

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.589/03

Dated Thursday this the 5th day of February, 2004.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

R. Jayakumar
S/o S.Ramalingam
Diesel Assistant
Southern Railway
Mangalore.
Residing at: Railway Quarters No.106-C
Opp."RRI" Cabin,
Mangalore R.S & PO

Applicant

(By advocate Mr.T.C.Govinda Swamy)

Versus

1. Union of India represented by
The General Manager
Southern Railway
Headquarters Office
Park Town P.O.
Chennai.
2. The Chief Personnel Officer
Southern Railway, Headquarters Office
Park Town P.O., Chennai.
3. The Divisional Mechanical Engineer
Southern Railway, Palghat Division
Palghat.
4. The Senior Divisional Mechanical Engineer
Southern Railway, Palghat Division
Palghat.
5. The Additional Divisional Railway Manager
Southern Railway, Palghat Division
Palghat.

Respondents.

(By Adv: Mrs.Sumathi Dandapani)
The application having been heard on 5th February, 2004,
the Tribunal on the same day delivered the following:

O R D E R

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

The applicant, a Diesel Assistant, has filed this application impugning the memorandum of charge dated 19.6.02 (Annexure A-2) and the Penalty Advice dated 24.3.03 (Annexure

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A-6) of the 3rd respondent imposing on him a penalty of reversion as Loco Khalasi as also the Appellate Order dated 2.7.03 (Annexure A-9) of the 4th respondent confirming the penalty. The facts can be stated in a nutshell as under:

2. The applicant on 20.4.2002 performed night duty from Coonoor to Mettupalayam. He was to work 672 Passenger Train with steam loco on 21.4.2002 which was to start from Mettupalayam at 9.10 a.m. Though the applicant was suffering from vomiting and diarrhea throughout the night and he was not alerted by the call boy well in advance as required, yet he reported for duty and signed 'ON' at 8.30 a.m. Seeing the condition of the applicant, the driver of the 672 Passenger Train and the Loco Inspector in charge of Loco and Crew Booking did not allow him to perform duty on the ground that he was sick. However, he was served with a memo of charge alleging that he did not turn up for duty at 8.00 hrs. to work the booked train No.672 Passenger from MTP-ONR on 21.4.02 and thereby failed to maintain devotion to duty contravening the provisions of Rule 3 (1) (ii) & (iii) of the Railway Services (Conduct) Rules, 1966. The applicant denied the charge. An enquiry was held. The enquiry officer in his report (Annexure A-4) held the applicant guilty of the charge. The Disciplinary Authority accordingly accepted the said finding and imposed on the applicant the penalty. The appellate authority also confirmed the penalty. The applicant is aggrieved by the penalty imposed on him. It is stated that the enquiry held was in a manner violative of the principles of natural justice as also the rules in regard to holding of the enquiry, that the finding of the enquiry officer that the applicant was guilty of the charge which had been accepted by the disciplinary authority,

is perverse as it is not based on any evidence at all, that the memo of charge does not disclose any misconduct at all and that the Appellate Authority's order is devoid of application of mind. With these allegations, the applicant has filed this application seeking to set aside the impugned orders.

3. Respondents have filed a reply statement seeking to justify the impugned orders on the ground that the orders were issued with due application of mind after holding an enquiry in accordance with the rules.

4. It is pertinent to mention here that before the applicant filed this application, he had earlier approached this Tribunal filing OA No.344/03 which was disposed of directing the applicant to file an appeal and the appellate authority to dispose of the same keeping the operation of the impugned order in abeyance. On the basis of the above, order. the impugned order of penalty has not so far been given effect to.

5. We have scrutinised the pleadings as also the entire material placed on record and have heard Sri T.C.Govindaswamy, the learned counsel of the applicant and Smt.Sumathi Dandapani, the learned counsel for the respondents.

6. Sri T.C.Govindaswamy, after taking us through the memo of charge and the statement of imputation as also the annexures attached thereto, argued that nowhere in the memo of charge it has been mentioned that the applicant was required to report for duty sharp at 8 O'clock and that no document has been produced to show that there was such a requirement. He further argued that

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it is evident from the evidence adduced during the enquiry especially from the deposition of Basheer Ahmed, Loco Inspector that the applicant had reported for duty and the reason why he was not allowed to perform the duty was his illness and therefore there is absolutely no material in his case on the basis of which any reasonable person could have reached the conclusion that the applicant was guilty. The disciplinary authority as also the appellate authority had acted without any application of mind in accepting the finding of the enquiry officer and imposing on the applicant the penalty of reversion to the post of Khalasi, argued the learned counsel.

7. Smt. Sumathi Dandapani, on the other hand argued that the applicant was required to report for duty at 8 O'clock, that he failed to do so admittedly and that this alone is sufficient proof that he was guilty and he showed lack of devotion to duty.

8. Giving the arguments of the learned counsel for the parties our anxious consideration, in the light of the materials and the evidence on record, we find that the argument of the learned counsel of the applicant that no reasonable person could have reached the conclusion that the applicant was guilty in this case, is perfectly justified and well reasoned. Smt. Sumathi Dandapani, the learned counsel for the respondents has not been able to bring to our notice any instructions general or special given to the applicant that he should have reported for duty at 8 O'clock a.m. on 21.4.02. She has not brought to our notice that there is any standing order or instructions that the diesel assistants should sign 'ON' duty one hour prior to departure of

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the train. The learned counsel for the respondents, on the other hand, invited our attention to Annexure R-4 (4) especially to what is stated under Allowance for Engine and Train Attendance, which reads as follows:

Allowance for engine and train attendance

(iv) The allowance for engine and train attendance will be as under:

- (a) Engine Attendance - Forty five minutes before the departure from the engine shed and fifteen minutes after arrival in the engine shed except for garret and other special type engines for which the Railway Administrations themselves may legislate.
- (b) Train attendance - Thirty minutes before departure and thirty minutes after arrival. In the case of goods trains the allowance before departure will be forty five minutes. In the case of S.Q.T. tranship or other special services, special orders may be issued by Railway Administration themselves.

9. We are not able to deduce from what is stated above that this is a direction for running staff to report for duty one hour before the departure of the train. We find that R-4 is the copy of the special instruction regarding calculation of hours of work for overtime payment, and allowance for engine and train attendance in that regard. Therefore, we find that there is nothing on record which shows that the applicant was required to sign on duty at 8 a.m. on 21.4.2002. Even assuming that there was such a requirement, it is evident from the enquiry proceedings that when the applicant reported, the Loco Inspector and the Driver did not allow him to perform work as he was sick and it is evident that his reporting at 8.30 was not on account of any lack of devotion to duty but owing to illness. It is also evident from the enquiry proceedings that there was no call boy at Mettupalayam.



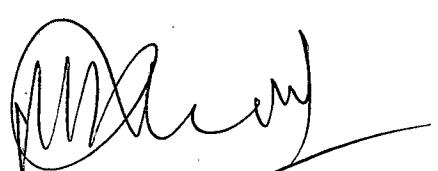
10. In the light of what is stated above, we find that the finding that the applicant is guilty is totally perverse and is devoid of merit. It is unfortunate that the Disciplinary Authority and the Appellate Authority did not carefully analyze the evidence before coming to the conclusions that the applicant was guilty. It is also unfortunate that the enquiry had been held in a manner which was not provided for in the rules. The enquiry officer first started examining the applicant and put some questions to one witness and then revering back to the applicant and put questions to him. This is not the manner in which the enquiry is to be held according to the provisions of the Railway Servants (Discipline and Appeal) Rules. According to the Rules, first the witness in support of the charge has to be examined and documents brought on record. Then the delinquent railway servant is to be questioned generally on the evidence appearing against him, and then call upon him to enter on his evidence. This procedure has not been followed. However that is the procedural aspect. Coming to more important aspect that is the ground that the finding is perverse, we notice that the enquiry officer came to the finding that the charge was established not on the basis of any evidence, as really no evidence was available, but only on conjectures, surmises and imaginations, which cannot be accepted and acted upon.

11. In the light of what is stated above, the impugned orders are totally unjustified and therefore the orders are set aside allowing the application with consequential benefits to the applicant.

Dated 5th February, 2004.

H. P. DAS
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN