

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. 175/96 & O.A. 1227/96

THURSDAY, THIS THE 12TH DAY OF MARCH, 1998.

C O R A M:

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

K.N.A. Namboothiri S/o Neelakandan Namboothiri  
Retired Divisional Engineer (Construction)  
South Eastern Railway,  
Raya Guda, Orissa  
residing at Keeranthatta Illom  
Kumaranallore P.O.  
Kottayam.

..Applicant in both the cases

By Advocate Mr. M.R. Rajendran Nair

VS.

1. Union of India through the Secretary,  
Ministry of Railways, Railway Board,  
New Delhi.

2. The Railway Board through the Chairman,  
Railway Board,  
New Delhi.

3. The Deputy Secretary (E) II,  
Railway Board,  
New Delhi.

4. The General Manager,  
South Eastern Railways,  
Garden Reach,  
Calcutta.

5. The Chief Engineer (Construction)  
South Eastern Railway,  
Visakapatnam. Respondents in both the O.As.

By Advocate Smt. Sumathi Dandapani

The application having been heard on 10.2.98, the  
Tribunal on 12.3.1998 delivered the following:

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

These two O.As have been clubbed together for the  
purpose of common hearing and final disposal. Both these  
OAs involve the same parties and basically seek the same  
reliefs. O.A. 175/95 was filed at a stage when the

disciplinary proceedings against the applicant had still not culminated in awarding a penalty to the applicant. Naturally, no relief was sought against any such order. However, when O.A. 1227/96 was filed, the disciplinary proceedings had been completed and on behalf of the first respondent the penalty of a 25% cut in the pension for the applicant for a period of five years was imposed. That order imposing the penalty dated 30.4.95/30.5.95 at A18 in O.A. 1227/96 has been impugned. Except for this difference caused by the issue of the final order imposing penalty on the applicant on the culmination of the disciplinary proceedings, two OAs are practically identical in the crucial respects of the facts of the case and the nature of reliefs sought.

2. The applicant, who is the same person in both these cases, joined service under the Indian Railways as an Apprentice Assistant Inspector of Works on 15.12.56. He retired from service on 31.3.92 while working as the Divisional Engineer (DEN for short) at Rayagowda in Orissa under the South Eastern Railways.

3. The case of the applicant is that it was only after he retired on superannuation that he received the letter No.E/30/D&A/KNAN/12 dated 3.4.92 at A1 addressed by the 5th respondent (Chief Engineer (Construction), South Eastern Railway, Visakapatnam) conveying the order of his suspension passed by the Railway Board, the 2nd respondent. A1 enclosed a copy of the letter dated 31.3.92 (A1(a)) from the office of the 4th respondent (General Manager, South Eastern Railways, Garden Reach, Calcutta) with which in turn was sent the order dated 30.3.92 placing the applicant under suspension issued on behalf of the 2nd respondent in exercise of the powers conferred by Rule 4 of Railway Services (Discipline & Appeal) Rules, 1968. This order passed by the Railway

Board is seen at A2.

4. The applicant feels aggrieved that in the face of this fact, namely that the order of his suspension passed by the competent authority was officially communicated to him well after he had retired on superannuation as the DEN, Rayagowda in the South Eastern Railways, the second respondent nevertheless went ahead with a regular departmental enquiry against him subsequently without obtaining the prior approval of the President of India as required under the Rules.

