

CENTRAL ADMINISTRATIVE TRIBUNAL
 PATNA BENCH, PATNA.
 OA/050/00537/2015

Dated of CAV : 29.04.2019

Dated of order : 6th May, 2019

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
 Hon'ble Shri Dinesh Sharma, Member [Administrative]

Sudhir Roy, son of late Tripti Roy, Station Superintendent, East Central Railway, Bachhawara under Sonpur Division [Bihar].

..... Applicant.

By Advocate : Mr. M.P.Dixit

Vs.

1. The Union of India through the General Manager, East Central Railway, Hajipur, District – Vaishali [Bihar].
2. The Chief Operating Manager, East Central Railway, Hajipur, District – Vaishali [Bihar].
3. The General Manager [Personnel], East Central Railway, Hajipur, District – Vaishali [Bihar].
4. The Divisional Railway Manager, East Central Railway, Sonpur, PO – Sonpur, District – Saran [Bihar].
5. The Additional Divisional Railway Manager, East Central Railway, Sonpur, PO – Sonpur, District – Saran [Bihar].
6. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, PO – Sonpur, District – Saran [Bihar].
7. The Senior Divisional Operating Manager, East Central Railway, Sonpur, PO – Sonpur, District – Saran [Bihar].
8. The Senior Divisional Financial Manager, East Central Railway, Sonpur, PO – Sonpur, District – Saran [Bihar].

..... Respondents.

By Advocate : Mr. B.K.Choudhary.

Mr. D.K.Verma.

O R D E R

Per Jayesh V. Bhairavia , Member [J] : In the instant OA, the applicant has sought for the following reliefs which are reproduced as under :-

“8[1] That your Lordships may graciously be pleased to quash and set aside the impugned punishment and orders dated 08.06.2013 passed by Respondent No.7 along with orders dated

23.12.2013 and 15.06.2015 as contained in Annexure-A/2 and A/3 passed by the Respondent No.5 and 2 together with IO report dated 06.05.2015 as contained in Annexure-A/7 concerning the finding of Rule 3[1][ii] of Conduct Rule,1966 being vitiated, perverse and contrary to the principle of natural justice.

8[2] That your Lordships may further be pleased to direct/command the Respondents to restore the pay, grade and status of applicant henceforth along with all consequential benefits including arrears of salary from the date of issue of punishment dated 08.06.2013 upto the date of its restoration with interest.

8[3] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant.”

2. The applicant's case in brief, is as follows :-

[i] The applicant while working as Station Superintendent [in short SS] under East Central Railway, Bachhawara, received a charge-sheet dated 17.01.2013 issued by Respondent No.7. According to the applicant, the charges leveled against him in the aforesaid charge-sheet is totally false, vague, concocted and based on conjecture and surmises. The applicant contended that on perusal of the aforesaid charge-sheet, it appears that the only document relied upon is “CRS Inquiry Report” but no witness has been named to substantiate the charge. The applicant submitted a representation on 02.02.2013 [Annexure-A/5] denying the allegations.

[ii] The respondent no.7 appointed Sri J.P.Trivedi, Area Officer, East Central Railway, Muzaffarpur as Inquiry Officer on 21.02.2013. Thereafter, the applicant submitted one representation for supply of CRS report relied upon in the charge-sheet as also other relevant

documents but the same has not been supplied, stating that the report of CRS is confidential, vide their letter dated 20.03.2013 [Annexure-A/6], and with regard to other papers, they stated that the other papers are not available, which is totally bad in law and against the principle of natural justice. Thereafter, the applicant submitted a detailed representation to the Inquiry Officer on 08.04.2013 denying the allegations.

[iii] The applicant contended that in the meantime, without considering the points taken by the applicant in his representation, the Inquiry Officer has submitted his report on 06.05.2013 [Annexure-A/7] in which the basic allegation against the applicant is violation of Sub Rule [1][2] and [3] of Rule 5.01 of GR and Sub Rule [iii] of Rule 3[1] of Conduct Rule has not been proved but Sub Rule [ii] of Rule 3[1] of Conduct Rule has been proved.

