

P.S.No.87/2011

Headquarter Office,
Churongate, Mumbai-20

No. E/Court/649/2/CAT(Judgement) Vol. VI

Date: 21.06.2011

To

All DRMs / CWMs & Units Incharge,

Of- Genl. Secy., WREU-GTR / WRMS-BCT.

Of- GS- All India SC/ST Rly Employees. Assn, 'W' Zone, Mumbai


Of- GS-All India OBC Rly Empl. Assn, Mumbai.

Sub: CAT/ADI's order dt. 21.3.2011 in OA No. 259/2009 filed by Shri R R Vankar, Dy.SS- Samlaya, Vadodara division.

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A copy of CAT/ADI's Judgement dt. 21.3.2011 in OA No. 251/2009 filed by Shri R R Vankar, Dy.SS- Samlaya, Vadodara division is sent herewith for information. It is requested that effective use of the said judgement may please be made while contesting similar case pending on your division/unit.

Encl: As above.


(S M Meena)
for General Manager(E).

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

OA No. 251/2009.

Date of Decision: 21-03-2011.

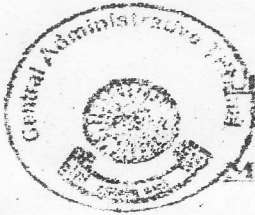
Mr. R.R. Tankar : Applicant (s)

Mr. G.P. Malhotra : Advocate for the Applicant(s)

VERSUS

Union of India & Ors. : Respondents

Mr. M.I. Patel : Advocate for the Respondent (s)



CORAM:

**HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)
HON'BLE DR. K.S. SUGATHAN, MEMBER (A)**

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

O.A.No. 251/2009.

Ahmedabad, Dated: this the 21st day of March, 2011.

CORAM:
HONBLE MR. MUKESH KUMAR GUPTA, MEMBER (J)
HONBLE DR. K.S. SUGATHAN, MEMBER (A)

Shri R.R. Vankar
Ex. SM Katnara
14, Amrapalli Society
Vishnagar Link Road,
Mehsana - 384 001.

..... Applicant.

(By Advocate: Mr. G.R. Malhotra)



VERSUS

Union of India, through the General Manager,
Western Railway, Headquarters Office,
Churchgate, Mumbai - 400 020.

2. The Divisional Railway Manager,
ERM Office, Western Railway,
Pratapnagar, Vadodara - 390 004.

3. The Chief Operating Manager,
Western Railway, Headquarters Office,
Churchgate, Mumbai - 400 020.

..... Respondents

(By Advocate: Mr. M.J. Patel)

ORDER

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

Ramesh R. Varkar, Station Master, in this second round of litigation, challenges validity of order dated 21st September, 2006 inflicting penalty of dismissal, modified by the Appellate Authority, to removal vide order dated 26.10.2007, as upheld by the Revisional Authority's order dated 13.10.2008. He also seeks declaration that ex-parte departmental inquiry conducted against him is illegal, arbitrary and violative of principles of natural justice and Rule 9(12) of Railway Servants (Discipline & Appeal) Rules, 1968, besides seeking all consequential benefits.



2. On earlier occasion he approached this Tribunal vide OA No. 164/2006, which was disposed of vide order dated 28.4.2006 requiring the Disciplinary Authority to first decide his representation dated 10.4.2006 and thereafter continue with the inquiry.

working adopted by Operating and Signalling staff. Applicant while working as Station Master Samlaya, on duty, failed to perform his duty and therefore exhibited lack of devotion to duty and also acted in a manner unbecoming of a railway servant. 21 documents and two witness were listed to support above noted charge. Earlier he was placed under suspension vide letter dated 22.4.2005. FIR was also lodged with Baroda Railway Police Station vide CR No. 63/2005 under Section 302, 307, 323, 325, 427 & 114 of IPC. While making representation on 10.4.2006 (Ann.A/7) he requested to withdraw/cancel said charge memorandum. Inquiry Officer, appointed to conduct oral inquiry vide communication dated 13.4.2006 conveyed to him that since he (applicant) has not furnished name of defence assistant, till then, should bring him on next date of inquiry fixed i.e. 22.4.2006. Prior to it, on 13.4.2006 (Ann. A/8) applicant had submitted a representation addressed to Senior DCM Baroda, whereby a prayer was made not to initiate said inquiry as case was pending before the Criminal Court and initiation of such proceedings would cause serious prejudice to him. Vide communication dated 22.4.2006 (Ann. A/9), next date was fixed namely 29.4.2006 on his request, stating that his defence assistant was not available and on the next date that he would bring the defence assistant. Immediately thereafter, he approached this Tribunal vide OA 164/2006. On disposal of aforementioned OA, applicant submitted representation dated 27.5.2006 (Ann. A/11) with a prayer to stay departmental proceedings as simultaneous prosecution and disciplinary proceedings is impermissible. Inquiry proceedings had also been held on said date, and according to applicant in absence of defence assistant he was



not willing to assist Inquiry Officer. As such nominate defence assistant, applicant was given last chance to engage defence assistant and enquiry was fixed for 3.6.2006. In reply to question no. 4 applicant agreed to attend enquiry with full readiness along with his defence assistant on the given date. Said question no.4 and his answer reads as under:-

"Q.4. Mr. Vankar since my nomination of E.O more than two months have passed and we could not go beyond the preliminary enquiry because all the time you refused to proceed ahead without your defence assistant, the proceedings are getting delay. Now this is the last chance being given to you to attend the DAR enquiry with your defence assistant and readiness. Failing which E.O will be free to give his verdict. The next date of enquiry proceedings is fixed at 10.30 hrs. on 3.6.2006 in the chamber of Station Manager, BRCP. Do you agree ?

Ans. Yes. I agree. I will attend the enquiry with full readiness along with my defence assistant Shri Y.T. Modi, on the given date."

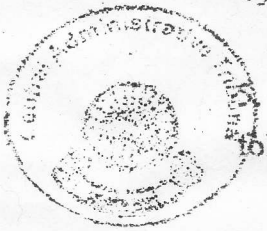
(emphasis supplied)



On 3.6.2006 applicant's defence assistant was not present and therefore, he again refused to proceed with the enquiry and requested to give "one more chance". Accordingly enquiry was again adjourned to 4.6.2006. On 4.6.2006 also, applicant did not participate in enquiry and hence ex-parte proceedings were initiated. In such circumstances Inquiry Officer conducted ex-parte proceedings and on examination of documents and witnesses as well as record, concluded that charges levelled against him are proved. Said findings were made available vide memorandum dated 6.7.2006 requiring him to submit representation, if any. He indeed submitted a representation on 14.7.2006 (Ann. A/12) and contended that

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since pt's representation had not been considered, inquiry officer was not justified to proceed with the enquiry and in any case inquiry officer acted illegally and arbitrarily. There was no justification to conduct ex-parte proceedings. On examination of findings of inquiry officer as well as applicant's representation, holding applicant responsible for said accident, penalty of dismissal was inflicted vide order dated 21.9.2006. On statutory appeal preferred, appellate authority looking at his age and taking lenient view reduced penalty to "removal", vide order dated 26.10.2007 (Annexure A/2). Being aggrieved, revision petition was preferred on 9.12.2007, which was rejected vide order dated 13.10.2008, upholding punishment imposed by appellate authority.



Shri G.R. Malhotra, learned counsel appearing for applicant raised following contentions:-

- (i) Applicant had rendered 8 years satisfactory service since the date of his appointment i.e., 29.12.1997. No accident or failure on his part in performing duty was ever alleged.
- (ii) Applicant in no way was responsible for said accident. Shri Rajji Bhaiji, Pointsman was deputed to watch the train from off-side and as applicant was on platform to show alright signal to train No. 9168 Sabarnai Express. In his representation dated 23.1.2006, in reply to charge memorandum dated 6.12.2005, he had clearly pointed out that his name did not appear in FIR and as such there was no prima facie case against him. It

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is later on, his name was included in said FIR for malafide reasons. He had submitted another representation dated 10.4.2006 with a prayer not to proceed with departmental enquiry as criminal case has been registered and further that his defence will prejudice as basis for initiating such proceedings is the same incident. Inquiry was conducted on 13.4.2006, wherein he had categorically denied the charges levelled against him.

(iii) When the enquiry was resumed on 27.4.2006, after disposal of applicant's OA, he had made a detailed representation to stay the departmental proceedings, but the same had not been considered objectively. He was prevented from engaging defence assistant, who was a retired official and, put up almost 300 KM away. Atleast 10 days time ought to have been given to him but the Inquiry Officer was determined to conclude proceedings against him and therefore fixed enquiry on 3.6.2006.



(iv) Inquiry Officer without giving notice to him to proceed ex-parte acted in violation of statutory provision under Rule 9(12) of the Rules and hastily submitted his findings dated 6.6.2006. Entire action amounts to denial of reasonable opportunity which render entire departmental enquiry illegal and void ab-initio.

(v) Vide representation dated 27.5.2006 Inquiry Officer was informed that his defence assistant Shri Y.T. Modi was unable to attend enquiry upto 30.5.2006 due to personal reasons. On 3.6.2006 the Inquiry Officer hastily fixed next date of enquiry on the very next date i.e., 4.6.2006 without giving

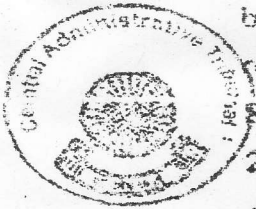
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sufficient time to produce effective defence.

(vi) Two witnesses listed in charge sheet were examined on 4th & 5th June, 2006 in applicant's defence and therefore he had no opportunity to cross examine them.

(vii) Placing reliance on his statement (Ann. A/13) it was contended that Pointsman Rajji Bhaji & P.No. of R/P exchange with B cabin Shri Jaisingh Lala, Switchman were with him at about 2.40 hrs. Shri Jaisingh Lala informed him that indication of point no. 9 had not been received even with setting and locking the point. On this he sent memo to ESM/SMLA through P.P. Sameer. R at once. Shri Balwant and Bodhu, helper arrived at station but they did not take memo and told that they were going to B cabin to rectify the problem. They may not have taken key of relay room from Station Master on duty. The line clear of train no. 9168 was obtained at 2.55 hrs and departure from CPN received at 3.04 hrs. Shri Jaisingh Lala on duty switchman B cabin informed him that indication of point no. 09 appeared on cabin and gave control for up home signal no. B-1. Both the signals were green. He had deputed points man to watch the train from off side and he was also ready on platform to show all right signal to train no. 9168. But all of sudden train entered in loop line no. 4 and collided from rear on RAI JNPT at 3.12 hrs.

(viii) Witnesses examined by the Inquiry Officer were not material witness. It is Rajji Bhaji & Jaisingh Lala, who were responsible for correcting

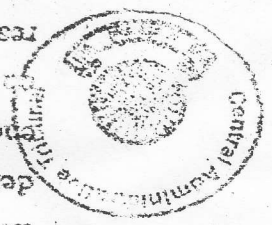


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 settings and verified point no. 9. Said persons were not listed as witnesses. Witnesses listed were Deputy TNL and Mail Express Guard, who had no role at all in said incident.

(ix) Disciplinary Authority agreed with the findings of Inquiry Officer mechanically and inflicted punishment of "dismissal", which had been modified by Appellate Authority to "removal". Contention raised vide statutory appeal were not examined in its true perspective. Even Revision petition was rejected without examining the issues raised therein. He was willing to attend inquiry with his defence assistant. He never refused to attend the enquiry nor he expressed his inability to proceed with inquiry in absence of his defence assistant. Learned counsel emphasized that defence assistant was staying far away from Sabarmati and as such he could not communicate with him. Placing reliance on AIR 1968 Delhi 85, K.N. Gupta V/s. Union of India & Ors., ATR 1990 (1) CAT 505, Sakh Lal vs. Union of India & Ors., & 2001(3) ATJ 131, Arun Kumar Swain V/s. Union of India & Ors., learned counsel vehemently contended that the Inquiry Officer violated Rule 9(12) of the Railway Servants (D&A) Rule, 1968 which enjoins giving atleast 10 days time to the delinquent Government servant to enable him to produce his defence. Denial of such an opportunity is violative of principles of natural justice. Furthermore, it is a case of no evidence; conducting ex-parte enquiry was not justified. Complicated question of facts and law was involved. In the above backdrop Shri G.R. Malhotra, learned counsel vehemently contended that applicant is entitled to relief as prayed for.



6. By filing reply as well as sur-rejoinder, the respondents contested the claim stating that he was afforded full opportunity to participate in the enquiry. He did not turn up along with his defence assistant, without any reasonable justification. His suspension was revoked on 17.2.2006. Representation dated 10.4.2006 was replied vide communication dated 22.5.2006 conveying him that there was no reason to stay the departmental proceedings particularly when as per law laid down by Hon'ble Supreme Court it is not necessary to stay departmental proceedings because a criminal case is pending before a Court of law on the same charge. Once competent authority had decided his representation, as per direction of this Tribunal, rejecting his request to stay departmental proceedings, there was no justification on his part to prolong enquiry on specious plea that his defence assistant was not available. He had sufficient time to attend enquiry. The enquiry was adjourned on his request by the Inquiry Officer 27.5.2006, to 3.6.2006. Applicant had grossly violated duties and responsibilities of Station Master vide SWR and Sr.No. 3.68(1)(a) vide C & SR. Said aspect were established and substantiated by witnesses in their direction. He ought to have attended enquiry along with his defence assistant and there was no justification at all to avoid it. His representation dated 14.7.2006 had been considered by the Disciplinary Authority before inflicting penalty of dismissal. Appellate Authority had taken a lenient view and reduced penalty to "removal". If S & T staff had taken the key-
 authorised, the applicant should have taken appropriate action and not given him clear to 9168 UP without personally verifying the points. Shri
 H.L. Patel, learned counsel appearing for the respondents contended that as



applicant had been granted more than sufficient opportunities to place his effective defence, which he has failed to avail deliberately, for the reasons best known to him, he deserves no sympathy by this Tribunal.

7. We have heard learned counsel for the parties, perused pleadings and other material placed on record, besides original records of disciplinary proceedings.

8. Original records of disciplinary proceedings were produced. Perusal of such record reveals that after imposition of penalty of dismissal, applicant had submitted statutory appeal and punishment was modified to removal vide order dated 23.10.2007. Thereafter his request for grant of pension had been considered by the competent authority and noticing that he had not completed prescribed qualifying service for grant of pension, the same was inadmissible. However ADRM vide order dated 21st December, 2007 sanctioned 25% of 2/3rd of principal gratuity.

9. The basic contention of applicant was that he had been denied reasonable opportunity to submit his defence by the Inquiry Officer. On examination of record with reference to material placed on record as well as original record, we noticed that enquiry was fixed on 22.4.2006 which had been adjourned to 29.4.2006 on his request. Thereafter as the applicant approached this Tribunal vide GA 164/2006, a direction was issued to consider applicant's representation dated 10.4.2006. Said representation was rejected by the competent authority and enquiry was to proceed. Thus

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enquiry was held on 27.5.2006. Due to non-availability of defence assistant, the was adjourned to 3.6.2006. Once again the defence was not available and granting one more opportunity, the proceeding was adjourned to 4.6.2006. On none of these dates, the defence assistant was present before the Inquiry Officer. Basic plea raised before the competent authority as well as Inquiry Officer had been to stay departmental proceeding till criminal case is decided. Thus basic issue which we are required to consider is whether respondents have denied him reasonable opportunity of being heard or it is the applicant who for one reason or the other remained adamant and did not participate in inquiry proceedings. As noticed hereinabove, enquiry had been held as many as on 4 dates. Though defence assistant was not present and required pass issued by Railway authorities in his favour, said defence assistant did not presented himself along with the applicant before the Inquiry Officer. On each date of hearing, applicant virtually refused to participate in the proceedings conducted by the Inquiry Officer on specious plea that defence assistant was not available. On 22.4.2006 proceedings were adjourned to 27.4.2006 on the specific undertaking given by applicant that he will bring his defence assistant on next date of hearing. Similarly on 29.4.2006, in reply to question No. 4, extracted hereinabove, he agreed that he was ready to participate in enquiry and he will attend the enquiry along with defence assistant on given date i.e., 3.6.2006. Yet in defiance of direction as well as breach of undertaking, he did not participate in enquiry. As the facts already noticed hereinabove would reveal that he had made a representation dated 27.5.2006 with a prayer to stay departmental proceedings contending that

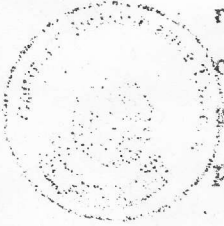


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simultaneous proceedings is impermissible. We may, at this stage, note that this was the precise plea raised by him vide representation dated 10.4.2006 and on that premise he had approached this Tribunal vide OA 164/06. Said prayer had not been accepted by the Tribunal. Rather, OA was disposed of requiring the disciplinary authority to first decide said representation and thereafter "to continue with the enquiry". What can not be achieved directly can not be allowed indirectly is settled legal principle. In our considered opinion applicant is basically over-reaching the order of this Tribunal, which is impermissible in law. His contention that Inquiry Officer denied him reasonable opportunity to defend his case is far from truth. There is no justification and basis for making such wild allegation. The provisions of Rule 9(12) did not require the enquiry officer to adjourn the matter for at least 10 days time, on each dates of hearing, as projected. It is only applicable when the delinquent official is not present and Inquiry Officer records ex-parte evidence of the Presenting Officer. In present case, daily order sheet dated 27.5.2006 makes it abundantly clear that applicant was provided last chance to appear in departmental proceedings along with defence assistant failing which it was made clear that : "enquiry will proceed ex-parte". Yet, he did not appear along with defence assistant on 3.6.2006. Therefore, it is not open to him to contend that he was required to be given show-cause notice before proceeding ex-parte. In our considered view, neither provisions of rule 9(12) nor principles of natural justice were breached. It is applicant, who is responsible for such state of affairs, since he abandoned the enquiry, did not participate therein deliberately for the oblique reasons. As such he can not be allowed to turn back and accuse the



Inquiry Officer. Other contentions raised by applicant that witnesses listed was not material witnesses; he had not committed any misconduct. Disciplinary authority passed cryptic order without any application of mind are totally frivolous and misconceived. When he had not participated in the enquiry, he is estopped from raising such unsubstantiated contentions. Judgments cited are inapplicable in present case inasmuch as the applicant had been afforded reasonable opportunity of being heard; was warned for proceeding ex-parte, and, therefore said judgments are totally distinguishable and inapplicable in given facts of present case. Scope of judicial review is well settled. The Tribunal can not re-appreciate material and evidence produced in enquiry. On examination of records, with reference to Inquiry report, we are satisfied that there had been overwhelming evidence against the applicant. Penalty of dismissal had been modified to removal vide order dated 26.10.2007 and he was allowed partial gratuity.



10. In view of discussion made hereinabove, finding no merits, OA is dismissed. No costs.

[Signature]
 (K.S. Sugathan)
 Member (A)

[Signature]
 (Mukesh Kumar Gupta)
 Member (D)

v/c.

Prepared by *[Signature]*
 Checked by *[Signature]*
 Date *[Signature]*