IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No. 020/1500/2014

Reserved on: 01.03.2019

Pronounced on: 11.03.2019

Between:

Bhojya Naik, S/o. Maniya Naik,
Aged 54 years, Occ: Loco Pilot (Mail),
O/o. The Chief Crew Controller,
South Central Railway, Guntur.

… Applicant

And

1. Union of India, rep. by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

2. The Divisional Railway Manager,
South Central Railway, Guntur Division, Guntur.

3. The Senior Divisional Mechanical Engineer,
South Central Railway, Guntur Division, Guntur.

4. The Senior Divisional Personnel Officer,
South Central Railway, Guntur Division, Guntur.

… Respondents

Counsel for the Applicant … Mr. K.R.K.V. Prasad
Counsel for the Respondents … Mrs. Vijaya Sagi, SC for Railways

CORAM:
Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicant has filed the OA aggrieved in regard to punishment of reduction of pay.

2. Brief facts are that the applicant while working as Loco pilot in the respondents organisation passed the starter signal 14/shunt signal 25 at on position on 22.2.2013. Charge memo was issued for the lapse. Inquiry report

submitted, as per applicant's version, did not contain any material to show that the applicant has erred. Despite such a report disciplinary authority imposed the penalty of compulsory retirement on 8.8.2014. On appeal the punishment imposed was reduced to lower grade of LP/Goods for a period of 5 years without loss of seniority and postponement of future increments and treating the intervening period from date of compulsory retirement to date of resumption of duty as *dies-non*. Aggrieved over the same, OA has been filed.

4. The contentions of the applicants are that he was not given the inquiry report, evidence let in during the inquiry was in his favour, there was a problem with the signal due to sunlight, no employee would risk his life by jumping the signal, other staff were let off with a minor punishment and the fact finding report was not marked as a document nor were the officers who submitted the fact finding report cited as witness in charge memo issued. Disciplinary authority observation that the applicant failed to complain about signal problem can be no reason to impose the punishment as it was universally known that there was a problem with the signal. Appellate authority without considering the grounds stated has issued a non speaking order.

5. Respondents take objection on the ground that the applicant without filing a revision petition has filed the OA which infringes Rule 24/25 of the Railway Servants (Discipline and Appeal) Rules 1968. The decision of the Hon'ble Principle Bench and Jabalpur bench in OA 87/2010 and 520/2011 respectively were cited claiming that revision has to be availed before approaching the Tribunal. Respondents further contend that the applicant was charged for passing the signal when it was in 'ON' position. Inquiry was conducted and the inquiry report was given to the applicant under acquittance on 12.9.2013. Disciplinary authority imposed the penalty of compulsory retirement on 8.8.2014 after

carefully considering the facts of the case. On appeal appellate authority reduced the punishment to that of reduction to the grade of Goods driver with allied conditions on 16.10.2014. In the appellate order it was mentioned that applicant may prefer revision petition within 45 days of the order but the applicant did not do so. Besides, during the inquiry Mr. V. Kullai Nayak, Yard Porter while answering Q. No 29 and Q. No. 31 has replied that he did not observe the shunt signal and that he did not convey the aspect of shunt signal to the applicant. If there was any confusion in regard to the signal the applicant should stop the loco and should not proceed further. The fact finding inquiry report was marked as an exhibit and that only those witnesses who were relevant to the charges were made witness. Applicant did not raise any objection during the inquiry about any inconsistencies in the charge memo and has confirmed that he is satisfied with the inquiry proceedings while answering Q. No. 66. Applicant has to follow the rules namely 3.78(1)(a), 3.83 (1), SR 4.40.1 & SR 4.40.2 formulated in regard to aspects pertaining to signals. Appellate authority has taken the past conduct of the applicant as per appendix V of Accident manual while deciding the appeal and that after carefully considering the appeal the penalty imposed was modified. The punishment imposed is as per rule 6 of the RS (DA) Rules 1968 and that the imposition is the discretion of the disciplinary authority/ appellate authority as per Hon'ble Supreme Court judgment in Administrator, Union Territory of Dadra & Nagar and Haveli v Gulaghia M. Lab (2010) 5 SCC 775.

6. Heard both the counsel. We have gone through the documents placed on record.

7. There are many issues raised by either sides which deserve comprehensive study to decide the issue to arrive at a justifiable decision.

i) Let us begin with the point raised by the respondents that the applicant without availing the remedy of revision petition has moved the Tribunal.

Section 20 of the AT Act which deals with the issue states that:

> *"A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under relevant rules as to redressal of grievances."*

Respondents assert that a final order has not been issued by the respondents as per Section 20 (a) of the Administrative Tribunals Act since the applicant was given an opportunity by the appellate authority to prefer a revision petition, while modifying the penalty of compulsory retirement imposed by the disciplinary authority in his appellate order dated 16/18.10.2014. The question is when it was specifically mentioned in the order of the appellate authority, why did not applicant avail the remedy. Learned counsel for the applicant took the line that when the appellate authority has only modified the appeal, the scope to get further relief in revision petition, as per general experience, is limited. The observation of Honourable Supreme Court in ***Kailash Chandra v U.O.I*** reported in ***AIR 1961 SC 1346 (1)*** (CA 283 of 1960) wherein the word "Ordinarily" was interpreted as under:

> *" 8. This intention is made even more clear and beyond doubt by the use of the word " Ordinarily " . "Ordinarily" means "in the large majority of cases" but not invariably."*

Even in many decisions of the Hon'ble benches of this Tribunal namely Chandigarh (OA 1679/JK of 1991), Allahabad (OA 287/1986), Jodhpur (OA 84 of 1986), New Delhi (OA 259 & 260 of 1987), Bangalore (OA 1895 of 1988) it was held that an objection cannot be raised about availing of remedies after the application has been admitted. Honourable Supreme Court observation in

Harbanslal Sahania and anr v Indian Oil Corporation Ltd and ors is that petitioners cannot be relegated to alternate remedy of initiating arbitration proceedings. As can be seen from the reading of section 20 of AT Act wherein the word "Ordinarily" used, does provide the discretion to entertain an application even if the remedy of revision petition has not been availed. Hon'ble Supreme Court interpretation of the word in the judgment cited supra does comprehensively support this view. The coordinate benches of this Tribunal have categorically held that once an application has been admitted, an objection that the available remedies have not been exhausted cannot be raised. It is also on record that this Tribunal has entertained many OAs wherein revision petitions were not filed. The logic to do so has been expounded above. Therefore, it is not invariable, for the applicant to avail the remedy of revision petition. Hence, the objection taken by the respondents that since the remedy of revision was not availed by the applicant, OA is not maintainable has no steam in it.

Respondents did cite the verdict of the Hon'ble Principal Bench of this Tribunal in OA No. 87/2010 wherein the applicant did not bring out all the grievances he had in the appeal and therefore the Hon'ble Principal Bench has observed the need to file the revision petition. In the present case it is exactly the opposite since the applicant has brought all the grounds to defend his case in his appeal but were not considered. Hence the Hon'ble Principal Bench judgment is not relevant to the present case. Similarly, the facts and circumstances cited in OA 520/2011 disposed by Honourable Jabalpur bench are different to the present case. Therefore, not relevant and particularly in the context of the observation of the Hon'ble Supreme court cited supra. The respondents should have taken this objection before admitting the OA and not at this stage.

ii) Having answered the objection in regard to exhaustion of remedies available it would be pertinent to examine as to whether rules empower appellate authority to modify punishment to that of reduction to the grade of Goods Driver in respect of jumping of the signal while performing shunting operation at a station. Besides was there any discrimination evident in imposing the punishment!

As per Clause 7, Appendix V to the Railway Accidents Manual the punishment to be imposed for station derailments while shunting by not following the signal is withholding of increments. Whereas the disciplinary authority has imposed the punishment of compulsory retirement and appellate authority has modified it to reduction to a lower grade by not following the cited rule. Both the penalties are against the rule cited. The learned counsel for the respondents has drawn our attention to rules referred to in the reply statement which are applicable in case of accidents involving running trains. These rules are obviously not applicable to locos performing shunting functions at stations. Further, in cases where signals were not followed while performing shunting operations, respondents imposed the penalty of withholding of increment vide Memo.GNT/M.271/I/Staff/DAR/MVVR/SF-11/13 dt.14.11.2013 & Memo GNT/M.271/I/Staff/DAR/SSSRR/SF-11/13 dt.28.6.2013 but the applicant was imposed with a harsher penalty of reduction to Goods Driver post. Discrimination is self-evident. The punishments imposed in respect of those referred to were as per rules cited whereas in respect of the applicant the punishment was against rules and discriminatory violating Articles 14 and 16 of the Constitution of India. In particular, it needs to be noted that the signal itself was giving a wrong signal due to reflection of sun light at the time the incident occurred as per the prosecution witness examined.

iii) Penalty is based on the findings of the inquiry report and whether such findings were properly considered before imposing the penalty!

The dispute is all about applicant passing the signal due to confusion created due to sunlight falling on it and the respondents claiming that if he was confused he should have stopped the loco without moving it. To discover the related truth, evidence tendered during the inquiry would help. The Dy. Station Supdt (PW-4) while answering Q-20, 21, 22 and 23 has replied that the shunter i.e. the applicant was confused in regard to the signal since in the afternoon when sunlight falls on the signal it gets reflected and creates confusion. This confusion would not have arisen had the shunter been given a walkie-talkie. Besides, he informed that the shunter did not come up for any unusual experience in the past. The Yard Porter (PW-3) has also confirmed that while answering question Nos.32 /35 that the shunter could have got confused about the signal aspect because of sunlight falling on the signal and that the shunter was not involved in any unusual occurrence in the past. The Station Supdt (PW-1) while responding to Q-44 has replied that the yard porter V. Pulla Naik has confirmed that the shunter enquired with him about the confirmation of the shunt signal and that since sunrays fell on it, the signal looked as if it was taken off and therefore the shunter started the loco. Further, in response to Q-45, PW-1 has replied that the sunlight falling on the signal caused the confusion thereby leading to movement of the loco presuming that the signal is taken off. During cross-examination, PW-1 has also confirmed that some shunters informed him about the problem being created by shunt signal 25 when sunlight falls on it. The SSE/Signals (PW-2) stated while answering Q-54 stated that there was a problem with the shunt signal when sun light falls on it. The applicant while answering Q-64 has stated that he was confused about the aspect of the signal

and that he enquired with the Points Man who confirmed that it was in off position and hence he moved the loco. The Yard Porter Sri V.Kullai Naik (PW-3) while answering Q-31 has informed that he did not convey the signal aspect to the shunter but the Station Supdt. in response to Q-44 has informed that Sri V.Kullai Naik did observe the signal as in 'OFF' position and therefore the loco moved. The version of the PW-3 is not consistent. As per the evidence tendered, there is overwhelming proof that the sunlight falling on the signal has made it appear that it is in off position permitting the shunter/ applicant move the loco. It was for the respondents to provide for a signal which is defect free. For inaction of the respondents penalising the applicant is not fair. As per Hon'ble Supreme court observation in Nirmal Chandra Bhattacharjeev vs. Union of India, 1991 Supp (2) SCC 363 mistake of the department should not recoil on the employee. Even in ***Union of India vs. SadhanaKhanna, C.A. No.8208/01,*** the Apex Court has held that the mistake of the department cannot be permitted to recoil on employees. In the present case it was the mistake of the respondents in not installing a signal which can be properly seen. Therefore, holding the applicant squarely responsible for the lapse is not fair.

iv) While issuing the Appellate order have the Principles of Natural Justice and necessity to issue a speaking order been followed?

The relevant para of the appellate order reads as under:

> *"I have gone through the appeal dt 25.8.2014 submitted by Shri Bhojya Naik. He has definitely committed a mistake in passing starter signal no 14/shunt signal no 25 at ON position at GNT yard on 22.2.2013 at 15.35 hrs. His past record is also not good. "*

As per respondent rules cited in regard to accidents while imposing punishments, past record/conduct is to be considered. This cannot be denied. However, the applicant has to be given an opportunity to explain about his past

conduct before imposing the penalty. Not giving such an opportunity is violative of Principles of Natural Justice. The appellate authority in the appellate order has claimed that the past record was not good and did not elaborate as to what was not good. Further he did not give an opportunity to the applicant to explain himself on the past conduct, thereby infringing Principles of Natural Justice. The action of the respondents infringes the legal principle laid down by the Hon'ble Supreme Court in the case of **Mohd Yunus Khan vs State of UP, (2010) 10 SCC 539** wherein it was held as under:-

> *34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment,* ***the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.***

Further, as per Ministry of Home Affairs OM No. 134/20/68-AVD, dated the 28th August,1968, it is not appropriate to bring in past bad records in deciding the penalty, unless it is made the subject matter of specific charge of the charge-sheet itself. The OM is extracted hereunder:

> "A question has arisen whether past bad record of service of an officer can be taken into account in deciding the penalty to be imposed on the officer in disciplinary proceedings, and whether the fact that such record has been taken into account should be mentioned in the order imposing the penalty. This has been examined in consultation with the Ministry of Law. It is considered that if previous bad record, punishment etc., of an officer is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the charge-sheet itself, otherwise any mention of the past bad record in the order of penalty unwittingly or in a routine manner, when this had not been mentioned in the charge-sheet, would vitiate the proceedings, and so should be eschewed."

Besides, appellate order only states that the appellant has definitely made a mistake without considering the various points raised by the applicant in his appeal. It was a bland and a non speaking order. Orders of the

Disciplinary/appellate /revision authorities have to be speaking orders. The essential ingredients of a speaking order are as under:

> Speaking order should necessarily contain the following:
>
> (a) Context: The order should narrate the back ground of the case. As has been laid down in a catena of decisions, law is not to be applied in vacuum. The circumstances that have caused the issue of the orders have to be brought out clearly in the introductory portion of the order. For example, if there is representation about incorrect pay fixation, the speaking order disposing of the representation should narrate how the anomaly has crept in, etc.
>
> (b) Contentions: Rival submissions, where applicable, must be brought out in the order. For example the evidence led by the presenting officer in support of the charges and by the charged officer for refuting the charges. Needless to add that there may be cases wherein submissions may be unilateral as is the case of stepping up of pay, etc. Even in the course of disciplinary proceedings, there may be some instances wherein the concept of rival submission may not apply as in the case of representation for change of Inquiring Authority or for engagement of legal practitioner as defence assistant.
>
> (c) Consideration: The order should explicitly evaluate the submissions made by the parties vis-à-vis each other and in the light of the relevant statutory provisions. Each submission by the parties must be considered with a view to decide about its acceptability or otherwise. 188
>
> (d) Conclusions: Outcome of the consideration is the ultimate purpose of the order. It must be ensured that each conclusion arrived at in the order must rest on facts and law (Speaking order)

The appellate order issued by the appellate authority does not fulfil the basic norms of a speaking order as explained above. Hon'ble Supreme Court in Markhan C. Gandhi vs Rohini M. Dandekar in CA No.4168 of 2008 has elaborately dealt with the implications of a order being a non speaking order as under:

> "4. The impugned order runs into 23 pages. Upto the middle of Page 10, the Committee has referred to cases of the parties; from middle of Page 10 to middle of Page 11, issues have been mentioned; from middle of Page 11 to the top of Page 22, the Committee has referred to the evidence, oral and documentary, adduced on behalf of the parties without discussing the same and recording any finding

whatsoever in relation to the veracity or otherwise of the evidence; and thereafter disposed of the proceeding which may be usefully quoted hereunder: We have gone through the records. The issues were framed on 18-8-1990. Issue No. 1 relates to a threat given by the Respondent to the complainant on 8-6-1977. This issue is not related to the professional misconduct and in this regard the complainant has not submitted any documentary evidence to prove her stand. As far as the issue No. 2 is concerned, this is a very important issue. The complainant has submitted document in support of her contention and proved the issue. This fact cannot be denied by oral version, as there is documentary record. As far as the issue No. 3 is concerned, this is also proved by the complainant by her evidence. Issue No. 4 relates to the certificate issued by the Respondent. This has also been proved by the complainant by documentary proof which is on record. Likewise Issue No. 6 is also proved by documentary proof. Issues Nos. 6 to 7 relate to one Mr. Vora, architect and builder and Mr. B.S. Jain and the Respondent. The main issue in this controversy is issue No. 8 i.e., whether the Respondent is guilty of professional misconduct or other misconduct. In this respect it is the admitted position before the Committee that some documents were already on record and retained by the Respondent and the certificate issued by the Respondent with regard to the property in question. It is also admitted position that in this matter a compromise letter was filed by the parties earlier. We have heard the arguments and we have also perused the documents. The complainant has proved her allegations made in the complaint against the Respondent. The allegations made are very serious. We are of the opinion that the Respondent has committed professional misconduct and thus we hold him guilty of professional misconduct and suspend him from practice as an advocate before any Court or authority in India for a period of five years and we also impose a cost of Rs. 5,000/- to be paid by him to the Bar Council of India which on deposit will go the Advocates Welfare Fund of the Bar Council of India. If the amount of cost is not paid within one month from the date of receipt of this order, the suspension will be extended for six months more. 5. From a bare perusal of the order, it would appear that, virtually, there is no discussion of oral or documentary evidence adduced by the parties. The Committee has not recorded any reason whatsoever for accepting or rejecting the evidence adduced on behalf of the parties and recorded finding in relation to the misconduct by a rule of thumb and not rule of law. Such an order is not expected from a Committee constituted by a statutory body like B.C.I. 6. We are clearly of the opinion that the finding in relation to misconduct being in colossal ignorance of the doctrine of audi alteram partem is arbitrary and consequently in infraction of the principle enshrined in Article 14 of the Constitution of India, which make the order wholly unwarranted and liable to be set aside. This case is a glaring example of complete betrayal of confidence reposed by the Legislature in such a body consisting exclusively of the members of legal profession which is considered to be one of the most noble profession if not the most. 7. Accordingly, the appeal is allowed, impugned order rendered by the Disciplinary Committee of the B.C.I, is set aside and the