[iv] The applicant contended that he received an order dated 08.06.2013 issued by the Respondent No.7 whereby punishment of reduction to lower grade with loss of seniority without any specific period has been imposed , which is not only bad in law, arbitrary, unjust, unconstitutional and against the principle of natural justice but also contrary to the findings of Inquiry Officer. The applicant thereafter preferred an appeal against the punishment order dated 08.06.2013 but the Respondent No.5, the appellate authority without considering the points taken by him, rejected his appeal on 23.12.2013. Thereafter, the applicant filed a revision petition but the

same has also been rejected, vide order dated 15.06.2015, hence this OA.

3. The respondents filed their written statement and denied the submissions of the applicant. According to them, the applicant Shri Sudhir Roy, while working as Station Superintendent, Bachhawara on 12.09.2012, Train No. 13226 Up Danapur-Jayanagar Intercity Express derailed in Bachhawara Yard as the train was taking into two routes at Point No.23 due to manipulation done by the Railway staff by changing the point while the train was running. An enquiry was conducted by Commissioner of Railway Safety, Kolkata. The respondents contended that the applicant was aware of the erratic functioning of 21 BT as he informed it to ESM before arrival of 13226 but this information was in oral form whereas it should in writing. The relay room was under double lock. One key was with ESM and the other key was with the Station Master. The respondents pleaded that though there was a junior ASM [Panel] on duty and it was his first day and since Shri Sudhir Roy was working as Station Master In-charge, it has been established in CRS report [it cannot be produced in the court of law being confidential] that for opening of the relay room, both the keys were required, therefore, the respondents pleaded that the connivance of ESM and SM is inescapable.

4. The respondents submitted that the ASM on duty opted for short cut method seems to be in connivance with Station Superintendent Shri Sudhir Roy resort a manipulation operation of track circuit from the relay room. The ASM made over his key in

supersession of Station Superintendent, Shri Sudhir Roy without making entry into the Relay Room Key Register. According to the respondents, Shri Roy being the Station Master In-charge, should shoulder the major responsibility, as without his consent, no such decision of short-cut method of working was possible nor station key could be handed over to the ESM.

5. The respondents further submitted that double route of point no.23 at BCA was only happened due to flickering of 21 BT by five times in between 10.26.30 and six times in between 11.03.2012 o 11.14.57, but while working as Station Master outdoor at BCA Station, Sri Sudhir Roy could not guide his subordinate staff, the ASM on duty in this regard and to adopt short-cut method for operation of Train No.13326 as also key of the Relay Room was handed over to ESM/BCA without making an entry into the Key Register as a result of which ESM/BCA interfered with relays of track circuit from the relay room and point no.23 became two route causing derailment of RSLR No.92725 EC of Train No.13226.

6. The respondents submitted that since Shri Sudhir Roy has been found responsible for violating GR Sub Rule [1][2] and [3] of GR 5.01 and thus contravened Rule 3[i][ii] and [iii] of Railway Services [Conduct] Rules, 1966 for which he has been punished by the competent authority.

7. The respondents pleaded that nomination of Inquiry Officer has been made in accordance with DAR Rules and since CRS report is a confidential one, privileged documents for Railway, hence copy of CRS

inquiry report was not given. However, the Commissioner of Safety is a statutory body appointed by the Government of India to inquire into the accident and findings of reasons of accident and suggestions to improve the workmanship/system. The respondents contended that CRS report is self sufficient and they did not need to examine any witness to support his submitted report. Hence, List of witness is not necessary in this case.

It is further contended that the applicant had participated in the enquiry and the enquiry officer had also provided due opportunity to the applicant to defend his case, which the applicant availed. The applicant has also took part in Examination and cross-examination of witnesses which is evident in the inquiry report dated 2.5.2013 (Annexure A/7). After conclusion of the enquiry, the report of the enquiry officer was also provided to the applicant and in response to it, the applicant had submitted his representation / reply. Thereafter, considering the entire material record of the enquiry, the disciplinary authority found the applicant guilty for adopting a short-cut method in train operation and unsafe practices without the consent of applicant /C.O or due to such prevailing practices for which CO is accountable which caused derailment of Train No. 13226 at BCA on 12.9.2012 due to mismanipulation of points through interference in relay room.

8. The respondents further contended that the Disciplinary Authority after careful consideration of all the relevant records available in file and circumstances leading to derailment, passed order awarding punishment of reduction to a lower grade with loss of

seniority under Rule 6 of Railway Servants [Discipline & Appeal] Rules, 1968, which has been upheld by the appellate authority as also by the Revisional Authority. Hence, this OA deserves to be dismissed.

9. On behalf of the applicant, it is further contended that relied upon documents more particularly copy of CRS report was not given though the applicant had demanded the same it is tantamount of denial of reasonable opportunity to the CO as per Article 311 (2) of Constitution of India. It is further submitted that though no witnesses have been cited or relied upon in charge memorandum but during the disciplinary enquiry some witnesses have been examined therefore the applicant has been deprived of fair opportunity as well as effective hearing, therefore, the impugned orders are bad in law. In this regard, the learned counsel for the applicant has placed reliance on judgments passed by the Hon'ble Apex Court in the case of State of U.P vs. Shatrughan Lal and another reported in 1998 (3) All PLR 190 (SC) as also the judgments passed by the Hon'ble Patna High Court in the case of Prakash vs. Board of Director, Mithila Kshetriya Gramin Bank, Darbhanga and others reported in 1996 (1) PLJR 469, and 2000 (3) PLJR 10 (kumar Upendra Singh Parmar vs. B.S. Cooperative Land Development Bank, and contended that where the charges against the delinquent are based on document, the denial of access to those documents have a deleterious and damaging effect and such opportunity is not an effective opportunity and therefore, there is violation of principle of natural justice.

10. Heard the learned counsel for the parties and perused the materials on record.

11. It reveals that the applicant/CO was served with charge memorandum dated 17.1.2013 for major penalty, the charge leveled against the applicant to the effect that "on 12.9.2012, while the applicant was on duty as Station Superintendent at station Master outdoor, Bchhawara on that day just before the accident occurred, there were many times failure of 21 BT Track during the period 10.26.30 to 10.33.33 total five times and between 11.14.57 hrs to 12.9.2012 there were six times 21 BT was failed. But for the said failure, the CO has not taken the adequate action and not carried out the procedure and by opting a short cut method, the Train No. 13226 Up was allowed to run and also without entering in the register the key of Relay Room was given to ESM/BCA. Resultantly, due to mismanipulation of relay room track circuit, it caused two routes to point no. 23. And the Train No. 13226 Up was derailed. For the said negligence, the applicant/CO had violated rules 5.01 (1) (2) and (3) of General rules as also violated rule 3 (1) (ii) (iii) of the Railway Service (Conduct) Rules, 1966. Along with said charge sheet.

12. It is noticed that in the inquiry report, in para no. 2 & 3 , the inquiry officer had observed that the applicant / CO had demanded the copies of the relevant documents, including copy of CRS inquiry report and examination and cross examination of employees, recorded during the CRS enquiry. In this regard, it is found that the inquiry officer observed in the said para that the aforesaid documents

