

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.020/00262/2014

Date of CAV:22.12.2017.

Date of Order :25.01.2018.

Between :

B.Srinivasa Rao, s/o late Samasundara Rao,
Aged 44 yrs, Sr.Section Engineer (P)/SPI/JDB,
r/o D.No.33-8-42/1, SF-1, Sampath Sai Residency,
Allipuram Bazar, Ward No.30, NK Street,
Visakhapatnam-530 004. ... Applicant

AND

1. Government of India, rep., by its General Manager,
East Coast Railway, Rail Sadan, 1st Floor,
South Block, Bhubaneswar, Odisha-751 017.
2. Principal Chief Engineer, East Coast Railway,
Rail Sadan, 1st Floor, South Block,
Bhubaneswar, Odisha-715 017.
3. Divisional Railway Manager, Waltair Division,
East Coast Railway, Dondaparthi,
Visakhapatnam, A.P.-530 016.
4. Addl.Divisional Railway Manager,
Waltair Division, East Coast Railway,
Dondaparthi, Visakhapatnam, A.P.-530 016.
5. Senior Divisional Engineer (Co-ord),
East Coast Railway, Waltair Division,
Dondaparthi, Visakhapatnam, A.P.-530 016.
6. Sri M.Venkateswarulu,
JE (P-Way), O/o SSE (P-Way)/JYP,
E.Co. Railway, Jeypore Railway Station,
Koraput District, Odisha.
7. Sri G.A.Naidu,
Loco-Pilot (Goods), RGDA, E.Co. Railway,
O/o Sr.Loco Inspector, Rayagada PO, Odisha.

8. Sri B.Srinivas,
 SSE (Works/JDB, O/o Sr.Section Engineer (Works),
 E.Co. Rly, Jagadalpur RS & PO, Basater Dist.
 Chattisgarh.

9. Sri R.R.Panda,
 SSE (Br.Spl)/RGDA O/o Sr.Section Engineer (Bridges),
 Rayagada PO, District Rayagada, Odhisha.

10. Sri B.Srinivasa Rao,
 SSE (C&W) KRPU, O/o Sr.Section Engineer (C&W),
 Koraput Railway Station, Koraput District, Odhisha. ... Respondents

Counsel for the Applicant ... Mr.V.Ravindranath Reddy
 Counsel for the Respondents ... Mr.S.M.Patnaik,SC for Rlys.

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
 THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant is aggrieved by the action of the 2nd Respondent in rejecting his Review Petition and confirming the orders of the Appellate Authority and the Disciplinary Authority who imposed on him the punishment of reduction of Grade Pay from Rs.4800/- to Rs.4200/- in the Pay Band Rs.9,300-34,800/- for a period of three years with loss of seniority and with the effect of postponement of his future increments of pay.

2. The brief facts of the case are that while working as Permanent Way Inspector Gr.III, the applicant was issued Annexure.A-VIII major penalty charge sheet dated 14.06.2012 in connection with the derailment of 5 BCN loaded wagons of up train No. MD/JYP/BCN that took place between CTS to JYP on 17.05.2012. The charge against him was that he failed to

ensure maintenance of gauge within the prescribed limits and that he failed to maintain the track condition properly for the safe running of train services. The charge also mentions that he had not ensured putting of gauge tie plates over the relieving span to avoid gauge spreading causing abnormal variation in the cross levels over the relieving girder towards the CTS end.

3. On receipt of the charge memo, the applicant submitted his explanation on 04.07.2012 stating that he is not responsible for the derailment. The applicant's case is that the the derailment of wagons has taken place due to excess speed at which the loco pilot had run the Goods Train and due to the application of sudden brakes to bring the train speed to 10 kmph. He also stated that the very laying of 67' girder in a curved track was itself defective as no super elevation was provided by the 9th respondent who was responsible for laying the track. He further pointed out that the 25 loaded wagons of the train consisting of two diesel engines and 42 loaded wagons, had already passed and only the 26th to 29th Wagons were derailed. It was also submitted by him that as per the inquiry report as well as the JAG report, JE (P.Way) JYP, Loco Pilot and SSE(works), JDB, SSE/ Brl/Spl/ RGDA & SSE (C&W) KRPU, who had been impleaded as respondents 6 to 10 respectively, are also responsible and have contributed to the derailment.

