

Central Administrative Tribunal
Principal Bench

OA No. 2386 of 2003

New Delhi, this the 13th day of August, 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri Hardwari Singh
S/o Shri Hira Lal,
Ex. Driver, Railway Station,
Barielly.

(By Advocate: Shri B.S. Mainee)

....Applicant

-Versus-

1. Union of India through
General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

...Respondents

(By Advocate: Shri Rajeev Bansal)

1. To be referred to the Reporters or not? Yes

2. To be circulated to outlying benches or not? Yes

S. Raju
(Shanker Raju)
Member (J)

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ORDER

By Mr. Shanker Raju, Member (J)

1. Applicant impugns dismissal order passed by the respondents on 22.2.2000, appellate order dated 26.12.2000 upholding the punishment as well as order on revision dated 31.7.2002 revising the penalty to compulsory retirement.
2. On the result of preliminary enquiry conducted in the wake of collision of train no. 4258 and 136 Dn on 05.01.1998, the applicant was placed under suspension and was charge sheeted for major penalty under SF5 of the Railway Servant (Disciplinary and Appeal) Rules, 1968 [hereinafter referred to as Rules] with the following article of charges:

"That Shri Hardwari Singh, Dr/BE while working on Train No. 136 Dn Ex. BE passed Dn. Loop starter and Dn. Advance Starter of KAR in danger position and entered into the Block Section without proper line clear authority, resulting in dashing with 4258 DN Kashi Vishwanath Exp. Train standing in

Block Section of KAR-MST due to its Hose pipe damaged.

He is responsible for this accident and thus he violated Gr. 3.78(i)(a)(b) & GR 3.81(2) of G&S Rule Book, 1990.

Sd/-
Sr.D.M.E./M.B.

Annexure - II

Statement of imputation of Mis-conduct on Misbehaviors in support of the article of charge framed against Shri Hardwari Singh, Driver (pass)/BE

Train No. 136 DN Passenger stopped at KAR at 21/42 Hrs. Started by over-shooting Dn. Loop starter & Dn. Advance Starter of KAR in 'ON' position and entered into Block Section without line clear while Block Section of KAR-MST was already occupied by 4258 Dn. Kashi Vishwanath Express which left KAR at 21.28 hrs. was standing in Block Section due to dashing of a NEEL BULL against T/E which caused damaged of Air Hose of 4258 Dn. At front side which caused loss of Human lives, grievous hurt to passenger of 136 Dn. And 4258 Dn. Exp.

That Shri Hardwari Singh, Dr./BE while working on train no. 136 Dn. Ex. Passed on Loop Starter Dn. Advance Starter of KAR in danger position and entered into Block Section without proper line clear authority, resulting in dashing with 4258 Dn. Kashi Vishwanath Exp. Train standing in Block Section of KAR MST due to its Hose pipe damaged.

He is responsible for this accident and thus he violated Gr. 3.78 (i)(a)(b) & GR 3.81 (2) of G&S Rule Book, 1990."

3. Subsequently, a test inspection was conducted on Signal Failure Register of KAR by the Joint senior officials. The copies of Preliminary Enquiry Report and Inspection Report were sought for by the applicant on which the enquiry officer on 2.9.1999 observed that the same would be shown to him during the course of enquiry.

4. In the disciplinary proceedings, six prosecution witnesses were examined.

The examination of applicant had taken place and on his defence statement, with the following observations, the charge was partially proved:

"POINTS OF DISCUSSION:

1. On going through the documentary and oral evidence recorded in the enquiry, it is revealed that the guard of 4258 Dn(PW/5) took no proper measures to protect the train in rear. He placed only three detonators instead of four, which too not at the proper place. He could not produce the three exploded detonators. This is confirmed by the C.O., that only two detonators have been exploded. The aspect of using fusee by the guard (PW.5) is separately an after thought as after placing placing the last detonator at 21/49. 30 seconds the accident occurred just after 30 seconds at 21/50 hrs. Thus leaving no time for lighting and affixing the fusee. The deposition of PW/5 as such is not trustworthy.
2. The guard of 136 Dn Shri U.P. Singh (PW/6) has asserted that he heard the station bell rung as on indication by the station staff for starting the train from the station. On receiving this indication he whistled and waved green signal to the driver of 136 Dn for starting the train. He has also confirmed to have seen the off aspect of starter signal and exchanged signals with CSM/EC/KAR.
3. Shri Maikoo, CSM/EC/KAR (PW/4) has confirmed that on receiving the indication from slot indicator he exchanged the private numbers as per log register. He also confirmed that he exchange the signal with the engine crew as well as train guard of 136 Dn.

The PW/4 Shri Maikoo also confirmed the sequence of lowering the departure signals, first advance starter and then starter signal. However, as per the interlocking and the systems of working the starter signal can be lowered on pulling the lever being free, but the advance starter shall only be lowered on receiving the line clear from the station in advance.

Thus it is possibly accepted that the starter got lowered and showed green aspect as deposed by Shri U.P. Singh guard 136 Dn(PW-6) and the C.O.

This goes to prove that all requisite formalities as an authority to proceed from the station were fulfilled. But the aspect of getting the advance starter lowered in absence of availability of the line clear from MST is not possible under the existing interlocking system. As such the C.O's assertion that he confirmed the advance starter in OFF position while approaching it, which is the

authority to enter into the block-section KAR-MST is not convincing.

Shri R.B. Dixit, Sec/CML/MB (PW/7) deposition that ASM/KAR gave departure of 136 Dn from his station at 21/52 hrs. where as the train left KAR at 21/44 hrs. i.e. 8" later. Shri R.B. Dixit also confirmed that while giving the departure of 1376 Dn the ASM/KAR was perplexed.

This goes to prove that the ASM/KAR gave late information to the CNL in the hope of reaching the 4258 Dn at MST.

5. The cabin log register and the ASM log register are the documentary evidence, that the private numbers were exchanged for the departure of 136Dn. This could only be done after the receipt of line clear from MST.
6. The signals were on the D/Asstt. Side who is paid for assisting the driver in sighting the signals. It was a dense foggy day, this fact has been established in the enquiry. The D/Asstt. Has accepted in the statement-in-chief that be pronounced alright for starter and Advance starter. He is the only eye witness to the fact of lowering of the starter and advance starter. In the enquiry none of the PW has spoken the word about the OFF position of advance starter.

In view of the evidences on record of the enquiry it is established that the C.O. had requisite authority to proceed from the KAR station, but the authority to enter into the block-section KAR-MST was not available. The C.O. as such is partially responsible for the charges leveled on him, who failed to ensure the OFF aspect of the Dn. Advance starter.

FINDING:

The charges leveled on C.O. is partially proved to the extent of this, entering into the block-section KAR-MST without ensuring the "OFF" aspect of Dn. Advance Starter of KAR"

5. The enquiry report was commented upon through a representation, which led to an order passed on 22.2.2000 by the disciplinary authority holding the applicant guilty of the charge as per charge mentioned in SF5 with the following observations:

"I have carefully considered your representation no. nil dated 29.6.98 in reply to the Memorandum of Show Cause Notice of even number dated 22.6.1998. I do not find your

representation to be satisfactory due to the following reasons:

“Shri Hardwari Singh, driver/passenger/Hd.Qr./BE while working on train no. 136DN on 5.1.1998 ex BE passed the advance starter signal of KAR station in danger (ON) position and thus entered into the block section without proper line clear authority resulting in dashing his train with 4258DN (Kashi Vishwanath Express) which was standing in the block section of KAR-MST due to its loco's hose pipe damaged. After going through the charges framed against Shri Hardwari Singh/Driver/Passenger/BE, enquiry report of inquiry officer Shri I.P. Singh, SIO/MB comments and clarifications on the inquiry report from Shri Hardwari Singh/Driver/Passenger./BE and other associated documents, it is established that Shri Hardwari Singh/Driver/Passenger/BE while working on 136 DN failed to correctly see that verify the aspect of DN advance starter signal of KAR station which was in ON (danger) position and hence the crew of 136 DN did not have the authority to pass the last stop signal of KAR station, i.e. DN advance starter signal.

Since the driver and diesel assistant are required to verify the correct aspect of each signal and also to exchange the signal aspect with each other and then only pass the signal, in this case Shri Hardwari Singh, driver failed to observe ON (danger) aspect of the DN advance starter of KAR station and passed the DN advance starter in ON condition. As such he did not have proper authority to proceed. By this act, Shri Hardwari Singh failed to observe G&SR No. 3.78(1)(a)(b) & GR 3.81(2)&GR 14.08

Shri Hardwari Singh/Driver/Passenger/BE by overlooking the ON aspect on DN advance starter of KAR station on 5.1.1998 unauthorisedly entered into the block section for which he did not have authority and this resulted into serious accident and caused 51 casualties and 66 injuries to passengers.”

I, therefore, hold you guilty of the charges mentioned in the Annexure of SF5 levelled against you and have decided to impose upon you the penalty of dismissal from service.

You are therefore dismissed from service with immediate effect."

6. The appellate authority upheld the punishment by observing that the applicant was shown the concerned documents sought for and the accident had taken place not on the failure of advance signal but due to negligence on the part of the applicant.

7. On representation, taking a humanitarian view on the ground that the applicant was also injured in the accident and is yet to recover, reduced the penalty to compulsory retirement giving rise to the present O.A.

8. One of the pleas raised is a pure legal plea which requires no probe but whereas the enquiry officer held the applicant guilty by partially proving the charge of entering into the block section without ensuring off aspect of Dn advance starter of KAR. The disciplinary authority impliedly disagreed with the findings of the enquiry officer and not only held the applicant guilty of unauthorizedly entering into the block section over looking the ON aspect of Dn advance starter of KAR station on 5.1.1998 but had also unauthorizedly entered into the block section without authority resulting in serious consequences. In this attempt in entirety charges mentioned in Annexure SF-5 have been established and on which the applicant had been held guilty.

9. In the above conspectus, it is stated that the applicant was not partially found guilty of the charges but it is based on the disagreement arrived at by the disciplinary authority on the conclusions of enquiry officer which had not been preceded by either recording of tentative reasons or according reasonable opportunity to show cause, therefore, the same is not in consonance with the principles of natural justice and vitiates not only the order of disciplinary authority but all consequent orders in the light of decision of the Apex Court in the case of **Yoginath D. Bagde vs. State of Maharashtra**, ATJ 2000(1) 208 as well in the case of **P.N.B. vs. Kunj Behari Mishra**, SLJ 1989(1)SC 271.

10. As regards supply of documents i.e. preliminary report and inspection report' it is stated that the same was not made available during the course of enquiry and there is no evidence to show that the same was tendered to the Defence Assistant. For want of these important documents, enquiry is vitiated in the light of decision of the Apex Court in **Kanshinath Dixit vs. Union of India ATR 1986(1)186** and **State of Uttar Pradesh vs. Shatruhan Lal, 1998 (6) SC 55.**

11. Another argument put forward is on the basis of Railway Board letter dated 15.11.1984,which provides that in case any document has been referred to in the list of documents more particularly statements, then the witnesses should be listed and examined to prove it. In this conspectus, it is stated that Assistant Driver Brij Mohan, who was an eye witness and whose statement in P.E. was relied upon, was not examined in derogation of the law laid down in **Hardwari Lal vs. UOI & Ors., 2000(1) ATJ 244.**

12. Lastly it is contended that the applicant has been held guilty on suspicion and surmises. Evidence brought on record has not conclusively pointed towards the guilt of the applicant and taking the test of common prudent man, the allegations are not substantiated.

13. On the other hand respondents' counsel Shri Rajeev Bansal vehemently opposed the contentions and stated that there is no disagreement. For whatever allegations the applicant has been held guilty by the enquiry officer, the disciplinary authority imposed upon the applicant a punishment on that count.

14. As regards 'no evidence', it is stated that it was incumbent upon the applicant to have diligently secured an authority of KAR off position, which he ignored. The said negligent act of the applicant resulted in serious repercussion i.e. loss of human lives which stood proved on record of the proceedings.

15. As regards furnishing of documents, it is stated that the same have been provided to the defence assistant of the applicant during the course of enquiry and no prejudice has been caused.

16. It is further stated that as the applicant was partially held guilty despite such a serious repercussion of his negligence taking a lenient view he was compulsorily retired.

17. Lastly, it is stated that orders are speaking and do not suffer from any legal infirmity.

18. In the rejoinder, applicant re-iterated his pleas taken in the O.A.

19. On careful consideration of the rival contentions, as regards disagreement of disciplinary authority without following due process of law, as a sine qua non, it has to be established that there was a disagreement between the disciplinary authority and the enquiry officer in so far as his finding on the charge is concerned. Basically the applicant in the charge sheet has been alleged to have entered the block section without ensuring off position of Dn advance starter. The enquiry officer in his finding, having regard to the fact that the ill fated day was a dense foggy day, observed that the applicant, who was the main driver, having regard to the lowering of starter proceeded to having no authority to enter the block section without ensuring off position of advance starter. The contention put forth by the applicant having regard to the statement of A.S.M. Cabin Man, Mr. Maikoo, that advance starter was not functioning properly which is a device based on inter-locking has not been found correct in the inspection report which was shown to the defence assistant of the applicant. Accordingly, the disciplinary authority also held the applicant guilty of the charge of overlooking on aspect of the Dn. Advance starter. As a result of which, on a partially proved charge, the applicant had been held guilty. No other charge has been relied upon by the disciplinary authority to arrive at on infliction of punishment. Mere mention in the order that the applicant has been held guilty of the charge in SF-5 cannot be read

in isolation with para 3 of the order where the applicant has been held guilty and punished for overlooking on aspect of Dn advance starter. Accordingly, we do not find any disagreement between the disciplinary authority and the enquiry officer as to the finding of guilt is concerned. As such case laws cited by the applicant would be of no avail and would not apply in the present case. As regards examination of eye-witness, namely, Brij Mohan, Assistant Driver and Railway Board letter dated 15.11.1984 which provides that when the statements of witness are relied documents, the authors of the statements should be listed as witnesses.

20. As a condition precedent for any substantial violation of procedural rules, prejudice caused has to be established. The diesel assistant was required to verify the correct aspect of each signal but this does not absolve the applicant, as a main driver, from performing his duties and to ensure that before entering the block section he also ensures OK position of Dn. Starter.

21. Although Shri Brij Mohan is a co-delinquent and was dismissed, his statement was cited as a statement in the list of documents. The only reliance placed on his statement by the enquiry officer is to support the case of the applicant to arrive at a finding of partial proof of the charge by observing that the diesel assistant had accepted that he pronounced 'alright' for advance starter as well. However, this would not mitigate the negligence of the applicant who is equally responsible apart from his assistant to ensure the correct position of the advance starter which is the only authority to enter the block section. We do not find any prejudice caused to the applicant on this count. Accordingly, non-observance of board letter dated 15.11.1984 would not vitiate the finding or the consequent orders.

22. In so far as non-supply of documents is concerned, it is trite law that the document, which has not been provided, one has to show its relevance and utility for defence. We find that the applicant, as additional documents, has sought for the PE report as well as the copy of the test inspection of Dn. Advance starter.

The enquiry officer on 2.9.1999 observed that these documents would be shown to the applicant during the course of enquiry. The said documents, as per the appellate authority, had been provided to the applicant during the course of enquiry through his defence assistant. As such, we do not find any violation of principles of natural justice or any prejudice having been caused to the applicant on that count. Moreover, we do not find that the inspection report has overruled any discrepancy or mal-functioning in advance starter or failure of inter-locking. Accordingly, it is established beyond doubt that advance starter was in danger position when the train passed towards block section which is negligence per se on part of the applicant who overlooked it. Unless prejudice is caused, non-supply of documents cannot be established. Moreover, documents sought for by the applicant were provided to him.

23. As regards of 'no evidence', a finding would be disturbed and interfered in a judicial review by taking a test of a common prudent reasonable man if there is no evidence or conclusion is perverse, this is in consonance with the decision of the Apex Court in **Kuldip Singh vs. Commissioner of Police**, 1988(8)SC 603.

24. Applying the aforesaid, it has been established from the circumstances as well as evidence on record that the applicant as a driver has an onerous duty to ensure the position of Dn starter before entering the block section. The evidence brought on record clearly shows that the Dn starter cannot be in OK position, which is based on interlocking system till another train is on the block section. Accordingly, what has been brought in evidence is that there may be a violation on part of ASM so far as starter signal is concerned but the final authority to enter the block section is OK position of Dn advance starter, which was in danger position and the same had been ignored while crossing over which resulted in accident. Accordingly, the conclusion drawn by the enquiry officer is based on the evidence pointing out conclusive towards the negligence of the applicant, which cannot be interfered in judicial review as Tribunals are precluded from re-

appreciating the evidence or substituting its view in place of the departmental authorities. As regards misconduct is concerned, the Apex court in **Union of India vs. J. Ahmed**, 1979(2) SCC 286 as regards negligence observed as under:

“In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in **Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik**, in the absence of standing orders governing the employee's understanding, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In **S. Govinda Menon vs. Union of India**, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in **P.H. Kalyani vs. Air France, Calcutta**, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances for which a railway cabinman signals in a train on the same track where there is a stationary train causing head-on-collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine

and the aircraft crashes causing heavy loss to life. Misplaced sympathy can be a great evil (see *Navinchandra Shakerchand Shah vs. Manager, Ahmedabad Co-op. Department Stores Ltd.*). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 23 of the Conduct Rules as would indicate lack of devotion to duty.”

25. If one has regard to the above, a negligence in performance or a lapse in performance of duty or an error in judgment in evaluating the developing situation would not constitute misconduct *per se* unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and degree of culpability may indicate its grossness.

26. If one has regard to the above, there were two drivers in the train. The Assistant Driver informed the applicant about OK position of the starter and advance starter which has been blindly, without ascertaining, followed by the applicant who was the main driver and in this process the culpability of his negligence and grossness has resulted in collision with another train already standing in the block section due to burst of hose-pipe. As the applicant had failed to discharge his own onerous duties and obligation to ensure himself the OK position of the Dn advance starter while entering the block section . The said accident caused 51 deaths and injuries to several passengers. The job of a driver is in the safety section of the Railways. While performing his duties, he has to ensure that not only his life but also the life of the passengers travelling, is dependent on his shoulders. Any error of judgment would play havoc as in the present case, which has brought bad name to the Railways and a disrepute to the country. We also find that this accident and error of judgment was not on any mitigating circumstances or external factor as there was no failure of the Dn

advance starter. Accordingly the act of the applicant was certainly culpable/negligent, which caused resultant damage to the gravest extent for which the punishment imposed and reduced is not disproportionate. On a humanitarian approach, as the applicant is still to be heeled from his injuries taking his long service, the punishment has been modified to compulsory retirement which is benevolent act on the part of the Railways.

27. In the result, finding no infirmity with the orders passed by the respondents, OA is found bereft of merit as accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)

12/8/04

/Na/