on 18.3.2013. The inquiry was prolonged due to non-submission of defence helper nomination by the charged official, non-attendance of the listed witnesses and non-supply of additional documents. The examination of listed witnesses were completed on 30.12.12 and further waited up to 20.2.13 for cross examination of listed witnesses by the charged official. After supply of additional documents, the cross examination was completed on 6.3.2013. One additional document was also supplied on 8.3.2013. The charged official sought for 15 more days' time to submit the written defence brief. However, the inquiry officer submitted the inquiry report on 19.3.2013 to comply with the time limit of D+90 days schedule to complete the D&AR inquiry for accident related cases in terms of Railway Board letter dtd.2.2.2006. The disciplinary authority sent a copy of inquiry report to the applicant to submit his representation. The applicant has addressed a letter to IO by raising bias against him on 28.3.2013 instead of submitting representation to the disciplinary authority on IO's report within the stipulated period. The disciplinary authority has carefully considered all the aspects of the case and the report of IO and passed the speaking order imposing the penalty of removal from service vide his letter dtd.12.4.2013. Since the applicant did not receive the penalty order, the same was pasted on the notice board in the presence of two witnesses. The applicant then submitted his appeal to the appellate authority who after duly considering the matter on records modified the penalty of removal from service to that of compulsory retirement.

6. The respondents submit that the applicant had deposed in his statement to the fact finding committee and has accepted that he has passed the main line starter signal of Virapur station at 'danger' aspect. The fact finding committee on detailed examination held that the applicant is primarily responsible for the accident and recommended for departmental action. The applicant has accepted the fact that he did not stop the train at scheduled stoppage at Virapur station and further shot the starter signal of Virapur station at ON position(DANGER) which was a threat to public safety. Therefore the initiation of enquiry against him is justified. On the reference of the applicant to the accident manual, the respondents submitted that the accident manual is an aid to the Railway administration and as Preface to the manual it incorporates latest rules of reporting and inquiry in to accidents, definitions and classifications of accidents as per Railway Board guidelines. Any deviation in reporting the accidents by the fact finding committee and any lapses in the findings will be viewed seriously by accepting authority. In this case Additional General Manager, South Central Railway has accepted the findings of the fact finding committee as Railway Board Lr.No.2005/Safety (A&R)/6/3 dt:3.1.2006 which is produced as Annexure-R1. He further mentioned that the applicant was held as primary responsible for the accident and his Assistant Loco Pilot was fixed as secondary responsibility. As such, the misconduct or charges framed against both will differ and conducting a joint enquiry for different charges does not arise.

7. Consequent to the filing of the MA by the applicant enclosing therewith the order of the revisionary authority, the respondents have filed additional reply submitting that the revisionary authority had considered the facts

submitted by the applicant while disposing of the revision petition. The applicant was given all opportunities to defend himself during the enquiry and also all facts have been taken into consideration by the appellate authority and revisionary authority and therefore, the contention of the applicant does not merit any consideration.

8. The respondents have filed another additional reply to clarify certain issues raised during the hearing. They submitted that the applicant had taken the contention of poor brake power which resulted in overshooting of starter signal. They submitted that the issue of poor brake power was never raised by the applicant before the fact finding enquiry or before the inquiring authority. They submitted that the applicant along with his ALP was off-loaded at Virapur station after the incident of SPAD(Signal Passing At Danger) and the train was worked by fresh crew up to Guntakal which is the next Rake Check point, where the facilities are available for checking the brake power of the said train. Further the train continued its normal journey up to the destination i.e. Vijayawada. They submit that as per the G&SR, the sequence of signal for this particular train was 'distant signal' which was proceed and it pre-warns the condition of next stop signal (Home Signal) which was 'caution' which means that the Loco Pilot has to pass the signal at restricted speed and be prepared to stop well within the vicinity of at the next stop signal i.e. starter signal of Virapur station. The applicant has brought the train to a grinding halt within 60 seconds from the maximum speed of 96 KMPH to a dead stop. This proves that the train was having sufficient brake power. Hence the point raised by the applicant on the brake power is baseless.

9. The applicant has filed rejoinder in which he has practically reiterated the

OA.No.170/00737/2015/CAT/Bangalore Bench submission made in the OA regarding non-following of the mandatory procedure and stated that without following the Railway Board procedure, the respondents appointed the inquiry officer who is lower in grade than that of the members of the fact finding committee. The IO being biased against the applicant submitted inquiry report without giving time for submission of his defence brief. The disciplinary authority has also not considered all the aspects and his order imposing penalty did not record any reasons for coming to the conclusion and hence is unjustified.

10. Heard the Learned Counsel for both the parties who have also submitted written arguments. The Ld.Counsel for the applicant while referring to the charges submits that while making allegations of failure of the applicant to control the speed of his train and passing the main line starter of Virapura station at 'ON' position, they have not furnished the details where he was required to stop and where he stopped along with the other details of the train position and in the absence of all these the charge memo issued is vague and lacks material particulars. Further if the alleged act committed by the applicant is classified as H1 i.e. train passing the signal at danger, the said incident is required to be intimated to the various authorities as well as the Commissioner of Railway Safety which was not done. He has also referred the accident manual regarding conduct of the enquiry in such cases which according to him is not followed. Therefore, initiation of enquiry without following the mandatory requirement is illegal as has been held by the Hon'ble Apex Court in several cases. He further mentioned that the inquiry authority should have been superior in status than that of the committee members of the fact finding committee in terms of the Railway Board letter dtd.10.4.1962 which clearly stipulated that if the lower grade officer is appointed to conduct enquiry, he will be prejudiced by the

report of the fact finding enquiry comprising officers senior to him. He also mentioned that during the enquiry, the documents are not furnished and dates of proceedings are not furnished. The inquiry officer cross-examined the witnesses which speaks of bias. Moreover the applicant was not given time to submit his defence statement and hence the procedure contemplated under the rules was not adhered to during the enquiry. He referred to several judgments of the Hon'ble Apex Court stipulating that the procedures contemplated under the rules is required to be followed. He further submitted that the applicant submitted a letter on 28.3.2013 to the inquiry authority with the copy to the other authorities alleging bias against the inquiry officer and when such application was submitted, the DA should have forwarded the proceedings file to the revisionary authority for his orders which has not been done. The disciplinary authority passed an order on 12.4.2013 which was not served on him. The order of the disciplinary authority is also not a detailed speaking order and hence is not sustainable in the light of various judgments of Hon'ble Apex Court indicating that the order passed by the authority should be speaking order. In the preliminary enquiry conducted by the fact finding committee, the applicant is not associated and he has no opportunity to cross-examine the persons from whom the statements have been obtained. Hence relying on the fact finding report which held the applicant guilty by the inquiry authority is not permissible. Hence the report of the inquiry officer is unjustified and further decision taken by the disciplinary authority, appellate authority and revisionary authority based on that report is erroneous and illegal.

11. The Ld.Counsel for the respondents while referring to the contention made in the reply statement submitted that the fact finding enquiry was

OA.No.170/00737/2015/CAT/Bangalore Bench conducted on 10.9.2012 i.e. immediately after 10 days from the alleged incident and the applicant has given sufficient opportunity to cross-examine the Guard. He submitted that the officers who conducted the fact finding enquiry belong to South Central Railway while the disciplinary authority and the applicant belong to South Western Railway. Therefore, there cannot be any influence or impact of the officers who conducted the fact finding enquiry on the inquiry officer nominated by the disciplinary authority. The inquiry officer is not under the control of supervision of the persons who constituted the fact finding committee. Moreover as per the Railway Servants D&A Rules 1968, the IO shall be two grades above the charged employee and therefore nomination of the officer by the disciplinary authority is justified. He further submitted that the applicant had never raised this objection regarding lack of jurisdiction or bias during the period of inquiry and had participated in the inquiry process. He also submitted that the allegation of bias against the applicant was raised only after the inquiry officer submitted his report and not at the time of enquiry itself. Therefore, it can be construed that only because of the report of the inquiry officer was not favourable to the applicant he started making allegations of bias against the inquiry authority. Moreover any bias against the inquiry authority should have been represented to the disciplinary authority and not to the IO himself. On the issue of inquiry authority not giving time for filing defence statement, they submit that the applicant had earlier approached this Tribunal in OA.No.362/2013 wherein he was directed to make further representation to the disciplinary authority. Moreover since the disciplinary authority passed an order, direction was given to file detailed representation to the appellate authority and to consider the appeal and also give a personal hearing. This was done by

the appellate authority. The appellate authority had considered all the facts and submissions made by the applicant and modified the order of penalty of removal from service to that of compulsory retirement from service. The revisionary authority had also addressed all the concerns made by the applicant in his revision petition and passed a detailed order upholding the order passed by the appellate authority. There is no procedural irregularity and all opportunities were given to the applicant to defend himself. He further submitted that the applicant had passed the signal which is a clear misconduct and lack of devotion to duty which could have resulted in loss of public property and Railway Board issued accident manual to deal with the issues of Loco Pilots. Considering this perspective, the penalty imposed on the applicant cannot be stated as unjustified.

12. We have carefully gone through the records and considered the facts of the case as well as submissions made by either side. From the records and submissions, it is clearly evident that there was an incident in which the train wherein applicant was the Loco Pilot had crossed the starter signal at Virapur station at 'ON' position. The applicant had not disputed this fact that he had passed main line starter at 'ON' position which was at 'danger' aspect. It had been contended by the applicant that if it was a case of SPAD, then it should have been reported to other authorities including Commissioner of Railway Safety as per rules. It is up to the respondent authority to follow requisite procedure as stipulated under relevant rules and regulations. However, this has no bearing on the disciplinary proceedings. There is no dispute to the fact that there was an infraction on the part of the applicant which resulted in the train passing the main line starter signal at danger(SPAD). The fact finding enquiry has also corroborated this fact and the infraction on the part of the applicant.