5. Earlier the applicant approached this Bench in O.A. 965/93 after he had received the memorandum of charges dated 22.2.93 along with a statement of imputations, list of documents and witnesses. His grievance in that O.A. was essentially that though he had requested the respondents to withdraw the disciplinary proceedings against him and to disburse the pensionary benefits as due to him, no such action had been taken by the 2nd respondent as the competent authority. He prayed therefor the relief of quashing the disciplinary proceedings and disbursement of pensionary benefits to him. The main ground on which the relief prayed for was based was the failure on the part of the 2nd respondent to obtain the prior approval of the President of India for initiating the departmental proceedings against him which, according to him, were initiated only after his retirement on superannuation. This Bench disposed of that O.A. directing the 4th respondent to issue a reply to the applicant indicating whether or not the approval of the President had been obtained for initiating disciplinary proceedings. On behalf of the 4th respondent, i.e., the General Manager, a reply was sent by the Dy. Chief Personnel Officer dated 30.7.93 to the applicant to the effect that since the applicant had been placed under

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suspension on 30.3.92 as per the Railway Board order dated 30.3.92 while he was still in service, and since the departmental proceedings are deemed to have been initiated from the date of such suspension in terms of Rule 2308 of Indian Railway Establishment Code, there was no need for the 2nd respondent (the Railway Board) to obtain the prior approval of the President. It was also clarified in the same communication that the departmental proceedings having thus been initiated could continue under the rules even after the applicant had retired.

6. The applicant felt aggrieved by that reply from the 4th respondent and approached this Tribunal once again in O.A. 1709/93 impugning that reply and praying for quashing of the memorandum of charges framed against him as well as for a direction to the official respondents to disburse the pensionary benefits to him. The Tribunal disposed of that O.A. directing the official respondents to conduct the disciplinary proceedings and complete the same within a particular time limit. That time limit was, however, extended subsequently. It was significantly observed by the Tribunal in its order in that O.A. that the applicant was free to raise the question of validity of his suspension as a preliminary issue in the departmental enquiry. The applicant accordingly pointed out in his objections submitted to the 3rd respondent i.e. the Dy. Secretary (E.II), Railway Board, New Delhi that the order of his suspension was despatched to him by Registered post only on 3.4.92 and that the applicant had been treated by the official respondents as on duty on 30.3.92 and 31.3.92. It was only on the afternoon of 31.3.92 that he retired on superannuation and he was paid salary and allowances accordingly right upto 31.3.92. The 3rd respondent, however, gave him a reply dated 31.8.94

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reiterating that Presidential sanction was not required in his case as the proceedings were deemed to have been initiated on 30.3.92 when he was placed under suspension.

7. Further, the applicant has challenged the conduct of the enquiry proceedings and its conclusion beyond the time limit granted by this Bench and has argued that since even the extended time limit expired before the disciplinary proceedings were concluded, the said disciplinary proceedings ~~were~~ invalid. He has also questioned the reasons for delay in the sanctioning of the pensionary benefits on the ground that such delay on account of illegal disciplinary proceedings initiated by the official respondents ~~is~~ unjust and unfair.

8. In O.A.1227/96 the applicant has specifically challenged the findings of the enquiry officer as contained in the report of the enquiry at A16 on the ground that the enquiry officer had no evidence before him to corroborate his findings that to a particular extent the first charge is proved and further that the 2nd and the 3rd charges are proved against the applicant.

9. He has similarly impugned in the same O.A. 1227/96 the order of the 2nd respondent at A18 imposing the penalty of a 25% cut in his pension which, according to him, is too harsh and is disproportionate to the nature of the charges proved against him. He has also alleged that when the enquiry was conducted he had been denied adequate and reasonable opportunity to defend his case and further that the charges against him were not only vague but also that the charges against him found proved by the enquiry officer do not amount to any misconduct on his part.

10. He has finally sought the following reliefs in these OAs Nos 175/96 and 1227/96:

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O.A. 175/96

i) Declare that the entire disciplinary proceedings against the applicant are null and void and direct the respondents not to proceed with the disciplinary action against the applicant any further...Declare that applicant is entitled to disbursement of gratuity, commuted value of pension and leave encashment due to him along with interest at the rate of 18% per annum with effect from 1.4.92 and direct the respondents to disburse the same to the applicant forthwith along with interest at the rate of 18% with effect from 1.4.92....

