

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.16/2001

Friday, this the 15th day of November, 2002

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

B. Gopinath, son of Shri C.C. Balakrishna Panicker, working as Catering Supervisor, Kerala Express, Trivandrum, residing at Chennampallil House, Moolavattom Post, Kottayam - 686 026.

..Applicant.

[By Advocate Mr. M.P. Varkey.]

Vs.

1. The Union of India represented by General Manager, Southern Railway, Chennai - 600 003.
2. Additional Divisional Railway Manager, Southern Railway, Trivandrum - 695 014
3. Senior Divisional Commercial Manager, Southern Railway, Trivandrum - 695 014
4. Divisional Commercial Manager, Southern Railway, Trivandrum - 695 014

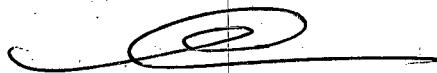
..Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil.]

The application having been heard on 09.09.2002, the Tribunal on 15.11.2002 delivered the following:

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was the Catering Supervisor in the pantry car of the New Delhi bound Kerala Express. The catering Inspector was not available during the trip on 06.05.97 when the train left Trivandrum. As per the duty roster issued by the Railway Administration, the duty hours of the catering staff begins at 6 a.m. only. But the Cook begins his work before that so that the coffee and tea are ready by 6 a.m. and breakfast is



ready by 7.30 a.m. and the applicant and other staff commence their work at 6.a.m. only. On 07.05.97, a team of Vigilance Inspectors entered in the said train at Gudur at 5.50 a.m. and started checking the catering unit. They noticed certain alleged irregularities. According to them, the applicant did not make entries of 125 vegetarian breakfast, 63 non-vegetarian breakfast and 6 cans each of coffee and tea which were kept ready for sale in the Manager's Order Book; private disposable cups were found with the vendors selling coffee and tea; and there was shortage in consumable provision items. Following the said vigilance check, a charge Memorandum (Annexure A/1) was issued on 05.09.97 to the applicant by the 4th respondent. The applicant submitted an explanation dated 17.11.97 (Annexure A/2) stating that his duty hours begins at 6 a.m. and he would have made entries of the items prepared in the Manager's Order Book and Noting Register before the commencement of the sales and that no private disposable cups were found in his stock and during stock verification, the shortage in consumable items is a fact recognised under the rules and the remedy provided is to make good the shortage. The 4th respondent by not accepting the points explained in Annexure A/2 imposed the penalty of withholding increments for 12 months (non-recurring) from 01.03.2001 on the applicant vide Annexure A/3 dated 22/29.06.98. Applicant preferred an appeal dated 14.08.98 (Annexure A/4) before the third respondent reiterating the points explained in Annexure A/2 and pointing out the illegalities in Annexure A/3 penalty order. The third respondent also did not consider his request by way of the said appeal Annexure A/4 and passed a most cryptic and non-speaking order dated 10.11.98 (Annexure A/5). Thereafter, applicant preferred a revision petition dated 17.01.99 (Annexure A/6) before the second respondent citing all the facts and pointing out the errors on the part of the 4th and 3rd respondents in passing the orders Annexures A/3 and A/5



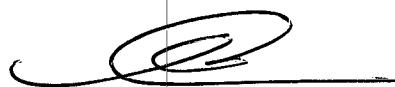
respectively. But the second respondent also upheld the orders aforesaid vide his order dated 10.02.2000 (Annexure A/7). In these circumstances, the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, seeking following reliefs:

- "(a) Call for the records leading to the issue of Annexures A/3, A/5 and A/7 orders and quash the same.
- (b) Declare that Annexures A/3, A/5 and A/7 orders are illegal, arbitrary and opposed to the principles of natural justice; that the applicant is entitled to draw his annual increment due on 01.03.2001 if otherwise eligible and direct the respondents accordingly.
- (c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The respondents 1 to 4 have filed a reply statement jointly contending that the entire Pantry Car staff, Stores and utensils were under the command of the catering Inspector, who manage the catering service throughout the run of the train in that trip. To avoid misuse of materials, strict control is called for in respect of supply of materials, like tea bags, coffee powder, milk etc. for preparation of coffee/tea and other items as well. The petitioner did not exercise control in drawal of the materials, which were required for preparation of the food items by the Cook. It points out to his laxity in executing the job assigned to him properly that without his knowledge, materials have been drawn by the cook. It is clear dereliction of duty. The duty for all staff of Pantry Car starts at 6 a.m.. If the cook, whose duty roster commences from 6 a.m. as per the applicant, starts work at 5.30 a.m. for preparation of coffee/tea, the applicant, a more responsible person as Incharge of the Pantry Car, should have shown equal responsibility to supply the materials required, which is not at all a strenuous



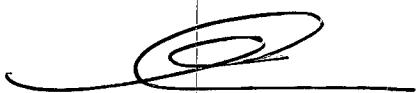
job. It is just an excuse to say that his duty starts from 6 a.m. only, forgetting the fact that the cook's duty hours also begins at 6 a.m. only. It is not a silly mistake that has been committed by the applicant. In the absence of entries in the stock book, there is every possibility of manipulating the stock and sales and the possibility all the more reinforced due to availability of private/unaccounted disposable cups. Here the Supervisor joined hands with his subordinates to sell unaccounted coffee/tea enabling to make private gains and has no qualms to admit that he has exercised no control in such important matters. The applicant is feigning innocence after having committed a grave mistake. The items were prepared without due entry in the Manager's Order Book and that private disposable cups were available with his team of servers. The applicant, as Incharge of the Pantry Car, cannot escape from the responsibility for the excess items without entry in the Manager's Order Book and for the unauthorised possession of private cups with his subordinates. He, as the Supervisor Incharge of the Pantry Car, failed to protect the consumables he was entrusted with. The crux of the matter is that the applicant failed in his duties as custodian of materials and as a Supervisor of the team who had to be guided by him in every aspect of Pantry Car sales and service. Considering all facts and also the explanation submitted by the applicant, a minor penalty was awarded to the applicant. The penalty awarded does not warrant a detailed enquiry as it is observed and the penalty imposed is a minor penalty of less than three years without cumulative effect and unlikely to affect the pension of the applicant, and hence of minor consequences only. Departmental catering is conceived as a model to provide safe and good catering service to the passengers. However, heavy losses are incurred in the process as compared to private caterers who run most of the Pantry Cars in Southern Railway. The recurring loss is caused by the department due to such irregularities witnessed



in the instant case, where the norms were found to have been thrown to winds with regard to drawal of materials for preparation of coffee, tea and breakfast without authority. During the vigilance check, a can of coffee was prepared in the presence of Vigilance Officials as per schedule and this alongwith the coffee already prepared was tested by tasting by the Train Superintendent and passengers of a representative character, and it was found that the coffee prepared as per schedule tasted as good while the other sample was below standard. The charged employee has a character prone to crime and, therefore, the O.A. deserves to be dismissed.

3. The applicant has filed a rejoinder contending that the Assistant Manager, Stores Clerk, Cook and Servers have their own assigned duties and the mistake in question cannot be found to that of the applicant. Regarding supply and consumption of materials Store Clerk and Cook are responsible and the applicant is responsible for it to the extent provided for in Paras 2851 and 2854 of Indian Railway Commercial Manual, Vol.II. Annexure A/6 revision petition was not disposed of in accordance with Rule 25(3) read with Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968. Simply because the penalty is minor, rules cannot be faulted. Rule 3(1) (i) to (iii) of Railway Services (Conduct) Rules, 1966, cannot be invoked independently and has to be invoked in conjunction with any other specific rule in Chapters XXVIII and XXIX of the Indian Railway Commercial Manual, Volume II.

4. The respondents have filed additional reply statement contending that there was ample proof of misconduct committed by the applicant which has been established by Annexures R/1 to R/4 furnished by them. It is submitted that the Chapters XXVIII and

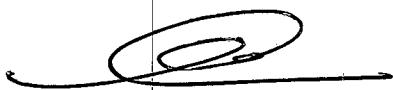
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XXIX very descriptively narrate functions of Commercial Department. The responsibilities of Catering Inspector (Incharge of the Pantry Car) is described as under:

"Catering Inspectors are responsible for the general supervision and control over the Catering and Vending Units under their jurisdiction. They should ensure efficient service to the travelling public and should also see that the instructions issued from time to time in regard to the maintenance of accounts and other related matters are correctly understood and carried out by the staff concerned."

5. We have heard Shri M.P. Varkey, learned counsel for the applicant and Shri Thomas Mathew Nellimoottil, learned counsel for the respondents. Learned counsel for the applicant submitted that the misconduct shall be a specified one as held by Hon'ble Supreme Court in AIR 1985 SC 504, Rasiklal Vaghajibhai Patel vs. Ahmedabad Municipal Corporation and Another. In the instant case, none of the charges in Annexure A/1 Memorandum is a misconduct specified either in the Railway Service (Conduct) Rules, 1966, or in Chapter XXVIII of Indian Railway Commercial Manual, Vol. II or in any other Rules. The 3rd respondent should not have found the applicant responsible for any shortage. The learned counsel for the respondents on the other hand, submitted that being a supervisory staff, since entire stock has been entrusted on applicant's responsibility, he should have been more careful than other staff and, therefore, the impugned orders cannot be faulted and the O.A. deserves to be dismissed.

6. A check was conducted in the Pantry Car of train No. 2625 Exp. between GDR and BZA. Shri Gopinath, the applicant, CS/Kerala Batch No.8 was found Incharge of the Pantry Car. The Vigilance Branch of the Southern Railway has checked the MOB, which a vital document to compare the ground stock and the CS is suggested to make entries in the MOB before preparation of any edibles and the Cook has to counter sign in the register. On the day of check, i.e., on 07.05.97, the report No.



VO/PC/T/223/TVC/97 of the Chief Vigilance Officer [Annexure R/2(1)] reveals that 125 vegetarian breakfast, 63 non-vegetarian breakfast, 06 cans of coffee and 06 cans of tea were prepared and kept ready for sale without any entry in the MOB. A perusal of the MOB shows that the last entry in the register was made at 17.50 hrs. on 06.05.97 and during the check, S/Shri V. Krishnakumar, SCB, S. Bhoopathy and K. Sudhakaran, the bearers, were found in possession of private disposable cups even though sufficient number of disposable cups supplied by the Railway were available in the Pantry Car, which establishes that the staff are indulging in private sales for personal gain at the expense of Railway earnings. Accordingly, 7 staff were held responsible for the alleged irregularities. Thereafter, disciplinary proceedings were initiated and following charges were issued to the applicant:-

" STATEMENT OF CHARGES

During the course of preventive check conducted in the Pantry Car of Train No. 2625 Exp. between GDR and BZA on 07.05.97, the following irregularities were noticed in the working of Shri B. Gopinath, C.S-I, Batch No. VIII.

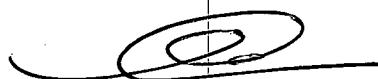
I. He has not made any entries in the MOB even though he prepared 125 vegetarian breakfast, 63 non-vegetarian breakfast, 6 cans of coffee and 6 cans of tea on 07.05.97 and kept ready for sale.

II. Private disposable cups were used for supply of coffee/tea even though sufficient number of Railway cups were available in the Pantry Car.

III. The following discrepancies were noticed in the store items:

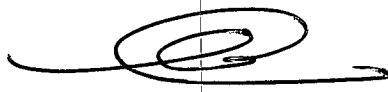
(1)	Disposable Cups	173 Nos.	Short
(2)	Tea Packet	03 Nos.	"
(3)	Coffee Powder	125 gms.	"
(4)	Sugar	04 Kgs.	"
(5)	Oil	0.5 Kgs.	"
(6)	Casserole - 300 ml.	25 Nos.	"
(7)	Black gram powder	02 Kgs.	"

By his above acts, Shri B. Gopinath, CS-I, Batch VIII, Kerala Exp. failed to maintain devotion of duty and thereby violated Railway Service Conduct Rules, 1966, Section 3(1) i, ii and iii."



7. The applicant submitted his explanation (Annexure A/2) itemwise against the charge memorandum dated 17.11.97 (Annexure A/1). But the 4th respondent did not accept the points in Annexure A/2 and imposed a penalty of "withholding of the next increment for a period of 12 months (NR) as he could have been more vigilant and could have supervised the working of the staff in a better way" vide Annexure A/3 order dated 22/29-6-98. Applicant filed an appeal Annexure A/4 dated 14.08.98, but the punishment was upheld by the appellate authority vide order dated 10.11.98 (Annexure A/5) and the revisional authority has also confirmed the same vide order dated 10.02.2000 (Annexure A/7). All these orders are under challenge before this Tribunal.

8. The main contention of the applicant is that the charges in Annexure A/1 memorandum is neither a misconduct specified either in the Railway Services (Conduct) Rules, 1966 or in Chapter XXVIII of Indian Railway Commercial Manual, Volume II (which deals with catering and vending services) or in any other rules. Therefore, the said charges do not amount to offences under the Rule 3(1) (i), (ii) and (iii) of Railway Services Conduct Rules, 1966. The charges are also faulted as they are non-speaking, ambiguous and cryptic. The charges were not proved by evidence on record. The penalty was imposed for the reason that the applicant could have been more vigilant and could have supervised the working of the staff in a better way, which were not the charges against him in Annexure A/1 and he was not being heard. Hence, it is submitted that Annexure A/3 order is arbitrary, illegal and against the principles of natural justice and is liable to be quashed. The applicant further contended that without seeing the provisions in Paras 2850 and 2854 of Indian Railway Commercial Manual, Vol. II, on excess/shortage in consumable items, the 3rd respondent held the applicant

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responsible for such shortages. The 3rd respondent did not appreciate the plea against vagueness of the number and possession of private disposable cups. Therefore, it is argued that Annexure A/4 order is also arbitrary, illegal and against the principles of natural justice.

9. Section 3(1) (i), (ii) & (iii) and 3(2) (i) & (ii) of the Railway Services (Conduct) Rules, 1966, says as follows:-

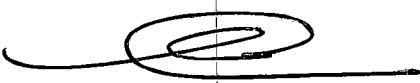
"3. General. (1) Every Railway servant shall at all times-

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a railway or Government.

(2) (i) Every railway servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all railway servants for time being under his control and authority;

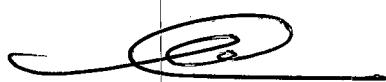
(ii) No railway servant shall, in the performance of his official duty or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible."

On the strength of that provisions, memorandum of charges for imposing minor penalties under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968, was issued to the applicant vide Annexure A/1(i). On scrutiny of the said provisions, we are of the view that the misconduct enunciated in Annexure A/1(1) and A/1(2) [charge sheet] can squarely be dealt with under Section 3(1) (i), (ii) and (iii). Therefore, there is no substance in the argument of the applicant that the imputation of charges levelled against the applicant in this case, cannot be dealt with under Section 3(1) (i), (ii) and (iii) of the Railway Service Conduct Rules, 1966.



10. The attempt made by the applicant is to the effect that the alleged over tax of this nature can only be dealt with under the provisions of Para 2854 and acted upon as per Para 2851 of Chapter XXVIII and XXIX of the Indian Railway Commercial Manual, Volume II. On going through the said provision, we are of the view that the offences committed by the applicant will not squarely come under those Rules. It is pertaining to surplusage and shortages which will occur in the normal course of business. On the other hand, the imputation of the applicant is mainly on his conduct while on duty and this case comes under the Conduct Rules and, therefore, we are of the view that the respondents have not faulted in the procedures and provisions initiated against the applicant.

11. On perusal of the documents and analysis of the impugned orders, the charges against the applicant is for the dereliction of duty which includes controlling and supervising the subordinates. The Catering Inspectors are responsible for general supervision and control over the catering and vending units. They should ensure efficient service to the travelling public and also should carry out the instructions for maintenance of accounts and other related matters correctly understood and carried out by the concerned staff. On going through the documents, we find that he has failed in keeping clear accounts of materials stocked with him and also failed to control the subordinate staff. The discrepancy has been admitted by him, but pleaded that it is a material phenomenon, which cannot be accepted. It cannot be said that it is a very silly mistake committed by the petitioner. The possibility of manipulating stocks and sales is evident by the availability of private/unaccounted disposable cups meant for selling unaccounted coffee/tea to make private gains. The private disposable cups available with the team of servers and the excess items without



making entries in the Manager's Order Book lead to the irresistible conclusion that these are done for obvious reasons to defraud the interest of the Railways. The applicant cannot claim to be a meek spectator to all these misuse and it is collusive.

12. This Tribunal is fully aware of its limitations as held by Hon'ble Supreme Court in (1994) 6 SCC 651, Tata Cellular vs. Union of India, wherein the scope of judicial review has been restricted only to the decision making process and not the merit of the decision. As the Court/Tribunal does not sit as Appellate Court while exercising its power of review. On going through the entire gamut of the pleadings, evidence and arguments, we are of the view that the respondents have not faulted in procedure and the impugned orders Annexures A/3, A/5 and A/7 have been passed with due application of mind and not vitiated by any arbitrariness, unfairness, illegality or irrationality. Therefore, we do not find any reason to interfere with these orders especially when a minor penalty has been imposed on the applicant, which is within the limit of the gravity of the offence.

13. In the conspectus of the facts and circumstances, we are of the opinion that the O.A. is not merited and, therefore, only to be dismissed. We accordingly dismiss the O.A.

In the circumstances, parties are directed to bear their own costs.

(Dated, 15th November, 2002)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Annexures submitted by the Applicant:

- A/1 True copy of charge memorandum No. V/VO/PC/T/223/TVC/97/BG dated 05.09.97 issued by the 4th respondent.
- A/2 True copy of explanation dated 17.11.97 submitted by the applicant before the 4th respondent.
- A/3 True copy of penalty order No. V/VO/PC/T/223/TVC/97/BG dated 22/29-6-98 issued by the 4th respondent.
- A/4 True copy of appeal dated 14.08.98 submitted by the applicant before the third respondent.
- A/5 True copy of appellate order No. V/P.227/A/98/162/Comm1. dated 10.11.98 issued by the 3rd respondent.
- A/6 True copy of revision petition dated 17.01.99 submitted by the applicant before the 2nd respondent.
- A/7 True copy of order No. V/P.227/A/98/162/Comm1. dated 10.02.2000 issued by the 2nd respondent.

Annexures submitted by the respondents:

- R/1 True copy of the statement submitted by the applicant to the Chief Vigilance Inspector dated 07.05.97.
- R/2 True copy of the letter No. VO/PC/T/223/TVC/97 issued from the Chief Vigilance Officer, Southern Railway.
- R/3 A true copy of the statement dated 07.05.97 given by the Train Superintendent to the Chief Vigilance Inspector.
- R/4 A true copy of the relevant pages of the service register, showing the punishment.
