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HIGH COURT OF DELHI AT NEW DELHI

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WP (CIVIL) No. 10308/2015

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Reserved on: 11th November, 2016

Date of Decision: 17th February, 2017

RAM PRAKASH

....Petitioner

Through: Mr. M.S. Saini, Advocate.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Jagjit Singh, Sr. Standing Counsel with
Mr. Preet Singh, Mr. Sukh Dev Singh & Ms.
Kiran Kaushik, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

This writ petition is filed for quashing and setting aside the order dated 25.03.2015, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1556/2012.

2. The brief facts of the case are that the petitioner – Ram Prakash, who was a Loco Pilot Passenger/Diesel of the working train No.4724 Dn Kalindi Express was charge-sheeted for the collision of the said train with the rear end of train No.2452 Shram Shakti Express at km No.1251/8-6 on 16.01.2010 between Mitawali and Tundla. The collusion had taken place despite 100% brake power on the working train. The signaling systems between Mitawali and Tundla were also in working order. The visibility being maximum 50 meters only, in terms of the G&SR Rule No.9.02, the

petitioner as a loco pilot was required to exercise extreme caution and keep the speed limit of the train below 8 Kmph. The speedometer had shown that the train manned by the petitioner had accelerated to the speed of 29 Kmph just before the collision took place. Further, the train had passed the last stop automatic signal No.502 in 'ON' condition, after stopping for a period of 2 minutes 16 seconds. These acts of carelessness and lapses on the part of the petitioner had caused 4 deaths, grievous injuries to 9 passengers, and injuries to 8 others.

3. The Commissioner of Safety, Railway conducted an enquiry and in his report held that the petitioner was responsible for the accident. Subsequently, a memorandum of charge dated 23.08.2010 for major penalty, i.e., SF-5 was issued to the petitioner, which read as under:

“On 16.01.2010 the said Shri Ram Parkash, LPM/DLI while working Train No.47.4 Dn Kalindi Express with Diesel Locomotive No.13438/WDG-3A is held responsible for rear end collision of 2452 Dn. Shramshakti Express with 4724 Dn. Kalindi Express at Km. 1251/8-6 between Mitawali and Tundla stations on GZB-TDL section of ALD division, North Central Railway at about 8.10 hrs. occurred due to violation of G&SR No.9.02.

By the above act of omission and commission Shri Ram Parkash, LPM/DLI failed to maintain absolute integrity exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant. Thereby contravened Rule No.3. 1(ii) & (iii) of Railway servant conduct rule 1966.”

4. As the petitioner denied the charges, the disciplinary inquiry was held. The Inquiry Officer ('IO') submitted his fact finding report to the Disciplinary Authority ('DA') on 29.11.2010, holding that the charges were proved. A copy of the said report was sent to the petitioner on 30.11.2010, who submitted his representation on 13.12.2010.

5. The Disciplinary Authority after considering the facts, records, inquiry report and comments of the petitioner found him guilty of the charges and in view of the seriousness of the case, imposed the penalty of dismissal from Railway Service with immediate effect.
6. The petitioner filed an appeal against this order of punishment, which was rejected by the Appellate Authority ('AA') on 28.01.2011. However, considering the past service record of the applicant/petitioner, the AA directed payment of compassionate allowance at the rate of 2/3rd of the compensation pension.
7. Still aggrieved, the petitioner preferred OA No.1556/2012, before the Central Administrative Tribunal, which stands dismissed vide impugned order dated 25.03.2015. Hence, the present writ petition has been filed by the petitioner for setting aside the said impugned order.
8. Learned counsel for the petitioner, during the course of arguments, submitted that the important documents demanded by the petitioner were neither supplied to him nor had the respondents produced the listed documents. However, learned counsel for the petitioner has failed to point out non-supply of any such specific documents. We have also examined the documents and the proceedings of the inquiry. The petitioner had received the documents on 06.10.2010, which he had requested vide his letter dated 06.10.2010. The record reveals that a copy of every document as demanded was supplied, except the weather report, which was not available. The petitioner has failed to establish that prejudice was caused to him due to non-supply of the weather report. Non-supply of the weather report would not invalidate the inquiry as it is the case of the petitioner as well as the respondent that there was dense fog at the time of the accident and the

petitioner had accepted that the maximum visibility was 50 meters. In terms of the dictum in Uttar Pradesh State Textile Corporation Ltd. v. P.C.Chaturvedi, **2006 AIR (SC) 87** and Pandit D.Aher v. State of Maharashtra, **2007, (Supp.8) SCR 120**), this plea and contention would fail. Principles of natural justice are not embodied rules and cannot be put in a straitjacket. Their violation and the effect thereof depends on the facts and circumstances of each case. In order to sustain and strike down an action for violation of principles of natural justice, one must establish that prejudice was caused due to non-observance of the said principles. It is for the petitioner to establish this prejudice, which, in the present case, has not been done.

