CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

DATE OF DECISION: 7.11.1989

P R E S E N T

Hon'ble Mr.N.V.Krishnan - Administrative Member

and

Hon'ble Mr.A.V.Haridasan - Judicial Member

ORIGINAL APPLICATION NO.7/86

R Seshaiyan - Applicant

Versus

1. Divisional Railway Manager, Southern Railway, Palghat.

2. Senior Divisional Operating Superintendent, Southern Railway, Palghat. - Respondents

Mr.K.Ramakumar - Counsel for applicant

M/s MC Cherian & TA Rajan - Counsel for respondents

O R D E R

(Hon'ble Mr.A.V.Haridasan, Judicial Member)

The applicant, a retired employee of the Railways has filed this application under Section 19 of the Administrative Tribunals Act, 1985, for the relief of having the punishment imposed on him set aside.

The facts of the case as stated in the application

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can be briefly read as follows.

2. The applicant ~~who~~ was working as Station Superintendent in the Pilamedu Railway Station near Coimbatore in Palghat Division . His scale of pay was Rs.700-900. He retired from service on 31st January, 1985. While he was working as Station Superintendent at Pilamedu on 22.3.1984, there happened an accident in which three coaches of Train No.82 Express was derailed. The applicant was served with a memo of charge alleging that, while working as Station Master at Pilamedu on 22.8.1984 he had not taken the precaution to physically check cross over No.54 before taking off signals for No.82 Express eventhough the indications for setting of points were not coming and instead he had employed the services of Shri M Mohammed Moideen, Assistant Electrical Signal Maintainer/Works/Palghat to take recourse to short cut methods by interferring with the relay systems and this has resulted in derailment of three coaches. The applicant denied the charge. Before charge-sheeting the applicant, a preliminary enquiry was held and the second respondent who was the Disciplinary Authority was a member

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of the Preliminary Enquiry Committee. The applicant had in his written statement of defence submitted, that the second respondent being a member of the Preliminary Enquiry Committee should not act as the Disciplinary Authority, because, having been associated with the Preliminary Enquiry personally, he would not be in a position to take an unbiased and objective decision. The Disciplinary Authority did not consider this objection. The enquiry was held and the Enquiry Authority submitted his report. The Disciplinary Authority accepted the findings, found the applicant guilty and by the impugned punishment order at Annexure-D awarded a punishment of reduction in rank to the applicant to the lower scale of Rs.550-750. Aggrieved at this punishment order, the applicant filed an appeal before the first respondent. The appeal was dismissed. The applicant has filed this application alleging that the Disciplinary Authority was incompetent to act as Disciplinary Authority in this case, as he had conducted the Preliminary Enquiry and also because he is not the authority competent to award punishment of reduction in rank to the applicant, that the appellate authority is not competent to hear the appeal, that the appeal was not properly disposed, that the enquiry was not properly held

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and that the punishment awarded is grossly disproportionate to the alleged misconduct. The applicant prays that, since the action taken is vitiated and has resulted in severe loss to him, the order of punishment, and the appellate order, may be quashed. The second respondent has filed a counter affidavit in which it has been contended that the enquiry has been properly and validly held, that no prejudice has been caused to the applicant, that the findings of the Enquiry Authority accepted by the Disciplinary Authority is based on legal evidence, that the second respondent is competent to ~~xxxxxxxx~~ impose the punishment awarded to the applicant and that there is absolutely no merit in the application and the same is to be dismissed.

3. We have heard the arguments of the learned counsel appearing for the parties and have also carefully gone through documents produced. The main argument raised by the learned counsel for the applicant in this case is that disciplinary proceedings and the order of punishment are vitiated, since the Disciplinary Authority who ~~xxx~~ accepted finding of the Enquiry Authority and held the applicant guilty of the charge and who has awarded the punishment being a member of the preliminary enquiry committee

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who personally made an investigation before framing charge he could not have assessed the evidence in a disproportionate, detached and unbiased manner. That the second respondent was also a member of the joint Enquiry Committee appointed by the first respondent, and that this committee examined almost all the officials concerned at the station at the time of the accident including the applicant and submitted a report are admitted in paragraph 4 of the counter affidavit filed by the second respondent. So the argument of the learned counsel for the applicant that the second respondent who acted as the disciplinary authority and who passed the punishment order had personal knowledge about the details of the occurrence on which the charge was framed against the applicant through his examination of the officers concerned including the applicant immediately after the accident occured and that therefore, the applicant apprehended bias can not be brushed aside as far-fetched. In the written statement of defence filed by the applicant in response to the charge-sheet, at the very outset he had objected to the second respondent a member of the joint enquiry acting as Disciplinary Authority on the ground that he apprehended bias. The contention of the second respondent in his counter affidavit " In this

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connection it is also pertinent to note that at no stage during or after the enquiry the applicant had challenged the competence of this respondent to function as a Disciplinary Authority" is found to be false because in the written statement itself, the applicant had raised that objection. In the enquiry report the Enquiry Authority has stated as follows:

> "Under these context the Station Master had no direct involvement in the actions of the signal staff and the fact had been accepted by the witness in his catagorical reply (A-99), that the SM had never asked him to interfere with the signalling apparatus or relay room particularly to give positive, negative circuits into R1, R2."

But in the concluding paragraph of the inquiry report the charge had been held to be proved. The Disciplinary Authority has found the charge proved in full. It is the Disciplinary Authority who had to arrive at a finding on the charge basing on the evidence recorded by the Enquiry Authority. So the final decision is that of the Disciplinary Authority. If the Disciplinary Authority who has to judge about the guilt of the applicant already had the direct knowledge about the details of the facts on which the charge were framed being a member of the Joint Committee who questioned witnesses including the applicant, it is difficult for the applicant to rest assured that he would get an unbiased and just decision. In this context the apprehension of bias expressed by the applicant in his written

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statement cannot be said to be unfounded. On the other hand it is to be held well-founded. Therefore, we are of the view that the second respondent should not have acted as Disciplinary Authority in this matter. For the above said reason we are of the view that the impugned penalty order is vitiated. The appellate authority has not properly gone into the various grounds raised in the appeal memorandum submitted by the applicant. So we are of the view that the appellate order is also defective.

4. In the result for the reasons mentioned in the foregoing paragraph, we quash the punishment order Annexure-D and appellate order Annexure-F. We make it clear that the setting aside of the impugned order of punishment would not preclude the respondents from taking denovo action if so advised in accordance with law; In case the respondents decide to take action, an adhoc disciplinary authority other than the second respondent will have to be appointed. It will be sufficient if the adhoc disciplinary authority so appointed, continues the proceedings from the stage after the enquiry authority submitted the report.

5. We make no order as to costs.

7.11.89.

(A.V.HARIDASAN)
JUDICIAL MEMBER

(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER