



CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

Original Application Nos. 350/00131/2015, O.A. 350/00132/2015 &
O.A. 350/00133/2015

Present :Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

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| O.A. 131 of 2015 | 1. Joyram Hemberam,
Son of Late Brajendra Nath Hembram,
Aged about 42 years,
By occupation : Service working as
Upgraded Trolleyman under the Senior Section
Engineer/P. Way/ Garbeta,
South Eastern Railway, Adra Division,
Residing at : Rly. Qr. No. E/14/2,
Garbeta Railway Station,
P.O. Amlagora, P.S. Garbeta,
District : Paschim Medinipur – 721 121. |
| O.A. 132 of 2015 | 2. Pandadhar Mahata,
Son of Late Bankim Mahata,
Aged about 53 years,
By occupation : Service, working as
Upgraded Trolleyman under the Sr. Section
Engineer/P. Way/Garbeta,
South Eastern Railway, Adra Division,
Residing at : Village – Mirga,
P.O. & P.S. – Salboni,
District : Paschim Medinipur – 721 147. |
| O.A. 133 of 2015 | 3. Ranjit Mahanta,
Son of Late Nirod Baran Mahanta,
Aged about 43 years,
By occupation : Service holder, working as
Upgraded (VG) Trackman under Senior Section
Engineer/P. Way/ Garbeta, Adra Division,
S.E. Railway,
Residing at : Rly. Qr. No.E/13/3,
Garbeta Railway Station,
P.O. – Amlagora, P.S. – Garbeta,
District : Paschim Medinipur,
Pin : 721 121. |

..... Applicants.

-Versus-

1. Union of India,
Through the General Manager,
South Eastern Railway,
11A, Garden Reach Road,
Calcutta - 700 043.
2. The Divisional Railway Manager,
Adra Division, South Eastern Railway,
Adra, District : Purulia - 723 121.
3. The Sr. Divisional Engineer
(Co-ordination) Adra Division,
Adra, South Eastern Railway,
District : Purulia - 723 121.
4. The Divisional Engineer (East),
Adra, South Eastern Railway,
Adra Division,
Being the Appellate Authority, Adra,
District : Purulia - 723 121.
5. The Assistant Divisional Engineer,
Bankura,
Being the Disciplinary Authority, Bankura
Adra Division, South Eastern Railway,
Bankura - 722 101.
6. The Senior Section Engineer (P. Way),
Garbeta, Adra Division,
South Eastern Railway, Garbeta,
District : Paschim Medinipur,
Pin : 722 121.
7. The Sr. Divisional Personnel Officer,
Adra Division,
South Eastern Railway, Adra,
District : Purulia - 723 121.
8. Mr. B.K. Karmakar,
Sr. Section Engineer/P. Way, Sonamukhi,
South Eastern Railway,



Being the Enquiry, South Eastern Railway,
Sonamukhi, District : Bankura - 722 207.

..... Respondents

For the petitioner : Mr K. Chakraborty, Counsel

For the respondents : Mr S. Banerjee, Counsel

Date of Hearing : 24-06-2016.

Date of Order : 01.07.2016

ORDER

JUSTICE VISHNU CHANDRA GUPTA, JM:

Heard Mr K.Chakraborty, learned counsel for the applicant and Mr S.Banerjee, learned counsel for the respondents and also perused the records of all the cases.

2. This is a matter arising out of a departmental enquiry wherein four persons were subject to enquiry. They have been punished and punishment was upheld by the departmental process. Consequently out of these 4 persons, 3 persons, namely, Shri Joyram Hembram, applicant in O.A.350/00131/2015, Shri Pandadhar Mahata, applicant in O.A.350/00132/2015 and Shri Ranjit Mahanta, applicant in O.A.350/00133/2015 filed separate O.As. All the three cases are taken up together as the common questions of law and facts are involved and are being decided by this common judgment.

2. We have taken the fact of one case which are similar to all other cases, only the name in the memo of charge is changed and all the charges framed against all the persons are similar. The enquiry is common. Hence factual matrix of one case will throw light of all the 3 cases.

