

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.86/99

Friday this the 7th day of September, 2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.Krishnan Nair,
Ex Chief Commercial Clerk/
Grade-II/CRY, residing at Marakkal House,
T.C.3/1221, East pattom,
Thiruvananthapuram-695 004.Applicant

(By Advocate Sri Pirappancode V.Sreedharan Nair)

vs.

1. Union of India, represented by
the Secretary, Ministry of
Railways, New Delhi.

2. The Chief Commercial Manager,
Railways Head Quarters Office,
Personnel Branch, Chennai-3.

3. Divisional Railway Manager,
Divisional Office,
Commercial Branch,
Thiruvananthapuram-14.Respondents

(By Advocate Sri Karthikeya Panicker)

The Application having been heard on 3.7.01 the Tribunal
on 7.9.2001 delivered the following:-

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant while working as Senior Commercial Clerk, Thiruvananthapuram - Pettah Railway Station was served with a memorandum in standard Form No.11 for imposing a minor penalty alleging that he had committed serious misconduct by granting delivery of consignments booked on PWB marked self in the absence of way bill on improper indemnity bond to M/s. Devi Cables and had therefore failed to observe commercial rules and violated IRCM Vol.I, Rule 959(G) and thereby contravened the provision of Rules 3.1(i)(ii)(iii) of Railway Services Conduct Rules, 1966(Annexure-A1). The applicant submitted his

explantion. The applicant did not hear anything further, but he understood that a decision had been taken to impose a minor penalty on him. However by letter dated 16.1.96(Annexure-A3) the applicant was placed under suspension. Thereafter he was served with Annexure-A4 memorandum of charge dated 15.2.96 proposing to hold an enquiry against him under Rule 9 of the Railway Servants (Discipline and Appeal)Rules,1968 on the very same allegations on which he had earlier been served with Annexure A1 memorandum. On receipt of the charge-memo the applicant requested for a personal hearing and for supply of copies of documents to enable him to submit a defence statement. The applicant thereafter submitted a detailed reply statement denying the charges(Annexure A6). However an enquiry was held and completed. The enquiry officer submitted a report (Annexure A8).The enquiry officer found the applicant guilty of the charges. He submitted a representation explaining how the finding cannot be accepted(Annexure-A9). However the disciplinary authority by the impugned order(Annexure A10) dated 28.4.97 found the applicant guilty and imposed on him a penalty of removal from service. The applicant filed an appeal, but the second respondent the appellate authority declined to interfere with the Annexure A10 penalty advice by it's order dated 1.12.98(Annexure A12). It is aggrieved by the order of removal from service and the appellate order confirming the penalty that the applicant has filed this application . The applicant has alleged that the third respondent, the Divisional Railway Manager was not competent to issue an order removing the applicant from service, that the finding

that the applicant was guilty is perverse as not supported by any legal evidence, that the enquiry has not been held in accordance with the rules, that the appellate authority has not considered the grounds raised by him in the appeal and that the penalty imposed on him is grossly disproportionate to the misconduct alleged and that even the issue of Annexure A4 chargesheet and the proceedings thereunder are vitiated for double jeopardy as the Annexure-A1 charge-memo issued to him for the very same allegations had not been withdrawn with liberty to issue another memorandum of charge.

2. The respondents have filed a reply statement justifying the impugned orders. It is contended by the respondents that as it was felt by the disciplinary authority that a major penalty has got to be imposed the proceedings dated 22.7.94 initiated under memorandum(A1) was not further proceeded with, the charge-sheet Annexure A4 was issued, that the finding that the applicant was guilty was arrived at on the basis of evidence adduced at the enquiry and that there is no merit in the contention of the applicant that the finding is perverse and there was no application of mind by the appellate authority.

3. We have carefully gone through the pleadings and documents placed on record. We have also perused the copies of the proceedings of the enquiry made available for our perusal by the learned counsel of the applicant. We have

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heard Sri Sudheer, the learned counsel of the applicant and Sri Karthikeya Panicker, the learned counsel of the respondents at considerable length.