were not supplied to the applicant/CO on the ground that the said document/ report are confidential. At the same time, it is also important to take note of the fact that other documents demanded by the applicant, such as details of data locker of Bachhawara Railway Station, SE 32 for the period of January 2012 to September 2012, Relay Room register, TCR of dated 12.9.2012 and Gang working chart dated 12.9.2012 as demanded by the CO was given to the applicant. Moreover, the witnesses have been examined and cross-examined by the applicant during the inquiry. The applicant's statement was also recorded during the inquiry. It is further noticed that nowhere the applicant has stated before the inquiry officer that due to non-supply of CRS report, he is unable to participate in the inquiry or denied at any stage that his case will be prejudiced. Even he has not objected for examination of the relevant witnesses who were directly answerable with respect to the issues involved, he has also cross-examined the said witnesses to establish his defence. Considering the material on record as well as the statement of witnesses and their cross-examination, the inquiry officer has come to the conclusion that the derailment of the train was caused due to mismanipulation of relay room track circuit, it caused two routes to point no. 23. And the Train No. 13226 Up was derailed. It is further concluded that the applicant /CO was not found responsible for alleged violation of Rule 5.01 (1) (2) (3) of General Rules but the applicant was found to be guilty for violation of Rule 3 (I) (ii) of Conduct Rules, 1966, because at the relevant time, the applicant was on duty and in spite of information /

instruction given by the panel operator about failure of 21 BT, the applicant has not performed his duties properly. Accordingly, the IO has submitted his report to the DA. It is admitted that the copy of the said report was provided to the applicant and in response to it, he has submitted his representation before the disciplinary authority.

13. It can be seen that the applicant has duly participated in the disciplinary proceedings. The relevant documents as demanded by the applicant with regard to details of data locker of relay room, register, TCR, SE 32 and the duty chart of Gang Man has been given to the applicant. He has also availed the opportunity to cross examine the relevant witnesses. It is further noticed that the applicant himself has cited certain observations made in the said CRS report in support of defence, this fact suggests that the applicant was aware of the content of CRS report. The applicant has also failed to establish that he has been prejudiced at any stage of inquiry. In this regard, at this stage, we take note of the law laid down by the Hon'ble Apex Court in the case of State Bank of India vs. S.K. Sharma, reported in 1996 (3) SCC page 364. It is held in para 33 (3) of the said judgment, "***In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer / employees. They are , generally speaking, conceived in his interest.*** ***Violation of any and every procedural provision cannot be said to automatically vitiate the inquiry held or passed . Except cases falling under – “ no notice”, “no opportunity”, and “no hearing” categories.***

....." ***If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for.***" In the present case, as noticed hereinabove, the applicant /CO has taken part in the inquiry, and has availed the opportunity to cross examine the witnesses, received the relevant documents and submitted his defence / representation at every stage. Therefore, it cannot be said that the the applicant has not been granted opportunity of defending his case effectively or cannot be said that he was deprived of effective hearing. In view of the discussion made hear-in-above and as per the law laid down in the case of State Bank of India vs. S.K. Sharma (supra), the applicant's submission that non-supply of document caused prejudice to his defence is not tenable in the facts and material available on record. It is also noticed that the judgment relied upon by the applicant i.e 1998 (3) All PLR 190 State of U.P vs. Shatrughan Lal, the Hon'ble Apex Court has also reiterated the principle as laid down in the above cited judgement (SBI vs. S.K. Sharma) (supra); hence it is not applicable in his case. So far other judgment reported in 1996 (1) PLR 469 relied upon by the applicant is also not helpful in the facts and circumstances of the case.

14. In view of the foregoing discussions, we are of the view that the disciplinary authority has correctly come to the conclusion that CO is held responsible for causing derailment of Train 13326 at BCA (Bachhawara Station) on 12.9.2012 due to mismanipulation of points through interference in Relay Room and accordingly found him guilty for the charges leveled against him. Therefore, the punishment has

been awarded as “reduction to a lower grade with loss of seniority”. The appellate authority and the revisional authority upheld the said order of punishment passed by the disciplinary authority. In our view, there is no violation of principle of natural justice in the departmental inquiry conducted against the applicant. We also hold that the impugned orders do not suffer from any infirmities. Hence, the punishment so imposed by the disciplinary authority does not call for our interference. The OA is devoid of merit and it is accordingly dismissed with no order as to costs.

Sd/-

Sd/-

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

mps.