

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 484/90
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DATE OF DECISION 10.01.1992

L. Mony Applicant (s)

Mr. P. Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through
the General Manager, Respondent (s)
Southern Railway, Madras and 4 others

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A. V. HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S. P. Mukerji, Vice Chairman)

The applicant in this case who had been working as Driver of goods train in the scale of Rs.1340-2200 has challenged the impugned letter of the Railway Board dated 3.4.81 at Annexure A.6 as also the punishment order dated 18.3.88 at Annexure A.13 reducing him to the post of Shunter in the lower scale of Rs.1200-2040 for a period of six months, the notice of enhancement of penalty dated 22.2.89 at Annexure A.16 issued by the appellate authority on his appeal dated 9.11.88 by which the reversion was proposed to be enhanced from six months to two years and the order of the appellate authority dated 27.6.89 at Annexure A.18 confirming the enhanced penalty. The brief facts of the case are as follows.

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2. While the applicant was working as a Driver in Goods train on 30.12.87 before the impugned circular of Railway Board dated 3.4.81 at Annexure A.6 had been communicated to the various depots on 27.3.88, he was called for duty to work the Ernakulam-Thondiarpur goods train and he signed on and joined duty at 1230 hours on 30.12.87. On completion of 9 hours of duty at a stretch, having felt tired, according to him, he claimed rest at 2235 hours (on the same day) and broke off duty at 2255 hours. He was served with a charge-sheet dated 11.1.88 for misconduct and misbehaviour. The charge against him was as follows:-

Charges: Shri L.Mony while working as Driver of Train No.ERTD on 30.12.87 he claimed rest at 22.35 hours at MNUR even though he had completed only 7 hrs. duty from wheel move at 2235 hrs. Thus he has violated the provisions of 10 hrs. rule viz. paras 2(i), (ii) and 4.1 of Rly.Bds. letter No E(LL)77/HER/29 dated 3.4.81.

para.2: The following periods will not count -

- (i) From bahar line to the station at the starting point, predeparture detention and travelling pilot and (ii) At the terminal station from the station to the shed, where the destination point is other than a station; say, a yard, a convenient point of would have to be locally demarcated as the destination station for the purpose of 10 hrs. rule.

para 4.1: The Ministry of Rlys. also desire to clarify that the Running Staff will not claim any rest within 10 hrs. at their duty at a stretch, while running through their Headquarters nor will they resort to stabling of train short of destination on completion of 10 hour duty at a stretch."

3. The statement of imputation of misconduct and misbehaviour contained in the charge-sheet at Annexure A.7 reads as follows:-

"Shri L.Mony violated 10 hrs. Rule in the following manner on 30.12.87. He while working as Driver of ERTD Goods on 30.12.87 claimed rest at 2235 hrs. where he had completed only 7 hrs. duty from wheel move by 22.35 hrs."

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4. According to him the Railway Board's letter dated 3.4.81 had never been communicated to the concerned staff in the Trivandrum Division including the applicant when the charge sheet was issued. He got a copy of the same from the files of the Loco Running Staff Association and found on verification material difference in the content of para 2 of the Railway Board letter and the extracts reproduced in the memorandum of charges.

5. He represented against the charge-sheet on 27.1.88 bringing out certain discrepancy in the extracts from the Railway Board's circular as given on the charge-sheet and the true copy of the said circular. On his request he was permitted to take extracts from the Railway Board letter but he was shown some other letter. On 29.3.88 he was advised that the applicant should have cleared his doubt either prior to the enquiry or during the enquiry itself. He was asked to submit a defence statement. The Enquiry Officer was appointed on 14.4.88 and he submitted defence statement at Annexure A.11 indicating that the aforesaid discrepancy regarding the content of the Board's letter could not be sorted out and he was not given a certified copy of the Board's letter and that he was not shown COPS Madras letter dated 5.5.81 earlier. Accordingly he was perfectly in his right to claim rest after 10 hours of duty from signing on. He requested that the proceedings of the enquiry without complying with his request for the production of Board's letter dated 3.4.81 was unjust, illegal and unsustainable. He has also produced a copy of the Board's letter dated 3.4.81

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which was in his possession. The enquiry was held on 2.6.85 and 8.6.85. The Enquiry Officer in his report dated 20.6.88 gave his finding as follows:-

"Shri L.Mony violated 10 hours Rule in the following manner on 30.12.87. He while working as Driver of ERTD Goods on 30.12.87 claimed rest at 22.35 hours, whereas he had completed only 7 hrs. duty from wheel move by 22.35 hours."

