

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 59/93

Tuesday, this the 18th day of January, 1994

**SHRI N. DHARMADAN, MEMBER(J)
SHRI S.KASIPANDIAN, MEMBER(A)**

D. Dhanaraj,
Elcott, 106-F/3,
Trivandrum Road,
Palayamkottai 627 002,
Tamil Nadu.

.. Applicant

By Advocate Shri P.Sivan Pillai

V/s

1. Union of India through
The General Manager,
SR, Madras-3.
2. The Chief Operating Supdt.,
SR, HQ Office, Madras-3.
3. The Divnl. Railway Manager,
SR, Trivandrum-14.
4. The Sr. Divnl. Operating Supdt.,
SR, Trivandrum-14.
5. The Divnl. Safety Officer,
SR, Trivandrum-14.

.. Respondents

By Advocate Smt. Sumathi Dandapani.

ORDER

N. DHARMADAN

A Mail Guard, who has been penalised pursuant to the disciplinary proceedings by imposing penalty of compulsory retirement, just before hundred days of his normal date of superannuation, has filed this application challenging the orders, Annexures-A15, A18 and A24, passed by the authorities under law in connection with the disciplinary proceedings.

. 2/-

2. According to the applicant, he has creditable service for more than 35 years. There was no punishment of any kind or adverse remarks in his ACRs. But for the penalty of compulsory retirement, he would have attained the normal age of superannuation and retired from service on 31.5.90 with all retiral benefits.

3. The charge memo, Annexure-A1, was issued to the applicant on 9.10.90. It is not bonafide, according to the applicant. It is liable to be quashed. It contains the following charges:-

"ANNEXURE-I - Statement of articles of charges framed against Shri D. Dhanaraj, S.No.VT 50, Mail Guard/TVC.

Shri D.Dhanaraj, while functioning as Guard of 6303 Dn Exp. on 21.8.90 has failed to control the speed of the train and stop the train short of Down Main Line Starter of STKT station when the same was showing 'ON' aspect and also he has failed to take up necessary follow up action when the Driver has passed the Main line starter at 'ON' aspect at about 8.35 hrs on 21.8.90.

Rules violated GR 4.43, 4.45 and SR 3.81(ii). "

4. Applicant submitted Annexure-A2 letter on 5.11.90 for giving personal hearing prior to the appointment of the Enquiry Officer under the Rule 9(7) of the Railway Servants (Discipline & Appeal) Rules, 1968. Annexure-A2 was not properly disposed of considering the request of the applicant. However, disciplinary authority, after conducting the proceedings, a penalty advice, Annexure-A15, was issued on 15.6.91 imposing the penalty of compulsory retirement of the applicant from service w.e.f. 25.2.91. This order was confirmed by the Appellate Authority in Annexure-A18 appellate order. Revision petition filed by the applicant was also rejected by Annexure-A24 order dated 7.10.92. The said order is extracted below:-

" The General Manager has in terms of Rule 25 of the Railway Servants (Discipline & Appeal) Rules 1968, carefully considered your case and passed orders upholding the penalty imposed on you duly observing as under:-

'No review is called for.'

You are to acknowledge receipt of this advice. "

5. The respondents have filed a detailed reply and also contended that the punishment imposed on the applicant is not liable to be set aside and the provisions of Rule 9(7) of Railway Servants (Discipline & Appeal) Rules do not apply to the facts of this case. The learned counsel for respondents also submitted that the applicant has not filed any review petition under Rule 25(A) of the Railway Servants (Discipline & Appeal rules, 1968.

6. The applicant placed reliance on Annexure-A20 order passed by the APO (T) exonerating the Driver, who was also charged alongwith the applicant for the offence connected with the same charge framed against the applicant. The relevant portion of that proceeding is extracted below:-

"I find from the enquiry proceedings that there are lot of grounds for doubting the correctness of the conclusions arrived at. In this case, the employee was charge-sheeted for passing the main line starter STKT at danger and stopping the train and immediately backing it within the starter. From the evidence given during the enquiry, it is seen that there is no direct evidence to support that the driver had passed the signal at danger. Train No.6303 which he was driving was having a crossing with No.352 Passr. at STKT. No. 6303 was received first. Witnesses have deposed that this train while approaching the station was passing only at 15 KMPH speed when it passed the level-crossing gate near the station. The visibility of the signal at STKT is good and there is no reason for the driver who was approaching the station at 15 KMPH speed, to ignore the signal and step up the speed. The total detention to the train at STKT for crossing No.352 was only 4 mts. according to the ASM and 6 mts according to the control chart. Train No. 352 which was waiting at signals for the arrival of No.6303, was revived on signals. STKT is a tract circulated station and No.6303 was standing beyond starter, the Track No.2 would have been shown as occupied and the signal would not have come off. If the train had come at excessive speed into the station and the driver had suddenly applied the brake, the brakes would have been jammed to the coaches. It would have been then impossible for the driver to immediately back the rake within the starter signal at such a short-time. The ASM who was dealing with the train was in a position to lower the reception signal for No.352 immediately after the arrival of No.6303 without any delay to the train. This would not have been possible if No.6303 had passed the signal at danger and was stopping occupying the track of Rd.2 In fact, the SM had come to know about the so-called incidence of the driver passing the signal at danger only from some public on the platform and reported the case to Control only after the departure of both the trains. Subsequently, in the enquiry, none of the public witnesses have corroborated that the train had actually passed the signal at danger."

7. According to the learned counsel for the applicant, if the Driver, who was also charged along with the applicant in connection with the same incident, can be exonerated, the charge against the applicant cannot be sustained. Both of them worked in the same train and the gist of the charge can be treated as identical. Under these circumstances, the applicant submitted Annexure-A17 appeal and Annexure-A21 revision petition before the General Manager for consideration with a copy of the order, Annexure-A20. But it has not been either dealt with or considered by the authority.

8. The learned counsel for applicant, Shri P.Sivan Pillai, submitted that in view of the facts and circumstances of the case, the original application should be allowed. he also relied on the decision of this Tribunal in OA 745/89 dated 31.7.91 in which the scope and application of the provisions of Rule 9(7) of the Railway Servants (Discipline & Appeal) Rules, 1968 was considered and held that the disciplinary proceeding will be vitiated if the request of the delinquent employee for personal hearing was not considered by the authority at the relevant time.

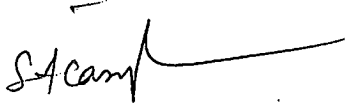
9. According to the learned counsel for the applicant, the entire proceedings initiated against the applicant are vitiated and they are liable to be quashed.

10. The revisional order, as extracted above, indicates that there was no application of mind and the order is unsupportable. We are not satisfied with the way in which the revisional authority has considered and disposed of the contentions of the applicant, who has produced Annexure-A20. The legal effect and application of the same was not

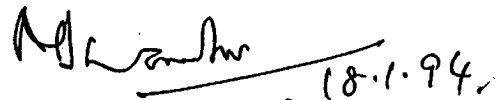
considered. Under these circumstances, we are satisfied order is to be quashed so that the ^{for a de-novo consideration} that the ^{entire} matter be at large ^{and} the same can be remitted back to the Revisional Authority for a proper disposal of the same in the light of Annexure-A20 and the decision of this Tribunal in OA 745/89 referred to above.

11. In this view of the matter, Annexure-A24 cannot be sustained. Accordingly, we set aside Annexure-A24 and send back the matter to the first respondent for a fresh consideration and disposal of the revision petition in accordance with law taking into consideration the fact and circumstances of the case. Since the applicant has already retired, we further direct the first respondent to give priority to this review and dispose of the same within a period of four months from the date of receipt of a copy of this judgment.

12. The application is disposed of as above. There will be no order as to costs.



(S.KASIPANDIAN)
MEMBER(A)

 18.1.94

(N.DHARMADAN)
(MEMBER(J)

v/-