

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 504 OF 2006

Dated the 26th September, 2008

CORAM:-

**HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)**

Khalid Ahmed, TM
S/o MA Khader, Accounts Assistant,
Southern Railway,
Divisional Financial manager's office,
Palakkad, resident 'Zerha'
Anand Nagar, Opposite Railway Hospital,
Palakkad.

.. Applicant


[By Advocate: Mr TC Govindaswamy]

-Versus-

1. Union of India, represented by
The General manager,
Southern Railway, Headquarters Office,
Park town PO, Chennai-3.
2. The Financial Adviser and Chief Accounts Officer,
Southern Railway Headquarters Office,
Park town PO, Chennai-3.
3. The Financial Adviser and Chief Accounts
Officer/General/Southern Railway
Headquarters Office, Park town, PO,
Chennai.
4. The Senior Divisional Financial manager,
Southern Railway, Palakkad Division,
Palakkad.
5. Chief Vigilance Officer,
Southern Railway, Headquarters Office,
Park town PO, Chennai-3.

...Respondents

[By Advocates: Mr Sunil Jose, ACGSC]




This application having been heard on 13th August, 2008 the Tribunal delivered the following -

ORDER


(Hon'ble Dr. KS Sugathan, AM)

The applicant is working as Accounts Assistant under the 4th respondent. He is aggrieved by the penalty advice dated 14.12.2005 issued by the 4th respondent which was confirmed in appeal by the 3rd respondent by order dated 15.3.2006 (Annexure-A1 and A2). By virtue of the aforesaid penalty orders the applicant's pay has been reduced to the next lower stage of Rs.7075/- in the existing scale of pay of Rs. 5500-9000 for a period of four years without recurring effect. The penalty was the culmination of a charge sheet on 4.7.2003 for failure to detect the over payment of Rs.99,000/- to one employee. Subsequently the aforesaid charge sheet was withdrawn without prejudice to issue a fresh charge sheet and thereafter by memorandum dated 9.8.2004 (Annexure-A4) a fresh charge sheet was issued. The substance of the article of charge is that the applicant has failed to check the overpayment towards arrears of DA to an employee while processing the bill for payment in April 2003, resulting overpayment of Rs.99,000/-. The applicant denied the charges whereupon an Inquiry Officer was appointed. After completion of the enquiry the Inquiry Officer submitted his report on 20.5.2005. The charges against the applicant were held as proved. After considering the representation made by the applicant on the enquiry report, the Disciplinary Authority imposed the penalty of reduction of pay




by one stage by order dated 14.12.05. The applicant appealed against the aforesaid penalty order, but the appeal was rejected by the 3rd respondent by order dated 15.3.2006. The applicant has prayed for quashing the penalty imposed on him.

2] It is contended on behalf of the applicant that arrear bill in question was prepared by the Dealing Clerk in the Personnel Branch. The responsibility for the correctness of the arrear bill so prepared was that of the dealing clerk, Mrs Usha, working in the office of the Divisional Personnel Officer. It was also verified by Smt Omana, Office Superintendent and approved by the Assistant Personnel Officer before it was sent to the computer centre, where the Computer Programmer made a computer print out and thereafter, it was sent to the Accounts Office. The checks conducted by the applicant as the Accounts Assistant is verified by the Senior Section Officer and approved by the Assistant Financial Manager. The extent of checks to be done by the Accounts Office is contained in para 1243 of the Accounts Code. According to the aforesaid Code, the responsibility of the Accounts Office in the matter of exercising the internal checks over the computer pay rolls is the same as for the manual pay bills. However, the checks laid down in para 1206(b) and (c) may be exercised only to a limited extent as described by the Financial Adviser and Chief Accounts Officer, where checks prescribed in para 1206(e) need not be exercised. Para 1206 (e) refers to checking of calculations and totals. It is therefore contended by the applicant that it is not the responsibility of the applicant to check the calculations and




totals. According to the applicant, the entire Vigilance Organisation is bent upon punishing him as he is the lowest official in the accounts office. The report of the Inquiry Officer is based on presumption and surmises and not based on evidence on record. The applicant was denied reasonable opportunity to present his case. The Inquiry Officer did not question the applicant on the evidence generally existing against the applicant which is a mandatory requirement under Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules. The penalty imposed against the applicant is shockingly disproportionate to the gravity of the charge.

3] Respondents have contested the OA. In the reply statement filed by them it is stated that the disciplinary proceedings were initiated against the applicant for his gross negligence and carelessness while discharging his official duty. The applicant has tick marked in the amount payable column. The bill was received by the applicant on 28.4.2003 and he had ample time to see the individual items and he had also seen individual items of the claim as evident from the tick marks put by him on the bill. Therefore, the applicant cannot absolve himself from responsibility. Further, the arrears working sheet accompanying the bill reveals that the arrears of pay is Rs. 1452/- and DA Rs. 799/-. The above arrears were on account of regularisation of the period of absence of 14 days during the preceding month as leave due. The applicant's tick marks in the amount payable column in the pay bill as well as in the working sheet for arrears shows that he has personally checked the admissibility of



arrears and allowed for payment. If only he had cross checked the relevant columns of arrears of pay and DA in the bill with the above working sheet as a dealing clerk is required to do, he could have easily detected the over payment. The railways therefore suffered a loss due to the negligence of the applicant. Had the applicant applied his mind and remained vigilant in discharging his official duties, this discrepancy would have come to light. Putting tick marks without seeing what it is clearly shows that the applicant has done his work in a casual and negligent manner. According to para 1243 of the Accounts Code check of calculations and totals need not be exercised in computerised bills. However, it does not dispense with internal check. Even if it is assumed that the officers who dealt with the matter could have also detected the mistake that does not absolve the applicant of his responsibility. The applicant was doing the initial checks in the Account Office. The amount being approved was large in comparison to a basic pay of Rs. 3280/-. The overpayment was not on account of calculation error but due to wrong data entry on the part of the Personal Branch clerk and the failure of the applicant to detect the same. The quantum of punishment imposed on the applicant was decided by the Disciplinary Authority and Appellate Authority based on evaluation of facts and evidence available. Adequate opportunity has been given to the applicant before imposing the penalty.



4] On a specific direction from this Tribunal information regarding the action taken against other officials, who dealt with the bills, was submitted by the respondents by their

affidavit filed in May 2008. It is stated therein that Smt. KM Omana, Office Superintendent Grade-I was issued with the charge memo for minor penalty on 07.07.03 and one increment was withheld for a period of 6 months without future effect. In the case of Smt. KM Ushadevi, Sr. Clerk, charge memo dated 4.8.2004 was issued for a Major Penalty. And she was imposed with the penalty of reduction of pay from Rs.6000/- to 5750/- in the scale of pay of Rs.4500/-to-7000/-for a period of three years with effect of postponing future increments by the Disciplinary Authority. The Appellate Authority modified the penalty by reducing the pay by one stage (from Rs. 6000/- to Rs. 5875/-) for a period of 12 months with the effect of postponing future increment. Smt CV Geetha, Senior Section Officer (A), was issued with charge memo for minor penalty and punishment was imposed on her by withholding one set of privilege pass for the year 2004. Hence it is not correct to say that the applicant has been subjected to any discrimination and others have been left free.

5] We have heard Mr. TC Govindaswamy, learned counsel for the applicant and Mr. Sunil Jose, ACGSC for the respondents. We have also perused the documents on record.


6] Following the pronouncement of the Hon'ble Supreme Court in the matter of *BC Chaturvedi -v- Union of India as well as High Court of Bombay -v- Shasikant Patil*, the grounds for judicial review in disciplinary proceedings has to be limited to the examination of (a) whether there has been a violation of the principles of natural justice, (b) whether the decision is vitiated

by considerations extraneous to the evidence and merits of the case, and (c) whether the conclusions are *ex facie* arbitrary or capricious that no reasonable person could have arrived at such a conclusion.

7] We have considered the merit of the rival contentions of the parties keeping in mind the above decision of the Hon'ble Supreme Court. It is not disputed that overpayment of Rs.99,000/- was effected by wrong calculation of DA arrear or a wrong entry of the amount of arrears into the computer. It is also not disputed that the arrear bill was prepared by the Personnel Branch and checked by the Accounts Branch. However, the mistake was not detected before payment. After over-payment was effected, the mistake was detected and the overpayment was recovered in instalments. The respondents have taken disciplinary action against all the employees who dealt with the bill for negligence and carelessness. The present applicant was the Accounts Assistant who checked the bill when it reached the accounts section after having been prepared by the Personnel Branch. An oral enquiry was conducted by the respondents in accordance with the procedure laid down in the Railway Servants (Discipline and Appeal) Rules. The applicant has now raised the issue of violation of principles of natural justice. On perusal of the available record, we find that the applicant had been given sufficient opportunity to present his case before the Inquiry Officer. This is also evident from the representation made by the applicant himself on receipt of the Inquiry Report (Annexure-A9). There is no averment in the

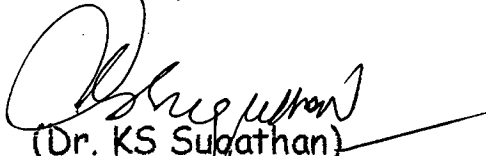


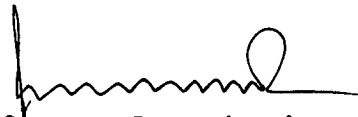
aforesaid representation that he had not been given sufficient opportunity to present his case. On the other hand, he has stated that no motive is attributed for the overpayment and no deliberate action is established in the over payment. Further the over payment made to the employee was fully recovered. The applicant has also contended that he is not responsible for checking the calculation and totals as per Accounts Code 1206. All these points have been considered by the Inquiry Officer, who in his report concluded that -"Even if he had not paid any attention towards the calculation of DA arrears made by the computer, his checking of all the other items mentioned above should be capable of indicating (to) him that something is wrong in a Group-D employee receiving such an abnormally high amount, which in turn, would have made him check once again all the items of the bill, had he bestowed adequate devotion to his duty." The contention of the applicant that it is not his job to check calculations and totals cannot absolve his responsibility to overlook a glaring discrepancy. The purpose of checking by Accounts Office is to ascertain such discrepancy. Checking/ verification of the salary and arrear bill would necessarily involve looking for internal inconsistencies in the figures. It is seen from R (4) (a) pay bill that pay arrear is shown as Rs.1452/- and the DA arrear is shown as Rs.99,799/-. If the applicant had carefully checked the bill, this could have been noticed. Therefore, we are of the considered opinion that the findings of the Inquiry Officer that the charges against the applicant are proved are well founded. As far as the quantum of penalty is



concerned, we do not accept that it is shockingly disproportionate and / or shocking to the conscience of a prudent man. The penalty involves reduction of pay by one stage for 4 years without recurring effect. We also do not see any discrimination in the manner in which the respondents have dealt with the other officials, who are also responsible for the over payment. In the case of the Clerk in the Personnel Branch, the punishment imposed was reduction of the pay by one stage for a period of 12 months with the effect of postponing future increments. It is not as if the respondents singled out the applicant only for imposing punishment.

8] For the foregoing reasons, we do not see any justification to intervene in the case and the OA is accordingly dismissed. No order as to costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Paracken)
Member (Judicial)

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