

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 575 / 2006

Thursday, this the 25th day of September, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

**O.V.Ramesh Kumar,
Assistant Station Master,
Southern Railway,
Mangalore.**

....Applicant

(By Advocate Mr Shafik M Abdul Khadir)

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

(By Advocate Mr Sunil Jose)

This application having been finally heard on 28.8.2008, the Tribunal on 25.9.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievances are against (i) the Annexure A-1 penalty advice dated 3/4.3.2003 issued by the Disciplinary Authority holding him guilty of the



charges levelled against him and imposing a major penalty of removal from service with immediate effect, (ii) the Annexure A-2 order of the appellate authority dated 20.6.2003 and (iii) the Annexure A-3 order of the reviewing authority dated 22.10.2005. By the aforesaid appellate order, the punishment of removal from service awarded to the applicant by the disciplinary authority vide Annexure A-1 order dated 3/4.2.2003 was modified and a lesser punishment of reduction to lower grade from the present scale of Rs.5000-8000 with the pay being fixed at Rs.6000/- for a period of three years with cumulative effect was awarded. Reviewing authority, has rejected his review application firstly on the ground of delay in preferring the revision petition and secondly on the ground that the appellate authority has already granted him more than the due consideration.

2. The brief facts of the case are that the applicant was served with Annexure A-4 memorandum dated 13/23.9.2002 proposing to hold an enquiry against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 for the following articles of charge:

"Shri O.V.Rameshkumar, Staff No.J/T.2121, SM/III/TLY while working as SM/III/TLY on 27.6.2002 was careless and negligent in his duties in that he failed to exchange Private Number with the Gatekeeper of LC No.224 at KM 728/200-300 between TLY-MHE before authorising T.No.6345 Express to depart from TLYT. This has resulted in the collision between T.No.6345 Express and Matador Van No.KL-13F-4698 at the LC No.224, at about 08.54 hrs. on 27.6.2002, causing the death of the Van Driver and greivous injury to a school going boy seated in the van.

He has violated paras A.3.3, A.3.4 and A.3.5 of Appendix A/E of SWR No.J.173/TLY dated 04.12.2001 applying to TLY station. He has not maintained devotion to duty and violated Rule 3.1(ii) of Railway Services(Conduct) Rules, 1966."

3. The instructions with regard to the level crossing No.224 at Tellicherry as referred to in the above charge is extracted below from the Annexure A-14 document filed by the applicant along with the O.A:



"A.3 LEVEL CROSSING NO.224 AT K.728/200-300 -(TLY-MHE):

3.1 This is a C class, non-interlocked, Engineering level crossing at Km.728/6-7 between TELLICHERRY and MAHE stations. This LC is provided with Lifting Barriers and is normally kept closed for road traffic and shall be lopened for road traffic only when there is no train movement over the LC, with the consent of SM/TLY supported by a PRIVATE NUMBER.

NOTE: Two Gatemen with one RG are provided for this LC, to work in EI roster of 12 hours shift.

3.2 Magneto telephone communication is available between this level crossing and SM/TLY as detailed in Appendix C.

3. Before granting Line clear for a Down train from MHE and/or before authorising an Up train to depart from TLY, or before initiating a shunt movement likely to obstruct/infringe this LC, SM/TLY shall advise the Gateman through the phone, the particulars of the train with its number, description and direction of movement and probable time of the train entering the section to this Gate and issue a PRIVATE NUMBER.

3.4 The Gateman on duty shall repeat the particulars of the train in acknowledgment, ensure that the LC is closed and secured against road traffic, if not already in that position and issue a PRIVATE NUMBER to SM/TLY.

3.5 The details of the train and the PRIVATE NUMBER exchanged shall be recorded in the PRIVATE NUMBER exchange register, specially kept for the purpose both by the SM and the Gateman.

3.6 When telephone communication between this LC and TLY station fails or if the Gateman has not acknowledged, SM/TLY shall act as follows:

In case of Up trains he shall issue Caution Orders for all trains.

In case of Down trains he shall advise SM/MHR through a numbered message with clear acknowledgment under exchange of Private Number, to issue caution orders for all trains.


NOTE: Run through trains shall be stopped out of course for this purpose at either end stations.

