CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.425 OF 2004

Friday, this the 15th December, 2006.

CORAM:

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR N RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Pinto Antony,
Goods Driver,
Southern Railway,
Palghat. - Applicant

By Advocate Mr TC Govindaswamy

v.

1. Union of India represented by the
General Manager,
Southern Railway,
Headquarters Office, Park Town.P.O.,
Chennai-3.

2. The Divisional Mechanical,
Southern Railway, Palghat Division,
Palghat.

3. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

The application having been heard on 5.12.2006, the Tribunal on 15.12.2006 delivered the following:

ORDER

HON'BLE MR N RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. The applicant is aggrieved by the penalty advice and appellate order passed by the respondents.

2. The applicant Shri K Pinto Antony, Goods Driver, has been working as such, with effect from 22.1.99 at Palghat. He is expected to work on an average of 8 hours per day and 96 hours for fortnight. On 28.8.2003, he received a call at 0030 hours, directing him to report for duty at 2 A.M. Accordingly he signed on at 2 A.M and was dispatched in a light engine by about 2.30 A.M and he reached Kanjikode Railway Station at about 2.55. After shunting operations, the engine pulling one goods train stock left at 4.35 under clearance from the Station Master on duty. At Thottipalayam station, the train was received in a loop line at 11.25 A.M. According to the applicant, he was entitled claim rest at 12.30 P.M. There was no reply to his message, claiming rest. At last, relief was arranged as per rules. Subsequently,he was issued with a minor penalty charge memorandum dated 29.8.2003 (A-3). The misconduct attributed to him was that he signed on at 2.00 Hrs. and claimed rest after a total duty of 10.3 hrs. despite directions to him to take the train to the next crew changing point at Erode, where the crew was waiting till 1230 Hrs. He furnished his reply dated 9.9.2003 Vide A-4 . He was served with a penalty advice dated 20.10.2003 (impugned A-1 order). The punishment awarded to him was reduction of his pay to the lowest stage in the present time scale for three years without cumulative effect. Vide A-5 petition dated 17.11.2003, he filed an appeal. This was followed by the A-2 appellate order dated 8.1.2004, which upheld the original penalty advice (A-1). Though a provision for revision was provided for in the said order, without availing himself of the same, he has filed this O.A.

3. He seeks to get both the A-1 and A-2 orders quashed and be granted all the consequential benefits. He rests on the following grounds:

i) The impugned orders are without application of mind and arbitrary.

ii) There was no misconduct on his part.

Iii) No PC message was conveyed to him as mentioned in the A-3 document.

iv) A-1 is ultravires Rule 11. Against the prescriptions of Rule 11 (1)(b), the disciplinary authority did not consider the question whether an enquiry is to be conducted or not.

v) The punishment imposed vide A-1 document is not a minor penalty but a major penalty.

4. Resisting the application, the respondents point out that

i) As the applicant has not availed himself of the revision opportunity, this O.A is premature.

ii) His conduct was against the mandates of Railway Board's order dated 13.4.92(A6).

iii) The impugned orders were passed with full application of mind and the reasons for arriving at the decision were clearly spelt out.

iv) The penalty awarded to the applicant is a minor penalty in terms of Rule 6 of the Discipline & Appeal Rules.

v) An enquiry under Rule 11(2) was mandatory only under certain specified circumstances, which did not exist in his case.

5. Heard the parties and perused the documents.

6. The first point for discussion is about the contention of the applicant that there was no misconduct on his part to initiate the disciplinary proceedings, to start with. Under grounds(B), © and (E), the applicant has elaborated upon the factual aspects of the disciplinary proceedings. It must be said at the outset that evaluation of such factual aspects is *dehors* the domain of adjudication of the Tribunal. The law in this regard has been set in no uncertain terms by the Apex Court in *2006 AIR SCW 734* that *"judicial review is not akin to adjudication on merit by re appreciating the evidence as an appellate authority."* Their lordships in the same judgment had referred to an earlier decision in 1995 (6) SCC 749 by extracting the following portion *"judicial review is not an appeal from*

a decision but a review of the manner, in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court." More specifically, the Hon'ble Apex Court has frowned upon re appreciation of evidence by C.A.T. as not permissible in 1998 SCC(L&S) 363.The proposition of the law is that the disciplinary authority is the sole judge of facts. The scope of judicial review is limited and the Tribunal cannot sit as an appellate authority over the findings of the enquiring authority Besides, it has been laid down by the Principal Bench of this Tribunal in Kishan Singh v. Union of India and others in O.A.2021/2003 that the scope for judicial intervention/review in disciplinary proceedings is very limited, the Tribunal cannot re appreciate the evidence,it can have the power to re-examine the decision making process, but not the decision itself. . Another point that merits mention in this regard is that the applicant was given specifically another chance to challenge the appellate order in a review petition, but he did not avail himself of that opportunity for reasons not made clear by the applicant but referred to by the respondents. Though it may not be mandatory on his part to do so, the fact remains that this opportunity was not availed of by him. In view of the above, this Tribunal is averse to go through the factual side of the disciplinary proceedings in view of the law laid down by the Apex Court.

