

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 546/2004

Friday, this the 15th day of September, 2006.

CORAM:

HON'BLE MR JUSTICE G SIVARAJAN, VICE CHAIRMAN

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

KK Raghavan,
Retired Shunter,
Southern Railway, Mangalore.
(Residing at Sankaran Cottage,
Pannippara, Muttathodi Post,
Vidyanagar Road,
Kasargode.

- Applicant

By Advocate Mr TC Govindaswamy

v.

1. The Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Chennai-3.
2. The Chief Operations Manager,
Southern Railway,
Headquarters Office,
Chennai-3.
3. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
4. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat. - Respondents

By Advocate Mr Sunil Jose

The application having been heard on 15.9.2006, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR JUSTICE G SIVARAJAN, VICE CHAIRMAN

1. The applicant was a Diesel Shunter at Mangalore in Palghat Division of Southern Railway. He was compulsorily retired from service in a disciplinary case. He has filed this application challenging 3 orders passed by the respondents in the disciplinary proceeding.
2. The charge against the applicant reads as follows:

"While drawing the Ey. rake of 593 pass. from Road, 4, he failed to observe the Disc. No.32 and passed the signal at 'ON' and trailed through point No.54B at 00.40 hrs on 31.3.2002 at MAQ. This has caused the averted collision with the Ey. rake and the MAQ/LE No.WDM2 11009 at MAQ. He has thus violated GR.5.13(1)(2)(3) and Gr.2.06 (b) of GRS. He has failed to maintain devotion to duty and behaved in a way quite unbecoming of a Railway servant. Thereby violated rule 3.1 (ii) and (iii) of Railway services(Conduct) Rules, 1966."

An enquiry was conducted based on the charge memo. The applicant in the course of the enquiry sought for production of Route Cancellation Register which according to him, has got very great relevance in deciding the allegations in the charges. However, the said Register was not produced. The enquiry officer in his report^{has} stated that "since it is clearly proved from the evidence that the disc was not at all taken off, the absence of Route Cancellation Register is not making any difference in the findings". The evidence referred to therein is the evidence of Shri P.K. Sreekesh, Station Master, Shri CV Balakrishnan another Station Master, Shri Babu Panayan, Senior Goods Driver who was driving the

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light engine and Shri M.P.Suresh, Pointsman, the man who was to give signal to the shunting Driver.

3. The case of the respondents is that the applicant has passed the danger line ignoring the shunt signal. The case is that the applicant has failed to observe the signal and passed the shunt disc No.32 at ON position which resulted in trailing through point ON 54 E. It is also their case that but for the stopping of the light engine by its driver, viz, Shri Panayan, there would have been a collision and that it is only on account of caution exercised by the said Panayan, the collision could be avoided. The respondents also relied on the alleged signal given by the two Station Masters to show that the applicant had failed to observe the signal. Thus it would *prima facie* appear that the evidences relied on by the respondents to find that the applicant has failed to observe the signal and passed the shunt disc No.32 at ON position is based on the oral evidence of the aforesaid 3 persons who are in one way or the other are *by not* connected with the incident. The alleged situation would have arisen if there was any link from the said persons also. It is in that context the document viz, the Route Cancellation Register becomes relevant and the applicant has sought for producing the same to substantiate his case. Viewed in the context the reason stated by the enquiry officer in his report does not appear to be justified. It has not been brought to our notice any provision in the Railway Manual to deny the production of the said register before an enquiry officer. This is one of the vitiating elements for which there is no satisfactory answer either in the order of the disciplinary authority or in the orders of the appellate authority and the revisional authority.

4. The enquiry officer in his report considered the various charges, viz, the violation of the provisions of FR 5.13(1) (2) (3) and GR 2.06(b) of FR 5. The enquiry officer found that only the violation of provisions of GR 5.13(1) and (2) are proved. It is further stated that the alleged violation of GR 5.13(3) not gone