6. The disciplinary authority accepting the enquiry report imposed the penalty of reduction of his rank to that of a Shunter for a period of six months. The following reason was given in the punishment order:-

" Enquiry report accepted. While giving explanation to SF-5 party has stated that he relied on a copy of 10 hrs. rule given to him by the Kerala High Court. In the very letter copy given by the party it is clearly given that drivers should not resort to stabling of trains on completion of 10 hrs. duty. If he had relied on the letter as he claims he should not have stabled the train short of destination. He had not given any reasons for resorting to this. Thus it is clear that he has violated the instructions of 10 hrs. rule"

7. The applicant filed an appeal dated 9.11.88 and the appellate authority issued a notice dated 22.2.89 at Annexure A.16 proposing the enhanced penalty of reduction from six months to two years without giving any reason for such enhancement. The applicant represented against the notice on 17.3.89 challenging the notice on the ground that in terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the appellate authority has to give reasons and grounds on which he considered the penalty as inadequate or propose to enhance the penalty. In the absence of such reasons he was unable to submit the representation. He prayed

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that the appellate authority should convey the reasons to him to enable him to make a representation in that matter. But the appellate authority without replying to his representation passed the impugned order confirming the enhanced punishment on 27.6.89 at Annexure A.18. He submitted a detailed appeal on 9.8.89 against the enhanced punishment to the Chief Mechanical Engineer which is still pending but the punishment has been executed against him. The applicant has challenged the impugned order of punishment at Annexure A.13, the notice of enhanced penalty at Annexure A.16 and the appellate order of enhanced penalty at Annexure A.18 as non-speaking, cryptic and vague. He has also argued that he was not given an opportunity to submit his defence statement before the appointment of the Enquiry Officer and that the Enquiry Officer's report was not communicated to the applicant prior to imposing the penalty at Annexure A.13. This is in violation of the principles of natural justice. He has also challenged the punishment order on the ground that not only was his rank reduced from Driver's to a Shunter's but also his pay was reduced from Rs.1440 to Rs.1410/- . Thus he has been awarded two different penalties by the impugned orders at Annexures A.13 and A.18. He also argued that since Annexure A.6 order of the Railway Board was communicated and notified to the Running Staff only on 27.3.88 he cannot be punished for its violation in respect of an event which took place on 30.12.87. He has also challenged the Railway Board's letter at Annexure A.6 as unconstitutional and liable to be quashed on various grounds as have been indicated in O.A. 215/90.

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8. The respondents in the counter affidavit have stated that the applicant has not exhausted the remedies available in law and that he has no locus standi to challenge the Railway Board's circular at Exbt.A.6 which has been in vogue for 10 years. They have also taken the plea of res judicata so far as Annexure A.6 is concerned as the same had been challenged by the All India Loco Running Staff Association and the Drivers before the High Court of Kerala ^{on a petition} which was transferred to the Madras Bench of the Tribunal and disposed of as TA 18/87 on 9.6.87 directing the petitioners therein to submit proper representations to the Railway authorities. The representation was rejected at Annexure R.3. Since the applicant has been a member of the Association, he is barred by the principle of constructive res judicata. They have stated that the impugned circular dated 3.4.81 was circulated to all depots on 15.5.81 at Annexure R.4 and R.5 and reiterated repeatedly in 1987, 1988 and 1989. They have referred to Rule 2.06 of the ⁱⁿ General Rules where Railway servants are expected to observe and obey all rules and special instructions and lawful orders of its superiors. They have given detailed reasons in support of the circular at Annexure A.6 which has been discussed in detail in O.A 215/90 disposed of today. They have stated that "if the applicant had not signed off, his train could have easily reach^{ed} Palghat by about 2330 hours by which time he would have put in only 8 hours of running duty when he had two hours of margin left. Even otherwise from the hour of signing on he would have completed only 11 hours of duty by the time he would have reached Palghat at 2330 hrs. He claimed rest on the point of completing

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10 hours from signing on at Mannanoor and thereby caused dislocation of service. Having conceded that as Shunter his pay was reduced to Rs.1410/- for six months they stated due to the gravity of the offence the punishment was enhanced. The applicant had indicated before the Enquiry Officer that he was not willing to cross-examine the witnesses. They stated that the applicant had submitted his explanation to the notice of enhancement on 17.3.89 which was considered but not found acceptable and the penalty was enhanced. His appeal dated 9.8.89 against the enhancement of the penalty was forwarded to the Headquarters Office at Madras on 18.6.90. On 25.6.90 the applicant was advised that his Head of Deptt. is COPS and not CME and that he should address his appeal to COPS. The applicant acknowledged this communication on 12.7.90 but he has not submitted any appeal addressed to COPS. The witnesses had clearly denied that they have received any message from the applicant claiming rest. The applicant did not cross-examine these witnesses. He did not produce any letter from SS/AWY to prove his defence of having given notice to SS/AWY for rest. The respondents have argued that the impugned orders give reasons succinctly. The applicant had put in only 7 hrs. of running duty when he refused to go further.

9. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the validity of the impugned circular at Annexure A.6 is concerned all the rival contentions given for and against have been discussed in detail in our order in O.A 215/90 disposed of today. We do not wish to repeat them here again and direct that our order in O.A/215/90

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setting aside the order at Annexure.A.6 dated 3.4.81 and its replacement by further orders as indicated therein will apply 'mutatis mutandis' to this case also.

10. As regards the order of punishment at Annexure A.13 apart from the fact that it is based on the order at Annexure-6 which has been set aside, it suffers from two grave infirmities. Firstly it imposes two punishments, one a major penalty of reduction in rank to the lower time scale as per Rule 6(vi) of the Railway Servants (Discipline and Appeal) Rules and the other of reduction in the lower stage in the time scale vide Rule 6(v) of the same rules. Since the two punishments cannot be awarded for the same offence as it amounts to double jeopardy, the order of punishment is vitiated. The proviso to Rule 6 of the aforesaid Rules as quoted below makes it clear that only one of the penalties can be imposed:-

"Provided that in cases of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collisions of railway trains, one of the penalties specified in clauses (viii) and (ix) shall ordinarily, be imposed and in cases of passing Railway signals at a danger, one of the penalties specified in clauses (v) to (ix) shall, ordinarily, be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing." (emphasis added).

11. The other infirmity in the impugned order of punishment is that the copy of the Enquiry Report was not made available to the applicant by the disciplinary authority before he made up his mind to impose the punishment. The Hon'ble Supreme Court in Union of India and others Vs. Mohd. Ramzan Khan, JT 1990(4) 456 held that non-supply of the enquiry report by the disciplinary authority before it finds the employee guilty on the basis of the enquiry report is violative of the principles of natural justice as also it amounts to denial of reasonable

opportunity as contemplated
/in Article 311(2) of the Constitution of India.

12. As regards the appellate order at Annexure A.18 we find that even though the applicant in his representation against the show cause notice of enhancement of penalty dated 17.3.89 at Annexure A.17 prayed that reasons for enhancement of penalty in consideration of the evidence on record be communicated to him so that he can make an effective representation against the enhancement of penalty, the appellate authority did not communicate any reason whatsoever. It will be pertinent to reproduce the show cause notice at Annexure A.16 as follows:-

" Shri L.Mony, Driver/ERM is hereby informed that the undersigned has carefully gone through his above quoted appeal and found that the penalty of reduction as Shunter at Rs.1410/- for a period of 6 months (NR) with effect from 1.10.39 imposed by Sr.DME vide V/TP 45/ERTD/30/12/87 dated 18.3.88 is inadequate and proposes to enhance the penalty for a period of two years (NR) instead of six months with effect from 1.3.1989.

Shri Mony is hereby given an opportunity of making representation on the penalty proposed. Representations if any, should be made in writing and submitted to the undersigned not later than 7 days from the date of receipt of the memorandum by Shri L.Mony.

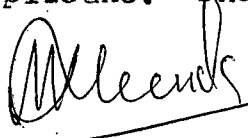
Receipt of the memorandum should be acknowledged."


13. From the above it is clear that the show cause notice did not give any grounds on the basis of which the applicant could make effective representation against the enhancement of penalty. Enhancing a penalty is not any less damaging than imposing a fresh penalty. The rules of natural justice therefore applies equally to imposition of a fresh penalty as in case of enhancement

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of the penalty already imposed. By communicating a non-speaking notice without giving reasons, the appellate authority has violated the rules of natural justice grievously. Accordingly we have no hesitation in striking down the non-speaking notice at Annexure.A.16 and the appellate order passed without giving reasonable opportunity to the applicant to represent effectively against the notice for enhancement of punishment.

14. In the facts and circumstances, we allow this application, set aside the Railway Board's Circular at Annexure.A.6 on the lines indicated in our order in O.A.215/90 which was disposed of today. We further set aside the punishment order at Annexure A.13, the notice of enhancement at Annexure.A.16 and the appellate order at Annexure. A.18 with all consequential benefits to the applicant. There is no order as to costs.


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(A.V. HARIDASAN)
JUDICIAL MEMBER


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(S.P. MUKERJI)
VICE CHAIRMAN

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