

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 16 of 2010

Thursday, this the 18th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

P. Pradeep, aged 36 years, S/o. M. Radhakrishna Menon,
 Assistant Loco Pilot, Southern Railway/Quilon,
 Residing at : TC 7/1689, Palayil House, Pangode,
 Thirumala P.O., Trivandrum District. **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Headquarters Office,
 Park Town P.O., Chennai-3.
2. The Sr. Divisional Electrical Engineer/Operations,
 Southern Railway, Trivandrum Division,
 Trivandrum-14.
3. The Divisional Railway Manager,
 Southern Railway, Trivandrum Division,
 Trivandrum. **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 18.8.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant who is a Assistant Loco Pilot of the Southern Railway, Trivandrum Division is aggrieved by the penalty order Annexure A-1 withholding his annual increment from Rs. 3,875/- to Rs. 3,950/- in the



scale of Rs. 3050-4590/- normally due on 1.11.2009 for a period of three years and also by the appellate order Annexure A-2 confirming the said penalty.

2. The applicant was earlier issued a memo of charges Annexure A-3 alleging that he has committed serious misconduct of having refused to work in the train 355 Passenger on 26.7.2008 from Ernakulam after the rest and also committed misconduct by returning to headquarters without proper authority from control office in 2075 express. The above said act has caused serious difficulty for the control office working and caused extensive loss of revenue to the national exchequer. Thus, he has violated GR 4.32(i) and Rule No. 3 (i), (ii) & (iii) of Railway Services Conduct Rules, 1966. The applicant denied the charges by submitting Annexure A-4 reply. But not being satisfied with the same, the disciplinary authority proceeded to impose the punishment as per Annexure A-1 to which reference is already made. Annexure A-3 is the memo of appeal submitted by the applicant to the appellate authority. That was also however, rejected by the appellate authority.

3. According to the applicant the Annexures A-1 and A-2 are issued without proper application of the mind and contrary to the rules and are also violative of the principles of natural justice. The charges are too vague and non-speaking and that proper defence could not be taken up. In the course of the arguments it was further submitted that going by the reply the sum and substance of the charge was based on Annexure R-1 note which did not



form part of the charge sheet and as such applicant had no opportunity to offer his reply to Annexure R-1 forming the basis of the charge issued. According to him in the light of the dispute on fact by virtue of his denial in the explanation, the authority should have proceeded to hold an inquiry in accordance with rules. In so far as such inquiry was not held, it violates sub rule (i) to (iv) of Rule 6 of the RS (D&A) Rules, 1968. Accordingly it is prayed to quash Annexures A-1 and A-2 and to pass appropriate orders granting him all consequential benefits.

4. In the reply statement filed by the respondents it is submitted that the applicant was a Loco Pilot at Kollam in the Trivandrum Division and belonging to the running cadre of the Southern Railway. The Railway servant is bound by the terms of employment and under Section 175 of the Railway Act, 1989 to obey the subsidiary rules, special instructions, general rules and departmental rules in force in the railway upon which he is employed. He is also governed by the Railway Services Conduct Rules, 1966 and Railway Servants (Discipline & Appeal) Rules, 1968. Annexures A-1 and A-2 are penalty advice and appellate order issued fully complying with the principles of natural justice. It is also stated that the Annexure A-3 charge memo was issued based on the report of the Chief Power Controller, Trivandrum, a copy of which is produced as Annexure R-1. They further rely on the said report Annexure R-1 to state that applicant arrived at Ernakulam Junction working in train 352 Passenger from his signing on duty at 3.35 hrs. and signed off at 9.35 Hrs. on 26.7.2008 as the train was running late. The scheduled arrival being 8.45 hrs. As per link he was

expected to work 337/323 passenger trains from Ernakulam commencing duty at 15.00 hrs. But as the applicant informed the controller that he is not willing to pick up his link train as he is not clearing six hours rest by 15.00 hrs. he was advised to work 355 passenger after clearing his rest, which is leaving Ernakulam at 18.00 hrs. and call served accordingly. But without accepting the call for working the 355 passenger, and without any authority to leave the station, applicant left Ernakulam by train No. 2075 Express. This is a misconduct on the part of the applicant which led to issuing of Annexure A-3 memo. However, they have admitted the fact that GR 4.32 (i) referred to in the charge is irrelevant but the applicant has violated Rule 3(1)(ii) & (iii) of the Railway Services Conduct Rules, 1966 which is relevant in this case. That disobeying the Controller's instructions and leaving the station without proper authority tantamount to lack of devotion to duty and unbecoming of a Railway servant. Thus, violated the Conduct Rules. In the penalty advice the relevant rule which was violated by him has been rightly shown as Rule 3(1)(ii) & (iii) of the Railway Service Conduct Rules, 1966. The penalty imposed was only for the relevant portion of charges and it comes under minor penalties under Rule 6(iv) of Part III of RS (D&A) Rules, 1968. They also supported the appellate order having been passed strictly in accordance with law. According to them the charges are very clearly stated and simple to be understood and in the factual situation for imposing a minor penalty no inquiry as such is required to be held and the very conducting of the inquiry is a discretion on the authority concerned.



5. We have heard the learned counsel for the applicant and the learned counsel for the respondents and perused the materials available on record as also the pleadings in the case.

6. Admittedly what is imposed is only a minor penalty and in the factual situation we do not think that it is a fit case where the absence of an inquiry has vitiated the proceedings and action taken is in violation of any rule as such. However, there is substance in the contention raised by the applicant that the charge memo issued is vague. Even going by the reply statement filed in the case it is admitted fact that reference to GR4.32 (i) is totally irrelevant. Rule 4.32 of the GR deals with examination of train by driver. It provides as to what are the things a driver has to do before commencing of the journey, which on the material allegation has no relevance. We point out to show that even at the time of issuing the charge memo sufficient care is not taken and when on technicality a misconduct committed by an employee is likely to be set aside and he escapes from the clutches of law, even though as a matter of fact he might have committed any misconduct. Be that it may Rule 3(1)(ii) & (iii) are Conduct Rules and if there was any refusal on the part of the applicant in not obeying the instructions given to him, certainly the order imposing the penalty could not have been said to be either harsher or in violation of any of the provisions contained in rule as the case may be. But the fact remains that a case was developed at two stages one at the appellate stage and next by filing a reply. If what was contained in the appellate order was stated in the charge sheet there would not have been an occasion for the applicant to raise the contention that the



charges are vague. Quite so when the basis of the charge sheet is a report Annexure R-1 produced along with the reply statement, the same should have been included in the charge sheet itself and a copy ought to have been given to him so that the further proceedings could not have been vitiated. That is not done in this matter. Going by the appellate order and reply statement read along with Annexure R1 the sum and substance of the charge is that the train driven by him reached Ernakulam South Station very late. Therefore, he could not have proceeded by the next train. But when he was asked to attend duty after his rest hours in another train going back to Quilon he without informing the authorities proceeded to travel in an express train. But the misconduct as understood by the authorities as per Annexure R-1 finds no place in the charge sheet. Thus, we find that the charge is vague and there is violation of the principles of natural justice in this regard. It is true that the applicant while giving the explanation merely contended that the charge is irrelevant, immaterial and unfounded but never stated that the charges are vague. But weakness on the part of the applicant by itself will not clothe the authorities to impose the punishment since the burden of proving the charges levelled against the applicant which are serious in nature warranting punishment lies on the person who issues the charge sheet. It is only when charge sheet is issued in clear terms and if the explanation is vague in any regard, advantages there from could have been taken.

7. In the circumstances, we find that both Annexures A-1 and A-2 are vitiated. Annexure A-1 for the reason that it is vague no where it is stated

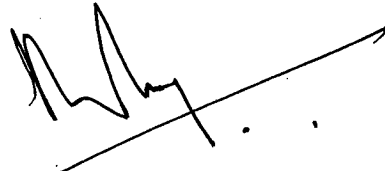


that as to who asked the applicant to work on the train from Ernakulam to Quilon. If Annexure R-1 was the basis on which charge sheet was issued Annexure R1 ought to have been mentioned in the charge memo and a copy thereof could have also been given to the applicant. The appellate authority's order is also bad as the appellate authority modified the charge sheet, which he cannot do. If he finds that the charges itself were vague he could have very well remitted the case back to the disciplinary authority after giving appropriate reasons.

8. For the reasons as stated above, we set aside Annexures A-1 and A-2 leaving open the right of the respondents to proceed afresh if they are so advised. In case no such proceedings are initiated within three months from the date of receipt of a copy of this order, all the benefits stands restored to the applicant. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

"SA"