O.A. 1227/96

i) To quash Annexure A18.

ii) To declare that the disciplinary proceedings conducted against the applicant were illegal and to direct the respondents to grant him full pension and to draw and disburse gratuity commuted value of pension and leave encashment due to him along with interest at the rate of 18% per annum with effect from 1.4.92....."

11. On behalf of the respondent Department i.e. the Ministry of Railways, the reliefs sought by the applicant have been strongly resisted. It has been contended on behalf of the respondents by their learned counsel that the order of suspension was passed and issued by the Ministry of Railways i.e. the Railway Board on 30.3.92 i.e. one day previous to the day on which the applicant retired on superannuation. Even though that order of suspension seen at A2 could not actually be served on the applicant before he left his office on the afternoon of 31.3.92, that order of suspension had already been placed under the process of intimation by despatching the same through the General Manager, South Eastern Railway, i.e., the 4th respondent and then through the Chief Engineer, Construction, South Eastern Railway, Visakhapatnam, i.e. the 5th respondent. According to the respondents, the suspension order under these circumstances should be considered as having become effective, if not on 30.3.92 itself at least on the afternoon of 31.3.92 and thus prior to the time the applicant actually retired on superannuation. The learned counsel for the respondents



has therefore argued that with the initiation of the departmental proceedings in the shape of the suspension order having been issued earlier to the retirement of the applicant, no prior or separate approval of the President of India was necessary for the continuation of those Departmental proceedings against the applicant. Regarding the conduct of the Departmental proceedings and the findings of the Enquiry Officer, it has been argued on behalf of the respondents that the principles of natural justice including personal hearing of the applicant were duly followed and that the nature of evidence relied upon by the Enquiry Officer was adequate and further that in any case the Tribunal cannot take up the task of re-examining the exact nature of that evidence as a part of the judicial review. She has also strenuously argued that the impugned order imposing the penalty of a 25% cut in pension for 5 years on the applicant in the light of the findings of the Enquiry Officer is fully justified and further that the Tribunal could not substitute its judgment and decisions regarding such matters, for the valid decisions taken thereon by the competent Departmental authority, in the process of judicial review.

12. Having carefully gone through the pleadings and the materials placed before us and having heard the learned counsel on either side, we are of the considered view that to start with the order of suspension had actually been issued by the second respondent, who is the competent authority in this matter, on 30.3.92. This is clearly borne out by the documents at page 3 and page 4 of the file No. DCPO (G)/Con/KNAN/92/679. This file was produced by the learned counsel for the respondents at the hearing of the concerned M.A. on 6.3.1998 in this case. The applicant has not opposed the production of this file. Page 3 of this file <sup>that</sup> clearly indicates/the decision taken

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by the 2nd respondent to suspend the applicant was taken on 30.3.92 and was received in the office of the 4th respondent at ~~the~~<sup>latest</sup> by 31.3.92. Page 4 of the same file indicates that the order of suspension was then communicated by the 4th respondent to the 5th respondent through a letter dated 31.3.92 for being served on the applicant. Even though the said suspension order could not be served on the applicant till the afternoon of 31.3.92, when he handed over the charge and proceeded on retirement, the incontrovertible fact remains that the order of suspension had already left the hand of the competent authority i.e. the Railway Board, New Delhi on 30.3.92 and it was in the process of communication. We agree with the learned counsel for the official respondents that the suspension order having been despatched officially from the office of the competent authority, the 2nd respondent, had become irretrievable and the communication had taken on the attribute of inexorableness. Further, the applicant has not denied that he was not in the office till 5.30 p.m. when a normal working day ends, on the day of his retirement. He has averred that on the afternoon of 31.3.92 he relinquished the charge of the post of the Divisional Engineer, at Rayagowda under the Southern Railway. He has not rebutted the assertions made on behalf of the official respondents that on the late afternoon of 31.3.92 when a suspension order though then signed not by the 2nd respondent, was sought to be served on the applicant, he was not found in his office and that therefore at 5.45 P.M. on that day the said order was finally pasted on the door of his office. We are of the opinion that even without a formal communication, it is most probable that in this situation the applicant had acquired some knowledge of his suspension before he actually retired on superannuation on

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31.3.92. We therefore hold that irrespective of the fact that the regular suspension order when sent by regular post dated 3.4.1992 (page 8 of the same file referred to above) reached the applicant a few days after his retirement when he had already come down to Kerala, the suspension and thus the initiation of departmental proceedings against the applicant should be considered as having commenced on 30.3.92 in the circumstances of the case. We also hold that in this view of the matter, no separate approval of the President of India was necessary for the respondents before initiating or continuing the said departmental proceedings against the applicant. In our opinion, it is extremely likely that the applicant had come to know of the order suspending him and therefore he had left the place where he was working i.e., Rayagowda immediately after the afternoon of 31.3.92. The averments made by the respondents that at 5.45 p.m. on 31.3.92, a copy of the order, though signed not by the second respondent but by the 5th respondent, was pasted on the door of his office room in the presence of witnesses, which has not been rebutted by the applicant, becomes relevant in this context.

13. We now take up for a detailed consideration the other principal allegations made by the applicant against the conduct of the Departmental Enquiry and the findings recorded by the Enquiry Officer which formed the very basis of the impugned order imposing the penalty of a cut of 25% in the pension of the applicant for five years. At the threshold we must observe that the time-limit prescribed by this Bench with extension must be considered as directory and not mandatory. Just because that time-limit was exceeded when the Departmental Enquiry was still to be concluded, does not make that enquiry invalid or non-existent. As regards the conduct of the enquiry and the



findings recorded by the Enquiry Officer, to begin with we find that the charges against the applicant were as follows:

Article I

That Shri KNA Namboodiri while functioning as DEN(C)/Tamluk Digha during the period January 1987 to January, 1990 committed grave misconduct and misbehaviour in as much as he in connivance with the contractor M/s Easter Engineering Construction Co., Calcutta extended undue pecuniary favour to the contractor by way of making overpayment to the tune of Rs. 1,95,400/- (net) and thereby caused huge loss to Railway.

Article II

That the said Shri KNA Namboodiri Ex. DEN(C)/Tamluk-Digha during the said period also committed misconduct and misbehaviour by way of not ensuring obtaining of contractor's signature on the primary records which was required to be obtained as per standard procedures.

Article III

Shri KNA Namboodiri passed CC 4 and on account bill without technical check unlike other running bills.  
By the above acts of omission and commission Shri KNA Namboodiri ExDEN (C)/Tamluk Dicha exhibited utter lack of integrity and devotion to duty and acted in a manner which is unbecoming of a Railway servant contravening Rule 3(1), (i) (ii) and (iii) of Railway Service Conduct Rules, 1966."

(Emphasis ours)

14. Undoubtedly the first charge is of a very serious nature and if held proved on adequate evidence would have warranted the penalty imposed on the applicant (described as C.O.) under the impugned order. The same assertion, however, cannot be made in respect of the 2nd and 3rd charges where no mala fide or moral turpitude has been implied.

15. The most crucial documents the entries in which could provide sufficient evidence in respect of these charges was the level books Ex S.3 and Ex. S.4. The issue of these books was required to be recorded in Ex. D5.

16. On these documents the following is what the Enquiry Officer has to observe:

CO(the charged officer, i.e. the applicant added by us) has contended that initial level books and resultant cross section sheets are not genuine as per

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evidence from Ex. D.5. Although there is a discrepancy in the date of issue of Ex. S.3 and Ex. S.4 and entries in these level books, it is pertinent that the register Ex. D.5 has not been maintained properly and even the level books used in departmental check and vigilance check have not been indicated in Ex. D.5. The A.E.N. is primarily responsible for the entries in the level books and the plotting in the cross section sheets (a separate inquiry is being conducted in respect of AEN).

