

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.15/2009

Thursday, this 1st day of July, 2010

CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

S.H.Mahaboob Jani, aged 58 years,
S/o A.Shek Hussain,
(Retd. Travelling Ticket Inspector/
Southern Railway/Ernakulam Junction)
Permanent Address: 89, Sowrimuthu Chettiar Lane,
Red Field Road,
Coimbatore-641045.

.. Applicant

By Advocate: Sri Mohankumar for Mr.T.C.G.Swamy

vs.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
2. The Sr.Divisional Commercial Manager,
Southern Railway, Trivandrum Division,
Thiruvananthapuram-14.

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3. The Additional Divisional Railway Manager,
Southern Railway, Headquarters Office,
Thiruvananthapuram-14.
4. The Chief Commercial Manager,
Southern Railway, Headquarters Office.
Park Town P.O., Chennai-3.
5. The Chief Vigilance Officer,
Southern Railway Headquarters Office,
Park Town P.O., Chennai-3. .. Respondents

By Advocate: Mr. Thomas Mathew Nellimoottil

The Application having been heard on 15.06.2010, the Tribunal on 17.2010 delivered the following:

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The Applicant has challenged the penalty order, the appellate order confirming the penalty imposed by the disciplinary authority and the compulsory retirement order passed by the revisional authority and the appellate authority confirming the compulsory retirement passed by the revisional authority. The bare facts of the case are that while the applicant was working as Travelling Ticket Inspector, Southern Railway, Ernakulam Junction, he was

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served with a memo of charges dated 23.9.2003 alleging that while the applicant was working as Travelling Ticket Inspector in train No.6041 prepared EFT No.363774 for Rs.690/- on 28.1.2003 and issued to one C.Subhash Chandrakumar, Con.646/NGO/MAS for allotment of berth Nos. 4 & 5 in AS I coach, who was holding Ticket No.33247003 and accepted Rs.700/- for the same from the said C.Subhash Chandrakumar and retained the balance of Rs.10/- for his personal gain and further it is stated that he demanded and accepted Rs.50/- from the said C.Subhash Chandrakumar for the allotment of the said berths and thereby the applicant violated Rule 3.1(i),(ii) & (iii) of Railway Service (Conduct)Rules, 1966. The applicant had filed his explanation. However an Enquiry Officer has been appointed and as per the report dated 16.12.2004, the Enquiry Officer reported that the charges framed against the applicant has been proved. On the basis of the enquiry report the disciplinary authority imposed a penalty of reduction of his pay scale for a period of 36 months with effect from 14.11.2005 with postponing of the future increments. Against the said penalty order, the applicant filed an appeal before the appellate authority. By the order dated 21.8.2007, the appellate authority confirmed the penalty order

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passed by the disciplinary authority. Subsequently on 25.9.2008 the revisional authority, i.e. the Chief Commercial Manager of the Southern Railway Headquarters Office, Personnel Branch, Chennai issued a notice for enhancement of the penalty ordered by the disciplinary authority. On receipt of the notice for enhancement of the penalty, the applicant has filed his representation. However, by the order dated 29.5.2008, the revisional authority suo motu revised the order passed by the disciplinary authority, confirmed by the appellate authority and passed a penalty of compulsory retirement from service. Against the said order the applicant also has filed an appeal before the Additional Divisional Railway Manager, the Appellate Authority, who confirmed the order passed by the revisional authority by the order dated 22.10.2008. Aggrieved by the penalty order passed by the disciplinary authority and the revisional order passed by the revisional authority, the applicant has filed this Original Application, with the following prayers:-

"(I) Call for the records leading to the issue of Annexures A1, A2, A3 and A4 and quash the same and direct the respondents to grant all the consequential benefits as if the impugned orders A1 to A4 had not been issued at all.

2. The O.A. has been admitted by this Tribunal and notices



ordered to the respondents. In pursuance to the receipt of the notice ordered by this Tribunal, the respondents filed reply statement in support of the orders impugned. It is stated in the reply statement filed on behalf of the respondents that Departmental enquiry followed on the basis of the charge memorandum issued to the applicant and there were evidences before the Enquiry Officer that while the applicant was working as Travelling Ticket Inspector he made clear endorsement to the ticket which he prepared and he had demanded and accepted Rs.10/- and Rs.50/- totalling to Rs.60/- extra from the prosecution witness C.Subhash Chandrakumar.

3. We have heard the counsel appearing for the applicant Mr.Mohankumar for Mr.T.C.Govindaswamy and the counsel appearing for the respondents Mr.Thomas Mathew Nellimoottil. The counsel appearing for the applicant advanced his arguments mainly on 3 grounds. Firstly the counsel for the applicant submits that as it is a case of trap made by the vigilance officers of the Railways, the findings of the Enquiry Officer based on the charge memo have to be rejected as there is no independent evidence in the alleged



transaction. The decoy witness is none else than an RPF constable who used to give evidence in favour of the vigilance wing of the Railways and who was actually taught and brought by the vigilance officers to book a case against the applicant and built up a case of bribery alleging that the applicant had prepared and issued EFT No.363774 for an amount of Rs.690/- on 28.1.203 and had given to PW I C.Subash Chandrakumar on accepting Rs.700/-. There was no independent evidence either for demand or for alleged recovery from the applicant. Even though it was a specific case of the prosecution that the applicant had Rs.60/- in excess of the declared amount in his hand and that amount has been recovered at 1 p.m. and at the same time it could be seen that the issue of the ticket has taken place at 8 a.m. Till 1'o clock no amount has been recovered and in the meanwhile the train passed through more than one station and if the case set up by the vigilance, the prosecution is correct, they would have recovered the money at the spot itself. That apart there were independent travellers in the train at the time of the alleged demand, acceptance and recovery. None of such passengers were examined or even cited as witness for the incident. That part the mahazar prepared at the time of the incident does not

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show that what point of time and where from it was prepared. Hence it is a case for no independent evidence other than the interested and brought up evidence of PW I the Head Constable who had participated in several other trap cases to give evidence in favour of the vigilance. The second contention of the applicant is that at the time of enquiry the applicant has not been given sufficient opportunity to narrate his case before the Enquiry Officer. The documents produced at the time of enquiry were not given to the applicant along with the charge sheet. This procedure adopted by the Enquiry Officer itself is in violation of Rules 9 and 10 of the Railway Servants (Discipline & Appeal)Rules, 1968. The applicant has not been given a chance for answering to the evidence appearing against him by putting questions generally on the evidence as provided under Rule 9(21) of the aforesaid rules. The Enquiry Officer has not observed the procedural rules as such for coming to a conclusion that the applicant had committed the misconduct as alleged against him.

4. The third ground urged by the counsel appearing for the applicant is that being a trap case, the vigilance officials ought to have followed paras 704 and 705 of the Indian Railway Vigilance Manual at

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the time of conducting the trap by affording all opportunities to the applicant to verify the evidence they rely on, by calling independent and dependable witnesses for proving the demand and acceptance of the alleged bribe by the applicant. The SW I, the counsel submits that is an RPF constable and his evidence cannot be relied on for proving the demand or the acceptance of the bribe as claimed by the vigilance. The delay caused in making the recovery of the excess amount from the applicant by itself causes doubt on the investigation done by the vigilance officials.

5. To support the contention of the counsel, he relies on a judgment of the Apex Court reported in 2008(3) SLJ(SC) 325 in Moni Shankar avs. Union of India & Anr.

6. The contentions of the counsel appearing for the applicant have been answered by the counsel for the respondents Mr. Thomas Mathew Nellimoottil, relying on the reply statement filed on behalf of the respondents. The learned counsel submits that the evidence of SW 1 and SW 2 has to be accepted regarding the demand and their depositions has to be believed even if they were RPF constables

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working in the Railways their evidence can not be eschewed as interested parties. The counsel further submits that the applicant had been given sufficient opportunity to defend his case before the Enquiry Officer. The Enquiry Officer has not violated any of the provisions of the Railway Servants (Discipline and Appeal)Rules, 1968. The applicant had been supplied with all the necessary records and documents which the prosecution relied on to find out the applicant guilty of the charges. Further the counsel for the respondents relies on a judgment of the Apex Court reported in 2007(8) SCC 212 in Chief Commercial Manager, South Central Railway, Secunderabad & Others vs. G.Ratnam & Others.

7. In the light of the contentions raised by the counsel appearing for the parties and on perusing the averments in the Original Application and the documents produced along with it, the question to be considered is whether the applicant is entitled for the reliefs which he claims in the O.A. or not. Before considering the question raised, we have to narrate the brief facts of the case once again as stated in the charge memo dated 23.9.2003 (Annexure A5). As per the charge, it is alleged that the applicant

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prepared and issued EFT No.363774 for Rs.690/- on 28.1.2003 to one Sri C.Subhash Chandrakumar for allotment of berth Nos. 4 & 5 in AS I coach and accepted an amount of Rs. 700/- and subsequently demanded and accepted Rs.50/- from the said C.Subhash Chandrakumar and thereby committed the misconduct punishable under Rule 3.1 of the Railway Services (Conduct)Rules, 1966. It is the further facts revealed from the statement of imputations and allegations in the charge-memo that on the day of the incident the applicant was on sleeper duty/3 AC coach in train No.6041 from MAS-ED and demanded and accepted more money than the Railway dues and this was smelted by the vigilance team and decided to conduct a check at JTJ. On arrival of the team at JTJ, the applicant was standing near AS I coach without uniform coat and the vigilance introduced themselves to the applicant and he also introduced himself. Then immediately the vigilance team entered AS I coach and asked the applicant to declare his own cash and Railway cash along with the value books and it is declared as his personal cash and later found that he is having excess of Rs.23/- of the declared cash. Immediately the SW I the RPF constable was asked to narrate the happening. He stated that the applicant demand Rs.700/- and



he paid the same for booking the berth and further CW I stated that the applicant demanded Rs.50/- more over and above Rs.700/- he had already paid. Thereafter the vigilance team made a recovery of the entire amount from the applicant at a different station and the applicant was arrested. In this factual narration it could be seen that there were independent witnesses in the Railway coach and none of these travellers were party to any of the proceedings including the recovery and even for the demand and acceptance of the bribe alleged to have been received by the applicant. If so, the evidences now produced before the Enquiry Officer has to be viewed with caution. In this context we have to consider the delay caused on the part of the vigilance to make recovery of the amount from the applicant. That apart we have to bear in mind that SW I was taught and brought by the vigilance to speak in favour of the vigilance and if such an evidence has to be accepted, it should be proved beyond reasonable doubt that SW I is speaking the truth. In this angle we have to see that it is the case of the applicant that there were independent witnesses present in the Railway coach. None of them were made parties to the proceedings. It is also to be noted that to prove a case of trap, it

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should be proved by independent evidence for both the demand as well as the acceptance. If SW I is to be believed the prosecution case has to be accepted, but the question is that unless and until his evidence is corroborated by any independent evidence or otherwise, we are not in a position to accept this evidence at all, especially when we have seen that SW I used to give evidence in trap cases by travelling along with the vigilance team in other cases also. If so, he is an interested witness. His evidence cannot be accepted as such. We are also seen that the evidence of SW 2 and other officials of the vigilance wing are also not independent witness, in the sense that they have to see that their trap shall be made as successful one. In this context the contention of the counsel appearing for the applicant is that the entire procedure followed by the vigilance team was in violation of Paras 704 and 705 of the Vigilance Manual. These provisions are not only for the guidelines but for the correct approach of an officer while a trap is being made. In this context in the judgment of the Apex Court in Moni Shankar's case(cited supra) discussing the view taken by the Apex Court in G.Ratnam's case (2008(1)SLJ 433 (SC), held that:-



"It has been noted in that judgment in Paras 704 and 705 cover the procedures and guidelines to be followed by the Investigating Officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the Railway officials. This Court proceeded on the premise that the executive orders do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued.

15. We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but we intend to emphasise that total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at a conclusion as to whether the department has been able to prove the charges against the delinquent official. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere."

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8. As regards the contention of the counsel for the applicant regarding the finding entered into by the Enquiry Officer, we are also of the view that only on the interested evidence of SW I and the vigilance officials, the Enquiry Officer should not have relied on the prosecution case at all. If the prosecution has not succeeded in proving a case by adducing reasonable or acceptable evidence, this Tribunal is justified in interfering with such findings. Apart from the infirmity in the evidence of the prosecution we may also consider the procedure adopted by the revisional authority issuing a notice for enhancement of the penalty awarded by the disciplinary authority, which has been enhanced as that of compulsory retirement, without giving an opportunity to the applicant to narrate his case. The revisional authority ought not have enhanced the penalty and imposed a punishment of compulsory retirement.

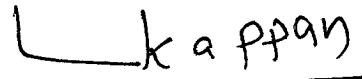
9. In the light of the discussions made in this order and on the principles laid down by the Apex Court, we are of the view that the Department has not proved the charge against the applicant by adducing acceptable evidence. Consequently Annexures A1 to A4 are hereby set aside and the applicant is found not guilty of the



charge framed against him. Further we declare that he is entitled for reinstatement in service with all consequential benefits within 30 days of receipt of a copy of this order. No order as to costs.



(K.GEORGE JOSEPH)
MEMBER(A)



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(JUSTICE K.THANKAPPAN)
MEMBER(J)

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