

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 497 1990  
TxxNo.

DATE OF DECISION 15.11.1991

L.Mony \_\_\_\_\_ Applicant (s)

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

Versus

UDI rep. by the General Manager Respondent (s)  
S.Railway, Madras & 2 others

Smt.Sumathi Dandapani \_\_\_\_\_ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

This application under Section 19 of the Administrative Tribunals Act by Shri L.Mony, now working as Shunter, Chief Wagon Superintendent's Office, Thamanam, Cochin is directed against the order dated 11.5.1988 at Annexure-A10 issued by the second respondent imposing on the applicant a punishment of withholding of increment due on 1.10.1988 for a period of one year and also against that part of the order of the third respondent (Annexure-12) dealing with the impugned punishment.

2. The facts necessary for the disposal of this application can be briefly stated as follows.

The applicant is a Divisional Secretary of the All India Loco Running Staff Association and has been holding that office from 1985 onwards. He had occasion to lead a few agitations in Trivandrum Division as the leader of the association. While he was working as a driver of goods train No.GR/J, on 14.6.1987 he found 20 wagons attached to the train at Mulangunnathukavu with their doors open. Since the applicant was aware of repeated and instructions to the General Manager of the Senior or Divisional Mechanical Engineer that goods train should not be taken from way side stations if doors of the wagons are not closed and secured, and since taking the formation with the doors in open condition was against the Rule 4.7.5 of Part III of the I.R.C.A conference rules, he did not venture to take the train in that condition from Mulangunnathukavu Station.

When the applicant declined to take the formation at Annexure-A5 was given to him a direction basing on a message from the Assistant Operating or Superintendent which reads as follows:

" You are permitted to start the train with the doors in the secured condition (message as per AOS order)"

Feeling that the Annexure-A5 direction was not very clear and or

that it was unsafe and contrary to the instructions of the higher authorities to start the train with wagons in open condition the applicant did not agree to take

This fact  
the train inspite of the Annexure-A5 direction was  
reported to the second respondent. The second res-  
pondent issued a memorandum of charges No.V/M.226/XIV/  
Rg. dated 7.7.1987 at Annexure-A6 proposing to hold  
an enquiry against the applicant under Rule 91 of  
the Railway Servants (Discipline and Appeal) Rules, 1968.

The articles of charge read as follows:

" That the said Sri.L.Mony, Goods Driver/  
ERM while working T.No.GR/J on 14.6.87 with  
loco No.WDM 17339 has refused to proceed  
further from MGK as per power message No.8  
notified to him by control through SM/MGK  
while at MGK, which resulted in the deten-  
tion to the train at MGK by 6.40 hrs, and  
arrangement of another crew by 29 Exp.

Thus he has violated rule No.1.02(50)  
2.06(a)(b) and 4.39 (b)."

The statement of imputations of misconduct in relation  
to the charge reads as follows:

" In terms of G.R.206 (a) & (b) every  
railway servant shall promptly observe and  
obey all rules and special instructions and  
all lawful orders given by his superiors.  
But in this case he has refused to proceed  
further from MGK, which resulted in the  
arrangement of other crew by 29 exp. and  
thereby causing a heavy detention of 6.40  
hrs. to the train at MGK."

The applicant submitted a written explanation inviting  
the attention of the second respondent to the various  
instructions including the instruction issued by him  
on 1.10.1985, Annexure-A4 to all drivers not to take  
the formation from way side Station if doors of the  
wagons are not closed and submitting that by not agreeing

to take the train with as many as 14 wagons with doors  
in open condition <sup>he</sup> had only obeyed the rules and in-  
structions issued by the second respondent, and that  
he had therefore not committed any misconduct. An  
enquiry was held and the Enquiry Officer found the  
applicant not guilty of violation of Rule 4.39, but  
<sup>him</sup> finding guilty of violation of 1.02(50) and 2.06 (a)  
and (b) submitted his report to the Disciplinary  
Authority. The second respondent on the basis of  
that report held the applicant guilty of all the  
charges and imposed on him a penalty of withholding  
of annual increment from Rs.1410 to Rs.1440 in the  
scale of Rs.1350 to 2200/-, due on 1.10.1988 for a  
period of 12 months by the impugned order at Annexure-  
A10 dated 11.5.1988. The applicant preferred an appeal  
against the Annexure-A10 order to the third respondent  
who without specifically disposing of the appeal as a  
part of another appellate/penalty order dated 27.6.1989,  
Annexure-A12 only cancelled the unexpired portion of the  
penalty imposed <sup>by</sup> with effect from 30.6.1989. Therefore  
aggrieved by the impugned order at Annexure-A10 and  
non-consideration of his appeal properly in the order  
at Annexure-A12, the applicant has filed this application  
praying that these orders may be quashed and that the  
respondents may be directed to restore the annual  
increment due to him on 1.10.1988 with consequential

benefits. It has been averred in the application that the applicant is not guilty of any misconduct, that the finding that he is guilty is based on no evidence at all, that the impugned order at Annexure-A10 is absolutely perverse, and that the Appellate Authority has not considered his appeal on merits.

3. The respondents in the reply statement have sought to justify the impugned orders on the ground that the refusal on the part of the applicant to obey the special instruction issued by the Assistant Operating Superintendent amounts to misconduct <sup>and</sup> that the applicant has been awarded punishment only in conformity with the rules. It has also been contended that no appeal has been received in the office of the second respondent against the Annexure-A10 order.

4. The applicant has filed a rejoinder stating that the appeal was filed and it was forwarded to Senior Divisional Mechanical Engineer, Trivandrum on 16.6.1988. In order to substantiate this contention the applicant has produced Annexure-A15, an endorsement on the copy of the appeal memorandum, Annexure-A11 by the Chief Wagon Supervisor that the appeal was forwarded to Sr.DME, Trivandrum on 16.6.1988 vide office note No.R.38/Rg of 16.6.1988.

5. We have heard the arguments of the counsel on either side and have also carefully gone through the pleadings and documents.

6. The substance of the charge for which the applicant was found guilty and punished by the impugned order is that, on 14.6.1987 he refused to take the Goods Train No.GR/J with loco No.WDM 17339 from Mulamkunnathukavu inspite of power message No.8, Annexure-A5 notified to him by control through Station Master, Mulamkunnathukavu resulted in detention of the train at Mulankunnathukavu by 6.40 hrs. and necessitated arrangement of another crew. and that he had thereby violated rule 1.02(50), 2.06 (a) & (b) and 4.39(b). The facts which are beyond dispute in this case are that, as many as 14 wagons of the train attached to it at Mulankunnathukavu had their doors open and that on the ground that taking goods train with wagons' doors of which are open is unsafe and against the instructions of the General Manager and other superior officers including the second respondent who issued the charge-sheet the applicant refused to proceed further from Mulankunnathukavu without the doors being closed. According to the learned counsel appearing for the respondents , as per rule 1.02(50) authorised officers are empowered to issue special instructions and as every railway servant is bound to observe and obey all rules and special instructions and lawful orders given by his superiors as per rule 2.06 and as the driver is

bound to obey all orders given to him by the Station Master or any Railway servant acting under special instructions so far the safe and proper working of the engine would admit as per rule 4.39 the refusal on the part of the applicant to proceed with the train from Mulankunnathukavu inspite of the special instruction conveyed to him by the Station Master at Annexure-A5 amounts to violation of the provisions contained in the above said rules. The learned counsel for the applicant on the other hand argued that, Assistant Operating Superintendent at whose instructions the Annexure-A5 power message was issued not being an authorised officer empowered to issue special instructions under rule 1.02 and as the instruction to take the goods train with wagons of which doors are not closed is unsafe and against the instructions issued by the General Manager and other superior officers including the one issued by the second respondent on 1.10.1985 at Annexure-A4, the refusal to take the train from Mulankunnathukavu on 14.6.1987 did not amount to any misconduct or violation of any rules. According to him the direction to take the train without the doors of the wagon being closed was not a lawful instruction and therefore the ~~was not~~ applicant was not bound to obey that order. The learned counsel argued that if the ~~had~~ applicant had obeyed that unlawful order and if some accident had occurred on account of the pressure of the wind getting into the open wagons through the doors, he

have  
would be held liable for negligence of his duties and  
for disobedience of the orders of the General Manager  
and the Senior Divisional Mechanical Engineer. Annexure-A1 is a copy of the memo issued by the Divisional  
Operating Superintendent, Trivandrum instructing that  
the doors of the empty despatched wagons should be in  
closed conditions. Rule No.4.7.5. Part III of IRCA  
Conference rules ~~which~~ lay down that "Doors,  
Ventilators, shutters or manhole doors of an empty  
wagon, which is not closed properly secured by full  
complements of fastening (except when permanently closed  
by ~~rever~~) are not to be certified fit." Annexure-  
A2 is a circular dated 5.9.1985 issued by the second  
respondent communicating the extract of the minutes of  
the safety meeting with the General Manager held on  
14.8.1985 regarding closing of the doors of the wagons.  
It has been mentioned there<sup>in</sup> that, instructions should  
be issued to TXR staff to refuse to give brake power  
certificate/safety certificate until such time as the  
flap doors in the formation offered are in properly  
closed and secured condition. Annexure-A3 is a copy  
of another circular issued by the second respondent  
to all depot officials in which it is stated as follows:  
" GM referred to seeing a covered empty  
special with most of doors in open condition  
while he was travelling by Np. 23 Exp. on  
13.8.85. He directed that TXR's should not  
be allowed to issue BPC unless all wagons  
have the doors properly closed."

Annexure-A4 is a copy of the circular issued by the second respondent on 1.10.1985 which reads as follows:

" All Drivers to be instructed through SOB not to take the formation from way side Station, if doors of the Wagons are not closed."

Admittedly on 14.6.1987 the applicant was asked to start the train from Mulunkunnathukavu station when the doors of the 14 wagons were not closed. It was under that circumstances that the applicant refused to take the train.

The power message given to the applicant under which he was directed to take the train,

(Annexure-A5) reads as follows: *M*

" You are permitted to start the train with the doors in the secured condition (message as per AOS order)."

In view of the clear direction by the second respondent in Annexure-A4 to the drivers not to take the formation from the way side station if the doors of the wagons are not closed, the applicant refused to take the train stating that the doors were not secured since they were not closed. In the written statement of defence submitted by the applicant to the memorandum of charges the applicant had made it clear that he refused to take the formation because he felt that it was unsafe to do so and also because he thought that he would be violating the instruction issued by the second respondent

himself, if he had taken the train with empty wagons with open doors and pleading that as his action was lawful and bonafide he may not be proceeded against.

A copy of the PRC's diary dated 14.6.1987 basing on which the charge-sheet at Annexure-A6 was issued to the applicant is attached to the charge memo. It reads as follows:

" Train arrived MGK at 17.00 hrs. and attached 9 + 20 empties shunting completed at 20.00 hrs. At 20.45 hrs. Dr. has given a message that out of 29 wagons attached 14 wagons having one side door open. Tfc. staff again attended and the doors were properly secured in the open condition and the ASM has given a message to the driver to proceed. Since the door are properly secured the driver has given the message that as per extant rules in force embodied in conference rule the doors of empty Wagon must be closed and secure, without the train cannot be started.

The ASM reported unable to close the doors keeping the train on Road 4. Matter informed to AME. A message issued to the driver permitting to proceed driver remarked 'No' at 22.55 hrs. PRC has instructed to shut down the loco on his completion of duty hrs., and to proceed to PGT as passenger vide PC 14/6/4.

Another crew was arranged Ex. ERS-MGK to work the train. Train left MGK at 2.40 hrs.

Rep: (1) Detention to loco 17339 from 21 hrs.  
(2) Stock with 84 units held up and could not go for interchange.  
(3) since the stock was delayed on Rd. 4 at MGK, PGT/J could not be traced in FCI siding."

The PRC who had recorded this diary was examined at the enquiry as witness No.3. In answer to Question

No.65 'Do you agree that all the above circulars, instruction and rules were issued to prevent accidents on account of the doors being kept in open condition?

This witness has answered 'I never asked the driver to start the train with the doors in open condition.'

To question No.66 put by the Enquiry Officer 'Did

Shri Azeez, Dy.CHC have any conversation with you

during this time? This witness has answered 'He

asked me to give a message (PC message) to the

driver to start the train. Since it is against

the safety point of view to ask the driver to start

the train with doors in open condition, I never gave

message and brought this matter to AME/TVC and then

only traffic has given a power message." So even

according to the PRC who was examined as third witness

in support of the charge it was against the safety

point of view for the driver to start the train with

doors of empty wagons in open condition, and therefore

he did not give the driver any instruction to start

the train with the doors in open condition. The

learned counsel for the applicant submitted that,

if the doors of empty wagons on one side are open

when the train is running fast the thrust of the

wind getting into the empty wagon is likely to cause

imbalance and even derailing of the wagons. We are

convinced that there is substance in this argument.

We are sure that it was because of this that the

General Manager and the other higher officials of the Railways have been giving instructions to depot officials, to the train examiners, and to all concerned not to give power certificate before the doors of the open wagons are closed and to the drivers not to take the train without all the doors of empty wagons being closed. Annexure-A4 was issued by the Divisional Mechanical Engineer, the second respondent himself. In Annexure-A4 he had directed that all drivers should be directed not to take the formation from way side station if the doors of the wagons are not closed. It is for strict obedience of this direction and consequent inability to obey a contrary direction that the applicant has been charge-sheeted, proceeded against and punished. We are distressed to see that the second respondent who had directed that the drivers should be instructed not to take the formation from way side stations unless the doors of the wagons are closed has issued the Annexure-A6 charge-sheet against the applicant for strict adherence to this direction. We are astonished to see that the second respondent has though the applicant had in his written statement of defence submitted in response to the memorandum of charges explained that he could not take the formation issued by the because he thought that he had to obey the instructions/

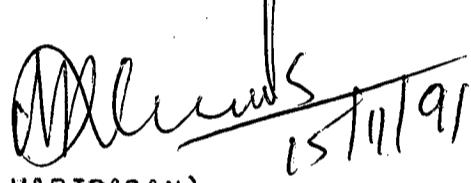
second respondent not to take the formation unless the doors of the wagons are closed has decided not to accept this explanation and to conduct an enquiry. We see from the evidence recorded at the enquiry that, even the witness No.3, PRC felt that it was unsafe to take the formation without the doors of the empty wagons being closed. In such circumstances we find that the finding of the Enquiry Officer and the Disciplinary Authority that the applicant is guilty of the charges is absolutely perverse.

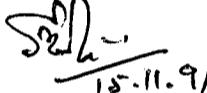
6. The gist of the charge against the applicant is that, he disobeyed the special instruction issued by the AOS. According to rule 1.02(50) special instructions are instructions issued from time to time by authorised officers in respect of particular cases or special circumstances. The applicant has contended in the reply statement that Assistant Operating Superintendent is not an authorised officer empowered to issue special instructions. The learned counsel for the respondents submitted that he could not find any order by which the Assistant Operating Superintendent has been authorised to issue special instructions. Therefore the case of the respondents that the applicant has refused to obey special instructions has not been established. Therefore on a careful scrutiny of the pleadings, facts, circumstances and evidence adduced at the enquiry

We find that the impugned order of punishment is not sustainable in law. We are constrained to observe that the second respondent has not applied his mind before he issued the charge-sheet, Annexure-A6, and that he has failed to appreciate the written explanation submitted by the applicant in response to the charge before ordering an enquiry to be held on the basis of the Annexure-A6 charge-sheet.

7. The respondents have contended that the applicant's appeal has not been received in the office. This has been found to be not true because, from Annexure-A15 it is evident that the appeal submitted by the applicant has been forwarded with the forwarding note by the concerned authority. It is further seen that the Appellate Authority in the orders at Annexure-A12 dated 27.6.1989 though while disposing of another proceedings has ordered that the unexpired portion of the penalty imposed on the applicant under the impugned order at Annexure-A10 be cancelled. This shows that the appeal of the applicant was before the Appellate Authority. Therefore finding that there is complete lack of application of mind to the defence and the grounds canvassed by the applicant in the memorandum of his appeal, the Annexure-A12 appellate order to the extent that it relates to not cancelling the whole of the punishment awarded to the applicant at Annexure-A10 is set aside.

8. In the conspectus of facts and circumstances, we allow the application and set aside the impugned punishment order at Annexure-A10 dated 11.5.1988 of the second respondent and that part of the order of the third respondent at Annexure-A12 relating to non-cancelling of the whole punishment imposed by the Annexure-A10 order. We direct the respondents to restore the annual increment of the applicant due on 1.10.1988 and we further direct the respondents to pay to the applicant a sum of Rs.500/- as costs.

  
(A.V.HARIDASAN)  
JUDICIAL MEMBER

  
(S.P.MUKERJI)  
VICE CHAIRMAN

15.11.1991