

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 76 OF 2009

Tuesday, this the 25th day of August, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

N.V.Saleem, S.No.J/T 1822

Senior Train Clerk, Southern Railway

Panambur, Palghat Division

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Applicant

(By Advocate Mr.P.K.Madhusoodhanan)

versus

1. The Divisional Operations Manager
Divisional Office / Transportation Branch
Southern Railway, Palghat

2. Union of India through the General Manager
Southern Railway, Park Town,
Chennai - 3

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Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 25.08.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This case would reflect how the authorities are casual in their approach to conduct any departmental proceedings. Annexure A-24 specifically stipulates that once the proceedings initiated under Rule 9 or Rule 11 of Railway Servants (Discipline and Appeal) Rules, 1968 are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officials unless the reasons for cancellation of the original charge memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action

which may be considered in the circumstances of the case. It has further been stipulated there that it is necessary that when the intention is to issue a fresh charge sheet subsequently the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention such an action indicating the intention of issuing charge sheet afresh appropriate to the nature of the charges.

2. In the instant case as early as 12.11.2005 the applicant was issued with a charge sheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The article of charges reads as under :-

" Shri NV Saleem, Tfc.Pr/CAN, St.No.J/T.1822, was directed to CMS/PGT on 04.07.2005 for medical examination as he was reinstated into Railway service as Tfc.Porter with effect from 19.05.2005 after a gap of 8 years. On reporting to CMS/PGT on 05.07.2005 he had left the hospital before conducting the Medical Examination. He has not turned up to CMS/PGT after that. He has not reported for duty also. As such he is absenting unauthorisdely. He has not submitted any leave application or reported sick at any of the Railway Hospital or health unit. Thereby he has failed to maintain proper devotion to duty and behaved in a manner quite unbecoming of a Railway Servant and thus violated Rule 3.1 (ii) & (iii) of Railway Services (Conduct) Rules, 1966."

3. This was represented again by representation dated 07.02.2006 at Annexure A-5. Inquiry Officer was appointed in this case vide Annexure A-6 and vide Annexure A-6 and vide Annexure A-9 order dated 05.06.2007, without reflecting any reason, the charge memorandum dated 25.11.2005 was treated "**as dropped without prejudice to further DAR action**" Vide Annexure A-10 memorandum dated 03.10.2007 another charge sheet was issued wherein the charge is as under :-

"Sri N.V Saleem, Tfc.Pr/CAN was directed to CMS/PGT for medical examination on 04.07.05 and he has attended RH/PGT on 05.07.05 but had not completed the medical examination procedure. He has also failed to turn up for duties till date and absented himself unauthorised from 06.07.05 onwards.

He has therefore failed to maintain proper devotion to duty and acted in a manner quite unbecoming of a Railway Servant and thus violated Rule 3.1,(ii) & (iii) of Railway Services (Conduct) Rules, 1966."

4. The applicant filed Annexure A-11 representation dated 15.10.2007. By order dated 18.10.2007 (Annexure A-12) one Mr.P.Rajan was appointed as Enquiry Officer which was objected to by the applicant vide Annexure A-13 representation dated 31.10.2007. Here again vide annexure a-14 the proceedings were treated as dropped without any prejudice to further DAR action and this time the order also contained " as there were discrepancies noticed in the charge memo already issued." Annexure A-14 refers. This was followed by a show cause notice about the alleged unauthorised absence from 20.07.2005 to 04.12.2007 vide Annexure A-15. The applicant gave a comprehensive reply vide Annexure A-16 representation dated 09.04.2008. Vide Annexure A-17 memorandum dated 19.06.2008 a charge sheet was issued to the applicant which reads as under :-

"Sri NV Saleem, Tfc.Pr/CAN was directed to CMS/PGT for medical examination on 04.07.05 and he has attended RH/PGT upto 19.07.05 as out patient but had not completed the medical examination procedure.

He has neither applied for leave nor obtained permission from competent authority for non attendance and also failed to submit any PMC within the prescribed time limit and resumed duty only on 05.12.07 at CAN.

He has therefore absented from duties unauthorisedly from 20.07.05 to 04.12.07 onwards.

