

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.554/1998

Friday this the 27th day of October, 2000.

CORAM:

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

HON'BLE SHRI G.RAMAKRISHNAN, MEMBER (A)

V.Ayyadurai,
S/o. late A.Udayar,
Divisional Electricial Engineer/Works,
Southern Railway, Palghat,
Permanent Address: No.17,
Venkesan Street,
East Tambaram, Madras -59.

... Applicant

(By Sri S.Parameswaran, Senior Counsel and Sri
T.C.G.Swamy, Advocate)

vs.

1. Union of India through
The Secretary to the
Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The Railway Board,
Rail Bhavan, New Delhi.
Through its Chairman.
3. The Joint Secretary (Establishment)
Railway Board, Rail Bhavan,
New Delhi.
4. The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.
Madras-3.
5. Union Public Service Commission,
New Delhi, through its Chairman.
... Respondents

(By Advocate Mrs. Sumathi Dandapani)
Mr. Govindh K. Bharathan, SCGSC (R5)

The Application having been heard on 8.8.2000 the Tribunal
on 27.10.2000 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This application is directed against the order dated
12.7.96 of the second respondent imposing on the applicant a
penalty of reduction in rank from Sr.Scale to Asstt.Officer

permanently (Annexure-A9) and the order dated 13.1.98 issued in the name of the President rejecting the applicant's appeal against Annexure A9 order(Annexure A14) and the order dated 12.2.98 of the 4th respondent reverting the applicant as Assistant Officer permanently and posting him as AEE/MDU against the vacancy consequent on the rejection of the appeal(Annexure-A18). The facts of the case in a nut-shell can be stated thus.

2. The applicant who was at the time of filing of this application was working as Divisional Electrical Engineer/Works in the Palghat Division of the Southern Railways in the Senior Scale, Group-B was served with a memorandum of charge dated 7.2.1990 containing the following article of charges:-

"Charge No.1:

Shri U.Ayyaduran, s/o Late.A.Udayar being a public servant while functioning as Asstt. Shop Supdt.DLX/Shop,Perambur, Shop Supdt. TLW/PER and Asstt.Engineer /TL/MAS and AEE/Madurai during the period 15.9.76 to 29.8.1988 and as on 29.6.88 was in possession of asset Rs.1,54,633.63 disproportionate to his known sources of income by corrupt or illegal means and thereby contravened rule 3(1)(i) and (iii) of Railway Services(Conduct)Rules,1966.

Charge No.2

Sri U.Ayyadurai, while functioning as E.Engineer TL/Madras, Southern Railway, Madras, had failed to obtain prior permission of the department for the purchase of house plot No.173/6 New Balaj Nagar Salaiyur in the name of his wife at the cost of Rs.24,000/- during the year 1987 and thereby contravened rule 18(1) and (2) of Railway Services(Conduct) Rules,1966.


Charge No.3

Shri U.Ayyadurai, s/o Late A.Udayar while functioning as Asst.Shop Supdt. DLX Perambur in the year 1983 had obtained a loan of Rs.3,500/- from the department for purchase of a scooter and the loan amount was utilised for the purpose other than it was sanctioned and no scooter was purchased. He is, therefore, guilty of unbecoming conduct and thereby contravened Rule 3(1)(iii) of Railway Services (Conduct) Rules,1966."

The applicant denied all the charges and an enquiry was held. The Enquiry Officer held that charge No.1 was partly proved and charge Nos. 2 and 3 were fully proved. The General Manager, the 4th respondent finding that he was not competent to award the penalty which was warranted forwarded the enquiry report to the Railway Board, the next higher authority. The Railway Board issued an order dated 28.2.96(Annexure-A6) imposing on the applicant the penalty of reduction in rank from Senior Officer to an Assistant Officer permanently. The applicant filed O.A. 339/96 assailing the order. The Tribunal on 8.4.96 passed an order keeping the operation of Annexure A6 order in abeyance and directing the respondents to state whether the disciplinary authority would be willing to reconsider the matter and pass a speaking order. The O.A. was disposed of by order dated 11th June 1996 directing the disciplinary authority to pass a speaking order quashing the order of penalty. In obedience to the directions contained in the order of the Tribunal the impugned order Annexure-A9 has been passed by the third respondent finding that charge No.1 was not established and the other two charges were established and imposing on him the penalty of reduction as Assistant Officer. Aggrieved the applicant filed O.A. 883/96 which

was disposed of directing the applicant to submit an appeal and directing that the operation of penalty imposed would be kept in abeyance until the disposal of the appeal. The applicant submitted Annexure A10 appeal to the President. As the appeal was not disposed of for a few months and the applicant was to retire shortly, he filed O.A. 1224/1997 again challenging the Annexure A9 order. This O.A. was disposed of by judgment dated 6th October 1997 directing the first respondent therein to consider the appeal on merits and to give the applicant a speaking order within two months. In obedience to the directions contained in the order after getting extension of time for implementation of the directions, the first respondent passed the impugned order Annexure-A14 dated 13.1.98 rejecting the appeal for the reason contained in the advice of the Union Public Service Commission which had held that charges No.1 to 3 were proved. Thereafter the impugned order Annexure A18 posting the applicant as Assistant Officer was issued.

3. The applicant assails the impugned Annexure-A9 as non-speaking, without application of mind and perverse and the appellate order.(Annexure-A14) as incompetent, and having been passed in excess of jurisdiction without application of mind and in violation of the principles of natural justice, since the appellate authority has entered a finding that charge No.1 was also proved differing from the finding of the disciplinary authority that the said charge was not proved without giving the applicant a notice of intention to



differ and a copy of the advice of the Union Public Service Commission to make a representation.

4. The respondents have filed a reply statement and an additional reply statement resisting the claim of the applicant and contending that the impugned orders were issued after proper application of mind and observing the procedure prescribed in the Railway Servants Discipline and Appeal Rules.

5. We have carefully gone through the pleadings and materials placed on record and have heard Shri S.Parameswaran, senior counsel appearing for the applicant and Smt.Sumathi Dandapani, learned counsel appearing for the respondents.

6. In view of the fact that the appellate authority has in its order Annexure A14 held that charge No.1 has been proved for the reasons contained in the advice of the Union Public Service Commission and differing from the finding of the disciplinary authority in Annexure-A9 that charge No.1 was not proved and as the findings on charge Nos.2 and 3 have got merged with the appellate order Annexure A14, we shall consider the legality, propriety and correctness of the appellate order Annexure A14. The charge No.1 as extracted supra relates to applicant having been found in possession of assets disproportionate to his known sources of income by corrupt or illegal means. The disciplinary

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authority has on an analysis of the evidence and on consideration of the enquiry report held that charge No.1 was not proved. Holding that charge Nos.2 and 3 which are very minor in comparison to charge No.1 were established, the disciplinary authority imposed on the applicant a penalty of reduction in rank as Assistant Officer permanently. It was against the finding on charge Nos. 2 and 3 and the penalty imposed on the applicant on the basis of the said findings that the applicant submitted his appeal to the first respondent (Annexure-A11) raising several grounds in defence of charge Nos.2 and 3 without taking any ground in regard to charge No.1 because in the order of the disciplinary authority by which he was aggrieved and against which the appeal was filed, he had been found not guilty of charge No.1. Sri Parameswaran senior counsel argued that under these circumstances the order of the appellate authority taking a different view in regard to charge No.1 detrimental to the applicant without giving the applicant an opportunity to put forth his grounds against such a view is wholly unjustified because it violates the principles of natural justice. He further argued that under the scheme of Rule 22 of the Railway Servants Discipline and Appeal Rules, the appellate authority has to consider whether the findings that are made against the Railway servant by the disciplinary authority and against which the appeal has been filed are warranted by the evidence and therefore the appellate authority cannot reopen the findings in favour of the Railway servant and hold it against him. If the

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appellate authority is of the opinion that a proper decision has not been arrived at it could have only remitted the case to the disciplinary authority with appropriate directions for entering a proper finding and in any case, the decision of the appellate authority that charge No.1 which had been held not proved by the disciplinary authority as proved basing on an advice of the Union Public Service Commission without giving the applicant a copy of the said report of the Commission and an opportunity to make a representation against the acceptability of the advice is vitiated for violations of the principles of natural justice, argued the counsel. We find considerable force in this argument. It is borne out from the records and is undisputed that the disciplinary authority held that charge No.1 was not established. It is also not disputed that the appellate authority before entering a finding that charge No.1 was also proved purportedly for the reasons contained in the Commission's advice, a copy of the advice of the Commission was not given to the applicant and that he was not given an opportunity to make a representation against the acceptability of the advice. The relevant part of Rule 22 of the Railway Servants (Discipline and Appeal Rules), 1968, herein referred to as Rules, reads as follows:-

"22.Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(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 laid down 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 or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders -


(i) 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 directions as it may deem fit in the circumstances of the case:"

Clause (b) of sub-rule 2 of Rule 22 empowers the appellate authority to consider whether the findings of the disciplinary authority are warranted by the evidence on the record. Learned counsel of the applicant argued that the findings which the appellate authority is empowered to consider are the findings against the appellant and against which the appeal has been filed and does not include the finding which not having been appealed against has become final. As it has not been specified in the rules, that the consideration should be restricted to such findings of the disciplinary authority as are appealed against and as sub-rule(c) provides for confirming, enhancing, reducing and setting aside the penalty, the argument that the appellate authority could not have considered whether the finding on charge No.1 held in favour of the applicant was warranted by

the evidence does not appear to be free from doubt.

7. Sri Parameswaran, the learned counsel of the applicant argued that the finding of the U.P.S.C. that Charge No.1 has been proved against the finding of the disciplinary authority that it was not proved is not based on any evidence at all. He taking us through the advice of the Union Public Service Commission (A15) had argued that the Commission has not analysed the evidence and come to a finding, but has only approved the conclusion of the Enquiry Officer and that as the conclusion of the Enquiry Officer are based on no legal evidence, the finding of guilt on Article No.1 of the charge is unsustainable as the same is not supported by any evidence. He referred to the evidence adduced at the enquiry and stated that no evidence at all has been adduced to prove that Plot No.173/6, New Balaj Nagar purchased in the name of the applicant's wife at a cost of Rs.24,000/- or other items in her name were either purchased out of the funds of the applicant or that the applicant played any role in their acquisition or that the applicant was in possession of these properties. He argued further that the Enquiry officer has picking holes in the defence evidence reached conclusion as if the burden of proof was on the applicant to disprove the charge. Sri Parameswaran further argued that the Enquiry Officer has freely quoted and relied on alleged previous statement of DW2 Valli (S-51) and of DW1(S-50) though the statements were neither brought on record nor put to the concerned witnesses. He further argued that for the purpose of



arriving at the probable expenses of the applicant, the Enquiry Officer has relied on the alleged statement of one Sri Gnanasundaram, Director of Statistical Dept., recorded by the C.B.I(S-16) without examining that witness in the enquiry statements recorded by the C.B.I without being put to the witness could not have been relied on by the Enquiry Officer, argued the learned counsel. We find considerable force in these arguments. The Enquiry Officer has relied on previous statements alleged to have been recorded by the C.B.I. without confronting the witnesses with the statements. It is also seen that the statement of Sri Gnanasundaram(S-16) alleged to have been recorded by the C.B.I has been relied on by the Enquiry Officer to come to the conclusion what the expenses of the applicant would have been without examining the witnesses who allegedly gave the statement. It is well settled by now that previous statements of persons not examined at the enquiry recorded beyond the back of the official facing the charge cannot be legally accepted in evidence and relied on. It is also well settled that if previous statement of a witness is to be relied on, to contradict the evidence given at the enquiry, the statement has to be put to the witness. We also find that no evidence has been adduced to show that the properties purchased in the name of Valli were purchased by the applicant or with the funds provided by him or that the applicant was in possession of the property. The onus is not on the applicant to disprove the charge against him.

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Only if some evidence is adduced, the official has to adduce evidence to rebut it. In the light of these facts and circumstances, we find that the finding that Charge No.1 was proved will not stand as the same has been arrived at without support of legal evidence and mainly on conjectures and presumptions.

7. We shall now examine the legality of the findings of the disciplinary authority which have been upheld by the appellate authority on Articles 2 and 3 of the Memorandum of Charges. The statement of imputations forming the basis of Article 2 reads as follows:-

" Sri U.Ayyadurai, while working as AEE/TL /MAS during 1987 failed to obtain prior permission of his department for the purchase of house plot No.173/6 New Balaj Nagar, Salaiyur in the name of his wife at the cost of Rs.24,000/- and thereby contravened Rule 18(1) and (2) of Railway Services(Conduct) Rules,1966.

The above allegation is based on the following facts:-

Shri Ayyadurai purchased plot No.173/6 in the name of Smt.Valli from Shri Varada Pillai,40,Ranganathan Street, Salaiyur and Kodandaraman,40,Ranganathan Street,East Tambaram.The extent of land is 15 cents. As his wife is not having any source of income, the property was purchased by her own behalf of the accused officer. No record is available to show that he had taken prior permission to purchase this plot. The property statement furnished by the accused officer did not carry any intimation with regard to the purchase of this property. Thus failing to take prior permission for the purchase of plot No.173/6 at Salaiyur tantamount to the contravention of rule 18(1) and (2) of Railway Services (Conduct)Rules,1966."

8. The gravamen of the charge is that the applicant failed to obtain prior permission of his department for

purchase of the property in House plot No.173/6, New Balaj Nagar at a cost of Rs.24,000 in the year 1987 in the name of his wife. It is also alleged in the imputation that property statement produced by the applicant did not carry any valuation of the purchase. The applicant has denied the charge. He had stated that his wife had purchased the property on her own and he had included that item in the property statement filed in the year 1988. Rule 18(2) of the Railway Servants (Conduct) Rules, 1968 is alleged to have been violated. In this context it is profitable to extract Rule 18(2) which reads thus:

"18(2) No Railway servant shall, except with the previous knowledge of the Government, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family.

Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is (i) with a person having official dealings with the Railway servant or (ii) otherwise than through a regular or reputed dealer."

There is no allegation in the charge that the purchase was made from a person having official dealings with the Railway servant or that it was made otherwise than through a regular or reputed dealer. The applicant made the purchase in the name of his wife, obtaining prior permission of his department is not at all necessary. As far as prior intimation is concerned, the case of the applicant is that he did not purchase the property, that the property was purchased by his wife on her own and however before the check period he had furnished the details in the property statement filed in 1988. The question is whether the applicant did make the purchase of the property in the name

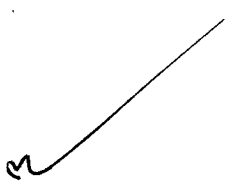
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of his wife or whether the wife of the applicant purchased the property. No evidence at all has been adduced in the enquiry to establish that the purchase was made by the applicant. Further the statement in the allegation which is the basis of the charge, it is alleged that as his wife is not having any source of income the property was purchased by her on behalf of the accused officer (Emphasis added). Therefore, even going by the statement of allegations the case is that the property was purchased by the wife of the applicant on behalf of the applicant. It is not even stated that the purchase was made with the knowledge and consent of the applicant. Therefore how can the applicant be held to have violated the Rules?. No evidence has been adduced to establish that the applicant's wife did not have any source of income at all. The finding therefore that the applicant is guilty of charge No.2 is totally per verse. The finding on charge No.2 in the impugned order reads as follows:-

"About the property purchased in the name of Smt.Valli, his wife, in Salaipur, the following statement at page-7 of his reply dated 18.7.1994, extracted as relevant:-

"Further, I have intimated the purchase of the said property by my wife in the year 1988, that is immediately after purchase and before check, and thereafter every year."

Irrespective of the fact whethr the property belongs to him or his wife, according to Rule 18(2), he is expected to do so with the previous knowledge of the Government as per extracts of the Rules indicated in P-4, where he himself has indicated that he has not advised the Govt./has intimated the same later. Thus, he has violated Rule 18(2) of Conduct Rules.



Thus, the Railway Board conclude that Charge-2 is fully proved."

A mere reading of the finding in the light of the Rule 18(2) and the imputation itself would establish that the finding is per verse.


9. Coming to the finding on Charge No.3, the applicant has in his explanation stated that as the scooter was not in good condition, he could not purchase it and immediately reported the matter requesting that recovery may be made as per Rules. It is seen that recovery was made not in accordance with provisions of sub-rule 5 of Rule 1108 of IREM, but in instalments. It does not prove that the applicant has not intimated the failure to purchase the scooter. As per the rules regarding loan for purchase of motor vehicle the Railway Servant is bound to produce utilisation certificate as also the R.C. Book with insurance policy in the stipulated time. As the applicant did not do any such thing and the recovery started soon after the loan was sanctioned, unless the applicant, as is clarified by him, had reported failure to purchase the scooter, he would either have been called upon to produce the R.C. Book or to refund the amount in a lump. The failure on the part of the authorities to recover the entire loan amount with interest in a lump does not prove that the

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applicant utilised the amount of loan for any other purpose. No evidence is also available to establish the same. Hence the findings on chage No.3 is also perverse and is based on mere suspicion.

10. In the light of the foregoing discussion of the facts and circumstances of the case, we are of the view that the impugned orders Annexures A9 and A14 are liable to be set aside. As the posting of the applicant as an Assistant Officer by the impugned order Annexure A18 ¹³ based on Annexures A14, the Annexure A18 is also liable to be set aside.

11. In the result, the application is allowed. Impugned orders Annexures A9, A14 and A18 are set aside with all consequential benefits to the applicant. There is no order as to costs.


(G. RAMAKRISHNAN)
MEMBER (A)


(A.V. HARIDASAN)
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A6 True copy of the Order No.E(0)1/94/P4-2/87 dated 28.2.96 issued by the third respondent.
2. Annexure A9 True copy of the Order No.E(0)1-94/P4-2/87 dated 12.7.96 issued by the third respondent.
3. Annexure A10 True copy of the Order in O.A. 883/96 dated 6.8.96.
4. Annexure A11 True copy of the appeal dated 12.8.96 submitted by the applicant to the President of India.
5. Annexure A14 True copy of the Order No.E(0)1/96/AE-3/29 dated 13.1.98 issued by the third respondent.
6. Annexure A15 True copy of the Order No. F3/192/97-S1 dated 11.12.97 issued by the Secretary, Union Public Service Commission.
7. Annexure A18 True copy of the Office Order No.HPB (0)113/1998 dated 12.2.98 issued by the first respondent.

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