

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00301/2017

DATED THIS THE 11th DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri.Anil Gokhale
Son of Late Udaram Gokhale
Aged about 36 years
Working as Sr. Asst.Loco Pilot
Hubli-580020
Dharward District-580020.

....Applicant

(By Advocate Smt.C.Deepa)

Vs.

1. The Union of India
Represented by its General Manager
South Western Railway
Headquarters, Hubli-580020.
2. Chief Operations Manager
Headquarters Office
South Western Railway
Hubli-580020.
3. Divisional Railway Manager
Headquarters Office
South Western Railway
Hubli-580020.
4. Sr.Deputy Mechanical Engineer (C&W)
Mechanical Branch
Hubli Division
Hubli-580020.

...Respondents

(By Advocate SriJ.Bhaskar Reddy)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The case of the applicant is that he was appointed as Assistant Loco Pilot in the South Western Division on 22.5.2007. He was promoted as Loco Pilot in Feb., 2014

and worked as such till Nov., 2014. While working so, articles of charge memo was issued against the applicant on 22.5.2014(Annexure-A1) proposing to issue major penalty and an inquiry was ordered to be held under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on the following charges:

1. Shri Anil Gokhale, Loco Pilot Goods/HPT has failed to stop the train No.JVSL/RNJP ER and passed the UP Home Signal at 'ON' of RNJP station without proper authority.
2. Shri Anil Gokhale, Loco Pilot Goods/HPT has tried to misguide the Enquiry Committee by deposing false statement that he has noticed obstruction on the track which was denied by Asst. Loco Pilot, Station Master on duty and Guard.
3. Shri Anil Gokhale, Loco Pilot Goods/HPT has backed the train without authority after passing the Home Signal at ON.
4. Shri Anil Gokhale, Loco Pilot Goods/HPT has restarted the train after backing the train from Home signal and passed the Home signal at ON once again on oral information from SM on duty through walkie talkie.

2. The applicant submits that the train driven by him departed/crossed from Bannihatti(BNHT) at about 01:15 hrs and it was only after the train crossed from BNHT station, the Station Master(SM) of Ranjithpura(RNJP) was informed about the programme to receive the Train on Road 6 and the loco to clear Road 5. In RNJP Station, road to be used by a train was either Road 5 or Road 6. The programme as to the movement of train is always provided in advance to the next station to ensure smooth movement of train. In the present case, it was not informed in advance. The SM has to ensure that the pointsman was sent well in advance to press the plunger button duly verifying that the line was clear of obstruction. The applicant while approaching RNJP station noticed that the aspect of distant was in 'caution' and he had well controlled the speed of the train knowingly 'home signal' would be in 'danger' aspect since visibility of 'home signal' at RNJP station is only about 150 mtrs. While approaching home signal suddenly he

had noticed an obstruction(stones) on track seeing which he immediately applied the emergency brake and stopped the train before the 'home signal'. In order to see any damages to the traction motors which are located under the truck, he had backed the train for a few meters and ensured that no damages had occurred to the motors. By the time of 'home signal' was 'taken off' as caution to RD-6, the applicant entered and berthed the train at RD-6 of RNJP duly observing the signal aspect. After berthing the train at RD-6, the applicant was instructed to do further shunt movements like detaching of engine and to attach the same engine to another load which berthed at RD-5 of RNJP and to conduct GDR check of that train and to clear the same towards 'Tornagalu' station. The applicant was engaged in these activities from 02:10 hrs to 04:50 hrs. All the activities show that there was no unusual behaviour from the part of the applicant like passing home signal at danger as alleged in the charge memorandum. If any violation of rules had really occurred from the part of the applicant, the train could have not been received to RD-6 in a normal manner and the applicant would not have been instructed to make any further movements. At 05:00 hrs, on duty station master had given message to all concerned stating that the train had passed home signal at ON i.e. Signal Passing At Danger(SPAD) noticing an activation of a relay in the panel which is suspected to have got activated due to many of the reasons as explained by himself in the D&AR inquiry as listed witness.

3. The applicant further submits that an Inquiry Officer(IO) was appointed by order dtd.1.7.2014(Annexure-A2) vide Sub Rule(2) of Rule 9 of RS(D&A) Rules 1968. A preliminary enquiry was conducted and the applicant denied the charges. Three witnesses were examined and depositions were taken from them(Annexure-A3). The IO has submitted his report(Annexure-A4) stating that the charges levelled

against the applicant were proved. Applicant made a representation (Annexure-A5) against the inquiry report. The 4th respondent vide his order dtd.20.11.2014(Annexure-A6) has imposed the penalty of 'removal from service' ignoring the representation submitted by the applicant. Applicant preferred an appeal to the 3rd respondent under Rule 18 & 19 of the Rules(Annexure-A7). The appellate authority by its order dtd.13.2.2015(Annexure-A8) had modified the penalty from removal from service to 'reduction from the post of Loco Pilot in scale of PB-2 with GP 4200 to Sr.ALP in the scale of PB-1 with GP 2400 for a period of 5 years on pay of Rs.9790/- he could have drawn as Sr.ALP, with loss of seniority and with effect of postponing future increments. The intervening period is treated as 'dies-non'. Thereafter, the applicant preferred a revision petition against the order dtd.13.2.2015 and the revisionary authority i.e. 2nd respondent has by his order dtd.30.3.2016(Annexure-A9) has dismissed the same and upheld the order dtd.13.2.2015. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

1. *Challenged in the impugned order No.SWR/P/HQ227/AG(HPT/UBLI) order dtd.30.3.2016 passed by the 2nd respondent(Annexure-A9).*
2. *Charge Memo dtd.22.5.2014 bearing No.H/M.348/I/SPAD/RNJP/may 2014/1427 (Annexure-A1) as the same is arbitrary, illegal, unjust.*
3. *Consequently the penalty advice dtd.20.11.2014 bearing No.H/M.348/I/SPAD RNJP/May 2014/1427 (Annexure-A6).*
4. *And also consequently the order dtd.13.2.2015 bearing No.H/P.90/VI/2014/AG/90 (Annexure-A8).*
5. *And grant the applicant all consequential benefits as if he is entitled for the same by treating if there is no charge memo and to release all the benefits to the applicant which he is entitled to including the cost of this proceeding.*

4. The applicant further submits that the report of the accident enquiry committee in

its suggestion and recommendation at (iv) has stated that 'concerned monitoring inspector may be advised to accompany LPs during their First Trip in section'. Thus it was clear that there were procedural mistakes on the part of the administration in not ensuring the facts that the monitoring inspector did not accompany the applicant in the first trip and the respondents have clearly erred in issuing charge memo on the applicant. The witnesses examined during the inquiry were not aware of the alleged SPAD. The IO has relied upon the documents which were not even referred to in the charge memo. The charge memo refers to only one document but in the inquiry report, the IO refers to documents and also refers to event recorder and digital report of the RNJP and copies of which were never delivered to the applicant. The Hon'ble Supreme Court in the case of *Kashinath Kishita Vs. UOI (1986) 3 SCC 229* held that 'if the copies of the documents received upon by the department are not served on the delinquent, the entire proceedings will have to be set aside'. The IO stated that he has seen the digital reports of the alleged incidence. But the inquiry report is silent about the manner in which these reports were obtained and also it is not stated from whose custody the same was obtained. The Hon'ble Supreme Court in catena of decisions viz., *ATC 1990 (14) page 99, ATJ 2003(1) page 11, ATJ 2003(1) page 105* etc., held that whenever the IO has based his findings on the letters/reports produced by the prosecution without examining the author/person from whose custody the same was obtained and without him being subjected to cross-examination, the inquiry report become vitiated. Hence, based on the same principle, the impugned order is liable to be set aside.

5. Per contra, the respondents in their reply statement have submitted that the applicant has filed the OA challenging the order dtd.22.5.2014 after a period of 2 years by stating untenable grounds to condone the delay. The claim of the applicant

suffers from delay and laches and as such the OA is liable to be dismissed on this ground alone.

6. They submit that the applicant while working as Loco Pilot JVSL/RNJP ER Goods on 7.4.2014, failed to stop the train and passed Up Home Signal at ON at RNJP station without proper authority for which enquiry was conducted by a committee consisting of four JA Grade Officers. The applicant tried to misguide the committee by deposing false statement that he had noticed obstruction on the track, which was denied by SM on duty and Guard. The applicant has backed the train without authority after passing the Home Signal on ON, once again without proper authority started the train and passed up Home Signal at ON and entered road no.6 at RNJP station. The Committee conducted enquiry and submitted report stating that the applicant is held primarily responsible for SPAD and he was issued SF-5 as per D&A Rules 1968 by framing 4 articles of charge and IO has conducted detailed inquiry duly giving all opportunities to the applicant as per the Principles of Natural Justice and submitted the inquiry report after examining the witnesses and documents and in the event recorder and data logger report for RNJP, both timings are matching. Train stopped at 01:32 hrs and backed at 01:51 hrs to 01:54 hrs reversed and forwarded at 02:00 hrs. It is a clear case of SPAD, which is also proved by submissions of the SM and ALP who were examined as listed witnesses. In the memorandum of charges, the applicant was given opportunity to inspect and take extract from the documents mentioned in the enclosed list of documents at any time during office hours within 10 days of receipt of memorandum. Based upon the inquiry, charges were proved against the applicant and he was provided with inquiry report and was given opportunity to submit written brief. Since the applicant has passed the Home Signal at ON and backed the train and restarted without proper

authority which is a grave misconduct which affects the safety of the public, the Disciplinary Authority(DA) after considering his written brief, has passed a speaking order of penalty of removal from service. The Appellate Authority(AA) has gone through the appeal preferred by the applicant and pointed out that data logger report is nothing but record of point to point activities happening on track which clearly confirms that JSLV Goods was passed home signal at ON before it was taken off and caused SPAD which was a grave safety hazard in the train passing duties. Moreover the applicant has misguided the JA grade committee by saying that there was an obstruction and he applied brakes and stopped the train. The AA after duly considering the service record of the applicant, has modified the penalty of removal from service to that of reduction to GP Rs.2400 in PB-1 for a period of 5 years with effect of postponing of future increments. The intervening period is treated as dies-non. Even though the punishment for such negligent act is removal from service as per rules, the AA has taken a lenient view and reduced the punishment. Further the revision petition though filed belatedly by 209 days by the applicant was also duly considered by the Revisionary Authority(RA) and a detailed speaking order was passed upholding the orders of AA. Hence, the OA being devoid of merit is liable to be dismissed.

7. We have heard the Learned Counsel for both the parties and perused the materials and written arguments note filed by both the parties in detail. The Learned Amicus Curiae Dr.S.Iqbal Ahamed and Shri Shiva Kumar have filed their written briefs. From a perusal of the orders passed in this case along with various representations given by the applicant and the brief submitted by the Amicus Curiae Dr.S.Iqbal Ahamed, the following points emerge:

As noted by the appellate authority vide Annexure-A8, it is clear that the applicant

had failed to control the train resulting in passing of the home signal at 'on' condition which normally is a very serious offence putting the safety of the train at risk. It is also clear that the applicant based on the oral instructions of the Station Master, Ranjithpura(RNJP), had backed the train and again passed the home signal at 'on' position without any proper authority. It is also clear that without any evidence and not supported by other witnesses, he tried to misguide the inquiry committee by giving false statement of obstruction on track. However, the appellate authority has also indicated certain contributory facts and reasons which might have led to this incident which we reproduce below:

The UP home signal of RNJP Station is at 1 in 100 rising gradient and this abnormal feature of the layout is covered vide Para No.2.5.2 of RNJP Station Working Rules which clearly states that "as far as possible no train shall be kept at home signal since the station is in approach with rising gradient of 1 in 100".

Further due to curve in the approach of HS, after picking up aspect of RNJP Home Signal from distant signal, Driver of train is virtually blind of HS aspect till approx 150 meter before HS. The caution aspect of distant at that time was obeyed which is evident by event recorder analysis placed on file where it is mentioned that at 1:32 hours the speed of train was 0.4 kmph i.e. 400 meter per hour which was reduced from 51.9 kmph at 1.31 hours. This indicates he has applied brake at required time. However, the driver has always in mind para 2.5.2 of Station Working Rule before approaching home signal which stipulates non-stop reception, as far as possible. The Loco Pilot was given adhoc promotion on 01.02.2014 and after completing requisite training and LRS, this was his first trip as loco pilot in the TNGL-RNJP section. Appointed in 2007 he has completed seven plus year of service only.

8. It is also seen that a lenient view has been taken by the appellate authority based on the fact that the applicant did not have any previous record of accident and the fact that this was his first trip as loco pilot in that particular section. The Amicus Curiae has brought out certain other aspects in their report relating to the non-following of any procedure by the Guard of the train as well as the Station Master. The Amicus Curiae has pointed out the fact that none of the procedures and

evidences to prove the allegations of the loco pilot passing stop signal at 'on' were taken and produced in the disciplinary enquiry as per SR-80(1) of G & SR Rules and para-7.14 of the Accident Manual. The Amicus Curiae has indicated that the reliance of Speedo Meter Chart, Event Recorder and the Data Logger has not been prescribed under any rule. In fact even in the order of the appellate authority much reliance has been placed on the Data Logger which remains to be incorporated in the safety rules as cited. The Amicus Curiae has pointed out that the disciplinary authority was one of the members of the preliminary inquiry conducted by four junior administrative grade officers. However, the penalty order has been issued by a different official. The Amicus Curiae has pointed out certain other lacunae in the report of the inquiry officer which apparently had not answered the points raised by the applicant and disciplinary authority has also not answered in detail the reasons for discarding the points made in the representation of the applicant. From the above, it is clear that the Station Master is equally culpable in this incident along with Guard of the train. The prescribed procedures were not followed before the train was allowed to go back and the pilot was allowed to restart the train. From the facts and circumstances of the case, it is clear that he had indeed passed the signal when it was on which is a very serious incident with regard to the safety of the train. However, taking note of the observation of the appellate authority himself relating to the various reasons as to why this incident could have happened in that particular location and the fact that this was the first trip of the pilot in that particular section and is accident free record till then, we deem it appropriate to set aside the order of revisionary authority vide Annexure-A9 and remit the matter back to the respondents to pass an appropriate order reducing the penalty finally imposed. It is however, not possible to exonerate the applicant from the disciplinary proceedings

as pleaded by him. An appropriate modified punishment order may be imposed by the respondents within a period of three(3) months from the date of this order. We wish to place on record our appreciation for the service rendered by the Amicus Curiae especially Dr.Iqbal Ahamed in assisting the Tribunal.

9. The OA is disposed of as above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00301/2017

Annexure-A1: Memorandum dtd.22.5.2014
Annexure-A2: Order dtd.1.7.2014
Annexure-A3: Preliminary enquiry
Annexure-A4: Enquiry report
Annexure-A5: Representation against the enquiry
Annexure-A6: Remove from the service dtd.20.11.2014
Annexure-A7: Memorandum of Appeal
Annexure-A8: Order copy of 13.02.2015
Annexure-A9: Order copy of 30.3.2016

Annexures with reply statement:

-NIL-

Annexures with written arguments note/memo filed by the applicant:

Annexure-1: AIR 1993 SC 1197
Annexure-2: CDJ 1986 SC 191

Annexures with written arguments note filed by the respondents:

-NIL-
