

THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (S) No. 2574 of 2018

The Union of India through Divisional Personnel Officer,
 South Eastern Railway, Ranchi Division, Ranchi --- --- Petitioner
 Versus
 Om Prakash --- --- Respondent

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through: Video Conferencing

 For the Petitioner: Mr. Devesh Krishna, Advocate
 For the Respondent: Mr. Anis Khan, Advocate

 09 / 15.03.2021 Heard learned counsel for the parties.

2. Respondent Railways in O.A. No. 051/00245/2015 has challenged both the order dated 02.06.2017 passed in O.A. and order of dismissal of the Review Application bearing No. R.A. No. 00/51/00007 of 2017 (Annexure-7) in this writ petition.

3. Applicant, an Assistant Loco Pilot was proceeded departmentally for major penalty under Rule 9 of Railway Servants (Discipline and Appeal) Rule 1968 on 09.07.2013 for the charge of delayed reporting of an accident that took place on an unmanned railway crossing between Kotshila and Jhalida station. Applicant instead of giving information at the next station Jhalida, gave memo at Muri on the same day and also informed the Respondent No. 6 - Divisional Electrical Engineer (OP), South Eastern Railway, Hatia on phone. He was placed under suspension and after preliminary inquiry, it was found that driver of the vehicle TATA DI 207 bearing registration no. JH1K-7004 was responsible who tried to cross the unmanned crossing level without observing the movement of approaching train. The Applicant was responsible for delayed reporting of the accident. After a proper regular inquiry and second show-cause notice upon the applicant / petitioner, Divisional Electrical Engineer, South Eastern Railway, Hatia imposed a minor penalty of withholding of annual increment for three years with non-cumulative effect. Appeal and Revision preferred by the applicant were dismissed without interference in the order of penalty.

4. Learned Tribunal upon consideration of the rival case of parties, set aside the order of punishment dated 13.06.2014, as also the order of Appellate Authority dated 21.04.2015 and Revisional Authority dated 28.07.2015, holding as under:

“9. There is no dispute about the fact that for the accident in unmanned railway crossing, no disciplinary proceeding was initiated. The disciplinary case was initiated against the present applicant for delayed reporting of the accident to the concerned authority. The joint enquiry report dated 28.06.2013 [Annexure-A/2] reveals that the fact finding team comprising of three members had suggested disciplinary action against the Loco Pilot, A.K. Sinha, Assistant Loco Pilot, Om Prakash [present applicant] and Guard, Md. S. Ahmad for delayed report of the accident to the concerned authorities. Since it was an accident in an unmanned railway crossing, no fault was found with the drivers of the train. The report further discloses that the driver of the vehicle under a confusion that he would cross the track, misjudged the speed of the train, he missed from a few second and the rear portion of his road, vehicle got hit by the side buffer of the said train and was thrown away from the track.

