

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 533 of 2005

Tuesday, this the 27th day of March, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

K. Ramesh,
S/o. Kunjur Krishnan Nair,
Working as Travelling Ticket Examiner (SL),
Southern Railway, Quilon,
Residing at 'PALAZHI', Near MVGHS,
T.K.M.C. PO, Peroor, Kollam ... Applicant.

(By Advocate Mr. M.P. Varkey)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Chennai : 600 003
2. Chief Commercial Manager,
Southern Railway, Chennai : 600 003
3. Additional Divisional Railway Manager,
Southern Railway, Trivandrum : 695 014
4. Senior Divisional Commercial Manager,
Southern Railway, Trivandrum : 695 014 ... Respondents

(By Advocate Mr. P. Haridas)

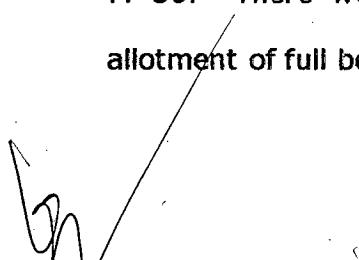
The Original Application having been heard on 6.2.07, this Tribunal on
27.3.07. delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

A peculiar case. The chart of 2624 Express in respect of Coach S-8 on
23-08-02 showed the same PNR No. 4318093494 in respect of six passengers

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(Berth Nos. 13, 14, 15, 16, 38 and 40) with one particular ticket number 23937296 as well. The reservation was from the Chengannur to Chennai Central. After the preparation of the chart, there was a cancellation of one of them, berth No. 38 (Smt. Valasamma, F/58) and a fresh ticket with same PNR No. but different ticket No. 25301828 was issued. The applicant who was the Travelling Ticket Examiner in that train for S-5, S-7, S-8 and S-9 from TVC to PGT made necessary endorsement in the chart in respect of the passengers as per the ticket shown to him, but, according to him, by oversight he had tick-marked all the six berths as having been present and proceeded further to examine tickets of other passengers. At Katpadi Station on 24-08-2002, when a preventive check was conducted it was found that Berth No. 38 was under occupation of another passenger by name Mathew T Cherian who was holding a ticket from Chengannur to Chennai and according to the said passenger, he was allotted the berth at Trichur by the TTE and he had paid a sum of Rs 100/- to the TTE who, of course, did not give any receipt in respect of the same. The vigilance check was conducted in the presence of another T.T.E. Shri S. Ranganathan who had taken over from the applicant at Palghat and while so taking over, the chart handed over to him did not contain any endorsement in respect of Berth No. 38 of Coach No. S-8, as to the cancellation or allotment to any other passenger. The Chart contained only the original name of Valasamma F. 58. There were other RAC passengers in the compartment, waiting for allotment of full berth subject to availability.

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2. The respondents proceeded against the applicant on the ground of mala fide Intention purported to be established from the following:-

- (a) The passenger who was not travelling was not marked "NJ" but a tick mark was given.
- (b) The change of ticket number due to cancellation of one berth was not updated in the chart.

3. Charge sheet dated 15-05-2003 was issued, and the applicant maintained that as the ticket and the chart reflected the same PNR No., he had tick marked all the six berths in the chart and as the group was allotted berths at different places, he could not trace them and due to pressure of work he could not detect that passenger in Berth No. 38 was dropped out and five of them only were travelling. This resulted in his not allotting berth number 38 to any other RAC passengers. As regards the statement given by the passenger who was in occupation of berth No. 38, the applicant exhibited his Ignorance about the same.

4. Regular Inquiry was conducted and the applicant participated in the same. Inquiry officer finally, after examining all the witnesses, and after considering the contentions in both the sides held, as under:-

"I agree on this point and don't want to give any credence to the aspects of giving Rs 100/- to the charged official etc., but truth remains a passenger with W/L ticket has been allowed by the Charged official in berth No. 38 which is a 'NJ' berth and supposed to have been allotted to a RAC passenger. For all the above happenings Ex S-12 is the supporting evidence which is the statement given by Shri Ranganathan. With regard to statement given by the Charged official (Ex S-11), the Charged official had replied



to all the questions and also admitted his mistake and he had not made any remarks regarding any duress during the course of obtaining a statement from him by the Vigilance Inspectors.

My findings in this vigilance case against Shri K. Ramesh, TTE/SL/QLN in the charges framed against him vide charge memorandum No. V/VO/PC/3/2002/08/2312/GVC(FR) - 11 dated 15-05-2003 issued by Sr. DCM/TVC stands proved.

5. Applicant has furnished his representation and did not shift his stand as given earlier before the I.O. (vide reply to Q. No. 51). He had, however, supplemented that on the basis of law laid down by the Apex Court in the case of Lattoor Singh vs Union of India (ATJ 2003 (1) 105), documents whose authenticity had not been proved by examining the respective authors thereof, various exhibits relied upon by the respondents cannot be taken as evidences in the eye of law. As regards his own statement Ex. S-11, it has been stated that the same was retracted by him.

6. The disciplinary authority, by Annexure A-7 order dated 10-02-2004 endorsed the findings of the inquiry authority and gave the following reasons:-

"I have carefully gone through the whole file regarding Disciplinary Proceedings initiated against Sri. K. Ramesh, TTE/QLN who during a vigilance check by train No. 2624 Madras Mail on 24-08-2002 (which left TVC on 23-8-2002) was found to have indulged in corrupt practices and Departmental action under Railway Servants Discipline and Appeal Rules 1968 were initiated against him vide No. V/VO/PC/J/2002/08/312/TVC(FR)-II.

The enquiry report submitted by the Inquiry officer and the representation given by the charged official have been considered. The inquiry officer has dealt the matter in detail, of the charge that the CO while working Train No.

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2624 Mail on 23-8-2002 has fictitiously shown by tick marking in the chart a passenger by name Ms. V.Valsamma, F. 58 under PNR No. 4318093494 berth No. 38 in S 8 coach ex CNGR to MAS, out of a group of 6, who had cancelled her journey after the preparation of the chart, as travelling, thereby allowing another passenger with CPT No.25301324 with PNR No. 4318488957 ex CNGR to MAS, who was waitlisted, in seniority 9 in the final chart, to travel in the berth reserved for the passenger whose journey was cancelled, thereby overlooking the seniority/claim of RAC passengers who had to travel without the berth being provided. The case has been found proved in the enquiry. The charged official however, objects to the findings with the explanation that "Reasons for findings are not shown alongwith the findings or separately anywhere in the Inquiry Report". However, I feel in the paragraph under 9, 'Conclusion', the various aspects of the case have been well discussed, I find that the charged official had failed basically in not marking 'NJ' in the case of passenger who had cancelled the journey after the preparation of the chart. He cannot have any reasonable justification for the failure, it was further followed by a series of misuse of authority, ticking the position indicating the passenger as travelling, a person far less seniority in his status of reservation, his report that he was accommodated by the TTE who worked upto PGT all these factors go against the charged official. It is not a "simple mistake that he failed to mark the indication 'NJ' when the ticket clearly showed that only 5 passengers were covered under the ticket No. 25301828 with which the team of passengers actually travelled, when the passenger under name Mrs. Valsamma cancelled her journey. He has failed by this in his duty, which cannot be overlooked, followed with the consequential charges. Shri K. Ramesh thus failed in his duty violating Rule 3.1(i), (ii) and (iii) of Railway Services Conduct Rules, 1966 and I accept the findings of the Enquiry officer.

I have considered all the aspects in this case. Though the employee deserves severe punishment in this case, a lenient view is taken considering his young age and giving a chance to improve. I impose a punishment of reduction of basic pay from Rs. 4500/- to Rs. 4200/- in scale Rs. 4000-6000 for a period of 24 months (recurring).



Accordingly, pay of shri K. Ramesh, TTE/SL/QLN is reduced to Rs. 4200/- from Rs. 4500/- in scale Rs. 4000-6000 for a period of 24 months w.e.f. 25.2.2004. This will have the effect of postponing his future increments."

7. Appeal filed by the applicant could not yield any success to him, as the Appellate authority vide order dated 29-07-2004 (Annexure A-9) rejected the appeal holding as under:-

"I have gone through the entire case file and the appeal submitted by the employee. The charge against the employee is that the employee while working as TTE/SL/QLN by train No. 2624 on 23.08.2002 had failed to mark 'Not Joined' against a berth when the passenger had cancelled the journey after the preparation of chart and not travelled and allowed a wait-listed passenger to travel overlooking the seniority of RAC passengers. This was revealed during a vigilance check. The case was found proved in the enquiry. I accept the enquiry report. The reason given by the employee for not marking 'Not Joined' against the concerned berth is not acceptable. He was followed by a serious of misuse of authority. The employee thus violated Rule 3.1(i), (ii) and (iii) of Railway Services Conduct Rules. I confirm the penalty awarded to the employee.

