

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A/350/764/2015

Date of Order: 26.09.2019

Coram: Hon'ble Mrs. Manjula Das, Judicial Member
Hon'ble Mr. N. Neihial, Administrative Member

Sri Vijoy Kumar Gupta, son of Sri Ayodhya Prasad Gupta, was compulsory retirement, residing at Ismile, Gurunanak Pally, Lane No. 8. P.O Asansol (South), P.S. Hirapur, Dist. Burdwan, West Bengal.

---Applicant

Versus

1. Union of India, through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Kolkata - 1.
2. The Chief Operating Manager, Eastern Railway, Fairlie Place, Kolkata 1.
3. The Addl. Divisional Railway Manager, Eastern Railway, Asansol - 713301.
4. The Sr. D.E.E (Operations), Eastern Railway, DRM Office, Asansol - 713301.

---Respondents

For the Applicant(s): Mr. C. Sinha, counsel
Ms. P. Mondal, counsel
For the Respondent(s): Mr. S. K. Das, counsel

ORDER (ORAL)Per: Mrs. Manjula Das, Judicial Member.

Being aggrieved with the impugned speaking order dated 18.10.2012 issued by the Appellate Authority, the applicant has approached this Tribunal seeking the following reliefs:

"That your applicant prays before your Hon'ble Lordship of this Tribunal that after Quashing/setting aside the impugned Speaking Order and punishment order of the Disc. Authority, non reasoned speaking order of the Appellate/Authority and the Speaking Order of the Reviewing Authority, Hon'ble Direction may please be issued to the Respondents, to reinstate the applicant in service with same capacity as had been before issue of charge-sheet with 100% back wages from the date of punishment order with admissible interest."


2. Heard Mr. C. Sinha, Ld. counsel leading Ms. P. Mondal, appearing on behalf of the applicant and Mr. S. K. Das, Ld. counsel for the respondents.

3. The facts of the case as submitted by Mr. C. Sinha, Ld. counsel for the applicant are that, the applicant, an Elec. Loco Pilot (Goods), E.Rly, Andal, was issued with a major charge sheet (SF-5) raising allegations that on 06.10.2011 while working as Co-Driver with one Arjun Yadav, the Train No. UP/EC/RTRR/SPL passed the Up-Home and

Routing Signal of GMO at "ON" condition at 00:31 hrs with further allegation that he failed to assist Mr. Yadav and apply emergency break in time. Both the charges have not been proved by the E.A, DA and AA without any supporting documents, statement of witness and deposition cannot be relied upon and the charges fail due to vague Charge Sheet.

4. Ld. counsel for the applicant also submits that there is no such damage either to the Train or loss of life. Moreover, the applicant was due for promotion to Loco Pilot and he was not having independent charge of Loco Pilot and had rendered his job like a learner in assisting. No Enquiry Report has been submitted to the applicant before imposition of punishment

5. Mr. S K. Das, ld. counsel appearing on behalf of the respondents, however, submitted that the applicant Shri Vijoy Kr. Gupta, on 06.10.11, while working as co-driver with Sri Arjun Yadav, Elect Loco Pilot (Goods)/UDL/EC/RTPR/SPL with electric Locomotive No. 27895/WAG-7/ASN, passed the up home and routing signal of GMO at ON (Red) condition at 00:31 hrs. The case was jointly investigated first by the senior supervisors of different departments involved in the movements of a train of GMO/E.C.Rly and later, the case was investigated jointly by the junior administrative grade officers of DHN division of East Central Railway. In the enquiry of JA grade officers, all the persons involved in the movement of this train were called and interrogated and statements were also taken and record about the incident. It was further submitted by Mr. S.K Das that the routing signal of GMO was at ON condition and the applicant failed to assist the Loco Pilot, Sri Arjun Yadav, and also failed to apply emergency brake in time vide No. H/1140/OPN/DA/VKG/2011/08 dt. 22.12.11. The charge sheet along with the entire inquiry report, statement of the officials, appeared before the enquiry and other relevant papers were supplied which were acknowledge by Sri Vijay Kumar Gupta on 26.12.11. The Disciplinary Authority then appointed an enquiry officer to enquire into the matter. The enquiry was held on 28.05.2012, 28.06.12 and 24.07.12 and enquiry officer submitted his enquiry report on 30.07.12 holding the applicant as guilty of the charges. Copy of the enquiry report was provided to the applicant, which was acknowledged by him on 04.08.12. A defences note dated 31.7.12 was submitted and applicant submitted a representation on 13.08.12.



After going through the enquiry report, the Disciplinary Authority passed a speaking order dated 05.09.12 imposing the punishment of compulsory retirement with full benefit with immediate effect. The same punishment was also imposed on the loco Pilot as per Railway Boards L/No. 99/Safety (A&R)/6/1 dtd 21.08.12. The applicant then preferred an appeal against the punishment to next higher authority on 18.9.12. Thereafter, the Appellate Authority passed a speaking order keeping the punishment same as imposed by disciplinary Authority.

