

Union of India and ors. Vs. Vinod Babu

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Court : Delhi

Decided On : Oct-15-2014

Judge : S.Ravindra Bhat

Appellant : Union of India and ors.

Respondent : Vinod Babu

Advocate for Def. : Mrs. Meenu Mainee

Advocate for Pet/Ap. : Mr. Jitendra Kumar Singh

Judgement :

\$~3 * IN THE HIGH COURT OF DELHI AT NEW DELHI % DECIDED ON:

15. 10.2014 + W.P. (C) 4539/2014 C.M. No.9047-9049/2014, 15846/2014 UNION OF INDIA & ORS. Petitioners Through: Mr. Jitendra Kumar Singh, Advocate. versus VINOD BABU Respondent Through: Mrs. Meenu Mainee, Advocate. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI S.RAVINDRA BHAT, J.

(OPEN COURT) 1. The Union of India through Ministry of Railways challenges an order of the Central Administrative Tribunal (hereafter referred to as CAT) in OA17722011 dated 10.02.2014 by which the disciplinary orders made against the respondent/applicant was set aside.

2. The facts are that the applicant who was at the relevant time working as Driver in the Indian Railways was issued a chargesheet - on 28.02.2007 - alleging that while working in Train No.5046, he passed signal no.3 at GMC danger position ignoring the rules resulting in collision with another train no.BCM resulting in derailment of three wagons. The Indian Railways charged him under W.P.(C)4539/2014 Page 1 Rule 3.1 (i) (ii) & (iii) of Railway Service (Conduct) Rules, 1966 (hereafter referred to as Rules). The Article of Charges and accompanying Statement of Imputation also listed out several documents including the report of the Joint Enquiry Committee, which was in the nature of a preliminary enquiry. After full-fledged disciplinary enquiry, the Inquiry Officer held that the involvement of the applicant was doubtful and, therefore, recommended that no action be taken against him. The disciplinary authority after considering the report was not in agreement with the findings of the Inquiry Officer, and proposed to go by the report of the Joint Inquiry Officer. He recorded the disagreement note on 10.04.2008, and served it upon the respondent/applicant. This note also furnished a copy of the joint inquiry report which had apparently not been made available to the respondent/applicant during the entire inquiry proceedings. The applicant responded to the disagreement note and elaborated why the conclusions in the joint inquiry report ought not to be accepted and, instead, the recommendations of the Inquiry Officer after the regular inquiry ought to be taken into consideration.

3. The disciplinary authority, however, on 5.6.2008 rejected the respondent/applicants contentions and passed a speaking order imposing the penalty of removal from service which reads as under: "Have carefully gone through the Defence Note. I am not in agreement with the Defence Note. For BCN Empty hunting Signals Nos.115, 117 and 171 were lowered. This route was found from the side of line No.2 and red and point No.351A in reverse condition was found burst. With this, movement of both North and South line for coming to Kanpur, the condition of Signals Nos.1 and 3 W.P.(C)4539/2014 Page 2 being lowered has not been proved. Therefore, the condition of Signal No.3 being lowered has not been proved. It is apparent from this when the signal was crossed by the driver, then signal No.3 was in red then. The driver of 5045 UP is responsible for colliding on the side of the BCN Empty. Taking action in this

matter, I impose the penalty of Removal from service.

4. The respondent/applicant approached the appellate authority which, by its order dated 20.10.2008, even while maintaining the removal, directed payment of full compensation allowance. The respondent/applicant felt aggrieved and approached the higher authorities with the revision application which succeeded in part. In that, the penalty of removal was substituted with penalty of reduction in the time scale of the pay on the post of Diesel Assistant Loco in the grade of Rs.950-1500 (pre-revised) permanently with loss of seniority. It was in these circumstances that he approached the CAT.

5. The CAT by its impugned order set aside the penalty essentially on two grounds. Firstly, it was of the opinion that the acceptance of the joint enquiry report in the manner done by the Indian Railways was contrary to principle of natural justice; secondly, it was held that the disagreement note of the disciplinary authority disclosed the propensity to pre judge the matter. In other words, the disciplinary authority - even at the stage of issuing the disagreement note, had made up its mind and had merely gone through an empty formality, W.P.(C)4539/2014 Page 3 by issuing the disagreement note calling upon the respondent to respond. In so concluding, the CAT relied upon the decision of the Supreme Court reported as Punjab National Bank v. Kunj Behari Misra (1998) 7 SCC84 Yoginath D. Begde v. State of Maharashtra (1999) 7 SCC739 6. It is urged on behalf of the Indian Railway that the impugned order is erroneous. Learned counsel urged that even if there was some irregularity in the first instance with the conduct of the proceedings during the enquiry by not furnishing the joint enquiry report, the fact of the matter was that that document was a part of the record of the enquiry. The report of the Inquiry Officer itself indicated that he did not agree with the joint enquiry report. By not furnishing a copy of that report, entire proceedings could not be said to have been vitiated; on the contrary, the disciplinary authority while recording the disagreement note furnished a copy, which accorded adequate opportunity to the respondent/applicant to show whatever he wish to in his defence. He did so and thereafter the disciplinary authority went into the merits of the matter and imposed the penalty. Learned counsel next urged that the findings of the CAT to the extent that the disagreement note itself disclosed the propensity

to pre judge the issue are unsupportable in law. It was argued that the manner in which the disagreement note is framed cannot be the only basis for finding that the disciplinary authority - who is ultimately charged with the responsibility of either issuing the penalty orders or exonerating the delinquent officer - had prejudiced its mind. The note has to disclose the basis for disagreement; in the present case, the reference W.P.(C)4539/2014 Page 4 to the joint enquiry report and the rejection of the Inquiry Officers findings, were merely tentative. The absence of any expressed mention of the term tentative or proposal etc. did not vitiate the disagreement note. It was urged that in these circumstances, the findings of the disciplinary authority - confirmed at two subsequent levels ought not to have been disturbed by the CAT in exercise of power of judicial review.

7. Learned counsel for the respondent/applicant urged that by not furnishing the joint enquiry report and relying upon it, the disciplinary authority violated the principle of natural justice. She argued that the entire enquiry proceedings are premised upon the fair procedure which, in turn, mandates that all materials adverse to the delinquent officer had to be made available for effective defence. In the present case, the joint enquiry report was not made available and the applicant had requested for it, but was not given. He was, therefore, placed at a disadvantage when ultimately the disciplinary authority decided to act on that report, instead of the report made available after full-fledged enquiry. It was next urged that the disagreement note in the present instance, in fact, records a conclusion as against the requirement of law spelt out in Kunj Behari Misra and Yoginath D. Begde (supra) i.e., that wording has to disclose only an tentative proposal to disagree. For this reason, it was urged that the proceedings was vitiated and the order of the CAT does not call for interference.

8. From the above narrative it is evident that the joint enquiry report was ultimately accepted by the disciplinary authority. There is no doubt that this document was not made available during the course W.P.(C)4539/2014 Page 5 of the regular enquiry proceedings to the applicant. However, the disciplinary proceedings as a whole do not conclude merely with the enquiry report and culminate only with an order of either exoneration or an order finding guilt passed by the disciplinary authority. At the time when the enquiry report had to be considered (by which time

the respondent could not have had a grievance because he was exonerated by that report), the disciplinary authority was perhaps aware of the irregularity and made amends by furnishing a copy of the document viz. the joint enquiry report to the respondent/applicant.

9. In this view of the matter, this Court is of the opinion that the infirmity, if at all, was cured at the stage when the respondent/applicant was likely to be prejudiced, i.e., by the consideration of the document not put to him. Interestingly, in the reply to the disagreement note made on 22.04.2008, the respondent/applicant does not state that the absence of the joint enquiry report had vitiated the proceedings. He did not seek to either lead any further evidence, or to cross examine any of the departmental witnesses as a result of the said joint enquiry report being furnished. On the other hand, the merits of the contentions in the matter, i.e., the findings of the regular enquiry juxtaposed with the findings and recommendations of the joint enquiry report were highlighted and discussed in the reply to the disagreement note. In these circumstances, the CATs findings that the respondent/applicant was prejudiced by the absence of the copy of the joint enquiry report during the enquiry proceedings cannot be supported. Those findings are accordingly set aside. We reiterate that once the joint inquiry W.P.(C)4539/2014 Page 6 report was made available - at the stage of issuance of the disagreement by the disciplinary authority, having regard to the fact that the enquiry proceedings had not culminated into a statutory order, there is no question of prejudice to the respondent/applicant.

10. So far as the second aspect, i.e., the notice of disagreement and the manner in which it was done is concerned, Yoginath D. Begde (supra) no doubt, suggests that disciplinary authority ought to have prefaced or prefixed the discussion with something to suggest that conclusions are tentative. In this case, the disagreement note of 10.04.2008 does not contain any such terms. However, we are of the opinion that mere absence of such term, or any to the like effect would not ipso facto invalidate the show cause notice which conveys the substance of the disagreement, i.e., that the disciplinary authority was of the opinion that the Inquiry Officers recommendations stating that there was no material to implicate the respondent, was incorrect. The disciplinary authority went on to suggest that

such material existed in the form of the joint inquiry report. The substance of the disagreement note, therefore, was that the Inquiry Officer felt that there was material to support the charge rather than exonerate the respondent - which is what was exactly put respondent/applicant who dealt with it appropriately. to the In these circumstances, the findings of the CAT to the contrary are disapproved and are accordingly set aside.

11. This Court is of the opinion that the approach of the CAT has been hyper-technical and displays an over anxiety to somehow upset the disciplinary authoritys determination which were confirmed by W.P.(C)4539/2014 Page 7 the appellate authority, and subsequently by the revisional authority save to the extent that the penalty was modified. This Court is mindful of the line of reasoning of the Supreme Court starting with Union of India v. H.C. Goel, 1964 AIR364 and State Bank of Patiala and Ors. v. S.K. Sharma (1996) 3 SCC364 to the effect that so long as there is some material to support the findings in an administrative proceedings to wit disciplinary proceedings, Article 226 scrutiny does not authorise the Courts to substitute themselves as appellate fora to conclude and weigh the relevant materials. The only exception is that if conclusions are not based on any material, or the inference drawn are so manifestly absurd that no reasonable man can arrive at such findings. In the present case, neither of the two exceptions are discernable. Plainly, the CAT overstretched itself to upset the concurrent technical findings of three statutory authorities in this case. This Court accordingly disapprove the judgment of the CAT; the impugned order is accordingly set aside. The Writ Petition is allowed but without any order as to costs. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) OCTOBER15 2014 /vikas/ W.P.(C)4539/2014 Page 8