

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/498/2015

Date of Order: 08.11.2019

Between:

D. Murali, S/o. D. Mallesu,
Aged 41 years, Occ: Loco Pilot (Goods),
O/o. The Chief Crew Controller,
Waltair Division, East Coast Railway,
Visakhapatnam,
R/o. D. No. 38-31-2/2, Green Garden,
Marripalem, Visakhapatnam – 18.

... Applicant

And

1. The Union of India,
Represented the General Manager,
East Coast Railway,
Chandrasekharpur, Bhubaneshwar.
2. The Chief Operations Manager,
East Coast Railway,
Chandrasekharpur, Bhubaneshwar.
3. The Additional Divisional Railway Manager,
Waltair Division, East Coast Railway,
Visakhapatnam.
4. The Senior Divisional Electrical Engineer (OP),
Waltair Division, East Coast Railway,
Visakhapatnam.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mr. Jose Kollanur, Advocate for
Mr.T. Hanumanth Reddy,
SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed challenging the penalty imposed on the applicant by the disciplinary which was confirmed by the appellate authority and later, modified by the revisionary authority.

3. Brief facts of the case are that the applicant while working as Loco Pilot was proceeded on disciplinary grounds for causing an accident. In view of the accident, applicant was issued with charge memo dt. 26.11.2013, to which the applicant submitted his reply on 3.02.2014 denying the allegation. Disciplinary authority vide order dt. 04/5.2.2014 imposed the penalty of "Reduction to a lower stage in the time scale of Pay by one stage from Rs.15,540/- to Rs.15,080/- in the Pay Band II Rs.9300-34,800/- with Grade Pay of Rs.4,200/- for a period of 03 (three) years on non-cumulative effect." Upon appeal, the appellate authority, vide order dt. 28.03.2014, confirmed the penalty imposed by the disciplinary authority. Thereafter, applicant preferred a revision petition and the Revisionary Authority, vide order dt. 4/10.11.2014, modified the penalty to "Withholding of increments for the period of 2 year (24 months), which will not have the effect of postponing the future increments." Aggrieved over the penalties, applicant filed the OA.

4. Contentions of the applicant are that the accident took place because of the role of many employees and the applicant being singled out is unfair. The issue of charge sheet showing duty particulars of the applicant wrongly speaks about the non-application of mind on the part

of the respondents. The fact finding inquiry was not conducted before issuing charge sheet. Respondents have also failed to conduct inquiry under Rule 11B of the Railway Services (Disciplinary & Appeal) Rules, 1968 in order to enable the applicant to defend himself effectively. Disciplinary authority imposed the penalty before completion of the statutory period granted for submission of the explanation to the charge memo. Appellate authority issued non-speaking order when an appeal was made against the order of the disciplinary authority. Revisionary authority though reduced the punishment, but introduced extraneous factors while coming to a decision to reduce the penalty.

5. Respondents contested the contentions of the applicant by stating that the applicant being a senior driver should have been cautious and alert while shunting loco motives. Applicant failed to notice the cocks in non-driving cab (cab-1) of shunting Loco No. 23057 which were in open condition instead of closed condition. Charge memo was received by the applicant on 25.01.2014 and he was given 10 days time to respond. Applicant did not do so till 04.02.2014. Therefore, disciplinary authority decided the issue ex parte. Applicant has not explained as to why he drove the loco motive with a speed of 12 KMPH though the prescribed speed should be between 3 to 5 KMPH. Applicant failed to check the brake system before moving the Loco. Senior Section Engineer of the Electric Loco Shed has investigated the incident and submitted report and based on the same, disciplinary authority imposed the cited penalty. Applicant has not denied the fact that he drove the loco motive at a speed of 12 KMPH. The disciplinary authority after taking into consideration

all the aspects has confirmed the penalty imposed by the disciplinary authority. The Revisionary authority while reducing the penalty has observed that the contention of the applicant about the controlling movement of the loco of the Loco through SA-9 instead of A-9 may be true, but he cannot be absolved from the responsibility of improper controlling of shunting Loco at the time of incident when Loco Speed was 12 KMPH. The Revisionary authority too opined that the punishment imposed by the disciplinary authority and upheld by the appellate authority was harsh. But the Revisionary authority never considered the charges in question as untrue.

Applicant filed rejoinder denying the averments of the respondents in the reply statement. He contended that there is no mention about the speed of 12 KMPH either in the Statement of imputation or in the orders of the disciplinary or appellate authorities. For the first, speed limit of 12 KMPH was mentioned by the Revisionary Authority. He further contended that the very reduction of penalty by the Revisionary authority shows that he was innocent and he is entitled for complete exoneration. He has averted number of accidents in the past, which testifies his dedication and it is known to the authorities.

6. Heard both sides counsel and perused the pleadings on record.

7(I) It is not a disputed fact that the applicant was involved in an accident while performing a shunting duty on Electric Loco Shed, Waltair. Based on the accident, disciplinary authority issued a charge memo on 26.11.2013 for imposing minor penalty under RS (D&A)

Rules, 1968. The statement of imputation of misconduct/ misbehavior alleged against the applicant reads as under:

“Sri D. Murali is employed as Loco Pilot (Goods)/DYD/WAT under the control of the Chief Traction Crew Controller/DYD/East Coast Railway/ Waltair. While working as such, he has performed P-1 Shift duties at ELS/WAT i.e. from 00.00 Hrs to 08.00 Hrs on 09.11.2013. As per the Lr. No. WAT/TRS/E-20/ Dated:20.11.2013 of Sr. D.E.E./TRS/WAT, during shunting operation he had failed to notice the position of A-9 (incoming and outgoing) cocks in non-driving cab (Cab-1) of shunting Loco No.23057 as those were in open condition instead of close. It indicates that he was controlling Loco through A-9 and BP pressure was not dropped, resulted brake not applied. So loco was not controlled and dashed the Loco No. 23889 at PWL by which machine components have been damages and accident averted. This shows his carelessness and lack of devotion of duty. Therefore, he is held responsible for not observing safety norms during shunting operations.

By action in the above manner, Sri D. Murali, Loco Pilot (Goods)/DYD/WAT of Chief Traction Crew Controller/ DYD/WAT of Chief Traction Crew Controller/DYD/E.Co. Railway/ Waltair has committed an act of misconduct contravening the provisions of Rule 3(1) (ii) & (iii) of RS (Conduct) Rules, 1966, which lays down that every Railway Servant shall at all times maintain devotion to duty. Thus, he has rendered himself liable for Disciplinary action under Rs (D&A) Rules, 1968 amended from time to time.”

The applicant was given 10 days time and before he could reply, the disciplinary authority imposed penalty ex parte. The order of the disciplinary authority reads as under:

“This is a case of non-observing safety norms during the shunting operations in the yards by the Charged Official on the duty in question, which has resulted in dashing the Loco No. 23889 at ELS/ WAT for which machine components were badly damaged on 09.11.2013. The C.O. has acknowledged the Charge Memorandum on 25.01.2014 and not submitted his explanation till date. Therefore, I, as a Disciplinary Authority and the powers conferred upon me impose the following punishment as ex-parte.

“Reduction to a lower stage in the time scale of Pay by one stage from Rs.15,540/- to Rs.15,080/- in the Pay Band-II Rs.9300-34,800/- with Grade Pay of Rs.4,200/- for a period of 03 (Three) years on non-cumulative effect.”

The order of the Disciplinary authority does not deal with the whole issue and particularly, without any reply from the applicant. Disciplinary authority appears to have been in great haste to impose the penalty. As per the principles of natural justice, an opportunity has to be given to the applicant to explain his side of the story so that the disciplinary authority has an opportunity to decide the issue by taking a balanced view. Without having the applicant's version, imposing the penalty is obviously unfair and violation of basic principles of natural justice.

(II) Further, in his appeal dated dt.21.02.2014, the applicant has raised the following points:

- I. Shunting Supervisor was not present.*
- II. Shunting Jamadhar has not been exhibited danger hand signal well in advance.*
- III. Due to curve it was not possible for me to observe the hand signal of shunting Jamadhar from appropriate distance.*
- IV. Due to supporting loco No. 23786, the brake power of loco 23057 was reduced to 50%. So, the loco could not be stopped at proper place.*
- V. Dead Loco No. 23889 which was at PWL was not secured by skids. (After this incident two skids have been provided).*
- VI. No any stop board is provided."*

The appellate authority passed an order on 28.03.2014, without considering the above points raised by the applicant in his appeal. The order of the appellate authority reads as under:

"Speaking Order:

As a appellate authority I have read out the case in details as well as the appeal submitted by staff. In his appeal the staff has given details of the incident but in no way he has accepted his fault though it is true that the incident has happened and for which working staffs/ machine are held responsible. Regarding this incident it is not mentioned about the responsibility of machine. Therefore, it is pointed out the responsibility of only staff C.O. has mentioned that he was fully dependent upon the

hand signal of shunting Jamadar though the whole responsibility is upon the loco pilot that if visibility is not proper then he should have to reduce the speed so that it can be stopped in case of any obstruction.

Hence, CO cannot be charged. The CO has not mentioned any reason in his appeal in view of which the punishment is to be reviewed. The CO has not realized his fault because realization is a step towards improvement. But no realization of his clear fault is not expected from any staff. Issue of charge sheet and punishment notice are the means for improvement but not realization his fault by the staff is a indication of not bringing improvement in future. At such stage the punishment awarded is correct.”

Therefore, the order is neither speaking nor a reasoned order.

Hence, it is not valid in the eyes of law.

(III) Applicant made a revision application to the Revisionary Authority on 28.04.2014 and the revisionary authority while reviewing the punishment, has observed as under:

“Considering the facts, charges framed and circumstantial evidences judiciously, I believe that the punishment imposed by the DA, being upheld by AA appear to be harsh, not commensurate with the gravity of offence committed by the CO. As Shri Murali has an unblemished track record prior to this incident and his good work was recognized with an award by DRM/ WAT in the year 2003, in exercise of power conferred upon me under Rule 25 of Railway Services (Disciplinary & Appeal) Rules, 1968, I, the Revisionary Authority have decided to reduce the punishment to “Withholding of increments for the period of 2 year (24 months), which will not have the effect of postponing the future increments” to meet the ends of justice.”

Thus, it is seen from the order of the Revisionary authority that the applicant had unblemished track record prior to the incident and his good work was recognized with an award by DRM/ WAT in the year 2003. The Revisionary authority has also observed that the penalty imposed by the disciplinary, as upheld by the appellate authority is harsh. It is also

observed by the revisionary authority that it was also not clear about the role and responsibility of Shunting Supervisor and there was also no clarity about securing of Loco No. 23889 on Pit Wheel Lathe. However, the revisionary authority has brought in an extraneous issue about the speed of the locomotive being 12 KMPH which is not adduced in the charge sheet issued to the applicant. Whenever any extraneous issue is to be discussed while disposing a disciplinary case, the competent authority should give an opportunity to the charged employee to defend himself on the extraneous issue, which is to be considered for finalizing the penalty. The revisionary authority has failed to give such an opportunity to the applicant by calling upon him to explain as to why he has exceeded the speed limited prescribed. Without giving such an opportunity and finalizing the penalty is once again violative of principles of natural justice. Thus, from the above, it is seen that the primarily disciplinary authority has imposed the penalty without waiting for the reply of the applicant. It is not known as to why the disciplinary authority was in such a great haste in deciding the case. Therefore, primarily the penalty imposed by the disciplinary authority lacks support of law. Further, appellate authority without considering the grounds stated by the applicant in his appeal, has issued a cryptic order, which does not cover the points raised by the applicant. Finally, Revisionary authority while considering the facts that the applicant had good past record and that he was given an award by DRM/ WAT, has brought in extraneous issue of speed of the locomotive without giving an opportunity to the applicant to explain as to whether he has followed the speed norms. Therefore, here again it is found that revisionary authority has faulted in not enabling the

applicant to defend himself about a charge which was not included in the original charge memo. Legal principles in respect of giving opportunity to an employee to explain himself as enunciated by the Hon'ble Supreme Court are as under:

In *Vice Chancellor, Banaras Hindu University Vs. Shrikant*, 2006 (11) SCC 42, Hon'ble Apex court observed that :

“An order issued by a statutory authority inviting civil or evil consequences on the citizen of India, must pass the test of reasonableness.”

Further, the Hon'ble Supreme Court observed as under:

“And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? (Kashinath Dikshita vs Union of India (1986) 3 SCC 229)

A document not confronted to the delinquent cannot be relied upon for establishing the fact that the delinquent is guilty of a misconduct (see Nicks (India) Tool vs Ram Surat, (2004) 8 SCC 222 at page 227.) “

Drawing an analogy from the above observations of the Hon'ble Supreme court, it is apt to observe here that the applicant herein was not afforded an opportunity to explain himself while extraneous facts which were not part of the main charge were relied upon by the Revisionary authority.

(IV) In view of the facts and the legal principles cited above, the impugned penalty imposed by the disciplinary authority vide order dt.04/05.02.2014, as confirmed by the appellate authority vide order dt.

28.03.2014 and the order of the revisionary authority vide orders dated 04/10.11.2014 are set aside. Consequential benefits thereof, pursuant to setting aside the penalty orders referred to supra, be granted to the applicant, as per extant rules. However, it is open to the respondents to proceed against the applicant by giving him reasonable opportunity in accordance with rules and law.

(V) OA is accordingly allowed, with no order as to costs.

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

Dated, the 8th day of November, 2019

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