

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 518 of 1997

Friday, this the 12th day of March, 2004

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. K.P. Prabhakaran,
S/o M.P. Balakrishnan Nair,
Ex-Station Master/Southern Railway,
Ettakkot (Palghat Division),
Residing at: Prabha Sanghamam,
Madathil West Ponniam Post,
Via Tellicherry, Cannanore District,
Kerala.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. The Chief Operations Manager,
Southern Railway, Headquarters Office,
Park Town PO, Madras-3

2. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.

3. The Union of India through the
General Manager, Southern Railway,
Park Town PO, Madras-3

4. V.V. Gopalakrishnan,
Deputy Station Superintendent,
Southern Railway, Cannanore.Respondents

[By Advocate Mr. P. Haridas (R1 to R3)]

The application having been heard on 12-3-2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, an Ex-Station Master of Southern Railway, Ettakkot, Palghat Division, filed this OA aggrieved by the order dated 30-9-96/4-10-96 (Annexure A1) of the 1st respondent imposing on him a penalty of dismissal from service as also the order dated 19-2-97 (Annexure A2) of the 1st respondent by which the 1st respondent refused to interfere

with the penalty. The applicant had taken various grounds of attack in this OA including that the 2nd respondent, Additional Divisional Railway Manager had no competence to impose on the applicant the penalty of dismissal from service. When the OA came up for final hearing earlier before a Bench of this Tribunal, by order dated 21-9-1999 the Bench held that the Additional Divisional Railway Manager was not competent to impose on the applicant the penalty of dismissal from service and therefore, without going into other rival contentions in the matter, allowed the OA setting aside the impugned orders, providing that the order would not stand in the way of the respondents from taking such action in the matter as they deemed fit in accordance with law. Respondents carried the matter before the Hon'ble High Court of Kerala in OP.No.31065/99. The Hon'ble High Court of Kerala, vide its order dated 18-9-2003, found that the Additional Divisional Railway Manager was competent to act as disciplinary authority and to impose on the applicant the penalty of dismissal from service and therefore remanded the matter to the Tribunal for a fresh disposal of the OA on merits. Thus the OA is again before us for a final disposal.

2. We have perused the entire pleadings and material placed on record and have heard Shri T.C.Govindaswamy, learned counsel of the applicant and Shri P.Haridas, learned counsel of respondents 1 to 3.

3. In view of the courses that we are going to adopt in this case, we are of the considered view that it is not necessary to narrate the facts of the case in full. It would be sufficient to state that on the basis of the enquiry held into a memorandum of charges dated 3-1-96 the applicant was found guilty and the disciplinary authority issued Annexure A1

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order of dismissal from service, that the applicant submitted a detailed appeal (Annexure A-14) raising various grounds namely (i) that the disciplinary authority did not have jurisdiction to impose on him the penalty, (ii) that the enquiry was not held in conformity with the principles of natural justice, (iii) that the findings that the applicant is guilty is not based on any evidence and therefore it is perverse, (iv) that the applicant is not guilty of any misconduct, (v) that the applicant had put in 30 years of service and this has not been taken into consideration while awarding the penalty of dismissal from service, and that the appellate authority has not applied its mind to the grounds raised by the applicant. Although several grounds have been taken, the ground mainly pressed by the learned counsel of the applicant is that the appellate order Annexure A2 is unsustainable as it is cryptic, non-speaking and without application of mind. Learned counsel of the applicant submitted that under the above circumstances it would be appropriate if the appellate authority, namely the 1st respondent, is directed to reconsider the appeal afresh on merits after affording the applicant an opportunity of personal hearing.

4. Learned counsel of the respondents states that although the appellate order is short, it reflects application of mind and therefore it does not call for any intervention.

5. We have carefully gone through the material on record. We find that the applicant had raised various grounds in his appeal memorandum (Annexure A-14). The important grounds raised by the applicant are that the enquiry has been held without giving him reasonable opportunity to defend himself, that the finding that he is guilty is not supported by any evidence at all, that the enquiry authority failed to question



the applicant as required under Rule 9(21) which caused great prejudice to him as he could not explain the materials which apparently appeared to be against him, that the disciplinary authority has relied on extraneous materials to reach the conclusion and that the penalty was grossly disproportionate. Going through the appellate order Annexure A2, we find that the appellate authority has not applied its mind to these grounds and has not decided these points. It is profitable to extract the appellate order to see that the order does not disclose application of mind. It reads thus:

"I have gone through the Appeal, the file of papers, the Service Record of the employee and the orders of ADRM.

No rule has been violated in imposing the penalty and dealing with his case so far.

Adequate and reasonable opportunities have been given to the employee to prove his innocence. He did not attend the fact finding enquiry even though he was given more than one opportunity. He has failed miserably to give reasons for his serious act of omission which would have resulted in loss of lives.

I had called upon the employee during my Inspection of MAQ and has been spoken to him at length. He did not give any reason even to justify his behaviour.

His service record is full of omissions and irregularities like unauthorised absence, dereliction of duty etc. etc.

There is no prejudice proved on that of E.O. who conducted the inquiry.

The TI has repeatedly complained about his unsafe working, drunkenness on duty and had suggested his transfer. It is a matter for serious concern, that the employee did not profit by counsel, earlier punishment etc. and continued in his own wayward ways.

Continuing him in service will be against public safety.

His removal from service is in the interest of public safety and saving the fair image of the Railway.

The penalty imposed should stand."

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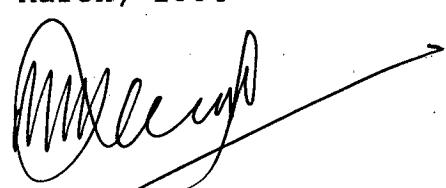
The appellate authority is enjoined to consider whether the enquiry has been held in conformity with the rules, if there is failure to observe any rule, whether that has caused prejudice to the applicant, whether the finding is supported by any evidence and whether the penalty awarded is adequate, inadequate or highly excessive and disproportionate. A mere reading of the appellate order reveals that the appellate authority has not discharged its statutory obligations properly. Under these circumstances, we are of the view that the appellate order Annexure A2 should be set aside and the appellate authority be directed to dispose of the appeal afresh in accordance with law.

6. In the light of what is stated above, we dispose of the Original Application directing the 1st respondent to consider Annexure A-14 appeal after giving the applicant an opportunity of personal hearing, in accordance with the rules and to pass a detailed speaking order, within a period of three months from the date of receipt of a copy of this order. The impugned order Annexure A2 is set aside. No order as to costs.

Friday, this the 12th day of March, 2004



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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