

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. O.A. 1330 OF 2017

Date of order: 30.11.2017

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Mukul Chandra Mondal,
Son of Sri Nemai Chandra Mondal,
Aged about 53 years,
Working as Senior Section Engineer/P.Way/
CRJ/Sectional under
Senior Divisional Engineer/II/ER/ASN of
Eastern Railway, resident of
Quarter No. 51,
Chittaranjan Railway Station Colony,
P.B. Road, Mihijam, P.S. Mihijam,
District - Jamtara, Jharkhand,
Pin - 815354.

.. Applicant



1. The Union of India
Service through the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Fairlie Place, BBD Bag,
Kolkata, Pin - 700 001.
2. The Divisional Railway Manager,
Eastern Railway,
Asansol,
District - Burdwan,
Pin - 713301.
3. The Chief Track Engineer,
Eastern Railway,
17, Netaji Subhas Road,
Fairlie Place, BBD Bag,
Kolkata, Pin - 700 001.
4. The Additional Divisional Railway Manager,
Eastern Railway,
Asansol,
District - Burdwan,
Pin - 713301.
5. The Senior Divisional Engineer/II/ER/Asansol,
Eastern Railway,
Asansol,
District - Burdwan,

[Signature]

Pin - 713301.

.. Respondents

For the Applicant : Mr. B. Chatterjee, Counsel
 Mr. J. Dutta, Counsel

For the Respondents : Mr. P. Kumar, Counsel

O R D E R (Oral)**Per Dr. Nandita Chatterjee, Administrative Member:**

Ld. Counsel for both sides are present and heard.

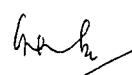
2. This Original Application has been filed under Section 19 of the Administrative Tribunal, 1985 seeking the following relief:-

- (a) An order do issue quashing/setting aside the impugned Charge Sheet being No. WM/SF-11/Sr. DEN/C/16-17 dated 1.8.2016 being Annexure "A-3" issued by the Senior Divisional Engineer / II/Asansol, Eastern Railway;
- (b) An order do issue quashing and/or setting aside the impugned punishment order dated 28.11.2016 been Annexure "A-5" issued by the Disciplinary authority of the Respondent authority against your applicant;
- (c) An order do issue quashing and/or setting aside the impugned office order dated 4.4.2017 & 31.7.2017 issued by the Appellate Authority and the Reviewing Authority against the prayers made by the applicant against the impugned punishment order dated 28.11.2016 been Annexure "A-6" & "A-7" respectively;
- (d) An order directing the official Respondents to produce the file/noting in connection with the impugned issuance of charge sheet, passing of the impugned punishment order, order passed in the statutory Appeal and the Review application passed and or issued against the Applicant along with all other relevant documents with an inspection to the Learned Counsel for the Applicant;
- (e) Any other or further order or orders or direction as to Your Lordship may deem fit and proper."

3. The Ld. Counsel for the applicant while submitting on behalf of the applicant has submitted as follows:-

That, the applicant is posted as a Senior Section Engineer/P.Way/CRJ under the Sr. Divisional Engineer-II/ER/Asansol.

That, the applicant while on duty at his workplace on 26.6.2016 had been witness to an inspection at Level Crossing Gate No. 2 SPL conducted



by the Divisional Railway Manager, Asansol and he was suspended by the Sr. Divisional Engineer/II with immediate effect.

4. That, the applicant received the suspension letter and had immediately preferred a representation on 29.6.2016 before the respondent authority for revoking his suspension order dated 26.6.2016.

That, the suspension order was revoked by the competent authority on 30.6.2016 and the applicant was served with a minor penalty chargesheet on 1.8.2016. On 12.8.2016, the applicant had preferred a representation before the respondent authority to exonerate him from the alleged Article of Charges levelled against him in the charge-sheet as impugned in the application but the same was not considered and punishment order was issued against the applicant on 28.11.2016. Upon receiving the punishment order, the applicant preferred a statutory appeal on 6.1.2017 and a speaking order was issued on 4.4.2017 rejecting the appeal of the applicant. A review petition was filed by the applicant on 2.5.2017 but this prayer was also declined by the Reviewing Authority by an order dated 31.7.2017.

