

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

D. A. No. 530
T. A. No.

1990

DATE OF DECISION 3.2.1992

Shri T. Sugathakumar Applicant (s)

M/s K. Ramakumar, V.R. Ramachandran Nair and
Roy Abraham. Advocate for the Applicant (s)
Versus
Union of India and two others Respondent (s)

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?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The applicant, who was working as Travelling Ticket Examiner, Southern Railway, Trivandrum, has in this application filed under Section 19 of the Administrative Tribunals Act challenged the legality, propriety and correctness of the order issued by the Divisional Railway Manager, Trivandrum. the second respondent on 13.5.1985 imposing upon him the punishment of dismissal from service with effect from 18th May, 1985 and also the appellate order of the Chief Commercial Superintendent, Madras, communicated to him by the letter dated 26.6.1990 at Annexure 'H' by the Assistant Personnel Officer upholding the punishment imposed on him.

2. The factual matrix can be shortly stated thus:
The applicant was appointed as Ticket Collector in sports

quota in Madurai Division of the Southern Railway in the year 1972. He was later promoted as Travelling Ticket Examiner and further promoted as Travelling Ticket Inspector. While so, in January, 1985, a memorandum of charges was served on him alleging that he, while working as FSCN, CBE Sleeper Coach by train No.48 from SRR/TVC on 8.1.1985 failed to hand over the First Class chart to Shri P.M. Thomas, CDR/ERS when demanded to accommodate wait-listed passengers and that he has also caused detention of the train for 25 minutes at TCR thereby violating Rule 3(I)(II) and (III) of Railway Service Conduct Rules, 1968. The applicant denied the charge. An enquiry was held. The enquiry authority found him guilty of the charge. The disciplinary authority, namely, the second respondent, without giving the applicant a copy of the report and an opportunity to make his representation in regard to acceptability of the same, by order dated 13.5.1985 at Annexure 'B' held the applicant guilty of the charges accepting the findings of the enquiry authority and imposed upon the applicant the penalty of dismissal from service. As according to the applicant he was appointed by the General Manager, the second respondent was incompetent to pass an order of dismissal in his case and as the enquiry was vitiated for several reasons, he filed an appeal to the appellate authority mentioned in the order raising the above contentions. The appellate authority has by the impugned order at Annexure 'H' rejected his appeal and confirmed the order of the disciplinary authority. It is in these circumstances that the applicant has filed this application.

3. The main grounds on which the impugned orders are attacked are: (a) the second respondent is not competent to dismiss the applicant from service as he is an authority

lower than the General Manager who appointed him; (b) the impugned orders at Annexure 'D' is vitiated for non-compliance of the principles of natural justice and denial of reasonable opportunity to defend as a copy of the enquiry report was not furnished to the applicant before the second respondent decided that the applicant was guilty; and (c) the findings of the enquiry authority and the disciplinary authority are perverse as the same are not supported by any legal evidence.

4. The respondents in their reply statement contented that the second respondent who is equivalent in rank to the Divisional Personnel Officer, who appointed the applicant, is competent to issue the impugned order of dismissal, that there is no denial of natural justice or reasonable opportunity to defend in not furnishing a copy of the enquiry report to the applicant before the disciplinary authority took a decision regarding his guilt as the Railway Servants Discipline and Appeal /Rules do not provide for furnishing such a copy, that the findings of the enquiry authority and the disciplinary authority are warranted from the evidence and ~~the facts~~ that the applicant has no legitimate grievance.

5. We have very carefully gone through the pleadings and the documents on record and have also heard the arguments of the counsel on either side. The applicant has asserted in the application that he was appointed by the General Manager, Madras, in the sports quota and had also prayed that the respondents may be directed to produce a copy of the order No.S.Rly.Z.769/XI dated 5.5.1972. We had by our order dated 23.7.1991 directed the respondents to produce the offer of appointment dated 12.6.1972 mentioned in the Service Book of the applicant and, if possible, the

Divisional Personnel Officer's order dated 18.5.1972 mentioned as authority in the same page of the Service Book. It was also directed that the respondents should produce for our perusal the order, if any, delegating the power of appointment of the General Manager to subordinate authorities for appointment in the Commercial Branch in sports quota. In response to this order, the Divisional Personnel Officer, SR, Trivandrum, filed an affidavit and produced Annexures R2 to R5(a). In this affidavit, the Divisional Personnel Officer has sworn that DPO's order dated 18.5.1972 mentioned in the service register of the applicant could not be traced out. It was also mentioned that there was no separate order delegating the power of appointment of the General Manager to subordinate authorities for appointment in the Commercial Branch. Annexure R2 is a copy of the proceedings of the Headquarters Office, Personnel Branch, Southern Railway, Madras, regarding appointment of Class III staff on sports accounts - 1972-73. It was on the basis of this proceedings that the applicant was appointed to the service. The opening sentence of these proceedings read as follows:-

"The General Manager has accorded sanction to the appointment of the following candidates in Class III service on sports account as indicated below:-"

Item No.1 is Shri Sugatha Kumar, the applicant. The post to which his appointment was sanctioned was Ticket Collector. The pay fixed on appointment was shown as Rs.180/- in the scale of Rs.110-180/- and the Division to which he was posted was shown as Madurai Division, Trivandrum Central. In this proceedings addressed to DSS/P/TPJ/MDU/OJA/ENC/P/BNC at the bottom it is seen stated as follows:-

"The verification of character and antecedents should be initiated at your end. Action may be taken in terms of this Office secret letter No.PB/CS/62 dated 6.7.62 and PB/CS/62/Vol.II dated 19.1.71."

"The RSC applications may be returned to this Office immediately after their appointment duly furnishing the date of appointment to enable further action being taken to regularise their appointment by the Railway Service Commission."

6. Relying on the last portion of the above communication, the learned counsel for the respondents submitted that though the General Manager has approved appointment of the applicant, the actual appointment was to be made only by the Divisional Superintendent and, therefore, the contention of the applicant that he was appointed by the General Manager has to be rejected. We do not find any force in this argument at all. It is evident from Exhibit R2 that the General Manager has accorded sanction for the appointment of the applicant in the post of Ticket Collector in the scale of Rs.110-180/- and that he was posted to the Trivandrum Central Station in Madurai Division. What remained to be done by the Divisional Superintendent was only to sign a formal appointment order after verifying the character and antecedents of the applicant. Merely signing the appointment order does not make an authority the competent authority to make the appointment. So we are convinced that the appointing authority in the case of the applicant was the General Manager. The impugned order at Annexure 'D' dismissing the

applicant from service issued by the Divisional Railway Manager, an authority lower in rank than the General Manager which who was the authority/appointed the applicant, is, therefore, invalid. The impugned order at Annexure 'D' and the appellate order should be quashed on that very account. Though the applicant had raised the question of competence of the disciplinary authority, this contention was brushed aside by the appellate authority in his order at Annexure 'H' as irrelevant without giving proper consideration.

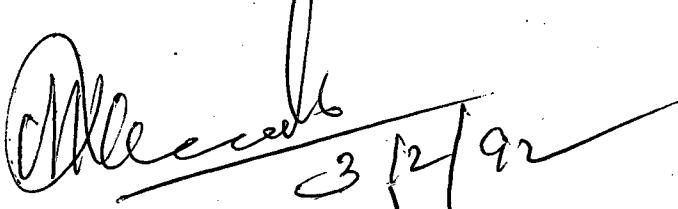
7. The impugned orders at Annexures 'D' and 'H' have to be set aside for another reason also. It is not disputed that a copy of the enquiry report was not given to the applicant and the applicant was not given an opportunity to make his representation regarding acceptability of the report before the second respondent decided that the applicant was guilty of the charges. The learned counsel for the applicant argued that this has resulted in denial of reasonable opportunity to defend and amounted to violation of the principles of natural justice. In *Union of India (1990(2) SCALE, 1094)* and others vs. Mohd. Ramzan Khan, the Hon'ble Supreme Court has held that non-supply of a copy of the enquiry report and denial of the opportunity to make a representation regarding the acceptability of the report amounts to denial of reasonable opportunity to defend and violation of the principles of natural justice enshrined in Art.311(2) of the Constitution of India and that the penalty orders in such cases are vitiated. This dictum applies clearly ~~xxxxx~~ to the facts of this case as the applicant was not furnished a copy of the enquiry report before the second respondent decided that the applicant was guilty. We/Find in this case that/there is a denial of reasonable opportunity to defend

and violation of principles of natural justice. On that account also, the impugned order at Annexure 'D' has to be set aside.

8. The applicant has contended that the findings of the enquiry authority upheld by the disciplinary authority that he is guilty of the charges is absolutely perverse. Since the punishment order has to be quashed on the other two legal grounds, we deem it not necessary to go into the merits of this contention and the other contentions raised on either side.

9. In the facts and circumstances of the case, we allow the application and quash the impugned orders at Annexure 'D' and 'H' and direct the respondents to continue the applicant in service as Travelling Ticket Inspector in the Trivandrum Division of Southern Railway with all consequential benefits. Since the penalty order is set aside on the grounds of incompetence of the punishing authority and also for non-compliance of the principles of natural justice, we make it clear that it will be open for the disciplinary authority, if it so desires, to recommence the disciplinary proceedings from the stage of receipt of enquiry authority's report and to pass final order in the matter *deneovo* after supplying a copy of the enquiry report to the applicant and giving him an opportunity to make his representation.

10. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI) R
VICE CHAIRMAN