

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 90/2005

FRIDAY . . THIS THE 22nd DAY OF DECEMBER, 2006

C O R A M

**HON'BLE MRS. SATHINAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

C. Ananda Kumar S/o Ramankutty Menon
Ticket Collector
Southern Railway, Palghat.
Residing at Nellikkal House
Kainoor PO, Thrissur.

.. Applicant

By Advocate Mr.M.P. Varkey

Vs.

1 Union of India represented by
the General Manager
Southern Railway
Chennai-600003

2 Chief Commercial Manager
Southern Railway
Chennai-600 003

3 Additional Divisional Railway Manager
Southern Railway
Palghat-678 002

4 Senior Divisional Commercial Manager
Southern Railway
Palghat -678 002

.. Respondents

By Advocate Ms P.K. Nandini

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is aggrieved by the penalty of reduction in rank from the post of Travelling Ticket Inspector in the scale of Rs. 5000-8000 on a pay of Rs. 6350/- to the post of Ticket Collector in the scale of Rs 3050-4590 on a pay of Rs. 3050 for a period of five years recurring.

2 The facts leading to the filing of this Application are as follows: While holding the post of Travelling Ticket Inspector, Southern Railway, Coimbatore, the applicant had manned S-4 and S-5 Sleeper Coaches of Train No.1013 - Kurla Coimbatore Express from Bangalore City to Coimbatore on 27/28.7.2000. When the train left Bangalore City at 2300 hours on 27.7.2000, there were some vacant berths in the said coaches. Therefore, in addition to the reserved passengers, some unreserved passengers who sought berths on payment of berth charges were also allowed in to the coaches. The applicant first checked and accommodated reserved passengers in S-4 and S-5 coaches. Thereafter he checked, charged and accommodated the unreserved passengers in both the coaches and the total berth charge levied was Rs. 2425/- By then it was 5.00 hours on 28.7.2000, there was no chance of checking S-4 coach once again as the vestibule door was found locked from inside and hence the applicant settled down in his assigned berth No. 7 in S-5 coach. At about 5.45 hours four persons who introduced themselves

as belonging to the Vigilance Organisation of Southern Railway confronted the applicant with many questions, checked his personal cash of Rs. 115/-, railway cash of Rs. 2425/- and cash receipt books with him and searched his suitcase, pockets and his body in vain for any hidden amount. They took a cash statement from him showing the said amounts. On instructions from G. Ravikumar, N. Suriyan and K. R. Raghunathan, proceeded to check S-6 and S-7 coaches, C. Mani went to check S-4 coach and G. Ravikumar stayed back to check S-5 coach, at about 6.00 hours. There were only few passengers left in S-4 and S-5 coaches and the checking of those coaches did not take much time. Hardly when the said checking was over, N. Suriyan came and asked G. Ravikumar, C. Mani and the applicant to come to S-7 coach immediately. When they went to S-7 coach some seven unreserved passengers were being questioned by K.R. Raghunathan in the presence of Abdul Azeez, the TTE of S-6 and S-7 coaches, N. Suriyan, G. Ravikumar and C. N Mani also joined him. Charges were collected from unreserved passengers for allegedly travelling in S-7 sleeper coach and Abdul Azeez TTE issued receipt for the same. Then S.I Prakash TTI of AC coach also was brought to S-7. A "proceeding" was drawn thereafter in the presence of R. Nagarajan, one of the passengers charged for travelling in S-7 with unreserved ticket, the four Vigilance Inspectors and the three ticket checking staff. The proceeding was dictated by G. Ravikumar and written by K.R. Raghunathan and signed by all present except C.N Mani who went out soon after

dictation. As the contents of the proceeding (Annexure A-5) were not fully correct or known to them, R. Nagaraja, S.Prakash, Abdul Azeez and the applicant declined to sign it. But they were pressurised to sign and they gave in. When the applicant returned to S-4/S-5 coaches, C. N. Mani had with him seven passengers, who had unreserved tickets. The passengers pleaded that they had travelled in general coaches and were proceeding forward through S-4 and S-5 so that, they could get down in front of the main gate at Tiruppur and Coimbatore. But C. Mani threatened to take them to police/court if they did not pay extra charges. They gave in. The applicant had to charge Rs. 195/- from three passengers as per Excess Fare Ticket and Rs. 280/- from 4 passengers as per Excess Fare Ticket under pressure from the Vigilance Inspector. However, the applicant had superscribed the words 'Vigilance Check' over the said EFTs to indicate that they were not issued in the normal course as per rules. Apart from charging as above, C. Mani dictated and extracted a statement from S. Angamuthu who was one among the four passengers charged with Rs. 280/- and forced the applicant to countersign the same along with C N Mani (Annexure A-2). What is stated in A-2 does not figure in A-1 proceedings. Perhaps, it was to plug this loophole only the applicant was called to Vigilance Office, Madras on 30.7.2000 and was forced to give a confession statement as dictated by the Vigilance team there. The said statement figures as Ext. S-17 in A-5 and A-6, though it was not a listed document in A-3 charge memorandum. After more than six months the applicant

received a major penalty charge memorandum (Annexure A-3). The applicant submitted a statement of defence dated 24.2.2001, denying the charges submitting that the charges were not maintainable in law or on facts and seeking some documents for the Defence. (Annexure A-4). But without considering A-4 an inquiry was ordered against the applicant. The inquiry was not held as per rules, reasonable opportunity was not given to the applicant to defend the case (Annexure A-5). The applicant submitted written brief of his case pointing out the procedural lapses, inter alia pointing out that the evidence adduced, if any, did not prove the charges. But the inquiry officer held the charges proved as per his report which was forwarded to the applicant (Annexure A-6). The applicant submitted a detailed representation on 29.8.2002 against Annexure A-6 reiterating what he had submitted in his written brief. But the 4th respondent by penalty advice dated 17.10.2002 imposed upon the applicant the penalty of reduction from the post of Travelling Ticket Inspector on a pay of Rs. 6350/- in the scale of Rs. 5000-8000 to that of Ticket Collector on a pay of Rs. 3050/- in the scale of Rs. 3050-4590 for 5 years (recurring). Aggrieved, applicant filed Annexure A-8 appeal which was dismissed by Annexure A-9 appellate order dated 17.12.2002. Applicant submitted a revision petition on 3.1.2003 to the second respondent which was also dismissed by Annexure A-11 order. Applicant submitted a mercy appeal dated 25.6.2003 to the first respondent (Annexure A-12) which was not considered on the ground that all channels of

appeal/revision was already exhausted. Hence this O.A.

3 The following reliefs have been prayed for:

a) Declare that A-7, A-9, A-11 and A-14 are without jurisdiction, unjust, illegal, harsh and unconstitutional and quash the same

(b) Declare that the applicant is entitled to be restored as Travelling Ticket Inspector in scale Rs. 5000-8000 w.e.f. 1.1.2004 with all consequential benefits and direct the respondents accordingly.

© Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

4 Reply statement and additional reply statement have been filed by the respondents denying the allegations of the applicant. The Vigilance Inspector has conducted a physical check in S-4 and S-5 coaches of the train which were manned by the applicant, in the presence of the applicant himself. The Vigilance team found that four persons in berth Nos. 49 to 52 and three persons in berth Nos. 70 to 72 in S-4 coach were occupying the berths with second class ticket and they were not having any receipt for the conversion charges paid for their travelling in Sleeper Coaches. They stated that they boarded the train with the permission of the TTE from Bangalore who have allotted the vacant berths and identified the TTE, one of them had given a written statement and as per the instructions of the Vigilance Team the applicant himself issued Excess Fare Tickets and collected the difference of charges from them. The applicant

was questioned in the presence of the passengers and other colleagues who have signed the proceedings. Based on the report of the Vigilance team the chargesheet was issued and enquiry was conducted. The applicant had also not declared the personal cash in his possession and also has accepted said omission by signing the proceedings. The applicant had also participated in the enquiry which was conducted in accordance with the rules. The allegations against the disciplinary, appellate and revisionary authorities are untrue and the contentions of the applicant have no merit.

5 We have heard arguments of the learned counsel Shri M.P. Varkey for the applicant and Smt. P.K. Nandini for the respondents. Both the counsel later submitted argument notes and copies of the judgments referred to by them. We have gone through the pleadings, argument notes and judgments referred to.

6 The main grounds advanced by the applicant's side were that:

- (i) There was no statutory provision/rule or order vested ~~with~~ ^{edg} the Vigilance Inspectors with powers to act as they did on 28.7.2000 in train No. 1013. Hence the action taken pursuant to the Vigilance check is non-est
- (ii) The charges in Annexure A-3 memorandum are ambiguous and opposed to facts and law
- (iii) The omnibus rule 3(1)(i), (ii) and (iii) of Railway Services (Conduct) Rules, 1966 cannot be invoked unless read with

specific rules dealing with the subject in The Indian Railway Commercial Manual Vol.1.

(iv) The enquiry held is vitiated for many reasons in that there was no documentary or oral evidence to sustain the charges.

(v) The findings in the enquiry is not based on any evidence adduced during the enquiry but based on allegations, prejudices, surmises and conjectures.

(vi) The disciplinary authority did not act as mandated by Rule 10 of Railway Servants (Discipline & Appeal) Rules, 1968. The Appellate Authority did not dispose of the appeal as mandated by Rule 25(3) read with Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968

7 Before proceeding to examine the grounds one by one, let us find out the happenings on the date of Vigilance checking which would be relevant to the issue. Train No. 1013- Kurla-Coimbatore Express from Bangalore City to Coimbatore left Bangalore at 2300 hours on 27.7.2000. The applicant was in charge of S-4 and S-5 Sleeper Coaches in the said train on 27th and 28th July, 2000 between Erode and Coimbatore. A surprise joint checking was conducted in the train on 28.7.2000 by the Vigilance team between Erode and Coimbatore along with RSO/CBI Chennai. A proceeding was drawn up by the Vigilance officers as at Annexure A-1 and the statement of the passengers who were travelling without proper

reservation tickets were also recorded in Annexure A-5. Annexure A-2 chargesheet was issued on 8.3.2001. The applicant submitted a written statement on 24.2.2001. Enquiry was conducted as per rules, preliminary hearing was held on 29.3.2001 and regular enquiry was conducted on 18.4.2001, 14.6.2001, 12.7.2001 and 25.9.2001. When the applicant alleged bias against the Enquiry Officer the matter was remitted back to the Disciplinary Authority. The enquiry was reconducted on 12.3.2002, 12.4.2002, 8.5.2002, 30.5.2002 and 26.6.2002. The charges were found true and the disciplinary authority passed Annexure A-7 order imposing the punishment of reduction to the post of Ticket Collector for a period of five years. The Appellate and the Revisional authorities confirmed the said order. The applicant has now prayed for quashing the above orders of the Disciplinary, Appellate and Revisional authorities.

8 The first ground taken by the applicant is regarding the power of the Vigilance Inspectors to check the tickets of passengers and order issue Excess Fare Tickets (EFT), etc. The respondents have submitted that a Vigilance organisation is formed in Railways to prevent the improper and selfish exercise of authority and influence attached to a public office and to irradicate illegal activities. The Vigilance Officers are empowered to check booking offices, Stores depot or any other Railway premises to inspect Railway records/documents etc. and also the train compartments without any inconvenience to the customers travelling in the train and if any

irregularities are noticed they are empowered to rectify the same and also to report the matter to the higher authorities for further action. Moreover, the Railway administration have authorised the Vigilance organisation to conduct such checks, as seen from the notification in the Southern Railway Gazette issued by the Senior Deputy General Manager and Chief Vigilance Officer requiring all the officials and staff in the railways to insist on identification cards from the Vigilance Inspector and also specifying their authority to enter any premise including trains and to record statements of railway officials if and when required. We do not therefore find any illegality in the vigilance check as such undertaken by the Vigilance team. They have only submitted a report like any other inspection document based on which enquiries have been initiated against the applicant under the rules. Hence this argument cannot be accepted. It is also seen that the applicant had not raised such a contention at any time during the enquiry or at the time of ^{recording the} proceedings by the team.

9 The second ground raised is that the charges alleged against the applicant are ambiguous. There are three charges, the first charge that he deserted duty spot and was found sleeping in S-6 coach at the time of check the applicant contended that he was sleeping in S-5 coach in the berth which was reserved for the TTE, and that the words "S-6" has been inserted in the Anneexure A1 proceedings later as could be seen from the original document. The persons at Annexure A-1 which was drawn up soon after the entry of

the Vigilance team into the train shows that the team entered the S-7 coach and found two TTEs sleeping in berth Nos. 27 and 28 of S-6. The applicant was manning S-4 and S-5 coaches and the other TTE was manning S-6 and S-7 coaches. They were asked to produce the Cabin Rough Journal and Reservation Chart, etc. and they have checked the records after recording the cash statements. The proceedings indicate that the applicant, Shri C. Mani the Vigilance Inspector, CBI and Shri Ravikumar RSO, CBI, proceeded to S-5 and S-4 coaches to conduct check and the others namely Shri Suryan, CBI, Chennai, Shri K.P. Raghunathan, CBI Chennai and the TTE Shri Abdul Aziz went to S-7 coach to conduct check. The evidence recorded by the Enquiry Officer at page 8.1.2 and 8.1.3 of the Enquiry Report would show that the proceedings referred to earlier was signed by both the applicant and the other TTE without any objection and that the physical check of the passengers has taken place after verification of the cash statement and blocking the Rough Journal when both the TTEs were present together. Therefore it cannot be contended that the words S-6 coach was inserted later. The second charge levelled against the applicant was that he has not declared his personal cash of Rs. 115/- in his Rough Journal. In the rejoinder statement filed by the applicant in response to the charge memorandum the applicant stated that he could not maintain the Rough Journal since he was feeling restless with severe head ache and had thus indirectly admitted the charge. It has been proved in the oral evidence of SW2 and SW-3 that the applicant had not

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declared his personal cash and he had signed the proceedings in which it has been mentioned that he had not done so, without any objection.

10 The third and most important charge was that the applicant had allowed seven passengers to travel in the Sleeper Class without collecting the conversion charges. The records of enquiry goes to prove that EFT Nos. 684719 and 684721 issued to the passengers in the presence of the Vigilance Team and the EFTs Book in the position of the applicant was blocked up to Nos. 684718. It was therefore evident that the tickets were issued after blocking the EFTs when the passengers were caught by the Vigilance team without payment of conversion charges. The applicant has put forward a curious argument that since the train was vertibuled, Passengers who were travelling in other general coaches had entered S-4 coach to enable them to get down at Tiruppur station quietly and that they were not actually travelling in the coaches manned by him. The record of enquiry however reveals a different story that the passengers had been questioned in the presence of the applicant and they had identified the applicant Shri Anandkumar as TTE who had allowed them to occupy the vacant berths. In fact the respondents have submitted that there is no vertibule between the second Reserved coach and Second Class coaches and there was no question of their passing through S-4 and S-5 coaches as contended by the applicant. These passengers had according to their


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statement, boarded the train at Bangalore at 2300 hours on 27.7.2000 and upto 6 a.m. on 28.7.2000 they were available in the train for 7 hours, the applicant has not taken any initiative to collect the railway dues. The contentions of the applicant in this regard are not tenable in the light of the overriding evidence. The mere fact that the 7 passengers were not examined as witnesses cannot vitiate the charges itself as it is supported by documentary evidence.

11 The next point raised by the applicant is that no specific rules of the Indian Railway Commercial Manual have been invoked in the charge memorandum. The respondents have submitted that as per the Indian Railway Commercial Manual Vol. I, Chapter 3, Para 308, passengers must not be permitted in a higher class than for which the fare has been paid and as per para 522, TTEs have to check irregularities of all type of passengers travelling without ^{ticket} checking etc. and Chapter-V in para 501 contains a clear direction regarding check and the applicant had violated all the above rules and instructions. Violation of these instructions would amount to not maintaining devotion to duty, thus leading to action under the rules. Hence, non mentioning of the specific provisions of the Indian Railway Commercial Manual could perhaps constitute a technical error and cannot be held to vitiate the enquiry proceedings as such.

12 The next contention is that the enquiry proceedings are vitiated by procedural irregularities especially that there was non compliance

of sub Rule (19), (20) and (21) of Rule 9 of the Railway Servants Discipline and Appeal Rules. Going through the answers we do not find any merit on this contention as the Enquiry Officer has questioned the applicant specifically as at Question No. 76, whether he has heard the evidences tendered at the enquiry, whether he wishes to admit/deny the charges, he denied the charges and in answer to question No. 78 whether he offered himself for oral examination he answered that he does not want to offer himself for oral examination but he will submit his written defence brief. The applicant has contended that the assessment of the evidence was not done referring to the defence of the applicant and the findings against each charge are not recorded. But we find that from the Enquiry report that this is not true as the oral and documentary evidence has been discussed in each charge and finding arrived at. The applicant has been granted sufficient opportunity to cross examine the witnesses in an elaborate manner and the complaint of violation of procedural rules cannot be sustained. The applicant has relied on the following cases to substantiate his grounds viz. Sher Bahadur Vs. Union of India (2002 SCC (L&S) 1028), Munna Lal Jain's case (2005 SCC (L&S) 567). The first case was one where the Enquiry Officer has not discussed the evidence but stated that in view of the oral and documentary and substantial evidence adduced in the enquiry, the charges were proved. In the second case the court was considering the disproportionate nature of the punishment and in that context, had emphasised the need for giving a reasoned



order. The above decisions are not relevant in the facts of this case.

13 With reference to the remaining grounds on the Appellate and Revisional orders, the applicant has relied on the dictum in Narinder Mohan Arya Vs. United India Insurance Co. Ltd. And Others (2006 SCC (L&S) 840). In this case the Hon'ble Supreme Court was considering to what extent such orders should be speaking orders and held that the Appellate Authority therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub rule (2) of Rule 37 of the Departmental Rules. Further, if the appellate order, if it is in agreement with that of the Disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules. In Annexure A-9 appellate order in the case on hand, the Appellate Authority has stated that he has considered the appeal with reference to the facts and Rule 22(2) of the Railway Servants Discipline and Appeal Rules 1968 and has come to the conclusion that the findings of the Appellate Authority are warranted by the evidence on record and he has agreed to the findings of the Enquiry officer after examining the various issues raised by the applicant in the appeal. Since it was a case of agreement with the finding of the Disciplinary Authority it was not necessary for the Appellate Authority to record his reasons in a speaking order in respect of each finding.

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It has to be seen only that the authority has applied its mind properly to the various facts and findings. The same is the position in the revisional order also and the revisional order at Annexure A-11 is more elaborate and has discussed each and every plea of the applicant on merit and a personal hearing was also given to the applicant. Thus we do not find these contentions of the applicant tenable.

14 To sum up, there is sufficient evidence against the applicant to clearly establish the charges levelled against him that he had been negligent in the discharge of his duties in collecting the railway dues and it is not a case of no evidence at all. His contention about vagueness of the charges is also not tenable and more so, in the context that he has not raised any such ground during the enquiry and has participated in the enquiry without a demur. The allegation of violation of the procedures in the conduct of the enquiry also does not hold good. It has been settled in law that Administrative Tribunals cannot sit as Court of Appeals over the decision of the disciplinary authorities on the findings of the enquiry authorities in a disciplinary proceedings by re-appreciating the evidences and cannot go into the question of sufficiency of the evidence. No violation of procedural rules and instructions in the inquiry having caused prejudice to the applicant is noticed in this case. Out of the three charges, the applicant had himself indirectly admitted all the charges during the preliminary stage of enquiry itself. We therefore do not find

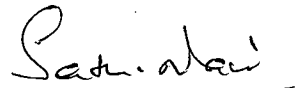
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any reason to interfere with the decision of the Disciplinary Authority as confirmed by the Appellate and Revisional Authorities. The O.A. is dismissed. No costs.

Dated 22.12.2006



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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