

(2008) 08 OHC CK 0074
In the Orissa High Court

Parsuram Mohapatra

APPELLANT

Vs

Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Citation : (2008) 106 CLT 878 : (2008) 2 OLR 754

Hon'ble Judges : Sanju Panda, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This writ petition has been filed against the impugned judgment and order dated 25.1.1999 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 681 of 1993 dismissing the O.A. filed against the impugned order of punishment of withholding of next three increments of the petitioner raising his pay from Rs. 20007 to Rs. 2040/- for a period of three years without cumulative effect from the date when it would otherwise be due to him but the period of punishment shall not operate to postpone future increments on the expiry of the period of punishment.

2. The brief facts of the case are that the petitioner was a Grade-B Guard under Khurda Road Division of the South Eastern Railways with headquarters at Cuttack. A memo of charge dated 9.9.1993 was received by him on 20.9.1993. On the same date he submitted an application requesting for supply of the copies of the documents containing materials in support of the charges. His case was that he was not supplied with the necessary documents due to which he remained in dark and the impugned order of punishment was passed.

3. The case of the opposite parties was that on 4.7.1993, the petitioner was ordered to work in Train No. D/PRDP/Jamboo Goods Train from Cuttack Station Road. The train left Cuttack at 15.45 hours after attaching six wagons positioned next to the train engine. The load of the train was 69 CRC empty wagons and one match truck. While the train was on the run between Cuttack and Kandarpur

Stations, one CRC empty wagon jumped off the track and derailed at KM.410/3-4 and dragged up to KM-410/06. Two wagons positioned third and fourth from match truck capsized and dropped down from bridge No. 4 and another wagon 5th from the match truck capsized and dropped down at the right side of the bridge. The next wagon, i.e., the 6th from the match truck was hanging over the bridge and mounted on the fifth wagon at Kandarpur end and subsequently dropped down from the bridge at about 16.05 hours. The incident took place in broad daylight and in fair weather. There was extensive damage to Railways property and movement of train services between Cuttack and Kandapur Stations was interrupted for more than 16 hours. A committee consisting of the Assistant Engineer-II, Cuttack, Assistant Area Superintendent, Cuttack and Assistant Mechanical Engineer (Power), Khurda Road, was appointed by the competent authority, the Divisional Railway Manager, to enquire into the cause of the accident. The Committee submitted its report, which was accepted by the Divisional Railway Manager. The petitioner was given charge-sheet and was awarded minor penalty as he was not alert in his duties in destroying vacuum in time and also did not exchange signal with the Driver and D.D.A. on curvature to ensure safe running of train as a result of which the CRC wagons derailed at KM-410/3-4. Therefore, he was charged for having violated Rules, 4.43, 2.11(2) (c) and (d) of GR 4.42.01(b) of Safety Rules and Rule 3.1(ii) of Railway Servants Conduct Rules, 1966. He was asked to explain within 10 days in reply to the charge-sheet but without submitting the explanation, he made an application demanding certain documents mentioned therein. In order to provide reasonable opportunity, a phone message dated 10.10.1993 was sent to the petitioner by the Divisional Safety Officer through the Station Master, Cuttack to collect the documents from the office of Divisional Safety Officer, South Eastern Railways, Jatni, Khurda Road. It was learnt from the petitioner that he would attend the office on 13.10.1993 for collecting the documents but he did not turn up. Thereafter another message was sent to the petitioner on 14.10.1993 directing him to collect the documents but the petitioner remained on sick leave from 15.10.1993 to 31.10.1993 and resumed duties on 1.11.1993. Thereafter also he did not attend the office of the Divisional Safety Officer to collect the documents. He failed to submit explanation even after he resumed his duties on 1.11.1993. Therefore, the Divisional Safety Officer took the view that the petitioner had no explanation to offer and after due consideration of the materials on record and without any denial from the petitioner, passed the punishment order on 2.11.1993 withholding his one increment for three years without cumulative effect which was received by him on 8.11.1993.

4. On perusal of the cause of the opposite parties, it appears that though the petitioner was posted at Cuttack he was required to collect the documents from the Divisional Safety Officer at Khurda Road. The opposite parties could have sent the documents to Cuttack. However, the opposite parties have themselves said that the petitioner remained on sick leave from 15.10.1993 to 31.10.1993 and resumed duty on 1.11.1993. As soon as he resumed his duty, the impugned

order of punishment was passed on the next day, i.e. 2.11.1993. Besides this, we have perused the report of the Enquiry Committee constituted as mentioned above. The only finding of the Enquiry Committee is as under:

After examination of the site of accident and going through all the evidence, we are of the opinion that on 4.7.1993 the wagon No. NR 61103 of D/PRRDP JB Goods train was the first to derail at KM 410/3-4 between CTC-KDRP stations due to a sudden jerk applied by the driver of the train while the engine was on descending grade and the wagon was on up grade and curvature.

The report of the Committee further reveals:

As per the topographical condition of the site, the drivers should have been cautious in operations. Due to his mis-judgment of controlling the train, the jerk took place which led to one of the wheels of the Wagon No. NR 61103 going off the track. Since the point of mount and drop is the same it is evident that the cause of the derailment is nothing but out of the jerk applied by the driver.

With regard to the guard, i.e., the petitioner, the Committee has given its finding but the same is contrary to the above quoted situation which is as under:

Subsequently, though the guard was not directly responsible, but he failed for his devotion to duties. Had he been vigilant on run on the curvature this disaster of other empty wagons getting bunched up and capsized over the bridge could have been averted.

5. Therefore, the guard was held to be not vigilant. The situation narrated by the Committee was not taken into consideration by the disciplinary authority and that situation was that due to the sudden jerk applied by the driver of the train and due to his mis-judgment of controlling the train the jerk took place which led to one of the wheels of the wagon No. NR 61103 going off the track and the cause of derailment is nothing but out of the jerk applied by the driver. Therefore, it was to be considered as to whether the guard had ample time to take action or not in such a sudden jerk and immediate derailment. The statement of the driver was recorded in the month of December, 1993 but the impugned order of punishment was passed on 2.11.1993. Therefore, for the above reasons, we are of the opinion that the petitioner could not get reasonable opportunity to defend himself in the proceeding and hence the impugned order of punishment is liable to be quashed and the matter is liable to be remitted to the disciplinary authority to reconsider the same and take appropriate decision after providing opportunity to the petitioner.

Accordingly, we quash the impugned order of punishment as well as the impugned order of the Tribunal and remit the matter to the disciplinary authority for reconsideration and appropriate decision after affording opportunity to the petitioner. The writ petition is allowed to the aforesaid extent.

Sanju Panda, J.

6. I agree.