3. The brief facts of the case are that all the 3 applicants are upgraded Trolleyman and working in South Eastern Railway under Senior Section Engineer/P.Way in Adra Division. They pushed the trolley as and when required under the guidance, supervision and monitoring of the trolley in charge. On 17.7.2012 all the 3 along with one Manik Shil was pushing the trolley under the supervision of Trolley in charge, namely, Sri B.C.Majhi on the down track. The trolley entered into Bridge No.211. A goods train was coming on the down track. The driver of the train suddenly shocked to see the trolley in aforesaid track in down line at 177/04 Km. He applied the emergency brake but failed to control the train and hit the said push trolley at Km 177/04. The train finally stopped at Km 177/26. Push trolley trapped between Cattle guard and engine wheel. A joint enquiry was conducted wherein this Trolley-in-Charge was found held responsible for the incident. On the basis of that joint enquiry report the applicants were also served with memo of charge levelled against them, which runs as under :

"South Eastern Railway

Statement of article charge framed against Shri Joyram Hembram, UG Trolleyman at GBA under Sr. S.E(P-Way)/GBA

Shri Joyram Hembram, UG Trolleyman at GBA while working as Trolleyman has committed gross negligence in duty which is as follows.

ARTICLE-I

DN E/Concord/TVT KOKG left PBA station at 12.22 hrs on 17.07.2012 Driver KOKG suddenly saw a Push Trolley on Bridge No-211 at km. 177/04 on Dn line between PBA-GBA. LP and ALP both applied emergency brack but failed to control the train and hit the said Push Trolley at km 177/04, then finally stopped the train at km 177/26. Push Trolley trapped between cattle guard and engine wheel. As per joint inquiry report and finding drawn by the joint inquiry committee



Shri Joyram Hembram, UG Trolleyman at GBA held responsible for this incident.

As per IRPWM para 1105, the Trolley man (holding competency certificate) are to take every possible precaution and protection against accident. Shri Joyram Hembram, UG Trolleyman at GBA has failed to maintain devotion to duty and acted in a manner unbecoming of a Railway servant and thereby he has contravened Rule 3.1 (ii) and (iii) of Railway Service (Conduct) Rules, 1966 rendering himself liable for disciplinary action being taken against him in terms of Railway Servant (Discipline & Appeal) Rule, 1968 as amended from time to time."

After concluding the enquiry and recording the statement of departmental witness as well as the defence witness, the Enquiry Officer submitted his report and recorded the following findings and reached on conclusion as under :-

"FINDINGS- (i) The charged officials having competency certificate yet they did not consider the visibility before putting trolley on track near bridge no 211 for trolling over bridge and trolleyed over bridge before accident about 120 m.

(ii) They did not hear the long whistle as told by driver during entrance of curve.

(iii) Their duty was to look out approaching train from PBA end during trolling as the trolley holder facing GBA. They failed to look out train well in advance for removing trolley from track. They saw the train in last moment at a distance of 200 m from their trolley. As per statement they all passed 1st trolley refuge and 1/3 of 2nd they saw the train first distance about 200 m from them, the train also having lesser speed as the driver applied brake confirming they will be unable to remove trolley. It proves they were not alert at all.

(iv) When they were passing over bridge 211 about 200 m from PBA end, the train dashed the unmanned push trolley they all saved their lives.

In this way they violated trolley working rule and failed to take precaution and protect the push trolley."



And consequently arrived at conclusion that the Trolleyman/charged officials failed to take precaution and protection of the trolley violated trolley running rule. Therefore, they failed to maintain devotion to duty and recorded the following conclusion :

"CONCLUSION – On careful consideration of foregoing facts and circumstances, I've come to conclusion that the four charged officials failed to take precaution and protection of trolley, violating trolley working rule. Therefore they failed to maintained devotion to duty & acted in a manner of unbecoming of a railway servant. Thus the charges framed against Sri – Manik Shil, Joyram Hembram, Ranjit Mahanta and Pandadhar Mahata ug trolley man under – SSE/Pway/GBA is proved."

This report dated 11.4.2013 was served upon the charged officials by the disciplinary authority after endorsing his agreement with the enquiry report.

After considering the reply submitted by the applicant the following punishment was awarded on 19.9.2013 to all the four Trolleyman. The punishment order of Sri Joyram Hembram is extracted herein below :

"South Eastern Railway

Speaking Order

In connection with the Major Penalty Charge Sheet No. E/8/(D&A)/183 dated 16/22.08.2012 against Sri Joyram Hembram, UG Trolley man, SSE/P-Way/GBA, the speaking order of the Disciplinary Authority i.e. ADEN/BOA, Sri K.N. Bhattacharya is hereby issued.

I have very carefully gone through the final defence statement dated 30.07.2013 of the CO. The points raised therein vide para 3 to 6 have been examined in terms of extent rule and procedures.

In this connection it is stated that the original millage of Bridge No. 211 was in between 177/32 (GBA end) to 178/12 (PBA end). But in article (I) it had been inadvertently mentioned km 177/04 (Hitting point) and 177/26 (Rest point) over Bridge No. 211 DN. From the fact of enquiry it is cleared that although the E.M. had been wrong, the



Bridge No.211 DN is same. Hence it was evident that Push Trolley accident took place obviously over Bridge No.211 DN.

It is fact that the official in-charge of Trolley is responsible at all time for its safe working. Accordingly the in-charge of said Trolley has been punished under RS (D&A) rule. But the Trolley men who were working the Trolley had necessary competency certificate for travelling the Trolley. So in terms of 1105 (1) & (2) of IRPWM such staff cannot deny their responsibility for safe working of the trolley. It was expected that they should have taken every possible precautions and protections against accident. In this instant case the CO has failed to comply with the said stipulation which is nothing but absence of his devotion to duties.

The file of the above mentioned case has been thoroughly studied by me. I have gone through the article of charges, relied upon documents very carefully. Also I have gone through the entire enquiry proceeding, examination & cross examination of witness, defence brief, of the charge official.

I have also gone through the findings of the EO's report with all other related records & documents of the case very carefully. I agree with the findings of Enquiry Officer on the ground that:-

- i) The enquiry has been conducted by EO without any bias/discrimination.
- ii) No natural justice has been violated.
- iii) The CO has been given full opportunity to defend his case. He failed to provide any valid reason to disprove the charge against him.
- iv) CO's final defence statement has no substances to disprove the charge.

Hence, I find that the CO is guilty of the charges for hitting the Push Trolley in between GBA – PBA on 17.07.2012 on Bridge No. 211, as he had not taken any precaution and protection against accident and failed to maintain devotion to duty and thus acted in a manner unbecoming of a Railway servant in contravention of Rule 3(I) (II) & (III) of Railway Service conduct rule, 1966.

In view of the above, I as the Disciplinary Authority impose the following punishment to the CO considering the gravity of the offence.

"Reduction to lower stage in time scale of pay by one stage in same PB Rs. 5200 – 20200/- and GP Rs. 1900/- for a period of 01 (One) year, with immediate effect further directions that on the expiry of said



period the reduction will have the effect of postponing the future increments in terms of the Rule 6 (v) of RS (D&A) Rules 1968".

The similar punishment also awarded to other applicants too and was communicated to the applicant on 21.9.2013. The order was challenged by the applicants. The appellate authority by order dated 22.1.2014 dismissed the appeal. The order passed by the appellate authority in case of Joyram Hembram is extracted herein below :

"S.E. RAILWAY

No. E/1/DA/JH

Dated: 22.01.2014.

To,
Sri Joyram Hembram,
Ug. Trolleyman
Under SSE/PW/GBA

Sub: Disciplinary action against Sri Joyram Hembram,
Ug. Trolleyman, under SSE/PW/GBA

Ref: 1. Major penalty C/Sheet No. E/8/D&A/183
dtd.16/22.08.12
2. Your appeal dated : 24.10.13

I have carefully gone through your appeal & also the full case file. I am agreed with the Punishment imposed by the Disciplinary Authority i.e ADEN/BOA. Considering the gravity of the case, I, the undersigned being the Appellate Authority applying my full mind have decided to stand good the punishment as under to meet the end of justice.

"Reduction of your pay by 01(one) stage from Rs.10160/- to Rs. 9860/- in same P.B Rs. 5200-20200/- + G.P. Rs. 2000/- for a period of one year which will have the effect of postponing future increments of your pay in terms of Rule 6(v) of RS (D&A) Rule' 1968."

Please acknowledge receipt.

(H.N. Pursey)
Appellate Authority
&
Divl.Engineer(East)/ADA"

Similar order was passed in respect of other applicants. Aggrieved by this orders the present O.A has been filed.

4. So far as the another two cases the charges are similar except the change of name. The punishment awarded is also similar and the result of the appellate authority are also same. Hence the fact of other two cases are not going to be discussed. On the basis of the facts narrated herein above all the 3 cases are being decided on the basis of pleadings and submissions made by the learned counsel for the parties.

