

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 49 of 2004

Monday, this the 31st day of July, 2006

C O R A M :

**HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

B. Gopinath,
S/o. C.C. Gopalakrishna Panicker,
Working as Catering Supervisor,
Southern Railway, Trivandrum,
Residing at Chennampallil House,
Moolavattom Post Office,
Kottayam : 686 026

... Applicant.

(By Advocate Mr. M.P. Varkey)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Chennai – 600 003
2. Chief Commercial Manager,
Southern Railway, Chennai – 600 003
3. Additional Divisional Railway Manager,
Southern Railway, Trivandrum – 695 014
4. Senior Divisional Commercial Manager,
Southern Railway, Trivandrum – 695 014

... Respondents.

(By Advocate Mrs. Sumathi Dandapani)

This application having been heard on 25.07.06, the Tribunal on 31.7.06 delivered the following:

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER



The applicant has challenged the following orders:-

- (a) Penalty Advice No. V/VO/A/FR/45/95 dated 3.3.97 issued by the 4th respondent.
- (b) Appellate Order V/VO/A/FR/45/95 dated 27.5.98 issued by the 3rd respondent.
- (c) Revisional Order No. P(A)86/Misc.179 dated 20.1.2003 issued by the 2nd respondent.

2. Briefly stated, the applicant while serving in the catering department of the Railways, was issued with a charge sheet for violation of Rule 3 and 15(1)(a) of the Railway Servants (Conduct) Rules. The charge is as under:-

"Shri B. Gopinath, Catering Supervisor, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant in that :-

- (i) He actively participated in the sale of milk powder to Pantry Car Units of Kerala Express and VRR/ERS in the name of M/s. Chennampallil Agencies, Moolavattom, Kottayam; M/s. Zion Traders and Agencies, run by his brother and brother's wife;
- (ii) He was instrumental to the sale of milk powder at higher price than the prevailing market price to the Pantry Car Units and VRR/ERS in connivance with C.J. CIR/Kerala Express at ERS and Shri K. Dhananjayan CIR/VRR/ERS and thus caused loss to the Railways.

Thus, he violated Rule 3.1(i), (ii) and (iii) and Rule 15 (i) (a) of the Railway Service (Conduct) Rules, 1966."

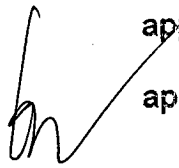
3. The applicant denied the charges and the inquiry took place. The Inquiry officer has held that the second charge has not been proved and in so far as the first charge i.e., active participation in the sale of milk powder to the Pantry car in

the name of Chennampalli Agencies and Zion Traders, the same is proved to the extent, "prepared the bills in the name of Chennampalli Agencies and Zion Traders."

4. The Disciplinary Authority has, after following the procedure, imposed a penalty of withholding of one increment in the scale of Rs 1400 – 2300 due on 01-03-1998 for a period of two years with recurring effect. Appeal filed by the applicant did not yield fruitful result. Hence, this OA.

5. Respondents have contested the OA. According to them, the handwriting experts have established that the applicant's handwriting was found in a number of bills of the aforesaid two firms. Applicant has reiterated the contents of the OA in his rejoinder.

6. Arguments were heard and documents perused. According to the counsel for the applicant, the case is one of no evidence as the matching of handwriting by the handwriting expert nowhere states that they were of the applicant. The counsel vehemently argued that on the basis of the vigilance action, if the standard documents and the questioned documents were sent to forensic experts, even without getting the statement alleged to have been given by the applicant duly admitted by the applicant, the same cannot go to prove that the applicant's handwriting is involved.



7. The counsel for the respondents had invited our attention to a specific question and its reply in the cross examination by the applicant of the handwriting expert and the same is as under:-

"Q.238. Kindly say when the possibility of two persons appearing similar cannot be ruled out there by possibilities of the handwritings of two different persons would also look similar?

Ans. In this connection, I have to mention here that the documents examination is based on the improbability of any two persons writing/ signatures being alike in the characteristics. Since the individual acquires the handwriting characteristics by him, learning and experience, it may not occur in any of the persons handwriting characteristics. The individual characteristic which is available in their standard may not appear in any of the individuals handwriting/signatures."

8. The counsel for the respondent rightly submitted that the above question implies that the applicant has accepted the statement as his and only tried to elicit from the witness in the cross examination that just as two faces could resemble each other, two persons' handwriting can also resemble each other.

9. Rules 3 and 15(1) of the Railway Services (Conduct) Rules, 1966 read as under:-

"3. General. (1) Every Railway servant shall at all times -

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Railway or Government servant.

(2) (i) Every Railway servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion



to duty of all Railway servants for time being under his control and authority;

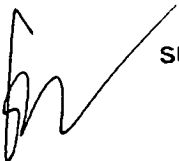
(ii) No Railway servant shall, in the performance of his official duty or in the exercise of power conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation - Nothing in clause (ii) of sub-rule (2) shall be considered as empowering a Railway servant to evade his responsibilities by seeking instructions from or approval of a superior officer or authority when such instructions are not necessary under the Scheme of distribution of powers and responsibilities.

15. Private Trade or Employment. (1) No Railway servant shall, except with the previous sanction of the Government, engage directly or indirectly in any trade or business or negotiate for or undertake any other employment.

Explanation. Canvassing by a Railway servant in support of the business of insurance agency, commission agency and the like owned or managed by his wife or any other member of his family shall be deemed to be breach of this sub-rule.

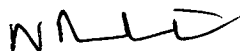
10. Rule 15 (1) is specific. No railway servant shall engage, directly or indirectly in any private trade or business, save with the sanction of the Railway. Here, the trade undertaken by Chennampalli Agencies and Zion Traders are "private trade" and the clear proof is that the applicant has prepared the bills. The bills prepared covers a period from 31-03 to 01-06-1992 i.e. for a full period of two months and the amount involved is Rs 13,000 plus. This proof is sufficient to hold that the applicant has violated the provisions of Rule 15(1) of



the Railway Servants (Conduct) Rules.

11. Though the applicant's counsel tried to fasten some illegality in the order of the appellate authority contending that he has presumed that the full charge has been proved, whereas the charge held to be proved is only to the extent of the applicant's having made the bills in the name of the two private firms, his contention is not acceptable as there has been no enhancement of penalty by the appellate authority; thus, the so called illegality does not qualify itself to such a magnitude to have the appellate order quashed.

12. In view of the above, the OA being devoid of merits, is dismissed. No costs.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

cvr.