

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No.  
~~XXXX XXXX~~

189

1990

DATE OF DECISION 5.6.1991

V.M.Sajeey Roy \_\_\_\_\_ Applicant (s)

Mr.P.Sivan Pillai \_\_\_\_\_ Advocate for the Applicant (s)

Versus

UOI rep. by the General Manager Respondent (s)  
S.Railway, Madras & 2 others

Smt.Sumathi Dandapani \_\_\_\_\_ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant, V.M. Sajeey Roy, Diesel Assistant, Southern Railway, Ernakulam has challenged the validity, propriety and correctness of the order dated 12.12.1988 at Annexure-A4 of the third respondent, imposing on him a punishment of withholding of increment for six months and the appellate order dated 24.4.1989 at Annexure-A6, rejecting the appeal and confirming the punishment.

2. The applicant is a Diesel Assistant belonging to the cadre of running staff. On 3.8.1988 at 5.50 AM.

while he was sleeping in the Railway Rest Room after work, he was given a call to proceed to Karunagappalli Station by No.30 Malabar Express from Kottayam. As the applicant was sleeping, after attending to the <sup>call of</sup> nature, ~~call~~ and other routine in the morning, he reported for duty only at 6.30 AM. As the train had already left, he reported the matter and sought advice as to how to proceed further by Annexure-A1 letter. Anyway, he was sent to Karunagappalli Station by No.19 Madras Mail at 7.40 hrs. On 17.10.1988 the applicant was served with a memorandum of charge for minor penalty at Annexure-A2.

The charge reads as follows:

" Sri.V.M.Sanjeev Roy, Dsl. Asstt/Erm, who was served with a call at 5.50 Hrs at Ktym to proceed as passenger by 30 Exp. on 3.8.88 to KPY to work KED goods, failed to proceed and raise up to the occasion as ordered and could have at least proceeded as passenger by 351 pass which left KTYM at 6.20 Hrs on that day since the station and the Rg-room is within 5 metres and instead refused the orders in writing that he requires preparation time and left only as pass by 19 mail which left KTYM at 7.40 Hrs, which resulted in the dislocation to train services. Thus he has violated GRS 2.06 and articles 3(i) (ii) (iii) of Railway service conduct rules 1966".

To this memorandum of charges, the applicant submitted an explanation, Annexure-A3 wherein he denied charge and stated that he had reported for duty at the earliest possible, taking the minimum required time to complete his morning routine. The Disciplinary Authority, the third respondent considering the explanation issued the

Annexure-A4 order holding the applicant guilty of the misconduct mentioned in the charge and imposing on him a penalty of withholding of increment. Though the applicant filed an appeal against this penalty order on the ground that he had not committed any misconduct, <sup>and</sup> that though he is entitled to two hours notice to report for duty, he had reported for duty at 6.30 hrs in response to the call at 5.30 hrs <sup>after</sup> attending <sup>to</sup> his morning routine, <sup>as</sup> possible within the minimum time <sup>and</sup> praying that he may be exonerated. It was also mentioned in the appeal memorandum at Annexure-A5 that the order of the Disciplinary Authority is a non-speaking one. This appeal was rejected by Annexure-A6 order. It is in this background that the applicant has filed this application challenging these two orders. The applicant has averred that the impugned order at Annexure-A4 is a non-speaking order, that the same is violative of <sup>the</sup> principles of natural justice, and that it is therefore unsustainable. Regarding the appellate order, it has been contended that, it is illegal as the Appellate Authority has taken into consideration facts which were not mentioned in the memorandum of charges and which were not germane to the issue involved.

3. The respondents have filed a reply statement.

It has been contended that the impugned orders have been passed after considering the explanation and the appeal memorandum, and that the grievance of the applicant that the orders are cryptic has no basis.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced. The essence of the charge against the accused is that he on 3.8.1988 though served with a call at 5.50 hrs. to proceed as passenger by No.30 Express to Karunagappalli to work KRD Goods, failed to proceed and rise upto the occasion and reported only after the passenger 351 which left at 6.20 hours had already left the station and that he has violated GRS 2.06 and articles 3(i) (ii) and (iii) of the Railway Service Conduct Rules, 1966.

In the application the applicant has alleged that at 5.50 hrs. when the call letter was served on him, No.30 Malabar Exp. had already left the station, that he had taken only the minimum time required to attend the call of nature, and had reported for duty at 6.30 hrs. and that therefore, he has not committed any misconduct at all.

In the explanation submitted by him (Annexure-A3), the applicant has stated that within 40 minutes after receiving the call, he had reported for duty, that 40 minutes was the minimum required time to attend the nature's call from the rest room, and that therefore, he has not committed any misconduct. In the impugned order at Annexure-A4, though it is stated that the explanation submitted by the applicant has been considered very carefully it has not been mentioned as to how the explanation was found not satisfactory.

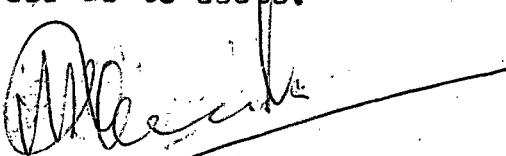
It is a fact beyond dispute that the applicant was taking rest after duty in the rest room in the Kottayam

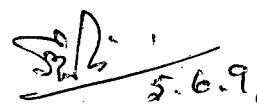
Railway Station when he was called at 5.50 hrs. It is normally difficult for any person to run for duty the moment he receives a call, especially at the early hours in the morning, as he might have to attend to nature's call. If he was informed that his reporting for duty forthwith was very urgent to avoid any danger, then the applicant should have immediately run to the spot where his presence was required. But as the call for duty/ only was an ordinary call to report for duty, the applicant cannot be faulted for taking the minimum time required for going to the lavatory and washing his face, etc. before reporting for duty. In the application it has been stated that in the congested rest room one has to stand in the queue for going to the lavatory. In these circumstances, we find that it is unjust to say that the applicant failed to maintain integrity or devotion to duty because he had taken 40 minutes <sup>time</sup> to attend to <sup>of nature</sup> natural calls before reporting for duty. Further, the averments in the application that the No.30 Malabar Exp. had already left by the time when the call letter was served on the applicant is not controverted in the reply statement filed by the respondents. So, even if the applicant had rushed on receipt of the call letter, without even going to the lavatory, it would not have been possible <sup>for</sup> him to go by No.30 Malabar Exp.. Further it was not stated in the call letter that the applicant should report for duty at least before 6.20 hrs, so that he could go by Train No.351. Therefore, we are of the view

that the impugned punishment order at Annexure-A4 has been issued without application of mind to the circumstances of the case and to the explanation submitted by the applicant to the memorandum of charges. We also find that in the circumstances of the case, it is unjust to hold the applicant guilty of any misconduct. We are also not convinced that the Appellate Authority has considered the appeal in the right perspective. The Appellate Authority has to take~~s~~ into consideration the fact that the applicant was called for duty in the early hours of the day, that he had to attend to the nature's call in the congested rest room before reporting for duty, and that a period of 40 minutes taken by him to prepare himself for duty was only a very reasonable time. The Appellate Authority has observed that the applicant could have reported for duty at least to go by Train No.351 since the driver who worked along with him had gone by that Train. The driver probably could avail the facility of lavatory earlier than the applicant. So the fact that the driver could report for duty a little earlier is not a reason to find that the applicant is guilty. Therefore, the Appellate order is also not justified.

5. In view of what is stated in the foregoing paragraph, we find that the impugned orders at Annexure-A4, and A6 are

liable to be quashed. We, therefore quash these orders and direct the respondents to grant the Annual Increments of the applicant due on 1.5.1991 in the scale of pay of Rs.950-1500 with effect from that date. There is no order as to costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
(S.P. MUKERJI)  
VICE CHAIRMAN

5.6.1991