

(2019) 01 DEL CK 0272

In the Delhi High Court

Case No : Civil Writ Petition No. 1261 Of 2016

Union Of India & Ors

APPELLANT

Vs

Raman Kishore

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9
Railway Servants (Conduct) Rules, 1966 — Section 3(I), 3(III)
Statutory Investigation into Railway Accident Rules, 1998 — Rule 4

Citation : (2019) 01 DEL CK 0272

Hon'ble Judges : Vipin Sanghi, J;A.K. Chawla, J

Bench : Division Bench

Advocate : V.S.R. Krishna, M.S. Saini

Final Decision : Disposed Off

Judgement

Vipin Sanghi, J

1. The Union of India has preferred the present writ petition to assail the order dated 20.07.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT) in OA No. 3059/2013.

2. The said OA had been preferred by the respondent to assail the disciplinary proceedings initiated against him, which culminated into imposition of penalty of removal from service upon him. The respondent also assailed the order rejecting his appeal thereagainst.

3. The respondent was charge-sheeted vide memorandum dated 22.02.2010 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The Article of Charge framed against him, and the statement of imputation of misconduct or misbehaviour in support of the said charge reads as follows :

"Because the aforesaid Shri Raman Kishore ESM-I/VBRD, you have been held responsible under Para 8.2.1 of the enquiry report of Commissioner of Railway Safety, Lucknow, in connection with the accident in the mid of Mathura and

Vridaban Road Stations between 2779 Goa Express and 2964 Mewar Express at Km-1401/2-4 during the course of your duty on 21.10.2009, and the charge is shown under para 8.2.3 (III)".

The statement of imputation of misconduct or misbehaviour in support of the aforesaid charge is as under:-

"Article-I

You have been held responsible under Para 8.2.1 of the enquiry report of Commissioner of Railway Safety, Lucknow, in connection with the accident in the mid of Mathura and Vridaban Road Stations between 2779 Goa Express and 2964 Mewar Express at Km-1401/2-4 during the course of your duty on 21.10.2009, and the charge is shown under para 8.2.3 (III).

Thus by your acts and omissions as ESM-I, VRBD, you have violated the Clause (I) & (III) of Rule 3 (1) of the Railway Servants (Conduct) Rules, 1966."

4. The charge-sheet came to be issued to the respondent on account of the fact that an accident between two trains namely, 2779 Dn. Goa Express and 2964 Dn. Mewar Express at KM 1401/2-4 took place somewhere between Mathura and Vrindavan Road Stations during the course of his duty. The accident invited statutory investigation, which was conducted under Rule 4 of the Statutory Investigation into Railway Accident Rules, 1998, which resulted into the preparation of the report dated 08.12.2009.

5. The primary document relied upon in support of the charge was the said report prepared by the Commissioner of Railway Safety, North Eastern Circle dated 08.12.2009. The said report is placed on record and it is a detailed document. A bare perusal of the same shows that while making the said report, in depth investigation was conducted and statements of various persons concerned, including the respondent, were recorded. The circumstances which led to the said accident were analyzed and the report concluded by recording the cause of accident in para 8.1 as follows :

"8.1 Cause of the Accident:

Having, carefully considered all the evidence tendered, records produced, observations, site inspection and circumstantial evidence. I have come to the conclusion that the Rear-end collision of 2964 Dn. Mewar Express with 2779 Dn. Goa Express at Km. 1401/2-4 between Mathura Jn. and Vrindavan Road stations on MTJ-Palwal Section of Agra Division of North Central Railway occurred as the integrity of the signalling system in the automatic signalling territory was compromised due to manual intervention by S& T Staff of Agra Division. The contributory factor in the accident was inability of the crew of 2779 Dn. Goa Express to spot the 2964 Dn. Mewar Express which was standing in the section due to ACP, and control his train in time.

Accordingly, the accident is classified under the heading "FAILURE OF RAILWAY

STAFF"

6. The primary responsibility for the accident was fixed on the respondent, who was then ESM Gr.-I, Agra Division. Apart from the respondent, others found blameworthy, were Mr. R.K. Chaturvedi, Loco Pilot, Goa Exp., H.Q. Jhansi, Mr. Laxmi Kant, Asstt. Loco Pilot, Goa Express, H.Q. Jhansi and S&T Department of Agra Division for being lax in supervision of maintenance practices leading to application of dangerous shortcut methods by field staff.

7. During the inquiry proceedings, it appears that on 31.03.2010, the Inquiry Officer put certain preliminary questions to the respondent delinquent, which have been set out in the impugned order itself. They are pertinent and read as under :

"Dated: 31.03.2010

Q.1 Have you received SF-5 No. MTJ/P/2/DAR/RK or not?

Ans. Yes. I have received.

Q.2 When have you received SF-5 No. MTJ/P/2/DAR/RK? Ans. I have received SF-5 No. MTJ/P/2/DAR/RK on 28.01.2010.

Q3. Do you know the charge against you in SF-5 No. MTJ/P/2/DAR/RK?

Ans. Yes. I know.

Q4. Do you admit the charge or not?

Ans. I accept.

Q5. Your charge is that you have been held responsible under Para 8.2.1 of the Enquiry Report of CRS Lucknow in connection with accident that happened between Mathura and Vrindaban Road Stations at KM 1401/2-4 between 2779 Goa Express and 2964 Mewar Express and 2964 Mewar Express on 21.10.2009 during your duty. What do you want to say regarding this?

Ans. Gateman of Gate No. 528 Shri Khem Chand informed at 04.50 hours that Dn. Signal did not show while the train had already passed 8 minutes ago. I locally reset Dn.A/C and gave NSR and signal became clear and train passed.

Q.6 When and how the information regarding accident between 2779 Goa and 2964 Mewar received?

Ans. I received the information at 05.10 hours from the Gateman at the Gate.

Q.7 What have you done after receiving the information of accident between 2779 Goa & 2964 Mewar Express? Ans. I gave information to the concerned supervisor.

Q.8 Do you know that the accident between 2779 Goa and 2964 Mewar Express

happened due to clearance of signal? Ans. Yes. Such type of mistake happened due to inadvertence for which I am very sorry.

Q.9 Will you repeat such type of mistake in future? Ans. I will not repeat such type of mistake in future.

Q10. Do you want to say anything more?

Ans. I wish to tell every railway servant that they should not act in any manner which may lead to such accident.

Q.11 After how much time accident happened after the clearance of Dn. Signal of Gate 528.

Ans. This accident occurred after 5 minutes of the clearance of signal.

Q.12 Do you know that after the clearance of signal, the accident of 2779 Goa and 2964 Mewar Express happened and what did you do after the accident.

Ans. Yes. After the accident, I informed the immediate supervisor about the accident.

Q.13 What instructions were given by the supervisors to you in this regard?

Ans. After the accident by closing RH-1, I went back from there.

(Sd/ - Amar Singh) (Sd-Raman Kishore)

E.O. SM-I VRBD."

(emphasis supplied)

8. It appears that the Inquiry Officer also proceeded to examine two witnesses, namely, Mr. R.K. Patel, JE-II and Mr. S.N. Singh, SSE (Sig.). Thereafter, the Inquiry Officer submitted his report on the basis that the respondent had admitted the charge and the fact that by clearing of the said signal by him, the accident occurred.

9. On the basis of the said inquiry report, which was accepted to by the disciplinary authority, the respondent was removed from service and other departmental remedies were of no avail to the respondent. The Tribunal however, allowed the original application on the ground that there was violation of principles of natural justice. The Tribunal took the view that simply on the basis of the finding returned in the CRS report with regard to the responsibility of the respondent in the occurrence of the accident, the guilt of the respondent in the departmental inquiry did not get established. The Tribunal held that CRS inquiry was only a preliminary inquiry, and that the purpose of holding the departmental inquiry was to prove the specific charges of misconduct alleged against the employee. In allowing the OA, the Tribunal held that the charge levelled against the respondent was vague and the procedure to conduct the inquiry was unfair. Several other grounds were also cited by the Tribunal for allowing the original

application. The Tribunal quashed and set aside the charge-sheet dated 22.02.2010; the Inquiry Officer's report dated 10.04.2010; the Disciplinary Authority's order dated 14.05.2010; the Appellate Authority's order dated 19.04.2011; and, the Revisional Authority's order dated 20.10.2012. The respondent was thus directed to be reinstated in service with all consequential benefits.