(emphasis supplied)

17. While recording his finding in respect of the first charge, the Enquiry Officer analyses the evidence and concludes as follows:

"The AEN and IOW have not been produced as prosecution witnesses, but CO has also not asked for these officials as defence witnesses. SW 3 has declined to comment when asked whether the level book Ex S.3 is original or duplicate. Perusal of Ex. S.25 answer to Q.No. 4,9,10,15 and 21 would indicate that the CO was responsible for ensuring the correctness of the amount passed for payment with respect to quantum of work executed. CO has modified some of the answers in EX. S.26). However, prosecution has not produced any evidence to prove that CO had connived with the contractor in passing the bill. Hence, the charge is proved to the extent that CO did not ensure correctness of the quantum of work executed by contractor while passing bills."

(highlighted by us)

18. It is evident from the above extracts from the findings of the enquiry officer on the first charge that the finding that the applicant did not ensure the correctness of the quantum of work is completely unrelated to the said charge which was that he in connivance with the contractor extended undue pecuniary favour to the contractor by way of making overpayment to the tune of Rs. 1,95,000/- (net) and thereby caused huge loss to the Railway, as we have quoted verbatim above. It is, moreover, quite evident that even that distinct finding is based on materials which the Enquiry Officer himself describes as not dependable. We are therefore unable to agree with the learned counsel for the respondents that this finding is based on any credible evidence, let alone on adequate evidence. In our considered view, this finding is not only totally unrelated to the first charge, but is also not based on any evidence.

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19. As regards the second charge, the relevant part of the finding is reproduced below:

From the above it is seen that the signature of the contractor is not available in the initial level books and the cross section sheets. CO's contention is that the initial level books taken on record are not the original ones and by implication the cross section sheets are also not the original. He has based this on the entries in the register Ex. D.5 which indicate that some of the level books have been issued on a date later than the entries made/signature of the official in the level books. However, PO has pointed out that the register has not been maintained properly and even the entries for the level books used for departmental and vigilance check are missing in the register. The cross section sheets tally with the level books. The primary responsibility for these documents in the field rest with AEN(separate inquiry is being conducted in respect of AEN). Thereafter, the initial level books and cross section sheets are to be kept in safe custody of DEN's office (answer to question No.16 of Ex. S.25). In answer to question No. 6 of EX. S.25 CO has stated that work was commenced only after contractor's signature along with AEN was taken in the initial level books and cross section sheets. CO has not asked for AEN as defence witness. SW 3 has declined to comment when asked whether the initial level book Ex. S.3 is original or duplicate. There is no other evidence to prove that the cross section sheets are not the original. In view of the above, this charge is held as proved.

(highlighted by us)

20. We find it difficult to appreciate how when the Enquiry Officer has himself observed that the primary responsibility for these documents rests with the AEN, he can at the same breath hold that the applicant was guilty of the charge of not obtaining the contractor's signature in these primary records, particularly when in his report he has not discussed specifically whether or not such a duty was cast on the applicant as DEN.

21. Similarly, the enquiry officer has held that the third charge against the applicant for having passed CC4 and other 'on account' bills without technical checks, unlike other running bills, is proved. The relevant part of his finding on this charge is quoted below:

He (the Prosecution Witness-added by us) has stated that he has got the technical check done in CC-6 on

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DEN's instructions and that technical check in CC-4 may not have been done in the absence of instructions from CO. The departmental check and vigilance check have arrived at quantities of work executed which is less than the amount paid for in CC-4 (Ex.S-20 and EX. S.24) although it is difficult to arrive at the precise quantities. Ex. D.6 is dated 16.4.79 and it is evident that CO did not know about this order when the bills were passed in February to December, '89. It is significant that after CC-4, CC-5 and CC-6 bills waere technically checked before being passed for payment (Ex.S.20). In view of the above, this charge is proved.

(underlined by us for emphasis)

22. It is clear from the above extract that the Enquiry Officer had not taken any trouble in ascertaining whether it was incumbent on the part of the applicant then working as DEN personally to have applied technical checks or whether he did specifically and in fact issue instructions for not carrying out the technical check, which was mentioned only as a possibility by a Prosecution Witness (PW1). On the contrary, it would appear from the discussions made by him in the report of enquiry that the actual technical check was supposed to have done by the PW1 whose evidence he has recorded as quoted by us above, while discussing and assessing the nature of evidence in relation to this particular charge.

23. Though it is quite well settled that the Tribunal should not substitute its own and detailed assessment of the evidence before an Enquiry Officer for the assessment made by the Enquiry Officer himself in a departmental proceeding, it is an equally well established doctrine that as part of the judicial review, if the Tribunal for good and adequate reasons finds that the conclusions reached by the Enquiry Officer in a departmental proceeding are virtually without any relevant or material evidence to support them, but are based on inadequate, irrelevant or extraneous materials and consideration thereof, the Tribunal is obliged to intervene in the

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matter in the interest of substantive justice.

24. We have deliberately refrained from discussing the appropriateness of the advice tendered by the Union Public Service Commission (UPSC). In the circumstances of the case the advice tendered by the UPSC has been treated as an internal document relied upon by the respondents. This is particularly so because the said advice of the UPSC was made available to the applicant only with the order indicating the penalty imposed on him. He therefore had no opportunity to discuss the merits or otherwise of the advice tendered by the UPSC and make a representation in respect of that advice.

25. We have examined carefully the findings of the enquiry officer and the nature of evidence adduced before him. We are of the opinion that the enquiry officer had practically no credible evidence to come to the conclusions that the first charge was partly proved and that the second and the third charges were fully proved. We, therefore, hold that the errors committed by him in arriving at these conclusions are apparent on the face of the record and that the findings of the enquiry officer are not tenable. However, we do not find sufficient justification for the allegation made by the applicant that he was not granted reasonable opportunities to defend his case. By and large, we are satisfied that he had been granted a reasonable opportunity to prosecute the matter before the Enquiry Officer.

26. In the light of the detailed discussions made above, we set aside the findings of the Enquiry Officer at Annexure A16 in O.A. No. 1227/96. We also find that the impugned order at Annexure A18 in O.A. 1227/96 imposing the penalty of a 25% cut in the pension of the applicant

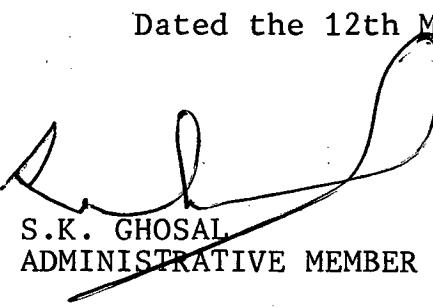
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is based entirely on the findings of the enquiry officer and that it does not deal adequately and appropriately with the grounds urged by the applicant against the findings in the report of the Enquiry Officer at A17. We, therefore, set aside the said order at Annexure A18 in O.A. 1227/96 imposing the penalty.

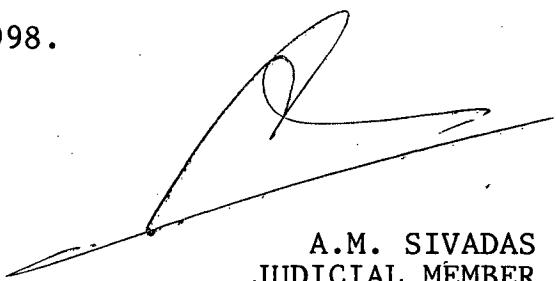
27. In the event, both these Applications are allowed in part and the respondents are directed to grant the applicant the full pensionary benefits as applicable to him, without taking into account the effect of the impugned order at A18/ <sup>aforesaid,</sup> and as per the relevant rules, within a period of three months from the date of the receipt of this order.

There shall be no order as to costs.

Dated the 12th March, 1998.



S.K. GHOSAL  
ADMINISTRATIVE MEMBER



A.M. SIVADAS  
JUDICIAL MEMBER

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