9. Learned counsel for the petitioner has submitted that there is no evidence that the train was running fast. We do not agree with the said submission. G&SR Rule 9.02 requires that “extreme caution was to be exercised under such conditions which entailed keeping the speed limit of the train below 8 km per hour under all circumstances”. The Commissioner of Railways Safety had conducted an enquiry and had found the applicant to be primarily responsible for the collision. Violation of this rule was established by the statements of PWs Sh.Rajender Parshad ALP/CNB (PW-2), Sh. J. J. Boggey Guard/TDL (PW-3), Sh. M.S. Meena SS/TDL (PW-4), Sh.Hitender Kumar Yadav SLI/DSL/TDL (PW-5), Sh.G.B.Singh SSE/C&E/TDL (PW-6), Sh. P. K. Singh SSE/Signal/TDL (PW-7), Sh.Vijay Kumar Sharma SSE/P/Way/TDL (PW-8) & Sh.Ram Sewask LPM/CNB (PW-9). Not only that, even the Asstt. Loco Pilot of the train of the applicant has accepted this charge on 22.11.2010. The speedometer chart had established that the train had accelerated to the speed of 29 km per hour.

Thus, the petitioner had violated the G&SR Rule 9.02, which resulted in the collision and caused 4 deaths, grievous injuries to 9 passengers and simple injuries to 8 passengers. We, therefore, find no substance in the submissions of the learned counsel for the petitioner.

10. Learned counsel for the petitioner submitted that S.K. Dubey was a material witness, who could have thrown light directly on the charges leveled against the petitioner, but he was not examined. It is a fact that S.K.Dubey was not examined, but, if the petitioner was of the view that his evidence was relevant and would exonerate him, he could have summoned S.K. Dubey, on his own, as his defence witness. The petitioner, at this stage, cannot make any grievance and seek exoneration for this reason. The charge was proved on the basis of evidence and material on record.

11. Learned counsel for the petitioner has also raised the question of victimization. We find absolutely no merit or substance in the plea of victimization as urged by the petitioner. Reliance was placed on Bharat Iron Works vs. Bhagubhai Balubhai Patel & Ors., *Vol. 49 FJR 332*, decided on 10.10.1975, is misplaced. The decision holds that ordinarily, a person is victimized if he is made a scapegoat and is subjected to persecution, prosecution, or punishment for no real fault or guilt of his own in the manner as if he was a sacrificial endurer. A word of caution is necessary. Victimization is a serious charge and, therefore, must be properly and adequately pleaded giving all details and particulars upon which the charge is based to enable the employer to fully meet the allegations. The charge must not be vague or indefinite, being as it is an amalgam of facts as well as inferences and attitudes. Where the actual fault or guilt meriting punishment is established, such action would not suffer from the taint of victimization.

In the present case, the petitioner was the Loco Pilot/driver of the train, who was involved in the collusion. There is no question of victimization or the respondents being biased against the petitioner. The findings of misconduct were properly arrived at and the inquiry was, in no way, vitiated. There is nothing on the record to prove the plea of victimization.

12. The only other question left for determination is as to whether the punishment imposed upon the petitioner is disproportionate to the gravity of the misconduct committed. The charges established against the petitioner are of extremely serious nature. The acts committed by the petitioner were wholly incompatible with due discharge of his duties. The accident had lead to loss of 4 innocent lives and caused grievous injuries to 9 other persons. The petitioner was responsible for their safety. The careless act of the petitioner had resulted in irreparable damage to the image of the railways.

13. It has been time and again held that the award of punishment for misconduct, if any, is a matter for the management/authorities to decide and if there is justification for the punishment imposed, the Court should not interfere. Such interference is required only when the punishment is shockingly disproportionate or is such that no reasonable employer would ever impose in like circumstances. Severity or adequacy of the punishment has several facets and would include responsibility of the employer and the duty and obligation of the employee. Any sympathy would be maudlin in the present case. The petitioner, a loco pilot, cannot after the accident for which he was responsible, protest against the punishment of dismissal. To say that the punishment was not commensurate with the gravity of the offence would not be acceptable.

14. The petitioner has failed to point out any error in the decision-making process. The petitioner was given an opportunity to defend himself. There has been a proper application of mind by the authorities. There is no error apparent on the face of the record. The punishment awarded is not arbitrary. The scope of judicial review, as a writ court, is very limited. We are of the opinion that the findings and conclusion arrived at in the enquiry are such that any reasonable person would have reached in the given circumstances.

15. The writ petition is accordingly dismissed. There will be no order as to costs.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

February 17, 2017
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