He has therefore failed to maintain proper devotion to duty and acted in a manner quite unbecoming of a Railway Servant and thus violated Rule 3.1, (ii) & (iii) of Railway Services (Conduct) Rules, 1966."

5. This was also responded to vide Annexure A-18 representation dated 10.07.2008. Again by Annexure A-19 order the Annexure A-17 charge memorandum was treated as dropped without prejudice to the further DAR action stating that there were discrepancies noticed in the charge memorandum already issued. Now by Annexure A-20 memorandum dated 11.08.2008 a charge sheet has been issued. The article of charges reads as under :-

" Shri N.V.Saleem, TNC/PNMB while working as Tfc.Pr at CAN (ex-TNC/CAN) was directed to RH/PGT for special medical examination on 04.07.05 by SMR/CAN (as he was removed from service on 25.06.97 while working as TNC/CAN and reinstated into Railway service as Tfc.Pr after a gap of eight years). He has attended RH/PGT on 05.07.2005 and was an out patient upto 19.07.2005, but has not completed the medical examination procedure. On 05.12.07 he has reported at CAN with PMC.

He has, therefore, absented from duties unauthorizedly from 20.07.05 to 04.12.07.

He has, therefore, failed to maintain proper devotion to duty and acted in a manner quite unbecoming of a Railway Servant and thus violated Rule 3.1(ii) & (iii) of Railway Services (Conduct) Rules, 1966."

6. The applicant has challenged the aforesaid issue of charge sheet as thoroughly illegal and as a matter of harassment to the applicant. The reason for harassment is stated to be that the applicant had insisted on the implementation of Annexure A-1 order dated 03.10.2007 in OA 192/06 whereby the applicant was directed to be reinstated. The illegality indicated by the applicant is that the act on the part of the respondents is violative of the provisions contained in Annexure A-24 order of Railway Board.

7. Respondents have contested the OA. They have justified their action in cancelling the previous charge sheets and in issuing fresh charge sheets.

8. The applicant has filed the rejoinder in which he has reiterated his contentions as contained in the OA.

9. Counsel for applicant submitted that a mere look at the sequence of events would suffice to surface out that the entire action on the part of the respondents is as a matter of harassment to the applicant and is also violative of the provisions. Referring to Annexure A-24 the Counsel submitted that the said Railway Board order mandates that appropriate reasons should be indicated for cancellation of the charge sheet. In the first instance, there is no such indication; in two subsequent events the reason given was that there were some discrepancies, without indicating what the discrepancies were. A glance at the articles of charge as contained in Annexure A-17 and Annexure A-20 would go to show that there has been no marked difference between the two.

10. In view of the above, Counsel for applicant submitted that Annexure A-20 charge memorandum should be quashed and set aside being violative of Annexure A-24 and the OA be allowed. Counsel for applicant has relied upon certain judgments.

11. Counsel for respondents submitted that Para 9 of the counter gives out comprehensively the reasons for frequent cancellation of charge sheets. They have also relied upon the decision of the Apex Court as

contained in the counter.

12. Arguments were heard and documents perused. Initially the stand of the respondents was that the applicant on reinstatement in pursuance of the Court order was directed to report for medical examination on 05.07.2005 and though the applicant presented himself on that day to CMS/PGT, he had left the hospital before the medical examination took place and was absenting unauthorisedly thereafter. Vide Annexure A-10 the allegation was that the applicant had not completed the medical examination procedure. Vide Annexure A-17 the charge sheet was that the applicant was directed to report to Railway Hospital for medical examination on 04.07.2005 and he had attended the Railway Hospital after 9.07.2005 as an out patient but had not completed the medical procedure. Vide Annexure A-20 memorandum the same allegation had been levelled against the applicant. The period of alleged unauthorised absence remained the same viz., 20.07.2005 to 04.12.2007.

" It is humbly submitted that Charge memorandum No.J/T Misc/CAN/NVS/5 dt 25.11.2005 was issued for his unauthorised absence from 05.07.2005 onwards. The applicant vide letters dt. 24.3.2007 addressed to the Divisional Operational Manager as well as the enquiry officer submitted that he is not in- receipt of charge memo. The submissions of the applicant dt 24.3.2007 to the DOM/PGT is produced alongwith the OA as Annexure-A8. The applicant had submitted a representation dt.24.3.2007 to the Enquiry Officer which is produced herewith and marked as Annexure R3 . Considering these submissions, the said charge memorandum was cancelled vide Annexure-A9 letter dated 5.6.07. Thereafter Charge memorandum No. J/T Misc/07/CAN/NVS/5 dt.03.10.2007 was issued specifying the unauthorized absence of the applicant from 06.7.2005 onwards and enquiry officer was also nominated vide order dt.18.10.2007. The applicant vide his representation dt. 31.10.2007 alleged that the enquiry officer is biased and prejudicial etc. A copy of the letter dt. 31.10.2007 is produced herewith and marked as Annexure-R4. Later the said charge memorandum was also cancelled vide Annexure-A14. Afterwards Charge memorandum No.J/T

Misc/07/PNMB/NVS/5 dt. 19.6.2008 was issued wherein his designation was wrongly shown as Traffic Porter/CAN. When this was pointed out by the applicant vide his representation dated 10.7.2008, the said charge sheet was cancelled vide Annexure A-19 letter dated 8.8.08. A copy of the representation of the applicant dated 10.7.08 is produced herewith and marked as Annexure-R5. Subsequently the applicant was issued with Annexure A-20 charge memorandum No.J/T Misc/08/PNMB/NVS/05 dt 11.8.2008 for his unauthorized absence from 20.7.2005 to 04.12.2007 which was received by the applicant and Annexure A-21 explanation dt.05.9.2008 was submitted. Thereafter as per Annexure A-22 order dt.20.11.2008 enquiry officer was nominated to inquire into the charges framed, against the applicant. The applicant again represented stating that the nominated enquiry officer is biased and prejudicial and he is the sole witness in the Charge Memorandum vide Annexure A-23 letter dt.19.12.2008."

13. The above would clearly indicate that there has been no appropriate reason for cancellation of the previous charge sheets. The applicant has been kept under mental tension from 2005 onwards on account of issue of charge memoranda. The action on the part of the respondents has thoroughly disregarded the spirit and intent of Annexure A-24.

14. The charge memoranda have been issued by the DOM who appears to have not much exposure in conducting departmental enquiry. May be sure to the fact that he happens to function in the Operational side and generally departmental proceedings are conducted from the personnel side. It is not exactly known whether any legal section has been approached by the DOM before issue of such charge sheet or at the time of cancellation of charge sheets. This is a sorry state of affair. The entire procedure could have been brought to an end much earlier had the respondents proceed as per law. It is worth to refer to the observation by the Apex Court in the case of **Lakshmi Ram Bhuyan vs. Hari Prasad**

Bhuyan & ors (2003) 1 SCC 197 wherein Justice Mr.R.C.Lahoti, as His Lordship then was has observed as under :-

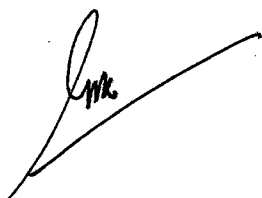
" An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine."

15. In view of the fact that issue of successive charge sheet by cancelling the previous ones is without any appropriate reason is not in conformity with Annexure A-24 order of the Railway Board, Annexure A-20 charge sheet has to be declared thoroughly illegal and accordingly declared so. The said Annexure A-20 is hereby quashed and set aside.

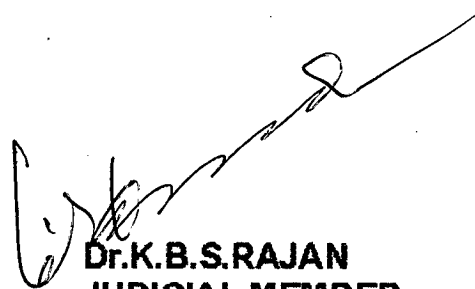
16. Before parting with this case, we would like to suggest that where Departmental action has to be taken by the authorities in the Operational Wing, due assistance of legal sections may be taken so that disciplinary proceedings are conducted properly. A copy of this order shall be directly sent by the Registry to the 2nd respondent and his acknowledgment may also be obtained.

17. **OA is allowed. No costs.**

Dated, the 25th August, 2009.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER