

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 574 of 2010 & O.A. NO. 627 of 2010

Tuesday, this the 28th day of February, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. NO. 574 of 2010 :

C. Saji,
S/o.Chellappan K.K.,
Loco Pilot (Mail), Southern Railway/
Ernakulam Junction,
Residing at Thekkethil,
Pathirappallil, Alappuzha.

... Applicant

(By Advocate Mr. T.C. Govindaswamy)

versus

1. Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
2. The Additional Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14.
3. The Senior Divisional Electrical Engineer (Operations),
Southern Railway, Trivandrum Division,
Trivandrum-14.
4. Shri S. Balaji, Senior Divisional Electrical
Engineer (Operations), Southern Railway,
Trivandrum Division, Trivandrum-14. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

2. O.A. No. 627 of 2010 :

T. Manoj,
S/o. P.G. Thankappan,
Assistant Loco Pilot/Southern Railway/
Ernakulam Junction,
Residing at : CMC No. 30, Ramanilayam,
Near Railway Station Cherthala, Alappuzha.

... Applicant

(By Advocate Mr. T.C. Govindaswamy)

versus

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai-3.
2. The Additional Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum-14.
3. The Senior Divisional Electrical Engineer (Operations), Southern Railway, Trivandrum Division, Trivandrum-14.
4. Shri S. Balaji, Senior Divisional Electrical Engineer (Operations), Southern Railway, Trivandrum Division, Trivandrum-14.

... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

These applications having been heard on 08.02.2012, the Tribunal on 28.02.12, delivered the following:

ORDER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

These O.As being identical, they were heard together and are disposed of by this common order.

2. The applicants who are working as Loco Pilot (Mail) and Assistant Loco Pilot respectively, arrived at Trivandrum Railway Station on 10.05.2009 by working Train No. 6345 at 19.30 hrs. After signing off, they occupied Room No. 4 in the Running Room wherein the respondent No. 3 and the Secretary to General Manager found them consuming alcoholic drinks at about 20.45 hrs. They were charge sheeted for violation of Rule 3(1)(iii) and Rule No. 22 (1)(a) of Railway Services Conduct Rules, 1966. The 3rd respondent, who is the disciplinary authority, imposed the penalty of withholding of their annual increment due on 01.07.2010 for a period of 32 months as at Annexure A-1



order and confirmed by the Appellate Authority's orders at Annexure A-7 and Annexure A-6 respectively. Aggrieved, these O.As have been filed by the applicants praying for quashing the impugned orders and to direct the respondents to grant all consequential benefits emanating therefrom.

3. The applicants contended that the impugned orders are opposed to the principles of natural justice and, therefore, violative of the constitutional guarantees enshrined in Articles 14, 16, 21 and 300-A. It is a case of witness being a judge of his own case. No enquiry was held. The applicant was condemned unheard. The disciplinary authority himself was a witness to the alleged incidence. The penalty was imposed only based on the personal knowledge of the 3rd and 4th respondents who are one and the same person and based on the materials collected behind the applicants. There are no rules or instructions prohibiting consumption of alcoholic drinks either on duty or on off duty in the Railway premises, though the rules do prohibit assumption of duties in an intoxicated state or consumption of alcohol while on duty. Prohibition of consumption of alcoholic drinks in public places may include Railway Platforms and trains, but not Railway quarters or private accommodations provided. The term "Railway premises" is not defined and even a Railway quarter is only a Railway premise. The applicants were not on duty. They were in the privacy of the lodging facility provided by the Railways. The applicant had categorically denied the allegations and requested to summon two of the persons said to be witnesses. There is no reason why the Disciplinary Authority should drop an enquiry and imposed the penalty without even giving the applicants an opportunity to prove their innocence.



4. The respondents contested the O.A. In their reply statement, they submitted that the scenario of the applicants consuming alcoholic drinks was photographed in cell phone camera by the 3rd respondent during his inspection. The penalty imposed is within the limits of the Railway Servants (Discipline and Appeal) Rules, 1968 and sufficient opportunities under the principle of natural justice had been given to them. Considering the gravity of the misconduct and the possible safety hazards, the penalty imposed is very light. Summoning of a witness for enquiry is not necessary under Rule 11, when the disciplinary authority so decides. The applicants misutilised the prohibited Running Room premises by consuming alcoholic drinks, which was witnessed during the a surprise inspection by an officer and the disciplinary authority. As per provision contained in Railway Board's letter RBE No. 238/2001 dated 13.12.2001, the Disciplinary Authority has decided to treat the case for imposition of minor penalty and did not feel the necessity of an enquiry in this case. The applicants have filed these O.As before exhausting the remedy of a revision petition available to them. The O.As are liable to be dismissed.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicants and Mr. Sunil Jose learned SCGSC and Mr. Thomas Mathew Nellimoottil, learned counsel appearing for the respondents No. 1 to 3 in respective O.As and perused the records.

6. The charge against the applicants that they violated Rule 3(1)(iii) and Rule 22(1)(a) of the Railway Services Conduct Rules, 1966 by consuming alcoholic drinks in the Running Room, is not proved as per law. The



impugned orders show that the Disciplinary Authority himself was a witness to the alleged incident and that the penalty was imposed based on his personal knowledge and the materials collected behind the applicants. A witness cannot be a judge just as no man can be a judge of his own case. It is against the principles of natural justice. In 2011 (2) SLJ 132, *Mohd. Yunus Khan vs. State of U.P. & Ors.*, the Apex Court held as under:

"25. This Court in **A.U. Kureshi v. High Court of Gujarat & Anr.**, (2009) 11 SCC 84, placed reliance upon the judgment in **Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.**, (1985) 4 SCC 417, and held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision.

26. The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute. (Vide: **S. Parthasarthy v. State of Andhra Pradesh**, AIR 1973 SC 2701; and **Tilak Chand Magatram Obhan v. Kamla Prasad Shukla & Ors.**, 1995 Supp. (1) SCC 21).

27. In **Arjun Chaubey v. Union of India & Ors.**, AIR 1984 SC 1356, a Constitution Bench of this Court dealt with an identical case 16 wherein an employee serving in the Northern Railway had been dismissed by the Deputy Chief Commercial Superintendent on a charge of misconduct which concerned himself, after considering by himself, the explanation given by the employee against the charge and after thinking that the employee was not fit to be retained in service. It was also considered whether in such a case, the court should deny the relief to the employee, even if the court comes to the conclusion that order of punishment stood vitiated on the ground that the employee had been guilty of



habitual acts of indiscipline/ misconduct. This Court held that the order of dismissal passed against the employee stood vitiated as it was in utter disregard of the principles of natural justice. The main thrust of the charges against the employee related to his conduct qua the disciplinary authority itself, therefore, it was not open to the disciplinary authority to sit in judgment over the explanation furnished by the employee and decide against the delinquent. No person could be a judge in his own cause and no witness could certify that his own testimony was true. Any one who had a personal stake in an enquiry must have kept himself aloof from the enquiry. The court further held that in such a case it could not be considered that the employee did not deserve any relief from the court since he was habitually guilty of acts subversive of discipline. The illegality from which the order of dismissal passed by the Authority concerned suffered was of a character so grave and fundamental that the alleged habitual misbehaviour of the delinquent employee could not cure or condone it.

28. Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an inquiry officer nor can he pass the order of punishment as a disciplinary authority. This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudicator. No person can be a Judge in his own cause and no witness can certify that his own testimony is true. Any one who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void."

On the ground of non-observance of principles of natural justice alone, the impugned orders are liable to be quashed.

7. For the sake of convenience, Rule 3(1)(iii) and Rule 22 of the Railway Service Conduct Rules, 1966, are extracted as under :

"3. General.- (1) Every railway servant shall at all times-

- (i)
- (ii)
- (iii) do nothing which is subversion of law and order and is unbecoming of a railway or government servant."

"22. Consumption of Intoxicating Drinks and Drugs.-

(1) A railway servant shall -

- (a) strictly abide by the law relating to intoxicating drinks or drugs during the course of his duties and shall also take due care that the performance of his duties at any time is not affected in any way by the influence of such drink or drug.
- (b) refrain from consuming any intoxicated drink or drug in a public place.

(2) A railway servant shall not-

- (a) appear in a public place in a state of intoxication;
- (b) use any intoxicating drink or drug to excess;
- (c) if he belongs to the category of running staff (both local and traffic) or is connected directly with train passing, have taken or used any intoxicating drinks or drugs within eight hours of the commencement of duty or take such drinks or drugs during the course of duty.

Explanation.- For the purpose of this rule, "public place" means any place or premises (including conveyance) to which the public have, or are permitted to have, access whether on payment or otherwise."

8. Drinking of alcohol is not *per se* prohibited. The applicants were not on duty. They were not in a public place when the alleged incident took place. There is no case that they were intoxicated while on duty. There is no breath-analyser test or medical report to prove the charge of having consumed alcohol. Running room is not a public place as per the Railway Servants Conduct Rules, 1966. In our considered opinion, the respondents' stand against the applicants is not at all tenable.

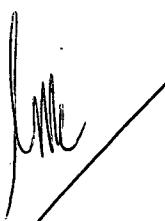


9. In the light of the above, we hold that the impugned orders are illegal and liable to be set aside although the respondents acted in good faith and in the interest of ~~the~~ public safety.

10. The O.As are allowed. The impugned orders are set aside. The respondents are directed to grant all consequential benefits to the applicants within a period of 2 months from the date of receipt of a copy of this order.

10. No order as to costs.

(Dated, the 28th February, 2012)


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVT.