

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.616/2002

Tuesday, this the 7th day of December, 2004.

CORAM:

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

HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER

P.C.Thommachi,
Retired Mail Driver,
Southern Railway,
Ernakulam Junction,
Residing at: Parackal House,
No.31/1018-A,
Rail Nagar, Ponnurunniy,
Vyttila, Kochi-19.

By Advocate Mr T.C.Govindaswamy

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1. Union of India represented by the Secretary, Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, Southern Railway, Park Town.P.O. Chennai-3.
3. The Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivanrum-14.
4. The Joint Director, Establishment (D&A) II, Railway Board, Rail Bhavan, New Delhi.
5. The Union Public Service Commission, New Delhi, represented by its Secretary.

By Advocate Mrs Sumathi Dandapani (for R. 1 to 4)

By Advocate Mr C Rajendran, SCGSC (for R 5)

The application having been heard on 29.11.2004, the Tribunal on 7.12.2004 delivered the following:

HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER

Disciplinary proceedings were instituted against the applicant by memorandum dated 9.10.90 under Rule of the Railway Servants (Discipline & Appeal) Rules, 1968. The following charge was framed against the applicant:

"Shri P.C.Thommachy, Mail Driver/ERS while working 6303 Exp on 21.8.90 between ERS and TVS passed down main line starter signal of STKT Station at "ON" position without any authority and he has also backed the train on his own accord with a view to destroy the evidence at about 8.35 hrs. on 21.8.90."

The Enquiry Officer submitted his report holding that the charges were proved. The penalty of compulsory retirement which was imposed on the applicant was twice set aside by the appellate authority. However, the disciplinary proceedings continued after the retirement of the applicant from service on 31.3.97. On examination of the applicant the Enquiry Officer submitted its report holding that the charge against the applicant was proved. On consideration of the enquiry report and consultation with the UPSC, the President by order dated 9.1.2001 (A-1) held the applicant guilty of the charge and imposed on him a cut of 10% in his pension for 3 years. The applicant filed this O.A. for quashing the impugned order at A-1 for quashing it with a direction to the respondents to grant the consequential arrears with interest.

2. The submissions made on behalf of the applicant are, as follows: The impugned order at A-1 is based on advice of the UPSC and the perverse finding of the enquiry officer is unsustainable. There is no evidence to establish the charge that the applicant passed the signal and backed the the train

for destroying the evidence. The appellate authority considered the matter in depth in its order dated 24.10.91, and exonerated the applicant of the charge for lack of direct evidence to sustain the charge. The findings of the enquiry officer based on surmises and conjectures and without valid reasons are liable to be rejected. The advice of UPSC advise which had not taken into relevant factors is arbitrary and incorrect. The impugned order was passed though there was no finding of grave misconduct or negligence on the part of the applicant. Therefore the order is contrary to rule 9 of the Railway Services(Pension) Rules, 1993.

3. The submissions made on behalf of the respondents are as follows: The enquiry was conducted as per rules and the charge was proved. The applicant was given ample opportunity to defend himself in conformity with the principles of natural justice. The advice of the UPSC (A-2) was tendered on judicious and impartial consideration of relevant facts and circumstances of the case, evidence on record, the deposition of witnesses, the finding of the enquiry officer and the plea of the applicant. There is no condition that the UPSC's advise is to be made available to the charged official before final order is issued. The plea of the applicant that the findings of the enquiry officer are not supported by reasons is unreasonable. The findings recorded in the enquiry report are based on relevant material and tangible evidence. The order at A-1 is valid and just as the applicant was found guilty of grave misconduct in continuation of safety and discipline rules.

4. We heard the learned counsel on both sides and perused the pleadings and material on records.

5. For consideration for the validity of the impugned order, Rule 9 of the Railway Services (Pension) Rules 1993 under which the President has the right to withhold or withdraw pension is reproduced below:

"9(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement."

Thus the pre-condition of Presidential prerogative to withhold/withdraw pension is that finding should be recorded either in departmental proceedings or in judicial proceedings that the pensioner committed grave misconduct or negligence while in service. It is indisputable that the impugned order of no such finding of grave misconduct or negligence, on the part of the applicant in the case was recorded. The impugned order without such a finding of grave misconduct or negligence on his part violated Rule 9 of the Railway Services (Pension) Rules. The Hon'ble Supreme Court in D.V.Kapur v. Union of India reported in AIR SC 1990 1923 pertaining to withholding of pension and gratuity under Rule 9 of CCS(Pension) Rules held as follows:

"7. Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art. 41 of the constitution."

Rule 9 of CCS(Pension) Rules and Rule 9 of Railway Services (Pension) Rules, 1993 are identical. The ruling of the Hon'ble Supreme Court in the aforesaid case is squarely applicable to the facts of this case.

6. This apart, the finding of the enquiry officer that the applicant was guilty of the charge was not based upon solid evidence. The enquiry officer himself stated in the report that in the absence of the recorded direct evidence in support of the charged official passing signal at danger in this case, the case had to be decided on circumstantial evidence. Shri Soman Varghese, ASM(Witness 1) stated that the train of which the applicant was the Driver overshoot the main line down starter when line starter was in danger. Shri K Shanmugham, SCP(Witness 2) on the other hand, presumed that the train had started and stopped. The ambiguity of evidence prompted the appellate authority to observe among other things as follows in the order dated 24.10.1991 (A-10):

"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 at 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.

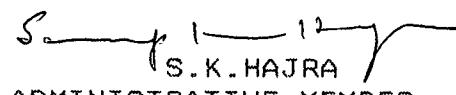
Witnesses have deposed that this train while approaching the station was passing only at 15 KMPH speed when it passed the level crossing gate near the station. The visibility of the signal at STKT is good and there is no reason for the driver who was approaching the station at 15 KMPH speed, to ignore the signal and step up the speed. The total detention to the train at STKT for crossing No.352 was only 43 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 received on signals. STKT is a track circuited station and if 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 for other 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 N.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 socalled 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."

The Tribunal is not expected to reappraise the evidence. However, it is necessary in the interest of justice to bring out the inconsistency of evidence and its lack of clarity. Based on such circumstantial evidence of doubtful authenticity, the finding of the enquiry officer that the applicant was guilty of the charge cannot be accepted.

7. In the light of the discussion, the impugned order dated 9.1.2001 at A-1 is set aside. The respondents are directed to release to the applicant 10% of the pension

including arrears of pension with interest at 6% on the arrears from the due date till the date of actual payment within three months from the date of receipt of copy of this order. O.A. is accordingly allowed. No costs.

Dated, the 7th December, 2004.


S.K. HAJRA
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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