

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO 15/2005

MONDAY THIS THE 20th DAY OF FEBRUARY, 2006

CORAM

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

Jayakumar S/o Damodaran Nair
Comercial Clerk/Booking Officer
Southern Railway, Trivandrum Central
residing at Nediyavila Veedu
Vazhottukonam, Kodunganoor PO
Vattiyur Kavu, Trivandrum.

Applicant

By Advocate Mr. TCG Swamy

Vs.

- 1 Union of India represented by
the General Manager
Southern Railway, Headquarters
Park Town PO
Chennai-3
- 2 The Chief Commercial Manager
Southern Railway
Park Town PO
Chennai-3
- 3 The Additional Divisional Railway Manager
Southern Railway Trivandrum Division
Trivandrum-14
- 4 The Senior Divisional Commercial Manager
Southern Railway, Trivandrum Division
Trivandrum-14

Respondents.

By Advocate Mr. P. Haridas,

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this OA is aggrieved by the penalty of reduction of pay by two stages imposed by the Disciplinary Authority and modified by the Appellate authority by Annexure A-6 order and confirmed by the Revisional Authority by Annexure A-9 and orders and has prayed for the following reliefs:

(a) call for the records leading to issue of the Penalty Advice bearing No. V/VO/T/FR/28/2000 dated 21.5.2001 Annexures A6 and A9 and quash the same

(b) Direct the respondents to grant the applicant all consequential benefits, including arrears of pay and allowances, as if the impugned orders had not been issued at allowances

© Award costs of and incidental to this application.

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

2 The applicant while working as a Commercial Clerk in the Booking office of Southern Railway Trivandrum Central was charge-sheeted for a fraud committed by the charge memorandum at Annexure A1. The allegation against the applicant was that while he was working in the Booking Office on 21.03.2000 he failed to maintain absolute integrity and show devotion to duty and acted in a manner unbecoming of a Railway Servant in that he had not cancelled the II M/E ticket No. 52219282 Ex. TVC.TCR tendered for cancellation by Shri Sreekumaran Nair either in the system or manually but deducted the clerkage charge of Rs. 10/- and not accounted the same to the books of Railways. The defence of the applicant was that at the time the ticket was tendered for cancellation at about 1820 hours on 21.3.2000 he was engaged in counting and bundling the cash available on hand to be handed over to the batch in charge and to avoid inconvenience to the passenger by making him waiting till the counting and bundling of cash is over refunded the amount taking the clerkage charge of Rs. 10/- as per rules keeping the ticket for cancellation after bundling the cash. By this time two platform tickets had to be issued and while issuing the second platform ticket there was a mild altercation with a second passenger who tendered a Rs. 100/- note for a platform ticket worth Rs. 3/-. By this time another passenger came for cancellation of a Kottayam ticket which was cancelled by the applicant and he was about to cancel the Trichur ticket also in the computer system when the Vigilance Officer entered the cabin and snatched the ticket.

3 An Enquiry Officer was appointed and enquiry was conducted and to his knowledge the Enquiry Officer has found the applicant not guilty. Notwithstanding that the penalty was imposed reducing his pay by two stages for a period of 40 months (recurring). He submitted a detailed appeal addressed to the third respondent and Annexure A6 order imposing the penalty of reduction in rank by two stages was modified by one stage for a period of 40 months (not recurring). When the Revision Petition dated 4.10.2001 addressed to the second respondent had no response the applicant had to approach this Tribunal by filing OA. 538/2004 for a direction to the Revisional authority to take a final decision. Thereafter the second respondent passed the impugned order confirming the modified penalty.

4 The grounds under which the applicant challenges the above orders are that they are arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and that there has been no element of misconduct or negligence on the part of the applicant. The applicant also alleges that the findings of the Enquiry Officer that the applicant has committed a misconduct of violation of Rule 3.1(ii) of the Railway Services (Conduct) Rules 1966 are perverse, pre-concluded and virtually under the dictation of the Vigilance Organisation and the findings of the disciplinary authority, Appellate authority and the Revisional authorities are totally without application of mind. He also alleges that the enquiry was abruptly closed without giving him an opportunity to clarify any of the evidence allegedly existing against him as provided under sub Rule 21 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968.

5 The respondents have stated in the reply statement that in the course of a preventive check conducted at the Booking Office,

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Trivandrum where the applicant was working it was found that the applicant had failed to follow the laid down procedure for effecting cancellation of tickets through the system. The averments raised by the applicant was not acceptable as the Booking office at Trivandrum has been equipped with computerised Advance Railway Ticketing System and so cancellation of a ticket can be done within a minute by following the stipulated procedure. Counting of cash is not an acceptable excuse at all for violation of laid down norms. As per the rules whenever a ticket is tendered for cancellation by a customer it has to be cancelled then and there and refund of fare as admissible should be paid immediately. The original ticket should be crossed and marked 'Non issued' along with stating the reason thereof on the ticket. The applicant did not follow this procedure and admitted it as a failure. The penalty has been imposed after careful scrutiny of the inquiry report, inquiry proceedings, defence statements, etc. There is no violation of any natural justice or proceedings with the enquiry officer. The applicant was granted opportunity to submit oral examination which he refused. He was also present throughout the proceedings and he had also cross examined the witnesses. He was already granted sympathetic consideration by the Appellate authority as is evident from the speaking order suitably reducing the quantum of penalty. Therefore the O A lacks merit and is liable to be dismissed.

6 The applicant in a further rejoinder denied the averments of the respondents and submitted that perversity in the finding of the Enquiry Officer is explicit and the Disciplinary authority passed the penalty order arbitrarily by not going through the enquiry proceedings and the enquiry report. The Disciplinary authority has simply followed the Vigilance Inspector's version which were proved wrong in the Enquiry. The Disciplinary authority should have found out the time as evidenced from

the inquiry report as the ticket was purchased at 1808 hours, tendered for cancellation at 1827 hours, Vigilance Inspector snatched the ticket at 1828 hours and the ITC print out was taken at 1829 hours and meanwhile between 1827 and 1828 hours the charged official had also issued a platform ticket and took some seconds to dispose of the person for want of change which will conclusively prove that the Disciplinary authority failed to apply his mind to the factual position as evidenced in the enquiry.

7 We have heard the learned counsel who argued the case elaborately. We have also gone through the proceedings of the enquiry. The learned counsel for the applicant emphasised the ground (b) raised in the Application that there was no allegation of misconduct or negligence on the part of the applicant. According to him this was borne out by the inquiry report at Annexure R-1(a) wherein the Enquiry Officer has discussed in detail the time of the incident and concluded that the purchase of the ticket would have been done at 1808 hours and it would have taken 18 to 20 minutes for cancellation between the purchase of the ticket and cancellation and fixing the time at 1825 hours for the issue of platform ticket and the altercation between the passenger and the applicant at about 1828 hours and the Enquiry Officer had taken note of the circumstantial evidence for concluding that there was confusion in the Counter just before the arrival of the Vigilance Inspector and noted that the charged official has no malafide intention in not cancelling of the ticket and the time span between the cancellation of the ticket and check by the Vigilance is very short. The counsel also relied on the judgment in 1986 SCC (L&S) 383, KG Appan Vs. Union of India and Others (2000 (3) SLJ 209) Ministry of Finance VS. S.B. Ramesh (AIR 1998 SC 853) and Dena Bank and Others Vs. Smt. Shakuntala Madhavan and another (1999 (1) Kerala ILR 396). In Smt. Shakuntala Madhavan's case to establish that the enquiry officer's findings were totally perverse and no element of mis-conduct was established during the enquiry and also the Enquiry officer has not examined the applicant generally and the examination of the witnesses as required under sub rule 21 of Rule 9 of the

Railway Servants (Discipline & Appeal) Rules, 1968. It was also pointed out that the respondents have not pointed out any rules or provisions to prove that the action of the applicant has resulted in lack of devotion to duty and there was any element of malafide motivation in withholding the ticket either for reissue or for obtaining the clerkage charge.

8 The counsel for the respondents reiterated the argument in the reply statement and pointed out that the applicant himself has admitted that he had not cancelled the ticket immediately not had any sufficient and cogent explanation for not cancelling the ticket through the system or at least defacing the ticket finally.

9 The main contention of the applicant is that there was no misconduct on his part in not cancelling the ticket and the unpleasant altercation with the passenger at the counter at that point of time had compelled him to keep the ticket without cancelling immediately and that he had attended to more urgent work and that the Vigilance Inspector had come into picture exactly leaving no time to cancel or deface the ticket. Though the counsel for the applicant referred to certain lacuna in the procedural aspects of not questioning the applicant generally and evidence before the Enquiry Officer, we do not think that the enquiry is vitiated and due procedure has been followed by the Enquiry Officer and the applicant under section 22 has examined the witnesses etc. The main question that has been raised is about the perversity findings of the Enquiry Officer. The learned counsel has taken us through the enquiry report in this regard and the conclusions of the Enquiry Officer which are worthwhile to be reproduced here:

"The charged official had not disputed that he had not cancelled the ticket. But, he had only given reason for not cancelling the ticket immediately. The Charged official as per rules should have generated a cancellation ticket when a ticket was tendered for cancellation. In this case he should have at least physically cancelled the ticket by defacing the ticket and subsequently should have generated a cancellation ticket through the system. He had not done anything on the ticket. This shows the negligence on the part of the Charged official. When we peruse the

DD.1 it indicate that the charged official had cancelled the ticket just prior to the check i.e. 12.3.2000 to 18.3.2000. Even on 21.3.2000 he had cancelled 5 tickets through the system. From DD.2 series all types of tickets are issued at BO by all counters. In answer to Q.No. 34 SW.2 had explained the procedure for cancellation. In answer to Q.No. 92 DW.1 stated that the counter will be busy from 1600 hrs to 19.15 hrs. and also explained the pattern of trains dealt during this time. The train towards ERS after Malabar Express is only Cannanore Express at 2100 hrs. Keeping the ticket for reselling is also not practicable. Since the duty hours of the evening shift person is over around 200 hours. However, the Vigilance had also not pointed out about the reselling aspect and also not charged the employee on this account. The aspect of resettling is ruled out. Further, from DD.1 it is clear that the charged official is not habituated in not cancelling the tickets. In the absence of intention for reselling the ticket and not habituated in not cancelling the ticket by the Charged official indicates that the charged official had no malafide intention in not cancelling the ticket. Finally the time span between the cancellation of the ticket and check by the Vigilance is very short. I conclude that the Charged official had failed to show devotion to duty by not cancelling the ticket in time through the system or by defacing the ticket."

10 Having discussed in detail ~~the~~ the sequence of events that took place and having come to the conclusion that the time span between cancellation of the tickets and the check by the Vigilance is very short and also that there was no intention on the part of the applicant to resell the ticket and he was not habituated to not cancelling the tickets, the Enquiry Officer jumps to the conclusion that the officer had failed to show devotion to duty by not cancelling the ticket in time. Such a finding does not flow from the discussion of the evidence in the previous paragraphs and we are inclined to agree with the applicant that the findings of the Enquiry Officer are not founded on the evidence and his own conclusions as narrated in the report. There seem to be an effort on the part of the Enquiry Officer to show that whatever be the circumstances or the constraints in which the applicant was placed he had not shown devotion to duty. This finding cannot be accepted ^{even} as the charge against the applicant is only for violation of conduct rules and not for violation of any prescribed rule or administrative instructions. The Enquiry Officer on one hand observes that the charged officer was not motivated by any malafide intention and that he could not have cancelled the ticket within the

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short time available to him and on the other hand then rushes to the conclusion that he has failed to show devotion to duty thereby causing substantial prejudice and damage to the applicant. In making this observation, we are very much aware of the well settled position of law that the Courts and Tribunals cannot go into re-appreciation of evidence. But that it is also equally settled principle that misconduct has to be proved by establishing a concrete nexus between the evidence adduced during the enquiry and the findings. In other words the findings have to flow from the evidence adduced. In BC Chathurvedi Vs. Union of India (1995 (8) SCC 709 the Apex Court observed:

"When the conclusion reached by the authority is based on evidence, Tribunal is devoid of powers to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its jurisdictional review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court."

11. In keeping with the above judgment of the Apex Court we are of the view that the finding of the Enquiry Officer that the official is guilty of lack of devotion to duty is not sustainable.

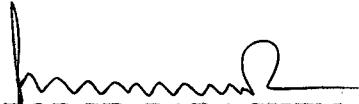
12 The respondents further seek to justify the action on the ground that the penalty awarded has to have a deterrent effect and is intended not only to reform the official who has failed to observe stipulated rules but also to reform the society and to warn other similarly placed officials working in various stations. This argument cannot however be accepted as it seeks to establish that any arbitrary action in the guise of Vigilance can be justified on the ground of public interest. On such occasions it has to be ensured the morale of the staff is sustained and that the procedures adopted by the Vigilance should conform to the principles of

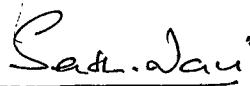


natural justice and also to the norms laid down for departmental action. The Enquiry Officer having observed during the enquiry that there was no willful negligence on the part of the applicant could not have come to any other conclusion than giving the benefit of doubt to the applicant. The Disciplinary authority has also without discussing the evidence adduced in the enquiry agreed with the perverse conclusion of the Enquiry Officer. The Appellate authority granted personal hearing to the applicant and had taken note of the observations of the Enquiry Officer that the official did not act with any malafide intention and that he has not habituated to the practice of not cancelling the tickets and therefore reduced the penalty imposed to make it non recurring and also reduction to one stage instead of two stages of pay. The mere fact of reduction or modification does not cure the basic infirmity of perversity in the finding of the Enquiry Officer on which the impugned orders are based. When the report itself is held to be perverse the orders passed on the findings thereof cannot be sustained.

13 In the result the orders of the Disciplinary authority, Appellate authority and Revisional authority are set aside. The applicant is entitled to all consequential benefits as if the impugned orders had not been issued. The OA is allowed. No costs.

Dated 20.2.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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