IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.20/1288/2013

Reserved on: 22.10.2019

Pronounced on: 14.11.2019

Between:

D.S. Sridhar,
S/o. D. Ramachandra Rao,
Aged 36 years, Occ: Assistant Loco Pilot,
O/o. The Chief Crew Controller (TRSO),
South Central Railway, Rajahmundry,
R/o. H. No. 5-14, Raghavendra Nagar,
Bummuru, Rajahmundry – 533 124.

… Applicant

And

1. Union of India, Represented by
The General Manager,
South Central Railway,
Bilaspur, Chattisgharh State.

2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3. The Additional Divisional Railway Manager,
Vijayawada Division, South Central Railway,
Vijayawada.

4. The Senior Divisional Electrical Engineer (Operations),
South East Central Railway, Bilaspur, Chattisgarh.

5. The Divisional Electrical Engineer (Operations),
South East Central Railway, Bilaspur Division,
Bilaspur, Chattisgarh.

… Respondents

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

Counsel for the Respondents … Mr. N. Srinatha Rao, SC for Railways

CORAM:

Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Mr. B.V. Sudhakar, Administrative Member

ORDER
{As per B.V. Sudhakar, Administrative Member}

2. The OA is filed against the penalty of reversion of the applicant from Asst. Loco Pilot (ALP) Grade -I to ALP- Grade –II for a period of 3 years.

3. Applicant, while working as ALP in Bilaspur Division of South East Central Railway, was issued a major penalty charge memorandum on 7.4.2010 for alleged misconduct of failing to assist the Loco Pilot in Loco No 27370 resulting in overshooting the signal on 13.12.2009 in violation of GR 3.83. Disciplinary inquiry was conducted wherein the article of charge was held to be proved vide inquiry report dated 8.10.2011. Disciplinary authority imposed the penalty of 'removal from service' on 14.10.2011, which, on appeal, was modified to that of reversion of the applicant from ALP-I to ALP-II fixing the pay at the minimum of scale for a period of 3 years with cumulative effect and treating the period from removal to reinstatement as 'dies non'. Thereafter, applicant on joining Vijayawada division on inter zonal transfer, preferred a revision petition on 30.01.2011 wherein appellate order was confirmed on 05.12.2012. Aggrieved, OA has been filed.

4. The contentions of the applicant are that there is a contradiction in the article of charge and the statement of imputation, in that, when the applicant was not in the Engine, the question of assisting the Loco Pilot (L.P.) would not arise. Inquiry officer has stated that the L.P. has been changing his version frequently and therefore, his statement is manipulated. Inquiry Officer came to the conclusion based on documents

which were not introduced. Applicant went to the station on duty as per the direction of the Loco Pilot according to GR 3.83 (2) and therefore, he was not in the engine. However, applicant boarded the train when the loco passed the starter signal. GR No 3.83 was therefore not violated whereas Rule 9(25) of Railway Servants (D&A) Rules, 1968 was infringed and inquiry report was not based on evidence, but based on the report of the fact finding enquiry. Appellate authority was convinced of the applicant's innocence but ignoring the fact that the applicant was not in the engine when the incident occurred modified the penalty instead of setting it aside. Loco Pilot and the Guard of the Train were not removed from service but the applicant was. Loco Pilot was let off with comparably lesser penalty of reduction in grade pay for 5 years.

5. Respondents contest the submissions of the applicant by stating that the inquiry report has established that the applicant was on duty and that he got in to the Loco after it passed the starter signal. The duty of the ALP is to inform the Loco Pilot in regard to the aspect of the signal and it was due to dereliction of duty by the applicant, engine further moved from the yard towards Bilaspur bursting point No.46 B of GTW yard. Applicant has stated in the inquiry that he boarded the engine ahead of the starter signal and did not observe the aspect of the signal. In a joint enquiry it was found that the Loco Pilot was primarily responsible and the applicant as a subsidiary offender. Applicant by deserting the engine led to violation of GR 3.83. Inquiry officer has conducted the inquiry as per procedure and the applicant has not revealed the aberrations committed by the inquiry officer in conducting the inquiry. The JAG

officer's enquiry report and the joint findings of the Senior Subordinate Committee were listed as documents which the inquiry officer is empowered to refer to. ALP is provided with walkie-talkie to communicate with the ground staff and hence, there was no need for the applicant to desert duty. Loco Pilot varying submissions have no relation to the findings against the applicant. Station Master has deposed that he saw the applicant on the platform and not in the engine. If the Loco Pilot has started the engine without the applicant, then he should not have boarded the engine half way as it violates the principle of commencing the journey from the GTW yard. Appellate authority modifying the penalty is in order and in the context of safety harsh penalties have to be imposed. Penalties are imposed based on the gravity of the lapse and therefore, applicant comparing his penalty with that of the Loco Pilot is irrelevant.

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

7. I) Applicant while working as ALP was involved in an incident of the engine overshooting the starter signal and bursting of point No.46 B. Charge memo was issued with the main charge that the applicant did not assist the Loco Pilot (LP) in calling out the signal. Applicant claims that as per the article of charge he was to assist the LP whereas the statement of imputations indicates that he was not in the engine when the incident took place. Therefore, when the applicant was not in the engine, the question of assisting the LP does not arise. Hence the Ld. Counsel for the applicant pleads that the charge sheet is defective

and has to go. In contrast, respondents charged the applicant with infringement of rule GR 3.83 which reads as under:

> *"GR 3.83. Assistance of the engine crew regarding signals.—*
>
> *(1) The Loco Pilot and Assistant Loco Pilot, as the case may be, shall identify each signal affecting the movement of the train as soon as it becomes visible. They shall call out the aspects of the signals to each other.*
>
> *(2) The Assistant Loco Pilot shall, when not otherwise engaged, assist the Loco Pilot in exchanging signals as required.*
>
> *(3) The provisions of sub-rules (1) and (2) shall, in no way, absolve the Loco Pilot of his responsibility in respect of observance of and compliance with the signals."*

Applicant, as per respondents, by not being in the engine could not assist the L.P in identifying the signal and calling it out as per GR 3.83(1). Hence the violation of the said rule. Had the applicant been in the engine, the incident could have been averted. Respondents assert that in the inquiry, applicant has admitted the fact of boarding the engine after it moved but did not observe the aspect of the signal. Learned counsel for the applicant incessantly harped on clause GR 3.83(2) which specifies that when the ALP is not otherwise engaged, he has to assist the LP and therefore, he has gone to the station as per the directions of the LP. Thereby he could not be in the engine. However, the clause speaks about assisting the LP in exchanging signals and it does not imply leaving the engine. More over when the engine staff are provided with walkie-talkie where was the need for the applicant to leave the engine for the purpose of any communication. It appears that there could be something more than what meets the eye. Respondents, as a Public Sector Organisation, have to bestow impeccable importance to safety as the lives of passengers, asset safety, huge losses etc are involved. Hence

compromising on public safety has to be discouraged with utmost rigour. Inquiry Officer has held the charge as proved.

III) Further, the claim of the applicant that some of the documents have not been identified in the inquiry does not materially absolve the applicant of his dereliction of duty. It could at the most be a procedural lapse which should not come in the way in ensuring public safety by making the applicant reap the consequences of the failure in adhering to the duty assigned. The right of the applicant is undoubtedly important, but so are the rules/law and safety in ensuring that an alleged offender be subjected to the rules of the respondents organisation/law in the larger public interest. We rely on the observation of the Hon'ble Apex Court in ***Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd., 1984 Supp SCC 597*** as under, to state what we did:

> *"6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction..... The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?"*
>
> *9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law."*

Therefore, the Ld. Counsel for the applicant clinging to the aspect of procedural lapse, time and again, has not persuaded us to accept the said line of defence, in view the observation of the Hon'ble Supreme Court cited. Further, Inquiry report has established that the Station Master has seen the applicant on the platform and that the applicant boarded the engine after it passed the starter signal, which was not lowered for the engine to move from line No.5 at GTW yard. Deserting the engine is too a grave a risk which the applicant has undertaken and the consequences thereof have to be borne.

IV) Applicant has pleaded that he has been discriminated in imposing a harsher penalty but letting of the L.P with a lesser penalty for the same lapse. There is substance in this submission. Indeed, disciplinary authority has imposed the harsher penalty of removal which was modified by the appellate authority to that of reversion from ALP grade I to ALP grade II in the minimum scale of pay for 3 years with cumulative effect. However, when it came to the L.P, penalty imposed was reduction of grade pay for 5 years though GR 3.83 (3) lays a major responsibility on the L.P. In the context of this norm, there appears to be no equality in imposing the penalty. Admittedly, applicant was identified as subsidiary offender and the LP the primary offender. If this being so, it is beyond comprehension that the primary offender is let off with a lighter penalty and the subsidiary offender subjected to a heavier penalty. Appellate Authority did take a moderate view and revised the penalty, but it is riddled with the weakness of being not on par with the one imposed on LP. Thereby the modified penalty imposed is susceptible to

challenge on grounds of fairness. It is not out of place to state that the concept of equality comes into play in not only granting benefits but also in imposing penalties on employees when they are charged with failures of similar nature. Respondents' decision to impose a higher penalty on the applicant than the one imposed on the LP for the same incident undisputedly fails the test of fair play and reasonableness. In saying so, we take support of the Hon'ble Apex Court observation in ***Man Singh v. State of Haryana,(2008) 12 SCC 331***, at page 337 as under:

> ***20.*** *We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness.*

Therefore, in view of the above legal principle, the respondents need to have a relook at the penalty imposed on the applicant. It is a matter on record that the incident took place which is an undeniable fact. Applicant has to bear the responsibility for the incident to the extent as ordained by his duty chart. He cannot escape from the penal consequences for the failure on his part all together, more so when it comes to safety. Fortunately, there was no loss of life and the respondents did not mention about any loss due to damage of any equipment. However, the penalty has to be tempered on par with those involved in the incident as it is not

in consonance with the legal principle enunciated by the Hon'ble Supreme Court expounded in the above paras.

V) Consequently, the Penalty of reversion of the applicant to the lower grade of ALP II fixing the pay at the minimum of pay scale for 3 years with cumulative effect is set aside, leaving it open to the Reviewing authority to review the penalty as per the observation of the Hon'ble Supreme Court cited supra and take an appropriate decision in imposing a comparable or lesser penalty.

VI) Time allowed to implement the decision is 3 months from the date of receipt of the order.

VII) With the above directions, the OA is allowed. No order as to costs

(B.V. SUDHAKAR) **(MANJULA DAS)**
ADMINISTRATIVE MEMBER **JUDICIAL MEMBER**

Dated, the 14th day of November, 2019

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