

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 603 of 2003

Tuesday, this the 8th day of February,

CORAM

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

1. N. Gopalan,
Ticket Collector (Reverted),
Working as Server in Parasuram Express,
Southern Railway, Ernakulam Jn,
Kochi.Applicant

[By Advocate Shri K.A. Abraham]

Versus

1. Union of India represented by the
General Manager, Southern Railway,
Chennai.

2. The Additional Divisional Railway Manager,
Southern Railway,
Thiruvananthapuram.

3. The Senior Divisional Commercial Manager,
Southern Railway,
Thiruvananthapuram.Respondents

[By Advocate Shri Thomas Mathew Nellimootttil]

The application having been heard on 8-2-2005, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant, who stood reverted as a Ticket
Collector, has filed this application under Section 19 of the
Administrative Tribunals Act, 1985 challenging the legality,
propriety and correctness of Annexure A-4 enquiry report,
Annexure A-7 order dated 17-6-2002 by which a penalty of
reversion from the grade Rs.3050-4590 to Rs.2610-3540 grade of
Server fixing his pay at Rs.3280/- with effect from 1-7-2002
was imposed finding him guilty of a misconduct as also Annexure
A-10 order dated 22-5-2003 by which the Appellate Authority has

confirmed the penalty. The short facts necessary for a proper understanding of the issue involved can be briefly stated as follows.

2. While the applicant was working as Ticket Collector at the Information Centre, on 29-9-1997 he received a communication from the Area Manager surrendering 2 berths in 1st Class in Train No.6329 to be allotted at the Information Centre against open tickets. On 19-1-1998 also, a similar incident occurred. Alleging that the applicant unauthorisedly allotted the surrendered berths against open tickets on the incident on 19-1-1998, Annexure A-1 memorandum of charges was laid against the applicant. The applicant having denied the charge, an enquiry was held. On the conclusion of the enquiry the applicant was awarded a penalty of reversion to the post of Server. The appeal and revision having been rejected, the applicant challenged the penalty before this Bench of the Tribunal in OA.No.403/99. Finding that the enquiry was vitiated in as much as the applicant was cross-examined by the enquiry officer before any evidence in support of the charge was taken, that the applicant was not given an opportunity to enter upon his defence, that he was not questioned on the evidence appearing against him in the evidence in support of the charge and that the whole procedure was held in a vitiated manner, the penalty was set aside by order dated 17-7-2001. On the alleged occurrence of 29-9-1997, Annexure A-2 memorandum of charges had been served on the applicant. The applicant having denied the charge, an enquiry was held and completed in 1999. Eventhough the applicant had submitted his explanation to the enquiry report, the matter was not proceeded further. However, once the penalty awarded to the applicant on Annexure A-1 memorandum of charges was set aside by the Tribunal by its order dated 17-7-2001 in OA.No.403/99, the Disciplinary Authority proceeded on the matter and issued Annexure A-7 order dated 17-6-2002 finding the applicant guilty and imposing on



him a penalty of reversion. The appeal filed by the applicant was dismissed. Aggrieved by the rejection of the appeal, the applicant has filed this Original Application seeking to set aside the impugned orders and to grant consequential benefits to him. It has been alleged in the application that the applicant allotted the berths at the oral instructions of the Area Manager and, as a matter of practice, that the enquiry has been held totally against the rules in regard to holding of enquiries, that the applicant has been denied reasonable opportunity to defend himself and that for all these reasons the impugned orders are not sustainable.

3. Respondents in their reply statement seek to justify the impugned orders on the ground that the applicant did not disprove the charge against him.

4. We have carefully gone through the pleadings, enquiry report and all the documents produced on either side and have heard Shri K.A.Abraham, learned counsel of the applicant and Shri Thomas Mathew Nellimoottil, learned counsel of the respondents.

5. A mere perusal of the enquiry report would clearly establish that the enquiry was held in a manner not in accordance with the rules and not giving the applicant any opportunity at all to defend himself. Instead of taking the evidence in support of the charge after the applicant had denied the guilt, what was done by the Enquiry Officer was to cross-examine the applicant at length. After the cross-examination of the applicant, one witness Mr M.S.Nair was examined. He has stated that on oral complaints by two Ticket Examiners he reported the matter and thus the charge was framed. He has not disclosed the names of the Ticket Examiners who allegedly complained to him. He has not been able to say whether or not there has been a practice of acting on oral

instructions from the Area Manager after receipt of the Chart at the Information Centre. He has also not stated in his testimony whether the RAC and Waiting List of Train No.6329 of the date in question had been cleared or not. The applicant had requested for supply of copy of the complete chart of 29-9-1997, copy of the complete chart of two tier AC by 6320 of 29-9-1997, copy of any standing orders, if any, forbidding the TC at the Information Centre from allotting any vacant berth to open ticket holders even when no waiting list passengers are available in the master chart, copy of any complaint received from anybody in this regard and copy of any standing orders issued by AM/ERS that the berths unutilized in AM/EQ with remarks surrendered to WL should be handed over to the TTE manning the coach. These documents were not supplied to the applicant and the Enquiry Officer did not permit the applicant to examine the witness which the applicant wanted to examine as a defence witness. We find no justification for the non-supply of the documents and not permitting the applicant to examine the witness on his side in defence. The action on the part of the respondents amounted to deprival of reasonable opportunity to the applicant to defend himself. Further, the charge is that the applicant irregularly allotted seats to open ticket holders. No dishonest motive or intention have been mentioned. A mere technical irregularity without any loss to the Railways or dishonesty may not amount to a misconduct at all. Further, even the sole document appended to the memorandum of charges, viz. Chart, has not been proved by examination of any witness. Thus, it is clearly seen that not only that the enquiry was held without following the procedure laid down which obviously caused prejudice to the applicant but also that the Disciplinary Authority has jumped into the conclusion that the applicant had allotted the berths to open ticket holders for personal gratification while there is not even a murmur about that in the memorandum of charges. The finding of the Enquiry Officer as also the Disciplinary Authority is, therefore,

vitiated by extraneous considerations and for want of evidence also. Therefore, we have no hesitation to hold that the finding that the applicant was guilty is perverse. We also find that the Appellate Authority as also the Revisional Authority did not consider the grounds raised by the applicant against the impugned orders with due application of mind.

6. In the light of what is stated above, we set aside the impugned orders with all consequential benefits to the applicant. The applicant's position as Ticket Collector shall immediately be restored and he shall be given the arrears of pay and allowances within a period of two months from the date of receipt of a copy of this order.

7. The Original Application is allowed as above without any order as to costs.

Tuesday, this the 8th day of February, 2005

H. P. Das
ADMINISTRATIVE MEMBER



A. V. HARIDASAN
VICE CHAIRMAN

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