CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.606/93

Wednesday, this the 5th day of October, 1994

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

KP Muraleedhar,
(Ex Rest Giver Station Master
Mysore Division),
Kunnumpilli,
Thiruvankulam P.O.
Ernakulam District. - Applicant

By Advocate Mr TC Govindaswamy

Vs.

1. Union of India through
General Manager,
Southern Railway,
Park Town P.O.
Madras-3.

2. The Chief Operating Superintendent,
Southern Railway, H.Q.Office,
Park Town P.O. Madras-3.

3. The Divisional Railway Manager,
Mysore Division,
Southern Railway, Mysore.

4. The Divisional Operating Superintendent,
Mysore Division,
Southern Railway, Mysore.

5. V Ramasamy,
Chief Engineer(Construction),
Southern Railways, Madras-3. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

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CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant while working as 'Rest Giver Station Master', was chargesheeted with misconduct referable to Rule 2.08(2) of

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GRS 1976 and Rule 3(i)(ii) and (iii) of Railway Service (Conduct) Rules, 1966. In brief, the charge was that he refused to attend to his normal duties on 11.5.1986 after reporting sick and before getting relief. On that day, applicant was working as Station Master, Gudigere. At 1220 PM he informed the Controller that he was sick and requested relief. Meanwhile No.204 Mahalaxmi Express left the adjoining station Saunshi towards Gudigere. Applicant did not receive the train or in railway parlance, give 'line clear'. The driver on his own, came into the station. For dereliction of duty applicant was removed from service, dispensing with the provisions of Article 311. This he challenged before the Bangalore Bench of this Tribunal in O.A.569/87. The Bench found that there was no justification for dispensing with an enquiry under Article 311, quashed the proceedings and remitted the matter to the disciplinary authority. That authority issued A10 charge sheet, held an enquiry and eventually imposed a punishment on applicant by A20 order. Applicant appealed against A20 unsuccessfully. By A22, the appeal was rejected and upon that, he moved this Tribunal.

2. Applicant would submit that the enquiry was held in violation of the principles of natural justice and that the findings are therefore vitiated. According to him, documents requested for, were not given, witnesses desired to be examined were not examined, and he was not questioned under Rule 9(21) of the Discipline and Appeal Rules. It is

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also his case that prejudice loomed in the minds of the authorities, and that the speed with which they removed him from service, is proof of such prejudice. He would submit that he was physically incapable of discharging his duties, and that this was the reason for not receiving the Mahalaxmi Express.

3. It is true that all the documents for which a request was made by applicant, were not furnished to him. Between the incident and initiation of disciplinary proceedings pursuant to orders in O.A.569/87, almost three years had lapsed and some of the documents called for were not traceable as pointed out in A13. An adverse inference cannot therefore be drawn. Quite apart, failure to furnish a document without anything more will not taint the proceedings. Prejudice must have resulted from such failure. Prejudice is a question of fact and not one of presumption as pointed out by the Supreme Court in Managing Director, ECIL, Hyderabad Vs. B Karunakar, (AIR 1994 SC, 1074). We will now examine whether omission to supply certain documents caused prejudice. The documents summoned were, the Train Signal Register of Saunshi and Gudigere Stations, sick and fit certificates, train orders, Combined Train Report and Train Registers maintained by Guard and Driver. The sick and fit certificates and Combined Train Report were given. The other documents were not available. That will make no difference, as the documents have no

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relevance to the issues. Counsel for applicant could not tell us how they are relevant. In a different context these Registers might have been relevant. Admittedly, applicant was present at the Gudigere Station when No.204 Mahalaxmi Express reached the signal and later the station, without clearance. It is also admitted that applicant did not give clearance or 'line clear'. There is no dispute so far. The only relevant question is whether applicant's action was justifiable or not. It would be justified, if his defence that he was physically incapable of attending to his duties is established. This has not been done as can be seen later.

4. It was then contended that the witnesses summoned were not made available for examination. A18 shows that steps were taken to procure the attendance of witnesses, but that the defence witnesses did not turn up. The disciplinary authority or the enquiry authority cannot be blamed for this. It is said that these witnesses were necessary to establish the physical state in which the applicant found himself. Evidence should have been produced from the Doctors who examined him or the hospitals where he was admitted(in case his condition was serious enough) or from helpers who took him to a Doctor, if he wanted to establish the defence of illness. The plea of prejudice on this score has only to be rejected.