5. Being aggrieved, this Original Application has been filed by the applicant. The Ld. Counsel for the applicant orally argued that the Memorandum of Charges against the applicant dated 29.7.2016 had been issued based on the following irregularities:-

“ Eastern Railway : Asansol Division

No. WM/SF/11/Sr. DEN/C/16-17 Asansol, dated 29.7.2016

**Sub: Memorandum of charges against
Shri M.C. Mondal, SSE/P.Way/CRJ
(Sectional)**

After scrutiny, the following irregularities have been noticed:

1. Tri colour tourch is out of order due to battery
2. Check rail was not clean
3. GWR available in English only not in Hindi
4. Loose Packing at approach sleeper of LC

5. No proper arrangement for fixing banner flag
6. Nearest pathway shop connected with the level crossing even in closed condition.

X X X X X X X"

6. The applicant was issued with the Memorandum of Charges for lack of integrity and lack of devotion to duty and for violation of Rule 3.1(ii) & 3.1(iii) of Rly. Service (Conduct) Rules, 1986 .

7. That, the applicant in his reply dated 12.8.2016 to the said Memorandum of Charges has submitted as follows:-

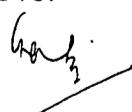
"the irregularities occurred due to my occasional diversion to some 'special job' accrued."

8. The applicant also committed in the said representation that he would ensure that there would be no recurrence of such irregularities, that he may be excused and very kindly exonerated from the imputation and consequently from the action proposed to be taken thereon.

9. In his representation dated 12.8.2016, the applicant had highlighted that he had not violated any of the provisions of P.Way Manual as set out in the Statement of Imputation.

10. Per contra, the Ld. Counsel for the respondents argues that the Memorandum of Charges were issued to him for violation of Railway Conduct Rules, 1968 and there was no reference to P.Way Manual in the Memorandum of Charges. Hence, his defence on not having violated any of the provisions of P.Way Manual is not applicable in the context of Memorandum of Charges so impugned.

That, the disciplinary authority had imposed a punishment as follows vide his order dated 28.11.2016:



"Punishment Notice No. WM/SF-11/Sr. DEN/C/16-17 Asansol Dt. 28.11.16

To

Sri M.C. Mondal
SSE/P.Way/Sectional/CRJ
Under SSE/P.Way/STN

Copy to i) SSE/P.Way/STN for information & n/a please.
ii) Sr. DPO/ASN for kind information please.

Sub: **Punishment**

Ref.: WM/SF-11/Sr. DENC/16-17 dated 1.8.2016

I have decided that you are responsible in the above case and have passed the following orders-

"One increment when next due is stopped for one year with cumulative effect."

Representation made by Sri M.C. Mondal, SSE/P.Way/Sectional/CRJ is not convincing. The charges found true keeping in view of safety aspect of level crossing gate. Hence, stopping of one increment with cumulative effect is to be imposed.

Station - Asansol

Signature.....

Designation - Sr.DEN/2/ER/ASN"

11. The appellate authority upheld the order of the disciplinary authority on the ground that:"As the deficiencies are related to safety of train operations, negligence, in this regard cannot be accepted."

And finally the mercy appeal was not considered by the Competent authority whereby the original punishment imposed by the disciplinary authority remained unchanged.

12. We have heard this matter at the admission stage and we find that the respondents are quite within their rights to impose a penalty for negligence relating to safety of train operations and that the applicant has not been able to counter as to how he should not be held liable for violation of Rule 3.1(ii) & 3.1(iii) of Rly. Service (Conduct) Rules, 1986. The applicant

[Signature]

has admitted in his written representation that he was guilty of irregularities and sought pardon for the same.

There is hence no scope of judicial review in accordance with the ratio laid down by the Hon'ble Supreme Court in the *High Court of Judicature at Bombay v. Shashikant S. Patil (2000) 1 SCC 416*, that enumerates as follows:-

- (a) where there has been a violation of the principles of natural justice; or
- (b) the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry; or
- (c) the decision is vitiated by considerations extraneous to the evidence and merits of the case; or
- (d) if the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion; or
- (e) Other very similar to the above grounds."

Accordingly, we find no reasons, either based on facts or on law to interfere with the charges, the order of the Disciplinary authority, appellate authority or Reviewing authority and dismiss the O.A., at the admission stage, on merit.

13. Hence, the O.A. fails to succeed. The parties are to bear their own costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

SP