10. The submission of Mr. Krishna, Id. counsel for the petitioner is that the CRS report was a statutory inquiry. In his submissions, the same had been conducted by an expert after detailed investigation and after taking into account the statements of several persons concerned, including the respondent. The same had not been assailed by the respondent, in any proceeding. He further submits that the scope of the inquiry proceedings was not so wide as to permit the re-examination of the issue whether the respondent was responsible for the accident or not inasmuch, as, that issue had been concluded in CRS report of the accident, which remained unchallenged. Mr. Krishna further submits that since the respondent had admitted his guilt at the initial stage of the inquiry itself, there was no occasion for the Inquiry Officer to go into any other aspect. Thus, according to him, there is no question of breach of principles of natural justice in the conduct of the inquiry.

11. On the other hand, the submission of the learned counsel for the respondent is that the respondent had rendered 31 long years of service and was practically at the fag end of his career, at the time of incident. In his submissions, the respondent was removed from service only on account of the fact that there was a lapse attributable to him. In his submissions, the accident occurred in the wee hours i.e. 04.54 hours, and the CRS report also shows that there was malfunctioning of the signaling system, which contributed to the occurrence the accident. Moreover, the respondent was working overtime, in the absence of relieving officer. Moreover, the driver of Goa Express also failed to notice that the Mewar Express was stationary, when Goa Express rammed into it from behind.

12. Having heard the learned counsel, we find merit in the submission of Mr. Krishna that the scope of the inquiry proceedings in the present case was minimized in view of the clear and categorical admissions made by the respondent before the IO. Pertinently, on a specific question put to the respondent, he admitted to the charge. He was explained the charge in question no.5 and in response to that also, the respondent had inter alia stated that he had locally reset Dn A/C and gave NSR and signal became clear and train passed. Thus, he admitted that he manually reset the signal, which allowed Goa Express to proceed further and hit Mewar Express from behind. On being asked as to whether he knew that the accident between Goa Express and Mewar Express happened due to clearance of signal (in question no.8), the respondent responded by stating "Yes. Such type of mistake happened due to inadvertence for which I am very sorry". On being asked as to whether he would repeat such type of mistake in future, he responded by stating "I will not repeat such type of

mistake in future". He was asked if there was anything more to say and he stated "I wish to tell every railway servant that they should not act in any manner which may lead to such accident."

13. Thus, in view of the admissions made by the respondent in the inquiry proceedings, there was no need for the Inquiry Officer to proceed any further, or to record any further evidence - either of the departmental witnesses, or on the part of the respondent. In the given peculiar facts and circumstances of the case, we find merit in Mr.Krishna's submissions that in the aforesaid light, there was no occasion for the Inquiry Officer to again undertake the exercise to determine whether, or not, the respondent was guilty of any negligence, which led to the unfortunate accident resulting in the death of 23 people.

14. In the aforesaid light, we set aside the findings returned by the Tribunal with regard to the legality of the inquiry proceedings or the order imposing penalty by the disciplinary authority as well as the orders of the Appellate and Revisional Authority. At the same time, it is evident that the accident took place on account of an erroneous on-the-spot judgment of the respondent. The circumstances show that the signaling system was not functioning properly, and the respondent was working overtime at wee hours of the day, in the absence of his replacement staff reporting for duty. There is nothing to suggest that the respondent knowingly acted in a rash and negligent manner, being mindful of the fact that his conduct would result in such a fatal accident. The respondent had rendered 31 years of service before the accident took place. His responses during the inquiry proceedings also show that he was remorseful. Others had also contributed in the occurrence of the accident. In such circumstances, we are of the considered view that the punishment of removal from service at the fag end of the career of the respondent, was disproportionately harsh and the same does invite judicial review by this court.

15. Having formed an opinion to that effect, considering the totality of the facts and circumstances, we do not consider it necessary to remand the matter for reconsideration by the competent authority following the ratio of the judgment of the Supreme Court in Bhagat Ram vs. State of Himachal Pradesh & Ors., (1983) 2 SCC 442, and the penalty of removal from service is hereby modified to that of compulsory retirement to be effective from the date of imposition of penalty by the disciplinary authority i.e. 14.05.2010.

16. The benefits and terminal benefits shall be paid to the respondent within three months from today, and the pension released to him from the next month. The necessary PPOs be issued.

17. The writ petition stands disposed of accordingly.