6. Mr. C. Sinha, Id. counsel for the applicant, submits that the Appellate Authority has not gone through the case file and without appreciating the evidence confirmed the allegation of passing Signal in ON position, so the statement made in the speaking order is cryptic as nothing has been clarified in the speaking order. Had the Appellate Authority gone through the pros and cons of the case, and such vague impugned appellate order would not have been passed in nine lines.

Ld. counsel, however, replied that as the signals were suddenly put back on the face of the approaching train, even after application of emergency brake the train could not be stopped. From the final consequence of events it was difficult to ascertain whether the crew actually failed to control the train in time and in place or it was a case of signal suddenly put back, wherein the situation had gone beyond control of the crew. The difficulty became more due to the following inadequacies prevailing in the system of station working at Gomah Station of E.C. Rly, which are as under:

- (i) Absence of data logger.
- (ii) Non availability of SWR before the enquiry.
- (iii) Non reversal of point in rear after acceptance of train no. 12311 up.

7. Mr. C. Sinha, Id. counsel for the applicant further submitted that without proving misconduct, the Disciplinary Authority imposed punishment of compulsory retirement from service which is not permissible under the law. Had the documents as asked for by the applicant have been provided that could have proved that due to wrong signal, signal put back to danger, as (i) Data logger, (ii) Non availability of SWR before the enquiry, (iii) Non reversal of point in rear after acceptance of train no. 12311 up, it could have been proved that Gomo Cabin and J.J. Mercus is wholly responsible for giving



wrong Signal. But it is very surprising that such documents in spite of several request have not been provided by the authority, who had issued the charge-sheet and has admitted several times in his speaking order that charge/raised allegation has not been proved due to non-production of three documents.

Mr. Sinha, Id. counsel, vociferously submitted that, there is a procedural lapse on the part of the department as much as no such enquiry report was supplied to the applicant before imposition of punishment. Further if there was not any failure in the system at the station, no allegations and charge would have arisen against the applicant.

Mr. Sinha, Id. counsel for the applicant, fairly submits that the major punishment imposed upon the applicant is a disproportionate one ~~and with~~ commensurate to the charge levelled against the applicant.

8. Having heard the Id. counsel for both parties and having perused the pleadings and materials placed before us, we find that the Disciplinary Authority after proper and thorough enquiry penalty order of compulsory retirement was imposed.

So far as the question raised by Mr. C. Sinha, Id. counsel for the applicant as regards to supply of the Enquiry Report, Mr. S. K. Das, Id. counsel for the respondent failed to advance the arguments as much as he has no instructions to that effect.

9. Undisputedly there is no history or any record of the applicant to show that prior to this present charge, there was any such adverse report against the applicant, for example, show cause notice or any disciplinary proceedings. Moreover, the applicant just got promoted to the post of Loco Pilot from Asst. Loco Pilot and he had acted as assistant of the said train (empty train). The applicant had already rendered 11 years of service and would have retire in the year 2031 had he not been imposed compulsory retirement.

10. In the case of **S.P. Sampath Kumar Etc vs Union Of India & Ors 1987 1 SCC 124**, the Hon'ble Apex Court held that:

"The jurisdiction of Tribunal to interfere with the disciplinary matters or punishment can not be equated with an appellate jurisdiction. Tribunal

cannot interfere with the findings of enquiry officer or competent authority where they are not arbitrary or utterly perverse.

Further observed that *"if the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."*

In the case of **State Bank of Mysore & Ors vs. M.C. Krishnappa (2011) 7 SCC 325**, the Hon'ble Apex Court held that:

"It is well settled that punishment is primarily a function of the management and the courts rarely interfere with the quantum of punishment unless it is unreasonable and unduly harsh."

In the **Union Territory of Dadra & Nagar Haveli vs Gulabhia M.Lad (2000) 5 SCC 775**, the Hon'ble Apex Court held that:

"Court or Tribunal cannot interfere with discretion exercised by competent authority in imposition of punishment; unless the same suffers from illegality or procedural irregularity of material nature or punishment is shockingly disproportionate."

11. In the instant case, no such misconduct is proved in the proceedings of Disciplinary Authority against the applicant before imposition of punishment. It is settled principle of law that before imposition of major punishment, the Enquiry report has to be supplied to the delinquent officer. However, the respondents' counsel have failed to reply as to whether the copy of the enquiry report was supplied to the applicant, as alleged by the applicant.

Even no such proved of any evidence of document of acknowledgment for furnishing the enquiry report to the applicant if any before imposition of punishment. Thus there is an apparent procedural lapse on the part of the Disciplinary Authority while proceeded with the proceedings leading to the imposition of penalty.

12. By taking into account the entire conspectus of the case as well as ratio laid down by the Hon'ble Apex Court, we are of the view that the punishment so imposed upon the applicant of compulsory retirement is too harsh and disproportionate to the charges, where even fairness of proceedings commensurate to his charge are lapse.

Accordingly, the punishment order dated 05.09.2012 passed by the Disciplinary Authority and speaking order dated 18.10.2012 is set aside and quashed. The Disciplinary Authority shall proceed for imposing lesser punishment upon the applicant instead of compulsory retirement.

The O.A. is accordingly disposed of with no order as to costs.

(N. Neihial)
Member (A)

(Manjula Das)
Member (J)

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