4. The contention of the applicant that the third respondent has no jurisdiction to impose on the applicant the penalty of removal from service has no force because the Divisional Railway Manager is competent to award all major penalties on Group-C employees working under him and it has not been even alleged that the Divisional Railway Manager is subordinate in rank to the authority which appointed the applicant.

5. The first point that was stressed by the learned counsel of the applicant is that the entire proceedings initiated by issue of Annexure A4 memorandum of charge dated 15.2.96 which culminated in the issue of Annexure A10 order, imposing the penalty of removal from service on the applicant are vitiated for double jeopardy. He invited our attention to the memorandum of charge issued to him on 22.7.94(Annexure A1) as also to the memorandum of charge Annexure A4. A perusal of both these memoranda reveals that the allegation forming the basis of both these charges were virtually the same, namely that the applicant granted delivery of consignments booked on PWB marked self to M/s. Devi Cables in the absence of parcel way bill and on improper indemnity bond thereby contravening the provisions of Rules 3.1(1)(ii)(iii) of Railway Services Conduct Rules,1966. The differences are that in Annexure A1, 3

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consignments delivered on 13.1.94, 20.1.94 and 21.1.94 alone were stated, whereas in Annexure A4 one more consignment delivered on 20.1.94 was also mentioned. A further difference is that in Annexure A4 memorandum of charge, it has been mentioned that the applicant "fraudulently" delivered the consignment to M/s. Devi Cables ,Trivandrum and that he had failed to stick on to the rules 956(a) and 959(a) of the Indian Railway Commercial Manuel,Vol.II and it caused a big claim for compensation and damage to the Railways reputation as trustworthy carrier of goods. But for this small difference,basically the foundation of the two charges against the applicant was one and the same. In that view, the learned counsel of the applicant argued that since Annexure A1 memorandum of charges was issued to the applicant in 1994 to which the applicant had submitted an explanation and as nothing further was heard on that, the issue of second memorandum of charge on the same allegations without dropping the first memorandum Annexure A1 with liberty to issue another memorandum of charge, is irregular as it is fundamental that a person cannot be put to double jeopardy. Sri Karthikeya Panicker, the learned counsel of the respondents countered this argument saying that although a memorandum of charge Annexure A1 was issued almost on the same allegations as were raised in Annexure A4 memorandum of charge also, since no penalty had been imposed on the applicant as a result of the proceedings under Annexure A1, it is meaningless to contend that the proceedings initiated under Annexure A4 amounts to double jeopardy. We find considerable force in the argument of the learned counsel of

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the applicant. If a person is proceeded against twice on the basis of the same set of allegations simultaneously or one after the another, though either of these proceedings did not result in imposing a penalty, it cannot be said that he has not been subjected to double jeopardy.

6. The next point argued by the learned counsel of the applicant is that the impugned order Annexure-A10 is unsustainable in law. The finding that the applicant being guilty was based on no evidence at all. Sri Sudheer argued that the gravamen of the charge against the applicant is that while the consignments in question were booked as self, the applicant delivered the same without obtaining the RR or proper indemnity bond, the important elements to be established to bring home the guilt of the applicant are that the consignments in question were booked as "self" and that the indemnity bond obtained by the applicant while effecting delivery of the consignments to M/s. Devi Cables were "improper". Learned counsel took us through the copy of the enquiry proceedings in full made available by him for our perusal. The only witness examined in support of the charge Sri D.Balachandran did not speak anything as to whether the consignments in question were booked "self" or whether there was anything wrong with the indemnity bond which the applicant got executed at the time he granted delivery of the consignments to M/s. Devi Cables. He has only given a general statement that if a consignment is received and if the consignee was not in possession of the RR before effecting delivery ,the party is asked to bring

the certified copy of the RR and to execute the indemnity bond. Going through the entire enquiry file, we find that the original PWB or RR was not brought on record to show that the consignment were booked as "self". The applicant had while questioned by the enquiry officer stated that the consignments were received on memo unaccompanied with the guard's way bill with marking on the cases to Devi Cables, that PVC granules and aluminium wires used to come from Delhi to Trivandrum only to Devi Cables, that as the consignee demanded immediate delivery and as the consignee was a regular customer on good faith he delivered the consignments on the consignee executing a proper indemnity bond. No evidence has been adduced at all to show that the consignment was booked as "self" by anybody and that the indemnity bond got executed at the time of delivery was defective in any way. Pointing out these material aspects revealed in the enquiry, the learned counsel argued that the finding of the enquiry officer which was accepted by the disciplinary authority that the applicant was guilty is based on no evidence at all and therefore the finding is perverse. Learned counsel of the respondents on the other hand invited our attention to the enquiry report wherein it has been stated as follows:-

" The items were delivered by Sri K.Krishnan Nair, Clerk-in-charge, TVP to M/s. Devi Cables, Trivandrum, on the strength of indemnity bond executed by the said party. The consignment was booked as to SELF and was received on memo, unaccompanied by the guards portion of the PWB. The consignee had deposited the Railway Receipt with M/s. Canara Bank, realising the value of the goods and since the party M/s. Devi Cables, failed to release the Railway Receipt, and surrender the same at the destination station that is TVP, the Bank

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returned the Railway receipt to the consignor. The consignor has now lodged a claim with the Railway administration, for an amount of Rs.392,626/- towards compensation as detailed below:

- (1)PWB 569033 Rs.161,642/-
- (2)PWB 571738 Rs.144,840/-
- (3)PWB 569037 of 17.1.94 Rs.76789/- and
- (4) PWB 579635 of 31.1.94 Rs.39355/-."

and argued that this has been established by evidence at the enquiry. Scanning through the entire enquiry report we could not find any material at all on the basis of which a reasonable person could conclude that the consignments were booked as "self", that the consignee had deposited railway receipts with M/s. Canara Bank or that the indemnity bond executed by M/s Devi Cables in any way was defective. Where from the enquiry officer got the information that the railway receipts were deposited with M/s. Canara Bank etc. is not discernible from the enquiry proceedings. It is seen from the enquiry proceedings that the applicant requested the enquiry officer to cause the production of the original or a photocopy of the PWB or RR. But the request was not acceded to. No reason is stated as to why the RRs or photocopies thereof were not produced at the enquiry even though the applicant made a specific request in that regard. The applicant had stated in the enquiry that as the Devi Cables was a regular customer and PVC granules and aluminium wires were received by parcel from Delhi only to Devi Cables and as the consignee requested for early delivery and also because keeping the bulk consignment in station was not advisable, in good faith the applicant had delivered the goods which were in the name of Devi Cables on getting an indemnity bond executed. The basis on which the enquiry officer refused to accept the explanation of the applicant

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mainly is that the applicant contradicted in his version regarding the period from which Devi Cables was a customer, in that while he has stated that Devi Cables was a customer for 10 years he has stated that he knew the party only from 1990 onwards and Sri Ramachandran Nair, the owner defence witness has stated that he started the Devi Cables only in 1990. We are of the considered view that this so called contradictions would not enable a reasonable person to conclude that the consignments were booked self and that the same was delivered without obtaining proper indemnity bond or fraudulently by the applicant. The claim of the applicant that ownership of the goods was established by the marking on the packages addressed to M/s. Devi Cables has been disputed by the enquiry officer on the ground that at that time the packages were not available in its original shape. It should be remembered that it is not the duty of the charged Railway servant to establish that he was innocent and that, on the other hand, the responsibility is that of the disciplinary authority to establish the guilt of the charged Railway servant atleast by preponderance of probabilities. By not bringing on record of the enquiry the PWBs or RRs to establish that the consignments in question were booked "self" and not to M/s. Devi Cables, even though the applicant specifically demanded production of these documents, and not showing how the indemnity bond executed by M/s. Devi Cables was defective, we find that the disciplinary authority had failed to establish the charge.

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against the applicant. In Bank of India and another vs. Degala Suryanarayana, (1999)5 SCC 762, the Hon'ble Supreme Court observed as follows:-

"11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel, AIR 1964 SC 364, the Constitution Bench has held:

" The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

Tested in the light of the above principle, we find that evidence on record at the enquiry does not justify the finding that the applicant was guilty of the charge. On the essential ingredients, there is no iota of evidence at all. The finding of the enquiry officer that the applicant had delivered the consignment to M/s. Devi Cables who were not really the consignee of the goods and whose ownership was not sought to be established by the applicant when

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delivery was effected is not based on any evidence at all. The disciplinary authority has also not properly applied its mind to the material available on record before accepting the finding of the enquiry officer. The decision of the disciplinary authority, therefore, to accept the finding of guilt and to impose on the applicant, a person who has rendered 33 years of service, a penalty of removal from service is wholly unsustainable. It is interesting to note that while the disciplinary authority in its order Annexure A10 has stated that it took a lenient view because the applicant happened to be "a man with a sorrowing family behind", a penalty of removal from service was imposed depriving the applicant even the retiral benefits. Even without showing any leniency and even if the charge had been established, a penalty of removal from service for a minor lapse in the official acts without any dishonest intention behind, would be shockingly disproportionate. It is pertinent that though a word "frauduently" is mentioned in the charge no dishonesty on the part of the applicant had even mentioned in the imputations. However in this case since the guilt of the applicant has not been established by any legal evidence at all, we are of the considered view that the finding of guilt and the resultant penalty have to be struck down.

7. The order of the appellate authority is also without application of mind. A careful scrutiny of the appeal memorandum and the appellate order would clearly show that

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the appellate authority has not taken care to consider the grounds raised by the applicant in his appeal memorandum.

8. In the conspectus of facts and circumstances, we find that the impugned orders Annexure A10 of the disciplinary authority imposing on the applicant a penalty of removal from service and the appellate order Annexure A12 refusing to interfere with the penalty order, are unsustainable in law. We therefore set aside the orders Annexures A10 and A12. As we are informed that the applicant has by now passed the age of superannuation, we direct the respondents to treat that the applicant continued in service till the date of superannuation and to pay to the applicant full back wages for the period between the date of his removal from service and the date on which he superannuated. We also direct the respondents to grant the applicant his pension and other retiral benefits treating that he continued in service till the date of his superannuation. The above directions shall be complied with promptly and at any rate within three months from the date of receipt of a copy of the order. There is no order as to costs.



(T.N.T. NAYAR)
ADMINISTRATIVE MEMBER



(A.V. HARIDASAN)
VICE CHAIRMAN

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Appendix

1. Annexure-A10: True copy of the order No.V/C.415/DAR/2/Major/96 dated 28-4-1997 of the 3rd respondent.
2. Annexure-A12: True copy of the order No.P(A)86/Misc/186 dated 1-12-1998 of the 2nd respondent.
3. Annexure-A1: True copy of the memorandum No.V/W/PC/22/RB/17/94 dated 22-7-1994 issued to the applicant.
4. Annexure-A2: True copy of the explanation to Annex.A1 submitted by the applicant, dated 5-8-1994.
5. Annexure-A3: True copy of the order No.V/C.415/DAR/2/Major/96 dated 16-1-1996 of the Senior DCM, Thiruvananthapuram.
6. Annexure-A4: True copy of the memorandum No.V/C.415/DAR/2/Major/96 dated 15-2-1996 issued to the applicant by the Sr.DCM.
7. Annexure-A5: True copy of the letter dated 6-8-1996 sent by the applicant addressed to the Senior Divisional Commercial Manager.
8. Annexure-A6: True copy of the written statement of defence submitted by the applicant dated 24-2-1997.
9. Annexure-A7: True copy of the letter No.V/C 415/DAR/2/MAJOR/96 dated 13-3-1997 of the 3rd respondent.
10. Annexure-A8: True copy of the enquiry report No.TKB/DAR ENQUIRY/TVP/96-97 dated 16-2-1997.
11. Annexure-A9: True copy of the statement dated 28-3-1997 submitted by the applicant before the 3rd respondent.
12. Annexure-A11: True copy of the memorandum of appeal submitted by the applicant before the 2nd respondent, dated 12-6-1997.
13. Annexure-A13: True copy of the letter No.DC/SR/7/9-97 dated 20-2-1997 of M/s.Devi Cables addressed to the 3rd respondent.
14. Annexure-A14: True copy of the cheque No.695025004 dated 30-4-1997 for Rs.3,92,626/- drawn on Syndicate Bank, Thiruvananthapuram Branch.