4. It is submitted by the applicant that the inquiry proceedings are not proper and have not been conducted in accordance with law as no Presenting Officer was appointed in the inquiry pursuant to a major penalty charge sheet. Further, the inquiry officer has very clearly stated that primarily the cause for derailment was

the excess speed at 13 Kmph at which the Train was run by the Loco Pilot Sri G.A.Naidu whereas the speed in the restricted one was 10 Kmph. It has also been stated by the inquiry officer that the applicant and the JE (P.Way) JYP are responsible in a contributory manner by not taking the gauge and the excess levels after the passage of every Train and also for not deputing Permanent Way Supervisor for the above work. Thus, even though the inquiry officer has shown 5 officials responsible for the derailment of the wagons and inspite of the fact that the Loco Pilot, who ran the Goods Train at 13 Kmph at the time of derailment was primarily responsible, the Disciplinary Authority has not taken any action against any officer other than the applicant. The applicant has also pointed out that the inquiry officer has failed to understand that the placement of 67' relieving span on a track was improper and that the mandatory safety certificate which should have been issued by the ADEN/JDB after completion of the work was not issued.

5. It is also the applicant's case that the inquiry officer has not allowed any cross examination of the witnesses by the applicant or his defence counsel and that the cross examination was done by the inquiry officer himself in violation of the Rules and in contravention of the principles of natural justice. The applicant further avers that inspite of his representation against the inquiry officer's report to the Disciplinary Authority, the Disciplinary Authority has imposed the major penalty of reduction of Grade Pay of Rs.4800/- to Rs.4200/- for a period of 3 years with loss of seniority without considering any of the issues raised by the applicant in his representation. Thus, the imposition of a major punishment even when the charges are not proved against him is highly illegal and arbitrary.

6. The applicant has also pointed out that the Appellate Authority and the 4th respondent herein has failed to consider his appeal and merely confirmed the punishment imposed by the Disciplinary Authority without any application of mind. Likewise, the Reviewing Authority also, without application of mind and without considering the points raised by him in his Review Application confirmed the order of the Appellate Authority. He also submits that even though he has qualified in the written test for Group-B Engineering Combined Panel of AEN against 70% quota vacancy for 2009-2011 and 2011-13 in Civil Engineering Department, he has not been promoted on account of the illegal and arbitrary punishment imposed on him. He, therefore, prays for setting aside the orders of the Disciplinary Authority, Appellate Authority and Reviewing Authority.

7. The respondents have filed a reply statement contesting the OA. They submit that the Junior Administrative Grade Officer Committee, which conducted an inquiry after the derailment, has concluded that the applicant failed to maintain gauge within the prescribed limits and that he did not ensure putting of gauge tie plate over the relieving span to avoid gauge spreading. It was also pointed out that there was abnormal variation in the cross levels over the relieving girder towards the CTS end. This is caused due to lack of supervision by the applicant. Further, since the applicant is the incharge SSE (P.Way), it is obligatory on him to report to the higher authorities whenever there are any discrepancies. They also refuted the averment of the applicant that JE (P.Way)/JYP, Loco Pilot, SSE (Works)/JDB, SSE (Br)/Sol/RGDA and SSE (C&W)/KRPU have also contributed to the derailment. As per the procedure in the Railways, a fact finding inquiry will be conducted

by the JAG level officers to find out the cause of the accident and subsequently action will be taken under the D&A Rules against the persons responsible. The same procedure has been followed in this case also.

8. The respondents have also submitted that though a preliminary inquiry was conducted after the accident by the Senior Subordinates on the same day, they had failed to clearly mention that the first inner wheel had derailed onside the track and the outer wheel was travelling on the rail over the relieving girder. This can happen whenever there is either spread gauge or wheel disc shifting. So, the derailing inner wheel inside the track proves that the gauge spreading took place while 25th wagon was passing over the rail till the end of the girder. Further, cross level defects were also noticed in the track reading in length of just 5m and that the cross levels changed abruptly from 4L to 49L, causing excess twist. The above causative factors pointed out by the Expert Committee were taken into account by the Disciplinary Authority while imposing the major punishment on the applicant.

9. The respondents also aver that it is not mandatory to appoint a Presenting Officer and that the inquiry conducted is proper and not in contravention of the prescribed rules. They also submit that although the applicant was allowed to appear for the written examination for Group-B AEN post on 12.12.2013 and although he qualified, he failed to secure qualifying marks in the final selection and hence his name has not appeared in the select list. Therefore, the contention that his punishment was coming in the way of his promotion is not correct.

10. The respondents reiterate that though the JAG Officers inquiry held the applicant to be primarily responsible for the derailment, he was imposed a lesser penalty as he was only partially responsible. Further, it is not in dispute that the derailment took place while the applicant was incharge of the Section. Further, the penalty will be imposed based on the gravity of the misconduct committed by the delinquent employee. In the instant case, the evidence on record justifies the impugned penalty. Hence, the grounds raised by the applicant are liable to be rejected and the applicant is not entitled to any relief.

11. The applicant has filed a rejoinder largely reiterating the averments in the OA. He points out that when the respondents have taken a view that the JAG Officers report is final, the JAG Officers ought to have called as witnesses to the departmental inquiry for putting to test their report. Since this was not done, there is a serious lacunae. These issues mentioned in his representation were not taken into consideration by the Disciplinary, Appellate and Reviewing Authorities. It is also stated that the recommendations of the Committee and their findings are not matching as the recommendations prove that the track was not properly laid. In view of this, the finding of the officers putting primarily responsibility on him is contradictory.

12. Heard the learned counsel on both sides and perused the record.

13. The learned counsel for the Applicant argued that when the Inquiry Officer has clearly held that the primary cause of the derailment was due to the excess speed run by Loco Pilot and when the JAG report has pointed to lapses in the laying of the track, imposition of a major penalty on the applicant alone without

any action against any of the other officers who have contributed to the derailment is excessive and arbitrary. He also relied on the judgment of the Principal Bench of this Tribunal in O.A.No.1630/2012 to buttress his point that when the inquiry officer has not held the charges against him as being proved, the evidence collected during investigation by the investigating officer could not be treated as evidence in the disciplinary proceedings.

14. The learned standing counsel, on the other hand, pointed out that when the applicant is responsible for track maintenance and when there is evidence that he has failed to maintain the track, he is liable for major penalty. The records show that the derailment has happened due to lack of proper supervision by the applicant.

15. The main grounds advanced by the applicant are that the inquiry officer has clearly stated that Sri G.A.Panda, Loco Pilot, was primarily responsible for the derailment and that in the light of this finding and without any concrete evidence of any lapses on his part, the imposition of a major penalty is highly excessive and arbitrary. It has also been argued that non-appointment of a Presenting Officer in the major penalty proceedings, is irregular and in violation of the rules. Further, cross examination of witnesses has been done by the Inquiry Officer himself and no cross examination of the witnesses by the applicant was allowed.

16. It has also been submitted that the Disciplinary Authority has not considered any of the grounds raised by him in his representation and has passed the penalty order even though the charge against him was not proved. Similarly, the Appellate Authority and the Revisionary Authority have confirmed the penalty imposed by the Disciplinary Authority without considering the material facts presented by him. Hence, the impugned orders have been passed without application of mind and are liable to be set aside.

17. The applicant has also contended that the respondents have failed to notice that the 67' girder which has been installed by the other officers is not suitable for a curved track and that the mandatory Safety Certificate had not been issued by the ADEN/JDB, who had supervised the work.

18. From the material on record, it is seen that after the occurrence of derailment on 17.05.2012, the respondents had an inquiry conducted by the Senior Subordinate Officers. Thereafter, on 27.05.2012 the JAG Officers conducted an inquiry and submitted a report in which the primary responsibility for the derailment has been fixed on the applicant as he failed to maintain gauge within the prescribed limits and had also not ensured putting of gauge tie plate over the relieving span to avoid gauge spreading. This report also contained as many as 10 recommendations which includes the finding "that the 67' relieving span is a straight girder and that the track over it cannot be laid with the curvature due to sleeper over the girder are the longitudinal along the rail so this girder should be avoided for use in the curve track". Based on JAG report, the respondents had issued the charge memo under Rule 9 of the Railway Servants (D&A) Rules for major penalty against the applicant.

19. It is very clear that the JAG report is in the nature of a preliminary fact finding inquiry only. Admittedly, in the preliminary inquiry the JAG report had fixed the primary responsibility for derailment on the applicant. However, after conducting the regular inquiry in accordance with Rule 9 of the Railway Servants (Discipline & Appeal) Rules, the Inquiry Officer had given a different finding, which is extracted below:

“ I. The cause of derailment and one of the factor is that primarily due to excess speed run by the Loco Pilot Sri G.A.Naidu of UP/MD/JYP/BCN Load at the speed restriction Zone of 10 KMPH (at Accident spot Km. 227/14-16 by 13 KMPH i.e30”more than permitted/Restricted speed at the spot). During the course of inquiry, Sri G.A.Naidu, L.P has submitted a letter issued by RDSO i.e SD POL 12.4 Dated 12.09.2007 (Folio No.83) regarding tolerances allowed in the MPS of the trains stating that marginal speed is allowed by + or – 3KMPH (copy enclosed).

After going through the contents of the letter the permissible tolerances is to be allowed is only for maximum permissible speed and not for the speed restriction zone. Hence, Sri G.A.Naidu, LP is found to be primarily responsible for cause of derailment.”

The inquiry report has also mentioned that the applicant and the Junior Engineer (P.Way)/JYP are also found to be responsible for not taking the gauge and X levels after the passage of every Train to watch the development of track and also for not deputing Permanent way Supervisor/JE (P) for the above work. It has also been mentioned that the SSE(Br)/Spl/RGDA, who has not provided the top bracing for fixing both leaves before launching the girder to avoid tilting, and the SSE(W)/JDB, who has not provided two layers of wooden sleepers under relieving span at both ends of the girder, are also responsible. The inquiry report further makes a mention that the JAG

Committee had pointed out a system failure as no guidelines have been given or responsibility fixed in team working and that distribution of work between P.Way and Bridge units with their corresponding duty should be given in writing by the Controlling Officer.

20. Thus, a perusal of the inquiry report makes it clear that the Inquiry Officer has not fixed the primary responsibility on the applicant. His finding is that the Loco Pilot is primarily responsible and that the applicant along with SSE(Br)/Spl//RGDA, SSE (W)/JDB and JE (P.Way) have also contributed to the derailment. There is also a mention of system failure which would suggest that there were no clear instructions or allocation of responsibilities. In this context, it is necessary to observe that inspite of the applicant's specific averment that he alone has been singled out for disciplinary action without proceeding against other officials, the reply statement is totally silent on this aspect. Thus, an adverse inference is drawn that the respondents have only proceeded against the applicant even when the Inquiry Officer has held that the Loco Pilot is primarily responsible and that 5 other officials including the applicant have contributed to the derailment. In this scenario, we find considerable force in the applicant's contention that a major penalty has been imposed by the Disciplinary Authority even when the inquiry officer has not held him primarily responsible. Thus, the imposition of a major penalty on the applicant without any action against any other official is against the established principles of justice and fair play and is liable to be set aside.

21. We note that in the Annexure.A.VI representation dated 03.09.2012 submitted by the applicant to the Disciplinary Authority, the applicant has raised as many

as 12 points in his defence. However, a perusal of the Annexure.A.5 orders of the Disciplinary Authority show that there is no discussion at all on the various grounds put forth by the applicant. Without consideration of any of the grounds, the Disciplinary Authority has passed a cryptic order concluding that “*as per the findings in the D&A inquiry, the cause of derailment i.e., track gauge is found up to +20mm in 2 degree curve against the prescribed values of -6mm + 15mm. However, the said Sri B.Srinivasa Rao is held responsible for poor maintenance of track, which made him partially responsible.*

As such, keeping the findings in view, the following penalty is imposed as the cause of derailment is track gauge is found up to + 20MM in 2 degree curve and Shri B.Srinivasa Rao is partially responsible, but JAG inquiry officers enquiry held Shri B.Srinivasa Rao to be primarily responsible:

'Reduction to a lower grade in Pay Band Rs.9300-34800/- i.e. from Grade Pay Rs.4800/- (MACP) to Rs.4200/- for a period of three years with loss of seniority. The period of punishment will have the effect of postponing the future increments of pay. On completion of the punishment period he will be restored back to the grade/post from where he has been reduced'. "

22. The aforesaid conclusion of the Disciplinary Authority is without a proper basis and it is clear that the Disciplinary Authority has totally ignored the findings of the inquiry officer that the Loco Pilot was primarily responsible for the derailment. It is pertinent to observe that he has not even recorded a note of disagreement with the inquiry officer, who held that the Loco Pilot is primarily responsible for the derailment. In the light of this, we have no hesitation in holding that the orders of the Disciplinary Authority are without proper application of mind and without consideration of the entire report of the

inquiry officer and without considering the points raised by the applicant. Thus, the orders of the Disciplinary Authority are liable to be set aside on account of non-application of mind.

23. We have also gone through the appeal and the revision petitions submitted by the applicant. Drawing attention to the various findings in the Inquiry Report, he pointed out that the Disciplinary Authority had failed to note any of these grounds while passing the impugned order. The Appellate Authority's order merely states that he has gone through the case file carefully and that the punishment imposed is warranted and adequate and that the charged official has not brought out any new facts in his appeal. The Revision Authority also confirmed the punishment by stating that the punishment is warranted and adequate and that no new facts have been brought out in his Revision Petition. Both the Appellate Authority's orders and the Revision Authority's orders are non-speaking orders without consideration of any of the points raised by the applicant in his appeal/revision petition. On this ground, the impugned orders of the Appellate Authority and Revision Authority are liable to be set aside.

24. The applicant has raised a pertinent point that the non-appointment of the Presenting Officer in a major penalty proceedings is gross violation of the rules. The respondents have taken the stand that it is not mandatory to appoint a Presenting Officer. However, Rule 9 of the Railway Servants (D&A) Rules which lays down the procedure for imposing major penalty provides for a appointment of a Presenting Officer to present the case on behalf of the Disciplinary

Authority in support of articles of charge. The Presenting Officer is required to produce the evidence by which he proposes to prove the articles of charge and examine/re-examine/cross examine witnesses. This aspect has been considered by this Tribunal in O.A.No.809/2009 dated 26th April 2011 in which it was held as follows:

“13. In a departmental inquiry against a delinquent officer, it is a pre-requisite condition that a presenting officer is to be appointed to discharge the duties on behalf of the prosecution and the inquiry officer is not expected to discharge the functions of presenting officer. Holding an inquiry without appointing presenting officer, is indirectly asking the inquiry officer to discharge such duties of presenting officer also, which would cause prejudice to the delinquent officer in defending his case. Without appointing presenting officer to hold an inquiry against the delinquent officer is itself irregular and by such act of the Disciplinary Authority, the inquiry officer took the role of presenting officer and who went to the extent of cross examining the defence witnesses and such conduct of the inquiry officer cannot be cured at the later stage. Further, sub-rule (c) of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 also requires the appointment of a Railway or any other government servant to be known as “Presenting Officer” present the case of the department in support of the article of the charge. Without appointing “Presenting Officer” entrusting such duties to the Inquiry Officer is not only irregular but also amounts illegality.”

25. Further, the Hon'ble Apex Court in a catena of judgments has emphasized that the Inquiry Officer is an independent quasi-judicial authority and that he cannot lead the evidence on behalf of the Disciplinary Authority. While allowing the appeal filed by Moni Sankar v. Union of India (2008 (3) SCC 484), the Hon'ble Apex Court has pointed out that the Inquiry Officer by conducting the examination in chief had acted as a prosecutor which was irregular. The relevant paragraphs are extracted hereunder:

“30. For the aforementioned purpose, the manner in which the enquiry proceedings was conducted was required to be taken into consideration by the High Court. The trap was not conducted in

terms of the Manual; the enquiry officer acted as a prosecutor and not as an independent quasi-judicial authority; he did not comply with Rule 9 (21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.

31. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly and that of the Tribunal restored. The appeal is allowed with costs Counsel fee assessed at Rs.25,000.”

26. In view of the settled legal position, we hold that the non-appointment of a Presenting Officer has vitiated the impugned disciplinary proceedings.

27. In view of the foregoing discussions, the OA is allowed. The impugned proceedings are quashed and set aside. The applicant shall be entitled to all consequential benefits arising from the quashing of the impugned orders. No costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 25th day of January, 2018

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