Accordingly, the penalty of reduction in pay from Rs. 4500/- to Rs. 4200/- in scale Rs. 4000-6000 for a period of 24 months w.e.f. 25.2.2004 imposed by Sr. DCM vide No. V/VO/PC/J/2002/08/312/TVC(FR)-II dated 10.2.04 is 'confirmed'. This will have the effect of postponing his future increments."

8. Revision petition by the applicant had also been dismissed, vide Annexure A-11 order dated 13-04-2005. Hence this OA.



9. Respondents have contested the O.A. According to them the charge levelled against the applicant stands fully proved and hence, prayed for dismissal of the OA.

10. Applicant filed the rejoinder, reiterating his stand taken in the OA. He had also submitted that the so called passenger in occupation of berth No. 38 in the train is a fictitious person, as he was not found in the address given by him. Documentary evidence in this regard was filed along with the rejoinder.

11. Counsel for the applicant took us through the pleadings and contended that right from the initial stage, the stand of the applicant has been consistent that due to pressure of work, and the fact that PNR as contained in Chart and the Ticket tallied, by oversight tick marked even in respect of berth No. 38 and handed over the chart to the relieving TTE at PGT. He had also stated that the applicant had absolutely no idea in respect of the passenger who was found occupying berth No. 38. He had further submitted that in so far as S-11 is concerned the same was taken by the vigilance under duress and he had retracted the same. It was further argued that the I.O. had recorded his findings that in so far as the episode of the passenger in occupation of berth No. 38 having given Rs 100/- the same was not given any credence and the same would go to prove that the applicant had not received any such benefit. Logically, the same should mean that the applicant only by mistake tick marked against Berth No. 38 and after he had got down from the train at PGT, the passenger could have occupied the berth. In any event, it was a mistake by

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over sight and thus, question of violation of Rule 3(1)(i) of the Railway Servants Conduct Rules does not arise. The counsel cited the following decisions in support of his case:-

- (I) AIR 1969 SC 983 - Central Bank of India Ltd. vs. Prakash Chand Jain
- (II) 1998 SCC (L&S) 865 - Ministry of Finance & Anr. vs. S.B. Ramesh
- (III) 2000 SCC (L&S) 85 - Hardwari Lal vs. State of UP and Others
- (IV) 2002 SCC (L&S) 1028 - Sher Bahadur vs. Union of India & Others
- (V) 2003 (1) ATJ 105 - Latoor Singh vs. Union of India and Ors.
- (VI) 2006 SCC (L&S) 840 - Narinder Mohan Arya vs. United India Insurance Co. Ltd. and Others.

12. Counsel for the respondents had invited our reference to the contents in the counter and submitted that the charges remain proved and the applicant deserved the penalty awarded to him.

13. Arguments were heard and the original records perused. In so far as S-11 is concerned, the same had also been perused. First of all, there has been nothing which would go to show that the applicant acted deliberately in not marking "NJ" in it. He had only stated that in the rush of work he would have failed to mark "NJ". In fact, in respect of S-9, it has been stated that there were 3 N.Js and 2 RAC N.Js. And, these were allotted to the RAC passengers. This is what could be discerned from Ex P-11.

14. The Inquiry Authority had categorically stated that the episode of Rs

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100/- being paid by the passenger in unauthorized occupation of Berth No.38 in S-8 compartment was to be ignored. This would certainly go to mitigate the blemish fastened upon the applicant that he had violated Rule 3(1)(l) of the Conduct Rules. Thus, even if the I.O's orders are to be approved, the same is only limited to that extent that the applicant had failed to mark NJ in the chart in respect of Berth No. 38 in S-8 compartment.

15. It is a matter of record that statements the passenger in unauthorized occupation was not examined, much less the applicant given a chance to cross examine him. The I.O. has held that the story of Rs 100/- should be disbelieved. The duty of the applicant was over at Palghat and till then there was no complaint. It was hours after the applicant alighted from the train after his duty at Palghat that the preventive had entered S-8. Negligence could at best be attributable to the case of the applicant. If so, the question that then arises for consideration is whether the said negligence would constitute a misconduct within the meaning of Conduct Rules. Reference to the decision of the Apex Court in the case of ***Union of India v. J. Ahmed, (1979) 2 SCC 286***, as hereunder would be appropriate to know the law on the subject:-

"A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso

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facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence."

16. It is pertinent to mention here that preponderance of probability is not only with a view to prove a misconduct; it applies equally to absolve one from misconduct. Here is a case, where, as per the records, the applicant had checked S-9 as well in which there were 3 NJs in Berth and 2 in RAC and all have been allotted to the RAC passengers. It is the very same applicant who had so allotted the berths to the RAC passengers. If so, it can be safely believed that had the fact of passenger of berth No. 38 not having travelled been duly noticed by the applicant, he would have certainly allotted the berth to the RAC passengers, just as he did in respect of S-9. Put in other words, had there been a malafide intention in not so marking NJ in respect of berth No. 38, the same would have been extended to the NJ Berths in the other coach too. But that was not the case. Right from the beginning, consistency has been maintained by the applicant that he had purely by oversight failed to note NJ in respect of Berth No. 38 in S-8 and the reason for the same is that the PNR produced by the leader of the Group tallied with that in the Chart and there was only one cancellation. Had there been two cancellations instead of 1, certainly the same would have attracted the attention of the applicant. According to the applicant, the leader of the group of five passengers did not tell the applicant that there was a cancellation.



17. The appellate authority had not considered the case of the applicant properly. Rule No. 22 of the the Railway Servants (Discipline and Appeal) Rules, 1968, stipulates:-

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record ; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

confirming, enhancing, reducing or setting aside, the penalty; or

II. remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Almost a similar provision has been made in respect of the employees of the United India Insurance Co., and the same reads as under:-

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

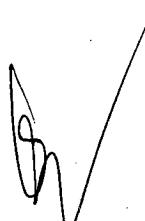
(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.



18. The above obligates the appellate authority to consider the appeal against any penalty order in a particular manner. The Apex Court in this regard, in the case of ***Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713*** held as under:-

The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression 'consider' is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

After so observing the Apex Court int he said judgment also held as under:-

37. In R.P. Bhatt v. Union of India this Court opined:

4 . The word consider in Rule 27(2) implies due application of mind. It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing, etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

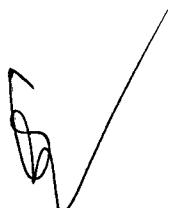
5 . There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority



were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

19. With the above law in mind, the case of the applicant is to be reviewed to ascertain as to whether the appellate authority had performed his function as required. The applicant had filed an appeal dated 19-04-2004 vide Annexure A-9 ~~and~~ ^{with} many a ground challenging the order of penalty. Nothing was mentioned in the appeal. There does not appear to be an application of mind by the appellate authority. The applicant has specifically raised the issue that the Disciplinary authority had of his own introduced, "corrupt practice" vide (d) of the appeal. This goes into the root of the issue as an impression of this nature would go deep in the mind of the disciplinary authority at the time of considering the extent of penalty to be awarded. The charge sheet never used the word, "corrupt practice". If at all it could be used, it should have not only been reflected so in the charge sheet, so as to enable the applicant to exculpate himself from the charge and the same should have been proved in the Inquiry as well. And in the Inquiry the Inquiry Officer clearly held that there is no question of believing the episode of the passenger in unauthorized occupation of berth No. 38 having paid Rs 100/-. Thus, viewed from the law laid down by the Apex Court in Narender Arya case (supra) it is to be held that the appellate authority's order also should be held as illegal.

20. The revisional authority also had taken into account the general

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expectation of an employee that there shall be no dereliction of duty and confirmed the order of penalty passed by the disciplinary authority, confirmed by the appellate authority, vide order dated 13-04-2005, at Annexure A-11. The dereliction in this case does not qualify to be a misconduct viewed from the point of law as laid down by the Apex Court in the case of Jacob (supra).

21. In view of the above discussion, we are of the considered view that there has been no malafide intention on the part of the applicant in not marking NJ in respect of Berth No. 38 in S-8 compartment in Train No. 2624 on 23-08-2002. The inadvertent oversight cannot be termed as a misconduct. The order of the Disciplinary Authority (Annexure A-7), of the Appellate Authority (Annexure A-8) and of the Revisional Authority (Annexure A-9) are, therefore, liable to be quashed and set aside and it is so ordered. The OA thus, succeeds. The respondents are directed to revise the pay of the applicant as if no penalty order has been passed and pay the arrears of pay and allowances to the applicant within a period of three months from the date of communication of this order.

No costs.

(Dated, the 27th March, 2007)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

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