

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.464/11

Monday this the 28th day of January 2013

C O R A M :

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

A.V.Mathews,
S/o.A.J.Varkey,
Station Master, Chingavanam Rly. Stn.
Residing at Anjilimoottil,
Thiruvanchoor P.O., Kottayam – 686 037.

...Applicant

(By Advocate Mr.M.P.Varkey)

V e r s u s

1. Union of India represented by General Manager,
Southern Railway, Chennai – 600 003.
2. Assistant Operations Manager (G),
Southern Railway, Trivandrum – 695 014.
3. Sr. Divisional Operations Manager,
Southern Railway, Trivandrum – 695 014.
4. Addl. Divisional Railway Manager,
Southern Railway, Trivandrum – 695 014.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 18th January 2013 this Tribunal on 28th January 2013 delivered the following :-

ORDER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant while working as Station Master Grade III at Vaikom Road Railway Station was charge sheeted vide memo dated 4.2.2009 for sleeping while on duty and for snatching and destroying the digital camera at about 1.30 hours on 15.12.2008. The minor penalty




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of reduction of his pay by one stage for 35 months with effect from 1.5.2009 without future effect was imposed on him vide order dated 15.4.2009 (Annexure A-4) which was confirmed by the Appellate Order dated 17.8.2009 (Annexure A-6) and revision order dated 23.12.2010 (Annexure A-8).

2. The applicant contended that there is no reference to any material on which the charges are based. As the charges were factual and denied by the applicant an inquiry ought to have been held. The 2nd respondent has bracketed all his activities pertaining to train passing duties at 1.25 hours and at 1.32 hours which makes sleeping at 1.30 hours impossible, as between 00.38 hours and 1.56 hours and held that the same does not preclude his sleeping at 1.30 hours. The Appellate Authority did not go into the aspect whether the applicant had slept on duty or not because it is not possible to sleep at 1.30 when the applicant had train movements at 1.25 hours and 1.32 hours. Hence, any chance of photographing the applicant and the applicant snatching and destroying the camera for that reason are very remote. Annexure A-4, Annexure A-6 and Annexure A-8 orders were passed ignoring the statutory rules on train passing duties and Hours of Employment Regulations providing for periods of inaction devoid of physical or mental activity during a shift duty.

3. The respondents in their reply statement submitted that the time of incident was around 2.30 hours and not at 1.30 hours as mentioned in the charge sheet which is a clerical error. The charges against the applicant



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are very clear and in straightforward language. The manner in which the applicant slept would have been available, if the camera belonging to traction department had not been smashed. In a case where there is no eye witness, it is obvious that the charges are based on the report of inspecting official. Obstructing inspection will affect the safety performance of the Railways and safety of public. Smashing the camera used for taking the photograph of duty staff amounts to obstruction of official work of the inspecting official.

4. In the rejoinder statement the applicant submitted that there is no provision for taking photographs of staff during inspections/night checks. There are limitations of a photograph as a proof of alleged sleeping on duty. A photograph cannot establish whether or not the photographed employee was alert or sleeping. The applicant had periods of relaxation/inaction when there was no train. Photograph taken during such periods are not helpful to assess alertness. The documents enclosed with Annexure A-3 representation would show that there was no chance of sleeping as alleged in Annexure A-2 charge memorandum.

5. We have heard the parties and perused the records. For the sake of convenience the charges against the applicant are extracted as under :-

Charges :-

"That the said Shri.A.V.Mathews, SMIII/PVRD while on duty at VARD during 20-24/08 hrs on 14/15.12.2008 committed serious misconduct and dereliction of duty in that

(1) he slept while on duty and



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(2) he snatched and destroyed the digital camera owned by TRD/Branch for the reason that ADEE/TRD/ERS took his photograph while sleeping on duty during his inspection at about 1.30 hours on 15.12.2008. The act of Shri.A.V.Mathews, SMIII/PVRD was quite unbecoming of a Railway Servant. Thus he has violated Rule 3.1(II) and (III) of Railway Services Conduct Rules, 1966".

6. The Disciplinary Authority has held that the activities listed by the applicant in his representation do not preclude his sleeping at a point of time about 1.30 hours as alleged in the charges. Hence the contention that the applicant snatched and destroyed the digital camera for the reason that the inspecting officer took his photograph while on duty during his inspection at about 1.30 hours on 15.12.2008 has become null and void is without basis. Thus, the destruction of the digital camera is directly related to the fact that whether he slept at about 1.30 hours on 15.12.2008 or not. In the Appellate Order, the Appellate Authority held as under :-

" I am not going into the aspect whether the CE has slept on duty or not. But deterrent punishment needs to be given for obstructing an inspecting official and for being deliberately offensive during the inspection."

7. The Appellate Authority has not held the first charge as sustained. If the first charge is not sustained whether the second charge can be sustained is a relevant factor which calls for application of mind on the part of the Appellate Authority. But this aspect has not been dealt with in the Appellate Order.



8. The applicant was imposed with a minor penalty of reduction of his pay by one stage for 35 months. On two accounts of charges, the punishment is cumulative. If the first charge is ignored then the question arises whether the second charge by itself would merit imposition of the cumulative punishment. The Appellate Authority should have examined whether the penalty imposed on the applicant is proportionate to the gravity of the offences proved in the light of his ignoring the first charge.

9. The second charge against the applicant is that he snatched and destroyed the digital camera. This charge has not been gone into by the Appellate Authority when he confirmed the punishment imposed on the applicant by Disciplinary Authority. He did not consider whether the second charge was proved or not. Instead he decided that deterrent punishment needs to be given for obstructing an official and for being deliberately offensive during the inspection which is not the charge raised against the applicant. Further, the respondents have admitted that the inspection was around 2.30 hours and that the time of 1.30 hours as mentioned in the charge sheet is a clerical error. A charge has to be precise and definite to enable the applicant to defend himself effectively. The applicant has defended himself effectively to show that he did not sleep and that it was not possible to sleep at 1.30 hours. Therefore, the first charge cannot be held as proved. The Appellate Authority has wisely ignored the first charge. If the applicant did not sleep on duty at around 1.30 hours, there is no provocation for snatching and destroying the digital camera by which his photograph while sleeping on duty at about 1.30 hours on 15.12.2008 was taken.



10. Photograph is not a reliable proof of alleged sleeping on duty. One may keep the eyes closed and yet may not be sleeping. The applicant had periods of relaxation/inaction when there was no train. If he winked during period of inaction it cannot be seen as lack of alertness. The respondents have not cited any rule which permitted photography to assess alertness. There is no evidence to show that the camera was bought and photograph was taken and that camera was destroyed.

11. Non consideration of the above relevant factors has vitiated the impugned orders.

12. Further, there is nothing in the impugned orders to show that the Disciplinary, Appellate and Revisional Authorities had considered the statutory rules on train passing duties and Hours of Employment Regulations which provided for periods of inaction. So also, the Appellate Order is bereft of consideration of whether procedures laid down in the rules have been followed in the case of the applicant, whether the findings of the Disciplinary Authority are warranted by the evidence on the record and whether the penalty imposed is adequate or not. The Revisional Order also bye-passed the above aspects.

13. In the result, the O.A is allowed as under :-

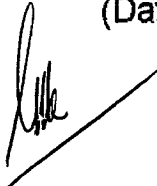
The impugned orders at Annexure A-6 and Annexure A-8 are quashed. The matter is remanded to the Appellate Authority for reconsideration in the light of the observations above.



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14. No costs.

(Dated this the 28th day of January 2013)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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