7. The second point for decision is whether the penalty advice and the appellate order have been passed after due application of mind. Obviously, the contention of the applicant is that it is not so. Taking the penalty advice, the applicant in his A-4 representation dated 9.9.2003 explained his position vis-a-vis the charge memorandum. He has raised the points of his entitlement to claim rest on completion after 10 or 12 hrs., of non-receipt of any message bearing the No.PC 28/8/16 and of non-receipt of advice about the waiting relief crew at Erode. In the penalty advice, (A-1) dated 20.10.2003, all these three points have

been met on a one- to- one basis. Again, in his appeal petition dated 9.9.2003 (A-5) , he has relied upon the Railway Board letter (A-6). In the A-2 order passed thereon dated 28.1.2004, which is impugned, his points have been elaborately met. Hence, we find that in both the impugned documents, there was an application of mind on the part of the respondents concerned.

8. The next point for decision is whether the punishment imposed is a major or a minor penalty. The case of the applicant is that it is a major penalty, if only because it has a substantial impact on his pay and allowances and also on his pension in a way. He has not elaborated this point effectively. On the other hand, the respondents counter this point by saying that the penalties categorized as minor penalties as per Rule 6 of the Rules include, among others, the (Rule 6 (iii)(b)) reduction to the lower stage in the time scale of pay for a period not exceeding three years without cumulative effect and not adversely affecting his pension. This point has not been resisted by the applicant in his rejoinder and in any case, such resistance is not necessary to decide on this issue, being a Rule position. We find therefore that the penalty awarded was only a minor penalty.

9. The third point for consideration is whether the prescriptions under Rule 11 have been violated. The said rule runs as follows:

> *"11.Procedure for imposing minor penalties.*
> *(1) Subject to the provisions of sub-clause (iv) of Clause (a) of sub-rule (9) of Rule 9 and of sub-rule(4) of Rule 10, no order imposing on a Railway servant any of the penalties specified in Clauses (i) to (iv) of Rule 6 shall be made except after-*
> *(a) informing the Railway servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;*
> *(b) holding an inquiry in the manner laid down in sub-rules (6)*

to (25) of Rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

© taking the representation, if any, submitted by the Railway servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;

(d) recording a finding on each imputations of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) Notwithstanding anything contained in Clause (b) or sub-rule(1), if in a case, it is proposed, after considering the representation, if any, made by the Railway servant under Clause(a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension (or special contribution to Provident Fund) payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub rules (6) to (25) of Rule 9, before making any order imposing on the Railway servant any such penalty.

(3) Deleted.

(4) The record of the proceedings in cases specified in the sub-rules(1) and (2) shall include -

(i) a copy of the intimation to the Railway servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry, if any,

(v) the advice of the Commission, if any;

(vi) the orders on the case together with the reasons therefor."

The applicant states that A-1 is totally ultravires Rule 11 of the Railway Servants (Discipline & Appeal) Rules (the Rules for short)quoted above. Of course, the respondents deny the averment by saying that his explanation was

called for on the charge sheet issued for minor penalty, the same was considered and a reasoned speaking order passed specifying the penalty. More specifically, the applicant's case is the penalty is a major penalty which should have compelled the respondents to have conducted an enquiry as contemplated under Rule 11 (1)(b) read with Rule 9 of the Rules. It is important to note at this juncture that this point had not been raised in his appeal petition vide A-5 dated 17.11.2003. One more opportunity of raising this issue among others before the revision authorities was not availed of by the applicant, as already pointed out above. In any case, the penalty awarded was a minor penalty as found above. As regards the contention of the applicant that an enquiry should have been held, respondents point out that such an enquiry is mandatory only in the following cases:

i) If the increment is to be withheld permanently (having cumulative effect) for any period, whatsoever,

ii) If increment is to be withheld temporarily for a period exceeding three years,

iii) If the penalty of withholding of increment irrespective of period or nature (cumulative or non-cumulative) is likely to affect adversely the amount of pension or special contribution to Provident fund payable to the delinquent,

iv) Where the disciplinary authority feels, after considering the representation, that such enquiry is necessary, if the case involves the facts which cannot be proved without examination of certain witnesses or where the case of administration and the delinquent are so evenly balanced that a more detailed enquiry is required to arrive at the truth,

v) Further the enquiry may also be conducted if the charged employee ask for an enquiry.

Obviously, the case of the applicant does not fall under any of these categories. In any case, the applicant has no point to counter the points mentioned above by the respondents. Hence, the obvious finding is that the applicant is not entitled to have the enquiry conducted under Rule 11 (1)(b) of the Rules

10. In sum it is found that,

it is inappropriate to go through the factual side of the disciplinary proceedings in view of the law laid down by the Apex Court,

in both the impugned documents, there was an application of mind on the part of the respondents concerned,

the penalty awarded was only a minor penalty and that

the applicant is not entitled to have the enquiry conducted under Rule 11 (1)(b) of the Rules

11. Based upon the above findings, the O.A is dismissed. No costs.

Dated, the 15th December, 2006.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.B.S.RAJAN
JUDICIAL MEMBER

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