13. As far the enquiry is concerned, the applicant has raised two main aspects. Firstly the inquiry authority should have been senior in position than the members of fact finding committee which is not so. On this the respondents have taken the contention that the incident took place in Guntakal which comes under South Central Railway and the fact finding enquiry was conducted by the officers in Guntakal Division. The Disciplinary Authority(DA) as well as the applicant come under the South Western Railway. So they come under two different Railways i.e. South Central Railway and South Western Railway. Therefore the officers who conducted the fact finding enquiry cannot have any influence on the inquiring authority. Moreover the inquiry officer is two grades above the charged employees. We are inclined to accept the contention made by the respondents on this issue and hold that the objection raised by the applicant that the inquiring authority should have been senior to the members of the fact finding enquiry is not valid as far as the present case is concerned as they belong to two different divisions/Railways.

14. The other major issue raised by the applicant is that all the documents are not provided to the applicant, the IO cross-examined the witnesses and he did not give time to provide defence brief and hence the IO was also biased. We see from the record that initially evidence of the witnesses was taken but the charged official declined to take up cross-examination without availability of documents. But later he had undertaken the cross-examination of the witnesses since documents were provided. During the entire enquiry period which spread over nearly 3 months, the applicant had not raised any issue of bias against the inquiry officer but raised it only after the inquiry report was submitted. If there was any element of bias

then it should have been raised earlier not after the enquiry is over and report submitted. The only point that has some substance is that the applicant sought time to submit his defence brief which was not allowed. On this the respondents contended that the IO had to submit his report within the stipulated time and hence after completion of proceedings, he submitted his report. Further even though the inquiry officer report was provided to the applicant but he did not submit his reply to the disciplinary authority which resulted in passing the order of penalty on 12.4.2013. Before submission of report, it would be desirable that the inquiry officer could have given some time to the applicant to submit his defence brief if not 15 days. Nevertheless we note that subsequent to the direction of the Tribunal to file a detailed representation before the appellate authority, the applicant has filed the detailed representation on 27/28.6.2013 in which he raised all the contentions which have been raised in the OA. The appellate authority also gave a personal hearing to the applicant. On going through the order of the appellate authority, we note that the appellate authority had addressed all the points raised by the applicant in his appeal in the order passed by him in which he modified the order of penalty of removal from service to that of compulsory retirement.

15. The revision petition made by the applicant against the appeal is also quite exhaustive and raised all the issues now being raised. We have gone through the order passed by the revisionary authority dtd.22.7.2015 and are of the view that it has addressed all the issues raised by the applicant in his revision petition. The applicant had raised many technical aspects in the OA. We note that both the appellate authority and revisionary authority are technical persons and they have considered the technical issues raised by the applicant in their orders.

16. We are not going in to the order passed by the disciplinary authority since it stands modified by the appellate authority. On going through the records, we hold that the appellate authority and the revisionary authority have duly considered all aspects raised by applicant while passing their orders. We are also of the view that the applicant was given adequate opportunities to defend himself and there is no case of any denial of natural justice. Hence, on detail consideration of all the facts and circumstances of the case, we do not find any ground for interference by the Tribunal in the order passed by the appellate authority modifying the order of disciplinary authority i.e penalty of removal from service to that of compulsory retirement from service which was further upheld by the revisionary authority.

17. Therefore, we hold that the OA is clearly devoid of any merit and hence the same stands dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

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

/ps/

Annexures referred to by the applicants in the OA.170/00737/2015

Annexure-A1: A Copy of the order dated 1.9.2012

Annexure-A2: A Copy of the order dated 11.9.2012

Annexure-A3: A Copy of the memorandum dated 15.10.2012

Annexure-A4: A Copy of the reply dated 29.10.2012

Annexure-A5: A Copy of the appointing the enquiry officer dated 2.11.2012

Annexure-A6: A Copy of the proceedings

Annexure-A7: A Copy of the letter dated 20.3.2013

Annexure-A8: A Copy of the letter dated 28.3.2013

Annexure-A9: A Copy of the interim order dated 23.4.2013

Annexure-A10: A Copy of the letter dated 24.4.2013

Annexure-A11: A Copy of the order dated 12.4.2013

Annexure-A12: A Copy of the order dated 12.6.2013
Annexure-A13: A Copy of the appeal
Annexure-A14: A Copy of the order dated 24.7.2013
Annexure-A15: A Copy of the revision petition dated 20.3.2014
Annexure-A16: A Copy of the reminder dated 5.8.2014
Annexure-A17: A Copy of the reminder dated 20.10.2012
Annexure-A18: A copy of the order dated 22.7.2015

Annexures with reply statement:

Annexure-R1: Copy of the Rly Board Lr.No.2005/Safety(A&R) 6/3 dtd.03.01.2006

Annexures with rejoinder:

-NIL-

Annexures with addl. reply statement:

-NIL-
