

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.534/09

Tuesday this the 23rd day of February 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

B.S.Ajith Kumar,
S/o.V.Balakrishna Pillai,
Assistant Loco Pilot/
Southern Railway/Quilon.
Residing at B.S.Bhavan,
Edanadu, Karamcode P.O., Quilon – 691 579.Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Chennai – 3.
2. Senior Divisional Electrical Engineer/Operations:
Southern Railway, Trivandrum Division,
Trivandrum – 14.
3. Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 23rd February 2010 the
Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-1 order of the
Disciplinary Authority by which he was imposed with a penalty of
withholding of 9 sets of privilege passes and 12 sets of PTOs. The charge
against the applicant was as under :-

.2.

Charges :That the said Shri.B.S.Ajith Kumar, ALP/CRC/O/QLN has committed serious misconduct in that while he was working 6128 express on 16.7.2008, from GUV, he gave a message to PRC that he will not discharge his official duties wherein he was to attach the dead loco at ERS. In his message of refusal to carry out his duties he even stated that "as per Union's decision taken yesterday after meeting with DRM". Return message was given clarifying that, no such meeting was conducted with DRM and as per GR 4.32 (i), it is the duty of ALP to attach the dead loco, and even official clarification was given once. But the said Shri.B.S.Ajith Kumar disobeyed official orders second time. Due to this disobedience loco was moved as LE all the way from ERS to TVC to work the link train, thus causing national loss of valuable energy.

He has thus violated GR 4.32 (i) and Rule No.3 (i), (ii) & (iii) of Railway Services Conduct Rules, 1966.

2. The brief background of the case is that the applicant was served with the Annexure A-3 Memorandum dated 17.7.2008 proposing to take action against him under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968. The applicant has given Annexure A-4 reply to the aforesaid Memorandum denying the same at the outset. He has submitted that he has not given any message to anybody stating that he will not attach the dead loco at ERS nor he was given with any return message. According to him, he has told the Loco Inspector who was present at the spot that he was ready to couple the locomotive but he insisted that the air pipes should be connected by the staff concerned as the C&W staff were available there to create the air pressure, release brakes and endorse the brake power certificate. The applicant has also quoted GR 4.32 and GR 4.33 and stated that the connecting air pipes of the loco to rear loco or formation is not the duty of the engine crew. After having considered the aforesaid explanation of the applicant, the Disciplinary Authority has held that it was totally unacceptable and he had, in fact, violated Rule No.SR 4.32 (i) which reads as under :-



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S.R.4.32 (i) An engine crew shall couple and uncouple the locomotive at the train originating station at any intermediate point of operational stabling or engine change and at station/yard where loco is required to be finally detached from the train for change of traction marshalling convenience or any other operational purposes.

The term coupling/uncoupling connotes activities pertaining to stipulated procedures related to safe and correct detachment of loco from the train and includes disconnection/reconnection of relevant hose pipes/air pressure pipes.

The Disciplinary Authority has also held that such disconnection/reconnection of air pipes is very much the job of the train crew. The Disciplinary Authority has also relied upon the SOB Circular 5/07 dated 29.10.2007 issued specifically on this issue. He has, therefore, imposed the Annexure A-1 order of penalty upon the applicant.

3. Against the aforesaid penalty advice the applicant filed the Annexure A-5 Appeal dated 23.9.2008 stating as under :-

1. He had not given any message to anybody including PRC stating that he would not discharge his official duties of attaching the dead loco at ERS as per the union decision taken the day after meeting DRM.
2. He was willing to perform his responsibility under the rules and told his inability to attach the air pipes without assistance required, by SR 4.32 (i) which was in force as on 16.7.2008, ie., the date of occurrence of the incidence.
3. He was punished by the Disciplinary Authority for mentioning the SOB Circular 5/07 dated 29.10.2007 which was not a part of the charge memo and, therefore, the Disciplinary Authority's order was in violation of the principles of natural justice.
4. While he was charged for violating GR 4.32 (i) and Rule 3 (i), (ii) & (iii) there was no such rule as GR 4.32 (i) in the General rule book. Hence he was not given any reasonable opportunity to defend his case.
5. Though the Disciplinary Authority while imposing the punishment has stated very clearly in its order that such disconnection/reconnection of air pipes was very much the job of



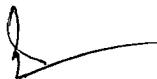
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the train crew, there was no such disconnection/reconnection of air pipes involved while working 6128 express on 16.7.2008.

4. The Appellate Authority has, however, held that the Disciplinary Authority's order was warranted by evidence on record. The Appellate Authority has also held that the Disciplinary Authority has applied its mind and thereafter gave the cogent speaking order bringing out the gravity of the offence and the reasons for arriving at the penalty imposed. Further, the Appellate Authority has observed that after causing pecuniary loss to the national exchequer, the applicant's appeal is still bristling with defiance which was unbecoming of a disciplined Railway employee working in an organisation where discipline is a foremost requisite for train operations. The Appellate Authority has, therefore, rejected the appeal with the option given to the applicant to file a revision petition. However, the applicant has not filed any revision petition in the matter.

5. The main contention of the applicant is that there is no evidence against him and the Disciplinary Authority has also violated the procedures for imposing minor penalty as laid down in Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. According to the counsel for the applicant, the Disciplinary Authority ought to have conducted an enquiry in the manner laid down in Sub Rule 6 to 25 of Rule 9 (Procedure for imposing major penalty). He has also relied upon the judgment of the Apex Court in O.K.Bhardwaj Vs. Union of India and others [(2001) 9 SCC 180] in this regard. The short judgment of the Apex Court is reproduced as under :-

"1. Leave granted.



2. The High Court has recorded its opinion on two questions : (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty": a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

4. Learned counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity was given to the appellant and that there has been adequate compliance with the principles of natural justice. But since the High Court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High Court to consider whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter according to law. The appeal is allowed with the above directions. No costs."

6. The respondents in their reply submitted that the Annexure A-1 and Annexure A-2 orders were passed by the 2nd and 3rd respondents within their official powers as Disciplinary Authority and Appellate Authority respectively. On the merits they have submitted that before starting the train, power controller had passed a message orally over phone to the applicant at Guruvayoor containing the instructions to attach with the train No.6128 Express a dead diesel loco at Ernakulam Junction which is expected to work train No.2202 from Kochuveli on 17.7.2008. They have also submitted that the applicant has told the power controller that 'as per



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union's decision taken on the previous day after meeting with DRM' he is not expected to attach the dead loco. As per GR 4.32(i) it is the duty of the Assistant Loco Pilot to attach the dead loco. They have also annexed a copy of the GR 4.32(i) which has been issued as a correction memo No.2 dated 11.1.2000. They have further submitted that on arrival of the train No.6128 at Ernakulam Junction the applicant had refused to connect the hose pipe in between locos. A Senior Loco Inspector deployed to supervise this work at Ernakulam Junction had given message to the DA at 00.15 hours on 17.7.2008 and recorded by Power Controller on duty in the message book in this regard had clearly mentioned the lapse on the part of the applicant. As this problem existed for some time before and a few Assistant Loco Pilots belonging to a particular unrecognized union were refusing to do their official duty viz. the coupling up of the hose pipes, a Standing Order Book (SOB) circular No.5/07 dated 29.10.2007 was specifically issued to make it clear and notify all the Loco Pilots and Assistant Loco Pilots of the Division through the said SOB.

7. We have heard learned counsel for the parties and perused the records. In our considered view the allegations made against the applicant in the charge memo can be proved only through a departmental enquiry as envisaged in Sub Rule 6 to 25 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules,1968. This is particularly in view of the fact that the applicant has denied the charges against him totally. We also do not find any documents to substantiate the Appellate Authority's contention that "the findings of the Disciplinary Authority are warranted by the evidence on record."



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8. In the above view of the matter, we quash and set aside the Annexure A-1 order dated 1.8.2008 and the Annexure A-2 order dated 5.5.2009 and remit the case back to the Disciplinary Authority to proceed against the applicant following the procedures as laid down in Sub Rule (1) (b) of Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. The enquiry so held shall be concluded within a period of six months. It goes without saying that the applicant shall fully cooperate with the enquiry. There shall be no order as to costs.

(Dated this the 23rd day of February 2010)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER