

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.153/97

Monday, this the 14th day of July, 1997.

C O R A M

HON'BLE SHRI AV HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

.....

G Sudhir, Goods Driver,
Southern Railway, Quilon,
Residing at 'Sandhya'
TC No.30/1323,
Pettah, Trivandrum.

....Applicant

By Advocate Shri TC Govinda Swamy.

vs

1. Union of India through the Secretary to the Government of India, Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, Southern Railway, Headquarters Office, Park Town PO, Madras--3.
3. The Senior Divisional Mechanical Engineer, Southern Railway, Trivandrum Division, Trivandrum--14.
4. Shri NP Krishnan (Enquiry Officer), Divisional Mechanical Engineer (Diesel), Southern Railway, Ernakulam Junction.
5. The Assistant Mechanical Engineer, Southern Railway, Trivandrum Divisional Office, Trivandrum.

....Respondents

By Advocate Shri PA Mohammed.

The application having been heard on 8th July, 1997,
the Tribunal delivered the following on 14th July, 97:

O R D E R

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, a Goods Driver, was charged by memo A.1 dated 21.6.93 under Rule 11 of the Railway Servants (Discipline & Appeal)

contd.

Rules, 1968 (the Rules for short) with having committed serious misconduct while working as Diesel Assistant by giving a false deposition before a fact finding committee and was awarded by order A.2 dated 22.9.93 a minor penalty of withholding of three sets of passes. He also suffered the penalty irrevocably. Thereafter, by A.3 dated 14.9.94, he was informed that A.1 was cancelled subject to the condition that action under the Rules would be taken against him since the punishment awarded was not commensurate with the charges. This was followed by a charge memo A.4 dated 12.10.94 under Rule 9 of the Rules for a major penalty, issued by the Divisional Mechanical Engineer, by order and in the name of the President. This charge memo reproduced the charge in A.1 for which a minor penalty had already been awarded by A.2, and added a new charge based on the same incident. Applicant gave his explanation to the charges by A.5 dated 29.10.94. Nothing more was heard of this for nearly two years. Then, by A.6 dated 16.7.96, a notice proposing enhancement of the penalty awarded in A.2 dated 22.9.93, was issued in exercise of the powers under Rule 25 of the Rules by the General Manager. This notice also cancelled the charge memo A.1, without prejudice to further action under the Rules. Along with the notice, another charge memo A.7 dated 16.7.96 was issued by the General Manager. This charge memo stated that the second charge memo A.4 dated 12.10.94 was cancelled and repeated the two charges set out in A.4. The applicant submitted his reply to the notice A.6 by A.8 dated 27.7.96 and his explanation to the charge memo A.7 by A.9 dated 28.7.96. An inquiry was proposed to be held by notice A.10 dated 30.12.96. At this stage, applicant, aggrieved by these second/third set of proceedings, has filed this application praying that A.4, A.7 and A.10 relating to the second/third set of proceedings, be quashed. Further proceedings on the basis of A.10 notice were stayed by the Tribunal on 29.1.97. Applicant challenges these orders on the following grounds:-

(a) Having been punished for the misconduct, he cannot be proceeded against for the same misconduct again;

(b) if the earlier penalty is cancelled, there is no question of "enhancing" a penalty which does not exist;

(c) the proceedings are purportedly in exercise of powers of revision under Rule 25. That rule only permits "further proceedings" and does not permit cancellation of a charge memo, issuance of a fresh charge memo and conducting a "fresh proceedings";

(d) the reply to the notice A.6 was not considered before issuing A.10 proposing to hold the enquiry, and the notice A.6 proposing to enhance the penalty and the charge memo A.7 were issued on the same day showing thereby that the notice was an empty formality and a farce; and

(e) the earlier penalty having been suffered by the applicant irrevocably, further action on the same charges is not permissible.

2. Respondents submit that the Divisional Railway Manager (DRM) "reviewed" the order A.2 and finding it inadequate, cancelled it and issued a fresh charge memo with an additional charge. But it was found that the "review" done was illegal as it was done after the expiry of six months after A.2. Therefore, the matter was referred to the General Manager who was empowered to revise the order without time limit, who issued the notice for enhancement of the penalty and the charge memo. The action taken is, therefore, in order, submit respondents.

3. We find that the grounds advanced by the applicant to challenge the impugned orders are well founded. Rule 25 does not

permit a fresh proceedings, but permits enhancement of the penalty after due notice. The cancellation of the charge memo A.1 in exercise of the powers under Rule 25 is, therefore, not in order. Further, once the charge is cancelled, then there would be no penalty in existence to be enhanced under Rule 25. Again, the show cause notice proposing enhancement of penalty and the charge memo for major penalty are issued simultaneously, thus reducing the show cause notice to an empty formality. It is clear that the impugned orders suffer from several vices and cannot be sustained.

4. We, therefore, quash A.4, A.7 and A.10 and allow the application. This will, however, not stand in the way of the respondents taking such action against the applicant as they deem fit, in accordance with law.

5. No costs.

Dated the 14th July, 1997.


P V VENKATAKRISHNAN

ADMINISTRATIVE MEMBER


A V HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure A1: A true copy of the Charge Memorandum issued by the 5th respondent No.V/MT.5/6319/22/3/GS dated 21.6.93.
2. Annexure A2: A true copy of the Penalty Advice No. V/MT.5/6319/22/3/GS dated 22.9.93 issued by fifth respondent.
3. Annexure A3: A true copy of the Letter No.V/MT.5/6319/22/3/GS dated 14.9.94 issued by the third respondent.
4. Annexure A4: A true copy of the Charge Memorandum No.V/MT 5/ 6319/22/3/GS dated 12.10.94 issued by the third respondent.
5. Annexure A5: A true copy of the Reply submitted by the applicant to the third respondent dated 29.10.94.
6. Annexure A6: A true copy of the Letter No.P(A) 94/Misc/ 35 dated 16.7.96 issued by the second respondent.
7. Annexure A7: A true copy of the Charge Memorandum No.P(A) 94/Misc/35 dated 16.7.96 issued by the 2nd respondent.
8. Annexure A8: A true copy of the Letter submitted by the applicant to the 2nd respondent.
9. Annexure A-9: A true copy of the Letter submitted by the applicant to the 2nd respondent dated 28.7.96.
10. Annexure A-10: A true copy of the Order No.V/MD 226/ ERS/DAR dated 30.12.96 issued by the 4th respondent.

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