

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.318 of 2014

Cuttack this the day of May, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Ch.Prushottam, aged about 70 years, S/o.Ch.Jagannayakula, Ex-Lever man 'B' under Sr. Divisional Operations Manager, East Coast Railway, Khurda Road, at present C/o. R.K.Behera, 4th Line, PO-Gosaninuagaon, Berhampur, Dist-Ganjam

...Applicant

By the Advocate(s)-Mr.B.S.Tripathy-I

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Operations Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Divisional Railway Manager, East Coast Railways, Khurda Road, At/PO-Khurda Road, PS-Jatni, Dist-Khurda
4. Additional Divisional Railway Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, Dist-Khurda
5. Senior Divisional Operations Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is an ex-employee of the East Coast Railways, who retired as Lever Man 'B' under the Senior Divisional Operations Manager, East Coast Railways on 30.11.2003. He has filed the present O.A. challenging the order

of the Disciplinary Authority dated 15.5.2001(A/1) reverting him to the post of Lever Man 'B' in the Grade Rs.2650-4000 (RSRPS) on pay Rs.4000/-(maximum of the grade) from the post of Cabin Master till attaining superannuation, the order of the Appellate Authority dated 3.11.2010(A/4) and the order of the Revisional Authority dated 26.7.2012(A/8) upholding the punishment imposed by the Disciplinary Authority. He has prayed for quashing the above orders and to grant all consequential service and monetary benefits including retiral benefits.

2. The brief facts of the case are as follows:

The applicant while working as a Cabin Master of South Cabin at Golanthara Station was served with a major penalty charge memo bearing No.AL/18/H/2000 dated 19.12.2000 with the following charges:

“On 18.10.2000, Sri Ch.Purushottam while performing the duty of SWM/Cabin Master in South Cabin at GDA Station from 16.00 hours to 00.00 hours committed gross negligence of duty in that he failed to put the Lever Collars after admission of D/Engineering Spl. At GTA Station on R/1 from SLRD and also failed to exchange the line block PNs for DMU-5 (Coaching train). In addition he failed to ascertain that R/1(common loop) of STA Station is clear and free from obstruction before taking line clear from SLRD and permitting slot for admission of DMU-5 on R/1(blocked line). He further committed mistake when D/Engg. Spl stabled on a running line at GRF R/1 failed to enter in TRS in red ink and failed to exchange PNs. It is also observed during the fact finding inquiry that he erased and manipulated documents of the route nomination for DMU5 in his TRS and correction made in his PN books to cover up his mistake after the averted collusion. As a result, for the cognizable offence committed by Sri Purushottam, DMU5 admitted on R/1 (block line) which could have created

hazardous accident between DMU5 and D/Engg. Spl. But fortunately, due to the alertness and timely follow up action taken by the driver of DMU5 an imminent collision was averted at GRA Station on 18.10.2000 at about 21.50 hours.

Thus, Sri Ch.Purushottam, SWM/Cabin Master is charged for violation of SR 5.4.(a), SR 3.38.01(d), SR 3.51.06(a), SR 5.23.01 and also Rule No.3.1(ii) of RS Conduct Rule, 1966 as amended from time to time and rendered himself liable for severe disciplinary action”.

This charge sheet was issued on the basis of the report of the JAG Committee holding the applicant as primarily responsible for the averted collision. The applicant submitted his reply to the Senior Divisional Operations Manager, Khurda Road who is the Disciplinary Authority. However, the applicant is aggrieved that even before the issuing of major penalty charge sheet the Disciplinary Authority had nominated Shri C.R.Das, Assistant Operating Manager, Khurda Road as I.O. vide his letter dated 17.12.2000. Moreover, no Presenting Officer was appointed during the inquiry and the entire inquiry was conducted by the I.O. himself by examining departmental witnesses and the documents. The applicant was not supplied with the copy of JAG Committee report nor the statement of any Railway servants obtained during the course of JAG Committee inquiry. Although the applicant was permitted to be represented by a Defence Assistant, the said Defence Assistant was not allowed to cross-examine the witnesses. The applicant alleges that the entire inquiry was conducted in gross violation of the principles of natural justice. The Disciplinary Authority

had served copy of the inquiry report to the applicant on 22.3.2001 in reply to which he had filed his final defence statement on 6.4.2001 wherein he pointed out the deficiency in the inquiry. However, the Disciplinary Authority ignored the contention of the applicant raised in the final defence statement and passed the punishment order. The appeal filed by the applicant on 5.7.2001 before the Appellate Authority, i.e. Divisional Railway Manager, Khurda Road was rejected vide order dated 27.11.2001 in a mechanical manner without answering the points raised by the applicant and without giving any reason. The applicant preferred a revision petition on 23.9.2003 and during its pendency, he retired from railway service after attaining the age of superannuation on 30.11.2003. The revision petition was rejected by the Revisional Authority vide order dated 8.3.2004. The applicant being aggrieved by the above orders had approached this Tribunal in O.A.No.160 of 2007 which was disposed of on 10.8.2010 with the observation that the Tribunal found no merit in the contentions of the learned counsel for the respondents that there is no need to pass reasoned orders by the Appellate Authority and the Revisional Authority when the rule provides so. Therefore, the orders passed by the Appellate Authority and the Revisional Authority were set aside on the ground that the same were not in accordance with the rule/law and the matter was remitted back to the Appellate Authority

with direction to give a fresh consideration to the appeal of the applicant in accordance with rules/law after affording him a personal hearing and communicate the result of such consideration to the applicant within a period of three months from the date of receipt of a copy of the order. Accordingly, the Appellate Authority, i.e., A.D.R.M., East Coast Railways, Khurda Road passed a speaking order dated 3.11.2010 at A/4 rejecting the appeal filed by the applicant. Similarly, the Chief Operations Manager, East Coast Railways in the capacity of Revisional Authority passed a reasoned order dated 26.7.2012 upholding the punishment imposed on the applicant. The applicant has challenged both these orders along with the order of the Disciplinary Authority in the present O.A. and has prayed for the reliefs as stated in Para-1 above.

3. The applicant has based his prayer mainly on the ground of procedural infirmities in the conduct of the disciplinary inquiry. He has submitted that the Disciplinary Authority had nominated the I.O in violation of Rule-9(9) of Railway Servants (Discipline & Appeal) Rules, 1968. He did not appoint the P.O. to present the case in violation of Rule-9(iv)© of RS(D&A) Rules and the Inquiry Officer himself examined the witnesses. Moreover, the applicant was not given the copies of the relevant documents. He has challenged the initiation of disciplinary proceedings on the ground that it is void being illegal, arbitrary, mala fide and against the rules and law. The Appellate

Authority has not considered all the points raised by the applicant in his appeal about the irregularities and illegalities in the inquiry proceedings. Similarly, the Revisional Authority also has not considered all the points raised by the applicant in his revision petition.

4. The Respondents in their counter-reply filed on 26.9.2016 have raised the objection that the O.A. is hopelessly barred by limitation and suffers from misconception of law as well as misrepresentation of facts. The Committee comprising Sr.DME, Sr.DSTE and DSO, Khurda enquired into the cause of the accident and held Shri Ch.Purushottam, the present applicant in the O.A. as primarily responsible along with SM & North Cabin, SWM of GTA station for the averted collision. The Inquiry Officer was appointed on the same day as the issue of major penalty charge sheet on 19.12.2000. The applicant was supplied with all the necessary and relevant documents. A copy of the inquiry report was also given to him in response to which he submitted his final defence statement. All these were taken into consideration by the Disciplinary Authority while imposing the punishment of reversion to the post of LM(B) till retirement. In accordance with the direction of this Tribunal in O.A. 160 of 2007 passed on 10.8.2010, the Appellate Authority granted a personal hearing to the applicant on 29.10.2010 and the appeal filed by him was rejected by the Appellate authority through a reasoned order dated 03.11.2010(A/4). Also the

Revisional Authority rejected the revision petition of the applicant through a speaking order dated 26.7.2012(A/8). The applicant has not only violated the safety norms while working as Cabin Master (SWM) South Cabin at GTA station, he also tampered and manipulated the concerned documents of route nomination for DMU5 in his TS and made correction in his PN books to cover up his mistakes. He has committed the cognizable offence leading to a major collision which was averted due to alertness of driver of DMU5. The contention of the applicant that the IO was appointed prior to issue of the charge sheet dated 19.12.2000 is not correct. The IO was appointed on the same day as the date of issue of charge sheet on 19.12.2000. Copy of the JAG Committee report was supplied to the applicant along with the charge sheet which has been acknowledged by him and admitted by him during the preliminary sitting of the departmental inquiry proceedings. All the necessary and relevant documents have been supplied to the applicant and a Defence Assistant was appointed to cross-examine the witnesses. The applicant has also confessed his mistakes while on duty on the date of occurrence of the incident before the members of joint inquiry. Hence, the punishment imposed on him is just and fair. The applicant has preferred a review application before the President which is still pending and the applicant has approached this Tribunal

without waiting for the order of the President. The O.A. is liable to be dismissed on this ground also.

5. The applicant filed a rejoinder on 16.11.2016 in which he has reiterated that the Inquiry Officer was appointed before the issue of the charge sheet which is a violation of Rule-9 of RS(D&A) Rules, 1968. The applicant has not received the JAG Committee's report. The I.O. has not mentioned at any place that the applicant has violated his duties as a Cabin Master.

6. The matter was heard on 3.5.2018. During the course of argument, the learned counsel for the applicant cited the judgment of the Hon'ble High Court of Orissa in Rabindranath Mohanty vs. Government of Orissa & Another reported in Indian Law Reports [(1975) 357 to 362] wherein it has been held that the question of appointment of I.O. would arise only after receipt of the written statement of defence by the charged official.

We have heard the learned counsels from both the sides and perused the documents submitted by them along with the case laws. The issue to be decided in the present O.A. is whether the impugned orders dated 15.05.2001(A/1), 03.11.2010(A/4) and dated 26.07.2012(A/8) are legally sustainable.

7. We find that this matter has already been adjudicated by this Tribunal in O.A.No.160 of 2007, In the order dated 10.8.2010, the facts of the case and points of law have been discussed in detail along with the charges against the applicant.

O.A.No.160 of 2007 also contained a prayer to quash the order dated 15.5.2001 along with the order of the Appellate Authority dated 27.1.2001 and the Revisional Authority dated 8.3.2001. After considering the case in detail, this Tribunal had quashed the orders of the Appellate Authority and the Revisional Authority and remitted the case back to the Appellate Authority to give a fresh consideration to the appeal of the applicant in accordance with the rules/law after affording a personal hearing to the applicant and communicate the result of such consideration to the applicant within a period of three months from the date of receipt of copy of the order.

8. In view of the order passed by this Tribunal in O.A.No.160 of 2007 we are not inclined to reopen the validity of the order passed by the Disciplinary Authority since the decision of the Tribunal was rendered for quashing and setting aside the orders of the Appellate Authority and the Revisional Authority. We find that after the disposal of O.A.No.160/2007, the Appellate Authority had granted a personal hearing to the applicant. Each and every point raised by the applicant in his appeal has been discussed in the speaking order of the Additional Divisional Railway Manager, East Coast Railway (Appellate Authority). The Appellate Authority has come to the conclusion that the Inquiry Officer conducted the inquiry in a proper manner and has reached the conclusion only after thoroughly examining all relevant relied upon documents and

witnesses. Necessary and relevant documents have been supplied to the applicant. The Appellate Authority while upholding the punishment imposed on him has come to the conclusion that the act of omission by the charged official should have attracted more stringent punishment from the Disciplinary Authority. In his order, the Appellate Authority has also made the following pertinent observation.

“During personal hearing on 29.10.10, the CO stated that it was night time and the Diesel Engineering Special train was on the other end of line No.1. So from his cabin he was not in a position to see the stabled train, therefore he allowed DMU-5 passenger train on line No.1. This argument of CO is very weak. Trains run on the railway system 24 hours (day and night) round the year (in all weathers). The safety rules to be followed by staff dealing with train passing duties are exhaustive and fool-proof. Not seeing a train in night-time will not cause an accident, as trains are run safely not only by seeing them, but by observing religiously the set of laid down procedures. If CO had followed the rule of putting lever collars for reminding him of the occupied line No.1, the mishap would never had happened”.

9. Similarly, the Revisional Authority also has passed a detailed order wherein he has discussed the order of the Disciplinary Authority and the Appellate Authority. The relevant Paragraphs from his order is quoted herein below:

“6. After going through the statements and written petitions given by the Charged Officer at various stages, it is seen that the Charged Officer has not placed lever collars after reception of Engineering Special on R.1. Similarly, while releasing slot for line No.1 for reception of DMU5, he failed to ascertain the clear line position through exchange of Private Number. Since he did not ascertain the clear line position for the subsequent

train, it was expected that the entry of arrival of Engineering Special should have been made in red ink in the Train Register, because alternative to assumption of clear line is blocked line with a load.

7. In one of his appeals, he has mentioned that he has not violated SR 5.23.01 which refers to stabling of a train and Engineering Special was supposed to pass through. In such a case, then it was mandatory on the part of C.O. to have taken line clear under exchange of Private Number before releasing slot for that line for a subsequent train. He failed to do so. Simultaneously he also failed to enter the train number in the Train Register in red ink indicating presence of a train on the line.
8. In one of the petitions, he has referred to have not violated SR 5.03.01(a) since it refers to duties of Station Master. Whereas Cabinman while observing SR 5.23.01(a) also has to take into consideration the provision of SR 5.005.03(a) which refers to placing of lever collars on lever handles working in the signals and slots. Therefore, while violation of SR 5.23.01(a), he also has violated SR 5.03(1)(a).
9. Taking the above into consideration, I upheld the punishment given by the Disciplinary Authority and upheld by AA”.
10. The only new point raised by the applicant in the case law cited by him is regarding the date of appointment of the I.O. The charges have been framed after a detailed inquiry by the JAG Level Committee into a very serious incident which could have led to a collision resulting in death and disaster. The applicant had also participated in the JAG level Inquiring Committee and was fully aware of the seriousness of his lapse. He had subsequently also attempted manipulation of records to hide the serious mistake committed by him. The facts of the case

being different in Rabindra Nath Mohanty (supra), we find that the judgment cited by the applicant is not applicable to the present O.A.

11. Having gone through the facts of the case and taking into account the earlier order passed by this Tribunal in O.A.No.160/2007 and considering the points of law, we find no merit in the present O.A. The orders of the Appellate Authority and Revisional Authority are detailed and reasoned orders and have squarely met the direction given in the earlier O.A. We therefore, find no merit in the present O.A. and consequently dismiss it with no order as to costs.

(DR.MURTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

BKS

Pre-delivery order in O.A.No.318 of 2014 is placed below
for kind perusal and concurrence.

MEMBER(A)

HON'BLE MEMBER(J)