5. Reply has been filed by the respondents raising therein that representations given by the applicant regarding biasness of Enquiry Officer Shri B.K.Karmakar was considered and rejected in May 2013 and as soon as the representation was made against the Enquiry Officer, the enquiry was stopped and only started after taking decision on representations of the applicant. It was further stated in the reply that in the accident trolley was totally damaged and as such it is a loss to the Railway authorities due to negligence on the part of the applicants. It was further submitted that trolley in charge was held responsible. However, the trolleyman holding competency of certificate hence they are also clearly responsible. The order of punishment was mainly challenged on the ground of para 1105 of IREM of the working of trolleyman rules and relevant rules in respect to decision of this case



contained in para 1103, 1104 and 1105 which are being reproduced herein

below for ready reference :

"1103. Certificate of Competency -

- (i) No trolley, motor trolley or lorry shall be placed on the line except by a qualified person appointed in his behalf by special instructions.
- (ii) Such qualified person shall accompany the trolley, motor trolley or lorry and shall be responsible for its proper protection and for its being used in accordance with special instructions.
- (iii) The qualified person shall hold a certificate of competency which shall be issued according to prescribed instructions.
- (iv) Staff in whose favour a certificate is issued should be literate, having knowledge of Hindi or other local languages, should have passed the prescribed Medical test and should be conversant with the rules for working of trolleys, motor trolleys and lorries, as the case may be. The certificate of competency will be issued for a specified period by an officer authorised to do so and renewed periodically.

1104. Officials Permitted to use Trolleys, Motor Trolleys and Lorries – Subject to their being certified competent, the following officials of the Engineering Department are permitted to use trolleys/lorries:

- (i) Trolleys/Lorries -
- (a) All officers and inspectors of Engineering Department.
- (b) Permanent way Mistries and Section Mates, Head Trollymen as may be authorized.
- (ii) Motor Trolleys – All officers of Engineering Department – motor trolley drivers and such inspectors as may be authorized.

1105. Responsibility for safe working -

- (1) The official-in-charge of trolley/motor trolley/lorry is responsible at all times for its safe working. When more



than one person holding competency certificate travels in a trolley, the official working the trolley is responsible for its safe working.

(2) It shall be clearly understood by officers and staff that they are to take every possible precaution and protection against accidents. When entering a tunnel or cutting or proceeding over a long bridge or curve, the official-in-charge will make sure that no train is likely to be met. While approaching a level crossing the official-in-charge, should look out for road traffic and ensure safe passage of his vehicle over the level crossing."

On the basis of para 1105 of IREM it has been contended that trolley in charge is only responsible and not trolleyman. In this matter it was further submitted that the trolley in charge B.C.Majhi has been examined as PW-1 and admitted his responsibility. On the basis of which it has been submitted that applicants are not liable to be punished.

6. The punishment was also challenged on the ground that the charges were not established and the enquiry was contrary to the established facts and rules. During the course of enquiry it has been revealed that the Enquiry Officer without taking proper note of the depositions of the PWs by cross examining them shown his undue favour to the Railway authorities. Applicants ought not to have been punished for the admitted reason that four trolleymen including the applicants were under total control and supervision of the trolley in charge and had to act as per direction of the Trolley in charge and hence they are not in any way responsible for the incident.

7. The mistake of fact was ignored by Enquiry Officer in view of the fact that accident was actually occurred and it has not been denied by the charged official.



It was further pointed out that punishment cannot be allowed to sustain for another ground and it has not been stated in the charge that the applicants were holding the competency certificate and without any evidence to this effect they were held responsible. In such way the applicant had no role to play for the reason that the applicants had to follow the orders and instructions of the Trolley In charge.

8. It was also submitted by learned counsel for the applicants that B.C.Majhi was also charged and punished and the applicants are liable to be exonerated in view of the statement of B.C.Majhi recorded during the course of enquiring as defence witness.
9. The perusal of para 1105 reveals that the Trolley-in-Charge is wholly responsible for the safe movement of the push trolley at all times. It is also mentioned in this Rule that when more than a person holding competency certificate travels in a trolley, the official working the trolley is responsible for the safe working. Sub-rule 2 also contains that officers and staff have to take every possible precaution and protection against accidents. When entering a tunnel or cutting or proceeding over a long bridge or curve, the official-in-charge will make sure that no train is likely to be met. While approaching a level crossing the official-in-charge should look out for road traffic and ensure safe passage of his vehicle over the level crossing. From the perusal of the statement of PW-1 B.C.Majhi, it appears that he categorically admitted that he was possessing a waki talki and was in charge of the trolley. Therefore the present Trolley in charge B.C.Majhi, who is also a Junior Engineer was present on the Trolley at the time of accident is not in dispute. Admittedly in the



charge against the applicants it has not been mentioned that they hold competency certificates.

