

18.11.2024
(D/L-7)
Ct. No.4
(B.K.N.)

W.P.C.T. 303 of 2024

Sri Saptarshi Patra
Vs.
Union of India & Ors.

Mr. Gopal Chandra Ghosh,
Mr. Rajkrishna Mondal
...for the Petitioner

Mr. Anamika Pandey
...for the Respondents

1. Heard learned counsel for the petitioner as well as learned counsel for the respondents.
2. On 6th August, 2017 at 8.30 a.m. in the morning the contractor was carrying on the work of shifting old sleepers by new ones in the “down” line. In the process they were trying to carry old concrete sleepers for the purpose of shifting them and to keep it across the “up” line on the other side. They suddenly noticed an express train coming from the other side. In utter confusion that prevailed thereafter they fled leaving the sleeper over the tracks. The train engine dashed the concrete sleeper and came to a halt. This led to an enquiry into this incident wherein the liability has been fastened on the petitioner finally, by issuance of the order of

punishment dated 13th December, 2017 by the disciplinary authority. The petitioner has been visited with a penalty of reduction to a lower stage in the time scale of pay for a period of three years having the effect of postponing his future increments on expiry of such period.

3. The brief factual background is that the petitioner was served a charge memo dated 6th September, 2017. The same contained to article sub-charges which reads as follows:

“State of Article of charge framed against Sri Saptorshi Patra, SSE/P. Way/NFK(Spl.)

Article – I

Sri Saptorshi Patra, SSE/P. Way/NFK(Spl.), while performing as Sr.SE/P.Way/Spl./NFK during the year 2017-18 train no. 15905 UP Vivek Express (Hauled by Loco No. 13019/WDG3A/UDL), (Manned by LP/UDL- Shri Ashoke Roy, ALP/UDL- Sri Gaurav Kumar, Guard-Sri Promod Kumar) on run in between TDLE- NFK Block Section at Km. 258/5-6 on UP line dashed with concrete sleepers which were cross handled across UP line by Contractual work.

Article-II

Sri Saptorshi Patra, SSE/PW/NFK(Spl.) while on duty on 06.08.2017 at about 8.30 hrs. was booked to Supervise the work of shifting old sleepers by new ones at Dn. Line at Km. 258/5-6 between NFK-TDLE was being done by Labours of Private Contractors. For this, 30kmph caution at Km. 258/6-7 NFK-TDLE Dn. & TDLE Station limit imposed by PWI/NFK on 01.08.2017. LOPC on Dn. Line given on 03.08.2017 & 05.08.2017. The labours who were being supervised by Salim Seikh, were trying to carry on old concrete sleeper & shifting from Dn. Line and keep it across the Up line on the other side. They suddenly notice an express train coming from TDLE side and in speed, got confused and left the sleeper over the track and fled away. As a result, the train engine dashed the concrete sleeper and stopped.

Neither caution was imposed nor look out issued nor banner flag was placed on UP line for putting the old sleepers across the UP railway track. Even TDLE and NFK station were not given any information. The work was being done on contract by private contractor, Menu Choudhary by deputing about 35 labours &

supervised at spot by one contractor Munshi Salim Sekh but none of them were present at the accident site at the time of dashing.

Having carefully considered all the evidence tendered, records produced, observations, site inspection and circumstantial evidence and examination of witnesses, it has come to the conclusion that dashing of 15905 UP with concrete sleeper took place due to negligence on the part of P. Way Supervisors to ensure safety at work site. No railway official was present at the site to supervise the labours of the private contractor. Stations at either end of the block section were also not sleepers and neither any look out/SR on UP line was issued. Even banner flags were not used on UP line to alert approaching trains.

By the above act, Sri Saptorshi Patra, SSE/PW/NFK (Spl.) Primary responsible and has acted in a manner which is lack of integrity and did not maintain devotion to duty of a Railway Servant and thereby contravened Railway Service conduct Rule 3.1 (i) & (ii) of 1966.”

4. In the proceedings that commenced upon issuance of such charge memo, it was the specific case of the petitioner that he was charged with the misconduct as noted above only on the ground that some J.A. enquiry had been conducted into the accident and based on the outcome of the said enquiry the petitioner was proceeded against. A copy of the report conducted in the J.A. enquiry was also not handed over to him.
5. Thereafter the enquiry has proceeded and culminated in the issuance of the impugned punishment order. During the course of proceedings before the enquiry officer the petitioner was not given copy of the J.A. enquiry conducted prior to issuance of the charge memo. Even enquiry report was not served on the

petitioner, and a punishment order has been issued visiting him with the penal consequences, taken note of above.

6. Upon going through the averments made in the original application we find that it was the specific case of the petitioner before the Tribunal that a copy of the enquiry report was not served on the petitioner. Such averments has been made in paragraph 4.22 of the application filed before the Tribunal. To ascertain the stand of the Union we made a specific enquiry whether they have denied this specific assertion in view of the fact that the Tribunal has recorded a finding that a copy of the enquiry report was served on the applicant/petitioner.
7. The learned counsel for the Union of India submits that the application had been filed when there were many restrictions arising out of the Covid-19 pandemic and the national lockdown imposed as a result.
8. According to her the W.S. in the circumstances could not be filed. That being the case we are at a loss to appreciate the finding of the Tribunal that the copy of the enquiry report enquiry report was served on the applicant/petitioner. Obviously when no W.S. was filed by the Union

of India in the proceedings there was no occasion to deny the specific assertion of the applicant.

9. In the circumstances finding of the Tribunal in this regard according to us is clearly unsustainable. We must also take into consideration the fact that the date of the enquiry report has not been mentioned in the order of the Tribunal. The finding regarding service of the enquiry report, therefore, in our considered opinion is clearly unsustainable.
10. In so far as, the various decisions recorded in the order of the Tribunal as regards the limited scope of review under Article 226 in respect of a disciplinary/departmental proceeding we observe that the judgments/reports considered therein are no doubt reflection of the settled legal position regarding the limited scope of judicial review in a departmental proceeding.
11. We further observe that though the scope is limited in judicial review of such action taken in a departmental proceeding; it is equally settled that where there is no material to support the conclusions in a departmental proceeding or where the findings are perverse as also being without jurisdiction or in contravention of the Principles of Natural Justice the Court exercising jurisdiction under Article 226 would be well

within its jurisdiction to interfere with such order and strike it down.

12. In the present case we find that within the limited scope of judicial review having regard to the specific undisputed averments made in the original application there was no material based on which the Tribunal could arrive at a conclusion that a copy of the enquiry report had been served on the applicant/petitioner. We, therefore, find such conclusion as contained in the impugned order dated 7th March, 2024 passed in O.A. 00535 of 2021 to be unsustainable.

13. The order of the Tribunal is set aside and the matter is remitted to the Tribunal to proceed after giving an opportunity to the Union of India to file its W.S. for considering the issue afresh.

14. The parties shall appear before the Tribunal along with a copy of this order on or before the 2nd December, 2024 to facilitate such consideration expeditiously without any undue adjournments or any unnecessary delay.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)