10. Both the Disciplinary Authority, so also the Appellate Authority found the Assistant Loco Pilot guilty of not reporting the nearest station master and reported only at Muri. The Revisional Authority only has upheld the order of the Appellate Authority. All the three heads of the disciplinary proceeding have not disclosed the responsibility of Loco Pilot and Guard vis-à-vis Assistant Loco Pilot. There is ample evidence on record that the Assistant Loco Pilot has also informed the Guard over walkie-talkie, so in case of an untoward accident, it is to be seen, what is the defined role of an Assistant Loco Pilot in presence of Loco Pilot and Guard. Train Operational Manual defines the work of Loco Pilot, Assistant Loco Pilot and Guard. As per 4.38 of the Manual, Assistant Loco Pilot shall obey the Loco Pilot. 4.40 of the Manual envisaged that every Loco Pilot shall keep a good look-out while the train is in motion and every Assistant Loco Pilot shall also do so when he is not necessarily otherwise engaged. 4.42 of the Manual says that the Loco Pilot and the Guard of a train shall exchange signals with each other, at such times and in such manner as may be prescribed by special instructions. Had there been a joint disciplinary proceeding holding Guard, Loco Pilot and Assistant Pilot severally responsible for the misconduct for delayed reporting, we would have held the punishment proper. The respondents do not utter a single word, what action they have taken against the Loco Pilot and Guard of that train, who are the senior officials and more responsible and answerable than the Assistant Pilot. Since an Assistant Pilot has to work under a Loco Pilot, and as information about the accident is the duty of Guard and Loco Pilot, we do not find any significant reasoning in finding fault with the Assistant Loco Pilot, and at the same time, not taking any action against the Loco Pilot and Guard. Bonafide of the respondents are at stack. Since, admittedly the train did not stop there, we have every reason to believe that the matter was not so serious, as they had not taken note of the same as is expected in case of an accident. Since the Guard and Loco Pilot are senior officials than the applicant, we do not find any justifiable ground to punish a subordinate employee like Assistant Loco Pilot, when senior employees are more responsible and duty is caste on them to report every untoward accident to the higher authorities immediately. Had the Guard or Loco Pilot been examined, it would have brought to light, what they did soon after the accident came to their notice. Even though minor punishment has been imposed on the applicant but since his responsibility is not singled out, and rather cumulative along with others and rather sharing a joint responsibility, we feel it expedient to exonerate the applicant from the charges as he was not singularly responsible for delayed reporting. Since the Disciplinary Authority, Appellate Authority and Revisional Authority have not assigned any specific reason, why an Assistant Loco Pilot is held guilty when Guard and Loco Pilot are on duty at the relevant point of time, we feel it expedient to set aside the punishment order in the larger interest of justice on the ground of lesser responsibility. Hence ordered.”

5. Learned counsel for the petitioner Railways submits that the order of penalty was set aside primarily on the ground that it was only the applicant who was singled out for punishment, though responsibility was joint and cumulative with the Loco Pilot and the Guard. Learned CAT observed that the Disciplinary Authority, Appellate Authority and Revisional Authority have not assigned any specific reason why Assistant Loco Pilot is held guilty, whereas Guard and Loco Pilot who were also on duty, have been left out.

6. Learned counsel for the petitioner submits that in the Review Application, Railways brought to the notice of the learned Tribunal the order of penalty imposed upon the Loco Pilot and Guard in the following manner (Annexure-6 and 6/1).

“Your next annual increment is withheld for a period of three year from the date of next due on 01.07.2014 with non-cumulative effect.”

“Your next increment whenever due is withheld for 03 (three) months with N.C.E under rule 6(VI) of DA rule 1968.”

However, learned Tribunal refused to interfere in the matter since it was not an error apparent on the face of the record.

7. Learned counsel for the petitioner Railways submits that this ingenious plea of disparity in penalty was taken into consideration by the learned Tribunal on its own without any opportunity to the Respondent Railways to answer it while deciding the Original Application. The applicant could not have taken such a plea of parity in treatment because Loco Pilot and the Guard were also proceeded against and punished for the same misconduct. The impugned order is, therefore, unsustainable in law and on facts. If it is not interfered with, it may result in disparity in treatment between the applicant Assistant Loco Pilot and other two personnel on the train i.e. Loco Pilot and the Guard who have suffered penalty for the misconduct. It is submitted that the learned Tribunal though, took into note the provisions of the Railway Train Operational Manual defining the role of all the three personnel on the train, but on its own arrived at erroneous finding that other two were left out, whereas applicant, a junior personnel of the rank of Assistant Loco Pilot was alone punished. The impugned order may therefore be set aside.

8. Learned counsel for the Applicant / Respondent submits that the learned Tribunal has not only taken into account the plea of parity in treatment, but also considered the materials brought on record during inquiry proceedings. It has taken note of the evidence of PW-1 (A.K. Sinha, Loco Pilot), PW-2 (Guard), PW-3 (L.K. Sharma) and PW-4 (A.K. Satrudhar) at para-3 of the impugned

order passed in the O.A. It has further taken into note that the applicant had informed about the incident to the Loco Pilot immediately in the presence of the Guard and Station Master at 2.10 hrs. As such, there was no delay on his part. This aspect was also confirmed from the deposition of Chief Loco Inspector Shri L.K. Sharma during inquiry. Therefore, order of the learned Tribunal passed in the O.A. did not suffer from any error of reasoning, neither was the factum of penalty upon the Loco Pilot and Guard brought to the notice of the learned Tribunal. The Respondent Railways failed to sustain the plea of review as these facts were within the knowledge of the Railways and as such, had not been discovered after passing of the order in O.A. Review application was therefore rightly dismissed.

9. We have considered the submissions of learned counsel for the parties and taken note of the relevant materials on record. We have also gone through the impugned orders passed by the learned Tribunal. It appears on scrutiny of impugned order of learned CAT that learned Tribunal was of the opinion that Loco Pilot and Guard had not been made responsible for the delayed reporting of the accident. Only the applicant, the Assistant Loco Pilot, a subordinate employee, was singled out. It appears that the applicant had also not taken any such ground of disparity in matters of penalty vis-à-vis Loco Pilot and the Guard. Respondent Railways seems to have been taken by surprise when the order of penalty was set aside on this ground. Learned Tribunal refused to take into consideration the relevant materials brought to its notice in Review Application vis-à-vis the instant ground of absence of parity in treatment. As it transpires, the Loco Pilot was also proceeded against and imposed with the similar penalty of withholding of annual increments for three years with non-cumulative effect. The Guard was also proceeded against, but he was imposed with a penalty of withholding of next increment for three months under Rule-6(IV) of D.A Rule, 1968. Therefore, it was not a case where the applicant had only been singled out for the misconduct. If the very basis of setting aside the order of penalty is shaken, the impugned order passed by the learned Tribunal in O.A No. 051/00245/2015 is rendered vulnerable to challenge. Since it appears that the said ground of disparity in treatment was taken into account by the learned Tribunal on the verge of deciding the O.A, the Respondent Railways could not have controverted it in the absence of specific pleading in that behalf by the applicant. The powers of review exercisable by the learned Tribunal are akin to the power conferred under Order 47 Rule 1 of the Code of Civil Procedure. Learned counsel for the petitioner has rightly placed reliance

upon the decision of the Apex Court in the case of **Gopabandhu Biswal Versus Krishna Chandra Mohhanty and others [(1998) 4 SCC 447]**. Power of review could be exercised by the learned Tribunal on principles akin to Order 47 Rule 1 of C.P.C not only on the ground of discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed, or on account of some mistake or error apparent on the face of the record, but also for any other sufficient reason.

10. In the facts of the present case, the order of learned Tribunal passed in the O.A. suffers from an error of finding of fact, as indicated above, on account of erroneous inference drawn by the learned Tribunal on its own, de-hors any pleadings on record. If the Railways in the Review Petition duly brought it to the notice of the learned Tribunal that there was no disparity in treatment vis-à-vis the applicant and Loco Pilot and Guard, learned Tribunal ought to have corrected such an error which formed the very basis of setting aside the order of penalty. There were sufficient reasons before the learned Tribunal to review the order passed in the Original Application. Learned Tribunal, however, fell in error in refusing to review the order passed by it in the Original Application despite these vital facts being brought to its notice.

11. In the light of the discussions made hereinabove, and upon consideration of the facts and circumstances, we are of the opinion that the orders of learned CAT passed in O.A. 051/00245/2015 and R.A. No. 00/51/00007 of 2017 cannot be sustained in the eye of law. Accordingly, they are set aside. Writ application is allowed.

(Aparesh Kumar Singh, J)

(Anubha Rawat Choudhary, J)

Ranjeet/