10. Our attention has been drawn by the learned counsel for the respondents that in the memo of charge this fact has been clearly mentioned. We have gone through the memo of charge which reveals that in second para of Article of Charge after giving the reference of para 1105 of IRPWM a general fact has been mentioned that the Trolleyman (holding competency certificate) mentioned in bracket. Thereafter reflect that no specific averment has been made in the charge that applicants were holding competency certificate. The evidence to this fact is not available on record nor came in the joint enquiry report. No such certificate were brought on record. The perusal of the conclusion arrived at by joint enquiry report which has been annexed as Annexure A-2 reveals that accident occurred due to lapse of engineering departmental staff alertness and 1/ ½ degree curve about 600 mtr from accident site. Hence SSE/P Way is held responsible in this case. The engineering staff is Mr B.C.Majhi, JE(PW) GBA. A details of trolleyman has been mentioned at the bottom of the report as A-1 to 4 and the train staff has been shown in the last of the report as 1, 2 and 3. The fact finding report of joint enquiry reveals that they held responsible the in charge trolley B.C.Majhi and not the trolleyman. It has not been mentioned in Joint enquiry report that any of the Trolleyman was having competency certificate. From where the enquiry officer mentioned that trolleyman were holding the competency certificate is not coming forth from the material on record. The fact of responsibility of trolley in charge has been admitted almost by all the



witnesses examined on behalf of the department including Trolley in-charge B.C.Majhi who has been examined as defence witness.

11. So far as defect in charge is concerned PW-6 in his deposition as prosecution witness of the department stated that accident has not been occurred at Km 178/4 but it was shown in the site plan at 177/4 Km. The position of bridge was shown contrary to the actual site. In the joint enquiry report the mistake in the site plan has been admitted by PW-6 who is one of the persons conducting joint enquiry. When the fact has been brought to the notice of Enquiry Officer it was necessary to get the charge amended or corrected with the approval of competent authority. This has not been done by the Enquiry officer or by disciplinary authority or even by the appellate authority. They ignore this discrepancy by saying that the fact of accident is not in dispute.

12. In case the accident is occurred Km 178/4 and not at Km 177/4 the difference comes of one km which matters in this case. In such a situation in charge of Trolley it was aware that some train is coming and the train is more than 1 Km away. Certainly the trolley in charge could be in a position to shift the same to the out of track. From the deposition of B.C.Majhi it is clear that earlier to this incident of the accident trolley was at up line and he shifted the trolley on down line few Kms away from the site of accident. It is also admitted by B.C.Majhi in his deposition that he was possessing walky talky. It was also admitted that visibility was poor and he has not deputed any person as a Flag Man on the other part of the bridge as a caution. He also admitted that the visibility on the spot was about 600 mt. It is also on record that there is



a curve at a distance of 600 m from the site of the accident. Having these facts on record and the statement of B.C.Majhi to the effect that he is responsible for the accident as in charge of trolleyman fixing responsibility of the trolleyman would not be proper.

13. Learned counsel for the respondents after conclusion of the argument placed on record that B.C.Majhi was also subject to enquiry and a charge has been framed against him in the light of para 1105 of IREM and wherein he was held responsible for this accident and the punishment was awarded to him. It is important to note that the discrepancy of the site of accident as depicted in the site plan and the joint enquiry report has not been noticed in the case of B.C.Majhi. hence there is a difference in between the two reports. However nothing has been placed on record with regard to penalty imposed on B.C.Majhi.

14. Having considered all the facts and circumstances of the case and submissions of the learned counsel for the parties we are of the view that those O.As deserves to be allowed not on the ground of defect in charge but also in view of the provisions of para 1105 of IREM especially in the light of the statement of B.C.Majhi and also in absence in the charge of possessing of competency certificate of the applicants. Therefore, the order of punishment imposed by disciplinary authority and affirmed by appellate authority by the impugned orders are liable to be set aside.

15. Consequently, the same are set aside and the applicants are exonerated from the charges levelled against them. The applicants will be



entitled to all consequential benefits on account of setting aside the order of punishment.

Hence O.A.No. 350/00131/2015, O.A. 350/00132/2015 & O.A. 350/00133/2015 are allowed. There shall be no order as to costs.

Let copy of this order be placed in the record of other O.As decided by this order.

(Jaya Das Gupta)
Administrative Member

BTW
(Justice V.C.Gupta)
Judicial Member

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