> matter is remitted, for fresh consideration and decision on merits in accordance with law. Chairman of the B.C.I, will see that this case is not heard by the Disciplinary Committee which had disposed of the complaint by the impugned order and an altogether different Committee shall be constituted for dealing with this case.

Thus the order issued by the appellate authority cannot be construed to be a speaking order by any stretch of imagination and it infringes the legal principle laid down by Hon'ble Apex court cited supra.

v) Gravity of an accident is generally understood in terms of loss of life and the cost damage to equipment etc. What have been the costs in the present case?

There was no loss of life. Further, the fact finding report dt 15.3.2013 indicates that there has been no damage to rolling stock, signal, Gear etc. and that the costs involved are nil. Respondents have also not filed any written document about any loss despite being enquired in the open court on a couple of occasions. Thus the implication is that there is no significant financial loss to the respondents due to the incident.

vì) Whether the punishment is commensurate to the lapse committed?

To answer this question, many underlying factors involved are to be dwelved upon. The passing of the signal has happened because of the mistake of the respondents. They did not install a signal which functions properly despite being informally brought to their notice by other employees as is evident from the inquiry report. Imposition of punishment was against rules in regard to locos involved in shunting operations. The order of the appellate authority was issued by taking into consideration an extraneous issue not cited in the charge sheet and flouting Principles of Natural Justice. It was manifestly a non speaking order going against the tenets of the legal principles laid down by the Honourable

Supreme court. Further the respondents have discriminated the applicant by imposing a harsher punishment whereas, others referred to in memos cited above were let off by withholding of increments for a year or two. There has been no loss of life or any perceptible financial loss as per records submitted. Thus by viewing the case from any angle either in terms of rules, law or loss the respondents have imposed a penalty which is shockingly disproportionate to the lapse noticed and that too because of the inaction of the respondents. Hon'ble Supreme Court has observed in ***Mithilesh Singh vs Union of India (2003) 3 SCC 309*** as under**:**

> ***9.*** *The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same. Reference may be made to a few of them. (See: B.C. Chaturvedi v. Union of India, State of U.P. v. Ashok Kumar Singh, Union of India v. G. Ganayutham, Union of India v. J.R. Dhimanand Om Kumar v. Union of India.)*

vii) Hence in the interest of justice, considering the merits of the case as discussed and the legal principles set by the Hon'ble Supreme, the OA succeeds. Action of the respondents is against rules, arbitrary and illegal. The impugned orders issued by the disciplinary authority and the appellate authority dt 8.8.2014 and 16.10.2014 respectively are quashed. Consequently, the respondents are directed to consider as under:

i) Consequent to quashing of the impugned orders referred to, respondents are directed to grant all the consequential benefits due to the applicant, as if no penalty has been imposed.

ii) It is open to the respondents to proceed against the applicant based on rules/law and proper appreciation of genuine facts of the case.

iii) Time calendared to implement the judgment is 3 months from date of receipt of this order.

iv) With the above directions, the OA is disposed of. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

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

Dated, the 11th day of March, 2019

evr