3.7 SM/TLY shall advise the section ESM/JE/SE/(Sig) for immediate rectification."

- 4. Vide Annexure A-5 letter dated 13/23.9.2002, the applicant requested the Disciplinary Authority to furnish him some more additional documents including the proceedings of CRS enquiry/report on the accident dated 27.6.2002, true copy of TSR with the detailed train/timings 24 hrs. prior to accident to 24 hrs.**



after the accident and P.N.Exchange registers with details of train No./timings/PNs utilised for exchanging PNs with LCS. Vide Annexure A-6 letter dated 21.10.2002, the respondents informed the applicant that the CRS enquiry report is a confidential document but he can read in the office. The TSR with the detailed train/timings and PNs Exchange Register were also allowed to be perused by the applicant on a later date in the office. Vide Annexure A-7 letter dated 25.10.2002, the applicant proceeded with his defence statement on the assurance given by the disciplinary authority that the documents yet to be produced would be made available to him in due course. He denied the charges levelled against him and submitted that the collision occurred owing to the open condition of the level crossing No.224 when train No.6345 Express was passing. The said level crossing being a 'C' Class Manuel non-interlocked gate, it should have been normally kept in closed condition against road traffic but this requirement was violated by the Gate keeper on duty. He has also submitted that what was entered in the PN exchange registers at Gate Bunk was not known to him, the PN given to him to the Gate Keeper before starting train No.6345 Express had been entered by him in the relevant column of the PNER. However, he has submitted that there was an "inadvertent slip in a pre-concept of mind in the thick of pressure of work in a given circumstance that prevailed at that point of time" and it "was not a deliberate negligence causing an unsafe condition". According to him, once he had exchanged PN with G.K for number 6345 Express with the Gate Keeper, the gate should have been kept in closed condition by the Gate Keeper as required under the rules and it was at that point of time that the Up train 6345 Exp. also was leaving his station. As no permission was granted to the Gate Keeper to open the gate, he was sure that the said level crossing was in closed condition and safe for the passage of train including 6345 Express. He has again submitted that it was owing to a slip of memory and a consequent inadvertent act due to oversight and pressure of



work in which he was engrossed and, therefore, it should be viewed distinct from deliberate negligence. In support of the aforesaid submissions, applicant has relied upon the following questions and its answer in the deposition of Gate Keeper, Shri M.A. John who was the PW2 in the enquiry proceedings:

Q.14 Which was the last train passed through your gate before the incident?

Ans. T.No.6347 Exp. Was passed through my LC gate at about 08.45 hrs.

Q.15 During the passing of 6347 Exp. through the LC gate, what was the gate position?

Ans. It was in closed condition.

Q.16 After that, what was happened? Briefly explain.

Ans. Since there was heavy road traffic and due to the pressure from the road users for opening the gate, I opened the gate without informing the SM/TLY. Within five minutes No.6345 Kurla exp. (Up) was approaching the gate. From left side a school van entered the track and hit by the approaching train.

Q.17 At what distance you have noticed 6345 exp.?

Ans. Approximately 10 feet from the gate lodge.

Q.18 Have you heard the whistle sound of 6345 Exp.?

Ans. I didn't hear.

Q.19 After the hitting what happened?

Ans. Immediately after that a large crowd tried to attack me. Due to the help of 6345 driver I was saved from the crowd.

RO and translated in Vernacular and accepted as correct.

Xxxxx xxxxxxx xxxxxx

Q.No.29 Before opening the gate is it not your responsibility to get the permission from SM/TLY supported by a private number authorising you to open the gate.

Ans. Yes. I have that responsibility.

Q.30 In this case, when you opened the gate, after passage of 6347 did you contact and get permission from SM/TLY supported by a PN for opening the LC for road traffic?"

He has also relied upon the following questions and its answers given by the said prosecution witness:

Q.36 You have answered that normally 6347 and 6345 more or less pass simultaneously or little time gap. Then why you open the gate

without contacting SM/TLY and without getting Private Number from him as permission to open the gate?

Ans. Thinking that there will be no train I opened the gate.

Q.37 You know normally the gate should be in closed condition against road traffic. Then why you keep the gate in open condition on the ground that there is no train from either direction.

Ans. I kept open the gate for road traffic due to pressure from road users and the SM has not given any PN for the train 6345 Exp on 27.06.2002.

Q.38 In any case don't you accept that opening of ILC 224 after the passage of 6347 in the down direction alone led to the hitting of 6345 with the school van on 27.06.02?

Ans. Yes.

Q.39 I say this opening of LC leading to the hitting of 6345 Exp with school van was in violation of safety rules relevant provisions of SWR/TLY and the relevant GWR maintained at 224. what you say?

Ans. SM has not given any PN for 6345 and hence I opened."

5. The enquiry officer dealt with the aforesaid evidence of the PW2 Shri M.A.John in the following manner:


"2.1 Examination of PW 2 Mr M.A.John (GK on duty at LC 224): During the Cross examination of PW2 by CE, it was clear that the duty SM had exchanged PN with LC 224 gatekeeper for Train No.6347 Exp. After the passage of the train 6347 exp the gate was opened by GK without getting PN from SM/TLY due to the pressure from the road users. Q No.25, 26 & 27).

The Gatekeeper while answering (Q.No.36 & 37) stated that he opened the gate due to the pressure from the road users and thinking that there will be no train. But while answering Q.No.39 the GK stated that he opened the gate since the SM/TLY has not given any PN for train No.6345.

Also while answering Q.No.31 the GK told that had he got permission from SM/TLY to open the LC gate supported by PN, this accident could not have happened."

6. The findings of the enquiry were as under:

"The charges against Shri O.V.Ramesh Kumar while working as SM/III/TLY as 27.06.2002 was careless and negligent in his duties. He failed to exchange PN with gatekeeper at LC No.224 at Km.728/200-300 situated between TLY-MHE before authorising Train No.6345 Exp to depart from TLY to MHE which has resulted in a collision of the said train with a Motor Van at the LC and caused the death of the van driver and grievous injury to a school going boy seated in the van.



He has violated paras A.3.3, A.3.4 & A.3.5 of Appendix A/E of SWR No.J.173/TLY dated 04.12.2001 applying to TLY station. He has not shown devotion to duty and violated Rule 3.1(ii) of Railway Service (Conduct) Rules 1966 and the charges stand PROVED."

7. The applicant made Annexure A-11 representation to the disciplinary authority against the enquiry report. The disciplinary authority, after having considered the report of the enquiry officer and his findings that the charge levelled against the applicant have been proved and the representation of the applicant against the said report came to the conclusion that applicant was guilty of the charges levelled against him. Accordingly he has imposed a major penalty of removal from service with immediate effect vide Annexure A-1 penalty advise dated 3/4.3.2003. The applicant made a detailed Annexure A-12 appeal dated 31.3.2003. The appellate authority after taking into consideration of his appeal held that the punishment is intended to reform an employee in the first instance and, therefore, the punishment milder than the removal from service was enough. Accordingly, the appellate authority decided to give further chances to the applicant for improvement. Accordingly, he modified the order of punishment or removal from service to that of reduction to a lower grade from the present scale of Rs.5000-8000 to scale Rs.4500-7000 with pay being fixed at Rs.6000/- for a period of three years with cumulative effect. The applicant preferred the Annexure A-3 revision petition dated 17.3.2003. The Reviewing authority considered the same but rejected it vide the impugned Annexure A-3 order dated 22.10.2005 holding that the review petition was belated one and secondly the applicant has already got more than the due consideration at the hands of disciplinary authority.

8. The applicant challenged Annexure A-1 order removing him from service issued by the Senior Divisional Operations Manager stating that he was appointed/promoted from the cadre of Station Master with the approval of the



DRM and the appointing authority of the applicant as Station Master is the Divisional Railway Manager and therefore, the removal, order is in violation of Article 311(1) of the Constitution of India. He has also submitted that the level crossing gate in question is provided with lifting barriers and is normally kept closed for road traffic and shall be opened for road traffic only when there is no train movement over the level crossings, with the consent of Station Master, Tellichery supported by a private number but the Gatekeeper has opened the gate without obtaining permission from the station master and without obtaining private number from the Station Master in token of having given permission to open the level crossing gate. The real cause for the collision was the negligence of the gate keeper which was admitted by him and the Commissioner of Railway Safety who enquired into the cause of the accident had also rightly come to such a conclusion. He has, therefore, contended that in the above circumstances, the finding that the applicant was guilty of causing accident at the level crossing and imposing the penalty upon him are totally unjustified. He has also submitted that even if, he had inadvertently omitted to exchange Private Number with Gate Keeper for 6345 Express, the accident would not have occurred, had the Gate Keeper adhered to Rule 3.3.1 of Annexure A-14. In any case, according to the applicant, he had no reason to believe that the level crossing gate was with open condition especially when it was in closed condition while train No.6347 was passing through and thereafter the Gate Keeper had not obtained permission for opening the gate. The other ground raised by the applicant was that the denial of documents sought by him especially the CRS report has resulted in substantial prejudice to him. He further submitted that CRS report is a public document wherein the causes of accident have been identified and to his best of information and belief, the Commissioner of Railway Safety had rightly reached a conclusion that the Gatekeeper has opened the gate without permission of the applicant and that was the real cause behind the accident. According to him, in




case the said report was produced in the enquiry, the absolute innocence of the applicant would have been proved.

9. The respondents in the reply have denied the contention of the applicant that his appointing authority is the General Manager/Divisional Railway Manager. According to them, at the material time the applicant was Station Master Gr.III in scale Rs.5000-8000 and the Senior Divisional Operations Manager is the Disciplinary Authority to that post as he was empowered to make appointments upto the grade of Rs.5500-9000. As regards the other contention that the Gate Keeper was the main cause of the accident, they have submitted that it is the basic duty of the Station Master to exchange Private Number with the Gate Keeper and to ensure closure of gate for safe passage of train. They have submitted that the applicant has failed to exchange Private Number with gate keeper at L.C.No.224 for Train No.6345 which is a clear violation of Station Working Rule. According to them, if the applicant had alerted the gate keeper about train No.6345, the major disaster could have been averted and, therefore, the role of the applicant for the cause of accident cannot be overlooked. They have also denied the contention of the applicant that he had heavy pressure of work and, therefore, he did not exchange the Private Number. As regards the allegation of the applicant that he was not furnished with certain documents, they have submitted that vide Annexure R-1 dated 30.12.2002 he has received the some of the documents from the office and he has given abstracts of the remaining one and permitted him to peruse the other documents which have not been supplied to him. They have also submitted that during the personal hearing, the applicant had accepted the mistake committed by him which he realised only after the occurrence of the accident. He has also promised to be cautious and careful in future service. They have annexed copy of his representation dated 28.5.2003 submitted to the DRM, Palghat Division in this



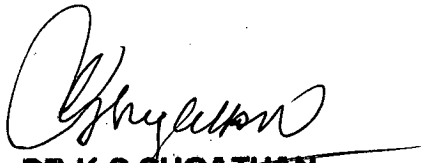
regard. They have also submitted that the enquiry was conducted fully in consonance with the relevant rules and in accordance with the principles of natural justice. The applicant was afforded all reasonable opportunities to defend his case and he had participated in the proceedings without any complaint. Further, they have submitted that the appellate authority was justified to issue the modified penalty imposing upon him taking a sympathetic view in the matter and in order to give him a chance for improvement and the Reviewing authority has rightly rejected his revision petition.

10. We have heard the counsel on both sides. The essence of the charge against the applicant was that he failed to exchange Private Number with the Gatekeeper of LC No.224 at KM.728/200-300 between TLY-MHE before authorising Train No.6345 to depart from TLY. This charge was proved beyond doubt, both by the admission of the applicant as well as by the deposition by the prosecution witness. Just because the gate keeper violated the rules, the applicant cannot escape from his responsibilities. We also do not find that the grounds raised by the applicant in this O.A are not sustainable in view of the reply given by the respondents. We do not also find any procedural infirmity in conducting the enquiry. Though the disciplinary authority has taken a serious view in the matter and imposed the severest penalty of removal from service, the appellate authority in his wisdom has taken very lenient view and modified the order. We find that the reason given by the appellate authority is quite justifiable in as much as he wanted to give the applicant another opportunity for improvement. Admittedly, even though the review application filed was beyond the limitation period, reviewing authority has considered his case and held that he was given due consideration at the level of the appellate authority. We do not find any infirmity in the said order also. In the above facts and circumstances of



the case, we find that the O.A is devoid of any merit and therefore the same is dismissed.

11. There shall be no order as to costs.



DR K.S.SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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