

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 160/04

Tuesday this the 19th day of September, 2006

CORAM

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

C.Vasudevan
Goods Driver,
ARS(M)'s Office,
Southern Railway,
Quilon.

... Applicant.

By Advocate Mr.T.N.Sukumaran.

V/s.

1. Union of India
Represented by the General Manager,
Southern Railway,
Chennai-3.
2. Additional Railway Manager,
Southern Railway,
Thiruvananthapuram – 14.
3. Senior Divisional Mechanical Engineer,
Southern Railway,
Thiruvananthapuram. ... Respondents

By Advocate Mr. Thomas Mathew Nellimoottil.

The application having been heard on 29.8.2006 the Tribunal on 19.9.2006 delivered the following:

O R D E R

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-1 penalty advice of the Disciplinary Authority dated 5.8.2002 imposing the following minor penalty:

"REDUCED TO THE BOTTOM OF THE GRADE FOR A PERIOD OF 2 YEARS NON-RECURRING."

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You are hereby informed that your pay is reduced from Rs.5300/- to Rs.5000/- in scale of Rs.5000-8000 for a period of 24 months Non-Recurring with effect from 1.02.2004. This will not have the effect of postponing your future increments."

2 He is also aggrieved by Annexure A-2 Appellate Order dated 9/7/2003 rejecting his Annexure A-3 appeal dated 27/12/2002 and confirming the aforesaid penalty imposed upon him by the Respondent No.3.

3 The brief factual matrix of the case is that the applicant was chargesheeted vide Annexure A-4 letter dated 30/5/2002 in the following manner:-

"That the said Sri C.Vasudevan, Goods Driver/QLN has committed misconduct in that he who was rest cleared on 21/5/2002 at 5.30 hrs. was not found when call was served to work Ey Super at 5.30 hrs. and he joined duty at 8.45 hrs. but signed as 8.00 hrs.

The non joining of duty in time of Sri Vasudevan has resulted in 5 hrs. 45 mts. detention to Ey Super and detention to the TID and VID for want of Road at QLN due to Ey. Super on goods Road.

He has thus violated Rule 3 (1) (ii) & (iii) of Railway Services Conduct Rules 1966."

4 The applicant submitted Annexure A-5 explanation denying the charges levelled against him. He submitted that he arrived at Quilon on 20/5/2002 at 1.30 p.m after working in T.No.6346. His rest was cleared on 21/5/2002 at 5.30 a.m and he arrived at Quilon on 21/5/2002 in the morning and signed on at 6.55 a.m. The delay for the Ey.Super to start at 12.43 p.m. was due to break binding of 5 wagons which was attended to by him for repair and line cleared at 10.45 a.m and started after T.No.2623 at 12.43 p.m. The Disciplinary Authority considered the aforesaid explanation of the applicant and it was not found satisfactory. It was mentioned in Annexure A-1 order that even though according to the explanation

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submitted by the applicant, he 'signed on' at 6.55 hrs. and started the train at 12.43 hrs, on verification of the signing Register, it was noticed that the applicant has 'signed on' but the signing time was found to be corrected and over-written in such a way that the original time could not be read. The "signing on" register is common and is in the chronological order and the previous entry on the same day for 6834 Light Engine by Shri K.Warrier was signed at 9.00 hrs. Therefore, the "signing on" of the applicant should have been after 9.00 hrs as the name of the applicant is found just below one Shri Warrier and his Assistant. If he had at 6.55 hrs, it should have been below the Shunter Shri N.Chandran who signed at 6.00 hrs and above Shri J.Dileep Kumar who signed at 7.05 hrs. The disciplinary authority, therefore, came to the conclusion that the charges framed against the applicant was substantiated as he did not join in time and also tried to divert the attention and spoiled the evidence against him in the Register. On considering the above act of the applicant as a serious offence, the Annexure A1 punishment was imposed upon him.

5 According to the applicant, the aforesaid penalty was not a minor penalty as Sub Rule (v) of Rule-6 of Railway Servants (Discipline & Appeal) Rules 1968 provides for reduction to a lower stage in the time scale of pay for a specified period under the heading "Major Penalty". The disciplinary authority has virtually imposed a major penalty of reduction to the lower stage without following the proper procedure and not giving an opportunity to defend his case under Sub Rule 6 to 25 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 thereby violating the principles of natural justice. It was also submitted that the Annexure A-1 penalty order was issued without application of mind as there is no reason assigned therein to impose penalty to the lower stage without giving him a reasonable opportunity. He also submitted that Annexure A-1 is arbitrary,

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illegal and violative of article 14 and 16 of the Constitution. According to him Annexure A-2 order is also not a speaking order and the Appellate Authority has not considered all aspects of the Annexure A-3 appeal.

6 The respondents have filed their reply stating that the applicant was awarded the punishment of reduction to the time-scale of pay for a period of two years without cumulative effect only as a minor penalty as per Rule 6(iii)(b) of Railway Servants (Discipline & Appeals) Rules 1968. They have also submitted that the penalty of reduction to the lower scale in the time-scale will become a major penalty only when it is with cumulative effect and period exceeds 36 months. As the applicant has been awarded the punishment of reduction to the lower time-scale of pay for a period of two years without any cumulative effect, it can be considered only as a minor penalty.

7 We have heard Shri Thomas Mathew Nellimoottil for the respondents. According to the respondents, the applicant was given the minor penalty listed at serial No.6(iii-b) of list of the minor penalties under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. We have perused Rule 6 (iii-b) and Rule 6(v) of the Railway Servants (Discipline & Appeal) Rules 1968, which are reproduced below:-

"6 (iii-b) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension."

6(v)****(Save as otherwise provided for in clause (iii-b) reduction to the lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his."

The major penalty at Rule 6(v) is almost identical with the minor differences that the minor punishment under Rule 6(iii-b) is for a period not exceeding three years and without cumulative effect and the major punishment under



Rule 6(v) is with cumulative effect and for a period exceeding 36 months. But both the punishments involves reduction to a lower stage for a specified period. It is not clear as to how reduction to a lower stage for period not exceeding 36 months would not have an adverse impact on an employee affecting his pension as mentioned in Rule 6(iii-b) (ibid). If such a punishment under Rule 6(iii-b) (ibid) is given to an employee who is to retire within the period of his punishment, obviously it will affect his pension. In any case, the charge levelled against the applicant involves disputed question of facts. The applicant has stoutly refuted all the allegations made against him and put forward certain reasons for occurrence of the incidents attributed to him. The Disciplinary Authority has not dealt with those reasons in a proper manner. The conclusion arrived at by the Disciplinary Authority is not based on any evidence but on assumptions and surmises. In such circumstances, the Disciplinary Authority ought to have held an inquiry as envisaged under Sub-Rule 6 to 25 of Rule 9 of the Raiway Servants (Discipline & Appeal) Rules, 1968. Rule 11(i)(b) even provides for "holding an inquiry in the manner laid down in Sub-Rules (6) to (25) of Rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary". A perusal of the Annexure.A3 Appeal of the applicant dated 27.12.2002 and the Annexure.A2 Appellate Order dated 9.7.2003 would show that the Appellate Authority has disposed of the Appeal in a cursory manner. The Appellate Authority has not applied its mind as required under Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968. It has not discussed about any of the grounds raised in the appeal oblivious of the fact that its orders are subject to judicial scrutiny. The single para order of the Appellate Authority is as under:

"I have gone through the entire case file as well as the



appeal submitted by the employee. The procedure laid down in the D&A Rules have been followed in this case. The charge against the employee is that he had committed misconduct in that he who had rest cleared on 21.5.2002 at 05.30 hrs was not found when call was served to work at 05.30 hrs and he joined duty at 08.45 hrs but signed at 08.00 hrs. The non-joining of duty in time of Sri Vasudevan resulted in detention to train. I find that the DA's findings are warranted by the evidence on record. The explanation given by the employee is not justified. I confirm the penalty imposed on the employee."

As the Annexure.A2 Appellate Order is vitiated by the aforesaid infirmities, we have no doubt in our mind that it is liable to be set aside. We, therefore, hold that both the impugned Annexures.A1 and A2 orders had been issued in violation of the principles of natural justice and the statutory rules.

8 While considering a similar case the Hon'ble High Court of Kerala in its judgment in **Kunhikannan Nambiar Vs. Government of Kerala, 2002(3) ATJ 354** ordered that in such circumstances a formal inquiry must be held and principles of natural justice must be followed even at the time of imposition of minor penalty even if Rule does not provide such an inquiry.

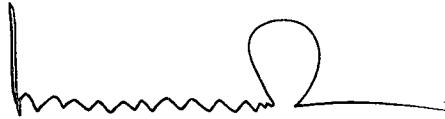
9 We, therefore, quash and set aside the Annexure A-1 and A-2 orders and remit the matter to the disciplinary authority and direct it to institute a proper inquiry as envisaged under Rule 9 of the Railway Servants (Discipline & Appeal) Rules 1968 and conclude the same as expeditiously as possible. The applicant shall fully cooperate in the inquiry to be so held. With the above directions, this OA is disposed of with no orders as to costs.

MA Dy.No.4662/06 in OA 160/04: After the OA has been reserved for orders after hearing the counsel for respondents and going through the pleadings of both parties in the absence of the counsel for the applicant

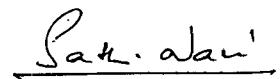
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under Rule 15 of the CAT (Procedure) Rules, 1987, the counsel for applicant has moved the present MA for re-hearing of the OA on the ground that he was not well and held up at his home town. On earlier occasions also the applicant's counsel was not present when the case was listed for hearing/final disposal. In the above facts and circumstances, the present Miscellaneous Application is not maintainable and hence dismissed.

Dated this the 19th day of September, 2006



GEORGE PARACKEN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

ks/abp