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into since the disciplinary authority had clarified that the speedo meter mentioned is not relevant in this case and the same is not relied upon in the charge memo. The enquiry officer has also found that the alleged violation of GR 2.06 (b) stands not proved. A perusal of the order of the disciplinary authority would show that he had ^{by proceeded on the 1st} assumption that the charges levelled against the applicant has been proved. Further, we find that there is no independent consideration of the matter by the disciplinary authority as contemplated under the relevant rules. He had simply stated that the charges have been proved and the same is accepted. The contention of Shri Sunil Jose, learned standing counsel for the Railways appearing for the respondents is that it is not necessary for the disciplinary authority to reproduce the entire evidence and the discussion in the enquiry report in the penalty order and that it will suffice if it stated that all the matters have been considered by the disciplinary authority. The standing counsel submits that the disciplinary authority had stated that he had considered the enquiry report as well as the representation submitted by the applicant. According to us, since the decision of the disciplinary authority was subject to appeal and revision, it is necessary for him to consider the charge and the evidence along with the written argument to find out independently as to whether charges found in the enquiry report are justified. Admittedly this has not been done. There is no discussion at all regarding the merits of the allegation. That apart, we find that the question of penalty was also considered by the disciplinary authority with reference to his assumption that the charges have been proved in its entirety. As already noted the enquiry report shows otherwise. Charge regarding violation of G.R 13(1) & (2) are stated as proved. Charge regarding violation of G.R.13(3) not considered and charge regarding violation of G.R.2.06(6) held not proved. We find that the order passed by the appellate authority is a much more detailed one. We find that the appellate authority was also surmising that the charges were established even though he had noted that

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the enquiry report refers to the observation of the disciplinary authority that the charge relating to violation of GR 5.13(3) need not be considered. However, we note that the appellate authority has clearly stated that "I find that the employee is guilty of the charges framed against him". The revisional authority, it must be noted, has got all the powers of the appellate authority as provided under Rule 25 (3) of the Railway Servants(Discipline & Appeal) Rules, 1968. A perusal of the order of the revisional authority shows that he did not properly exercise the said power. That apart, the appellate authority is bound to consider; (1) whether all the procedural safeguards are complied with, 2 (2) whether the findings of the disciplinary authority is justified on the basis of evidence in the case and (3) whether the punishment imposed is proportionate or not. If these are the matters to be considered by the appellate authority, by virtue of the provisions of Rule 25(3) the revisional authority is equally bound to consider those matters while disposing of the Revision Petition. We are unable to find that the revisional authority had considered the matter in the light of the aforesaid provisions. The revisional authority simply says that in the enquiry conducted by Loco Inspector, Mangalore, the charge has been held as proved; in agreeing with the findings the disciplinary authority, Senior DME/Pgt imposed the penalty of removal from service vide penalty advise dated 11.11.2002; on appeal DRM/Pgt the appellate authority has modified the penalty to that of compulsory retirement. The revisional authority further observes that there is no new points raised by the applicant in the revision petition and that though the applicant has stated that he ensured the off aspect of the signal, it has been proved beyond doubt that you have trailed through point No.54B and it shows that the point was not set for your movement. Thus it can be seen that the revisional authority was also under the impression that the enquiry officer has found all the charges levelled against the applicant as proved. In fact it is not so is evident from the discussion made earlier. For that reason itself this revisional order is vitiated apart from the fact

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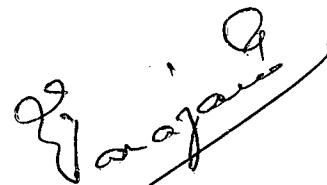
the revisional authority has not considered the matters as contemplated under the rules mentioned above. Thus on the whole, we are not satisfied with the order of the three authorities impugned in this O.A. The three authorities did not bear in mind the scope and ambit of the Rules which conferred powers on them in the matter. All of them simply acted on the assumption that the charges against the applicant has been proved in the enquiry. The punishment was imposed based on the said assumption. For all these reasons, we set aside the order A-1 of the disciplinary authority, the order A-2 of the appellate authority and the order A-3 of the revisional authority. We direct the respondents to reinstate the applicant forthwith. However, the respondents, if they so choose, are free to proceed with the disciplinary proceedings against the applicant from the stage of consideration of the enquiry report with reference to the objection filed by the applicant. In other words, the disciplinary authority is free to pass fresh order with reference to the enquiry report and the objection filed by the applicant. In that event, the disciplinary authority has to bear in mind the relevant rules and the observations made in this order while passing any orders pursuant to this order. It is made clear that if the respondents choose to proceed with disciplinary proceeding further, it must be done within a period of three months from the date of receipt of a copy of this order.

The O.A is allowed as above. There will be no order as to costs.

Dated, the 15th September, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



JUSTICE G SIVARAJAN
VICE CHAIRMAN