5. It was then argued that applicant was not questioned as required by Rule 9(21) of Discipline and Appeal Rules. We are unable to accept this contention. This contention raised

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in ground 7 of the appeal and in ground 10 of this application, has been answered. The appellate authority(A22) refers to question No.18 put to applicant on 19.6.1991, to show that applicant had been questioned with reference to the circumstances appearing against him.

6. Notwithstanding this, it has to be ascertained whether the evidence establishes the charges, that the applicant acted in a manner unbecoming of a responsible official by not receiving the train. As we pointed out earlier, it is admitted that the applicant was available at the station. It is also admitted that the reliever had not reached the station in time to receive the Mahalaxmi Express. It is also admitted that the applicant did not receive Mahalaxmi Express or give it clearance. The basic facts that constitute the charge being thus established, the only question is whether there is exoneration by reason of illness proved. The evidence of Raghavendra, Station Master, Saunshi(page 102 of the paper book) shows that he made an attempt to get into touch with applicant on the block phone, after the Mahalaxmi Express was ready for departure to Gudigere station which was in the charge of applicant. Raghavendra could not establish contact, and so he contacted the controller for clearance. Incidentally, applicant has a case that the train was cleared in violation of the procedure prescribed. If it had notbeen so cleared, applicant would not have had to face a charge. That is another matter. The charge found, in substance,

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is that applicant behaved in a manner unbecoming of a railway servant, whether it is by not clearing the signal or by not attending to the telephone as a prelude to giving the signal. For the purpose of despatching the train from Saunshi, station master Raghavendra, as is the wont, contacted the neighbouring station under the charge of applicant, through the block phone. The call was not taken. It is not the case of anybody, much less of applicant, that the phone was out of order. An employee who remains on duty (even after reporting sick and before the reliever) has the plain responsibility to discharge the duties inhering in him. Applicant did not do this. There is no evidence, worth the name to indicate that applicant was physically incapacitated, so as to be unable even to attend to a phone call or to send a message on the control phone, that he was not in a position to discharge any of his functions. The only evidence available on record is that of Dr Bhattal and that is to the effect that applicant was 'feverish'. There is no evidence that applicant went to a hospital for treatment for a more serious illness, before or after the so called incapacity. There is also no evidence from any source to show that he had to be carried from the station, in a weak state. On the contrary, the reasonable inference is that applicant after the arrival of his reliever, went to the dispensary of Dr Bhattal and then on to other destinations. If he was physically fit to undertake all these exercises, he would have been fit to attend to the

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block phone or speak on the control phone about his inability to receive the train. He knew the train timing. He knew that no relisver had come. We are therefore of opinion that the charge of dereliction of duty or acting in a manner unbecoming of a railway servant, stands established. Even if a different view arises on the facts, that is not a reason to set aside the findings of fact, and for that matter there are hardly any set of facts which do not yield two different inferences. The finding of fact is reasonable and does not warrant interference.

7. But, that is not the end of the matter. Undisputably, applicant was suffering from some ailment, though it might not have been serious enough to incapacitate him, and a railway strike was going on. It is possible that the authorities, from the conduct of applicant which was not very responsible, would have concluded that the intention of applicant was to disrupt traffic. While we feel that the charge is established, we feel that the degree of culpability found by the disciplinary authority, cannot be justifiably found. Perhaps this is a case where to quote the classic expression of Baron Alderston 'the mind is apt to mislead itself'. We think that the punishment does not pass muster of the test of proportionality, and the rule in Union of India V Giriraj Sharma(AIR 1994 SC, 215). We therefore quash the punishment of compulsory retirement imposed on the applicant, while maintaining the finding of misconduct. Competent authority will be free to impose any

punishment, less drastic than compulsory retirement. The long years of mental agony suffered by applicant, also must enter consideration while deciding on the quantum of punishment. For seven years or more, applicant had been out of employment and he was subjected to mental agony on that score. As for the relevant period, it is for the appropriate authority to regulate the same. It could be treated as period under suspension or it could be treated as leave. Since applicant has retired, respondents will consider whether it will not be proper to consider the relevant period as period qualifying for pension. We would direct the appellate authority to impose an appropriate punishment in the light of the foregoing observations and this will be done within two months from today.

8. With these directions, we dispose of the application. Parties will suffer their costs.

Dated, 5th October, 1994.

PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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List of Annexures

Annexure-A18: Letter No.Y/T 348/204 May 86 dt.26.8.91

Annexure-A20: No.Y/T 348/204/May 86 of 19/22.11.91

Annexure-A22: No.D(A)94/7/64 of 12.10.1992.

Annexure-A10: NCopy of charge Memorandum

Annexure-A13: No.Y/T 348/May 86 of 19.9.89