

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 192/2006

WEDNESDAY THIS THE 3rd DAY OF OCTOBER, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR K.B.S. RAJAN, JUDICIAL MEMBER**

N.V. Saleem J/T1822,
S/o late P.A. Abdulkhader
"Shamzeena" Kayyali Road,
Tellicherry
Traffic Porter, Southern Railway
Cannanore.

..Applicant

By Advocate Mr. P.K. Madhusoodhanan

Vs.

- 1 The Additional Divisional Railway Manager,
Southern Railway
Palghat.
- 2 The Chief Operations Manager,
Headquarters Officer, Personnel Branch
Southern Railway,
Chennai3
- 3 Union of India represented through the
General Manager, Southern Railway
Park Town, Chennai-3

..Respondents.

By Advocate Mr.P. Haridas.

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant herein has alleged that an enquiry has been conducted behind his back without serving a chargesheet and without

affording an opportunity to prove his innocence. He was awarded the penalty of removal from service during his absence and the appeal preferred by him after having come to know of his removal, has been disposed of after a lapse of four years.

2 The facts as submitted by the applicant are as under:- The applicant was working as a Train Clerk and the alleged incident took place when the applicant was on duty on 5.10.1994 to 6.10.1994. During the intervening night he was constrained to use the lavatory attached to the Station Manager's office and had locked the door of the office at that time but and the Station Manager had reported that he was found sleeping while on duty and threatened him with dire consequences. Though he tried to explain the true facts to the Station Manager, he was suspended from service from 12.10.1994 to 9.11.94 and he rejoined duty on 10.11.1994. Thereafter he fell ill due to Asthma and had to undergo continuous treatment for mental illness. On recovery from the illness the applicant reported for duty along with fitness certificate before the Station Manager, Cannanore in July, 2000 and was asked to report to the Senior DPO, Palghat who informed him that he had been removed from service by the first respondent. Though the applicant sought the copies of the chargesheet and other proceedings and the penalty awarded he was not furnished with any documents. Though he preferred appeal on 11.8.2000 to the second respondent pointing out these facts nothing was heard from him for sometime despite reminders; the applicant

was finally served with Annexure A-2 appellate order modifying the punishment of removal proposed by the Disciplinary authority to that of reduction to lower stage for a period of three years with effect of postponing future increments. The period between 25.6.97 and the date of resumption of duty by the applicant has been treated as non-duty. Accordingly the applicant had to rejoin duty as a Traffic Porter on a lower scale on 19.5.2005 and therefore he has been representing before the Sr. Divisional Operations Manager, Palakkad for copies of the earlier orders purported to have been issued and also followed up by Lawyer's notice dated 14.2.2006. So far the documents having s not been furnished to him, he has been constrained to approach this Tribunal based on the available documents.

3 The following reliefs are sought:-

(i) Call for the entire records of the case leading to penalty advice dated 20.6.1997 of the first respondent and Annexure A-2 order passed by the second respondent and set aside the same.

(ii) Issue necessary directions to the respondents to reinstate the applicant in service as Train Clerk untrammelled by the penalty advice and appellate order, and grant and disburse to him all service benefits arising therefrom to him within a time limit to be fixed by this Hon'ble Tribunal.

(iii) Declare that the entire disciplinary proceedings since the very initiation of disciplinary proceedings is bad in law.

(iv) Costs of the proceedings.

(v) Grant such other and further reliefs as this Hon'ble Tribunal deem fit and proper in the interest of justice.

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4 The applicant has taken the following grounds for consideration of his prayer:-

- (i) The entire disciplinary proceedings are vitiated by procedural irregularity and it is void ab initio and against the principles of natural justice.
- (ii) The appellate order is not a reasoned order as it does not indicate that any of the points raised by him regarding the non-observance of procedure laid down in the CCS(CCA) Rules have been considered by the Appellate Authority.

5 Reply statement and rejoinder have been filed. The respondents have submitted that ample opportunities have been granted to the employee as per the Railway Servants (Disciplinary and Appeal) Rules, 1968 and the Disciplinary authority after considering all relevant facts has imposed the punishment. During the enquiry it has come out that the Station Manager on inspection has found the Station Managers room locked and the applicant sleeping inside the room. The attitude of the applicant while on duty was one totally lacking in discipline. They have further submitted that the applicant was on medical leave from 17.11.1994 to 11.1.1995 and absented himself upto July, 2000 for about five years and therefore his case was treated ex- parte and finalised. They have also stated that the mode of service of chargesheet to be followed in ex-part cases has been followed in this case.

6 The applicant has denied the averments of the respondents in his rejoinder. He has again confirmed the position that the chargesheet, enquiry report and penalty advice were not served on him and not even an attempt to serve any of the notices or chargesheet on the applicant was made. He has also denied that he had gone abroad during the relevant period. He stated that the imaginary facts were brought out by the respondents to cover up the illegalities committed by them.

7 We have heard Shri P.K. Madhusoodhanan for the applicant and Ms Deepa for Shri P. Haridas on behalf of the respondents.

8 The learned counsel for the applicant while urging the same grounds as averred in the Original Application relied on the judgment of the Hon'ble Supreme Court in Union of India and Others Vs. Dinanath Shataram Karekar and Others (1987) 7 SCC 569). He drew our attention to paragraphs 3 and 10 of the said judgment wherein the Apex Court held that even when the chargesheet sent by post was received back with the postal endorsement "Not Found" a single attempt was not sufficient and further efforts should have been made for effecting the service and the court had confirmed the orders of the Tribunal setting aside the order by which the applicant therein was removed from service.

9 As the entire issue revolves round the question of the conduct of

the ex parte enquiry and whether the procedural formalities were observed by the respondents, the learned counsel for the respondents was directed to produce the disciplinary file relating to the disciplinary proceedings initiated against the applicant. After a lapse of two months the file bearing No. J/T-195/II/Inspr/SM/CAN of the Operating Branch of the Southern Railway, Palakkad Division has been produced. We have gone through the file. The file does not contain the papers of the original disciplinary proceedings purported to have been initiated by the issue of a charge memorandum against the applicant in 1996. It only contains the correspondence pages 1 to 10 pertaining to the appeal preferred by the applicant and the correspondence between the Appellate authority and the Senior Divisional Operating Manager, Palghat. The Appellate authority on receipt of the appeal has called for the file relating to DAR action against the applicant. Since the file only contained the charge sheet and penalty advice, he directed immediate action to be taken to collect the file from the Enquiry Officer and have the file re-constructed. But no action in this regard appears to have been taken. Copies of penalty advice, the copy of the chargesheet and the SR extract said to have been sent to the Appellate authority are available at pages 1 to 9 of the file now produced. In pages 1 to 5 the chargesheet in the standard form along with the statement of articles of charges is available. It is unsigned. Page 6 is an extract of the SR of the applicant wherein an entry has been made on 20.6.97 that the applicant had been removed from service with effect from the date

the penalty is served on him i.e. 25.6.1997, the date on which the penalty advice was pasted on the Station notice board. Page 9 is a copy of the penalty advice signed by Additional Divisional Railway Manager with an endorsement in hand that it has been pasted in the station notice board on 25.6.97. Apart from the above papers, the file does not contain any information regarding the conduct of the enquiry or in respect of other stages of the enquiry. It is evident though the respondents have not stated so in their reply, that the disciplinary file, if any relating to the applicant is not available in the office. In the light of these facts staring at us from the records produced before us, it is strange that the respondents averred in their reply statement without any hesitation that all reasonable opportunities were afforded to the employee and the disciplinary proceedings were conducted after following all procedures in accordance with the Rule 22 of Railway Discipline and Appeal Rules 1968. The respondents should have come out with the truth that the file was not traceable or furnish the reasons for missing of the file instead of trying to circumvent the whole question by making false statements. We take very serious view of such action by the respondent officer who filed the reply statement. We direct the third respondent to take suitable action against the officials responsible for making such incorrect/misleading statement before this Tribunal.

10 Going to the merits of the prayers, in the absence of the records we have to inevitably come to the conclusion that the entire

disciplinary proceedings stated to have been initiated and concluded ex parte against the applicant leading to his removal from service is vitiated by procedural flaws, ab initio void and against all principles of natural justice. Even though a penalty advice appears to have been available prepared and is available on the file, it shows that no effort was made to serve it on the applicant in his known residential address and it was straightaway pasted on the notice board. The ratio of the Hon'ble Supreme Court judgment referred to above by the learned counsel of the applicant is squarely applicable to the facts of this case, as paras 3 and 10 of the judgment extracted below would show:-

"3 The respondent was an employee of the appellants. His personal file and the entire service record was available in which his home address also had been mentioned. The charge sheet which was sent to the respondent was returned with the postal endorsement "not found". This indicates that the chargesheet was not tendered to him even by the postal authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities and the registered cover was returned to the sender with the endorsement "not found", it cannot be legally treated to have been served. The appellant should have made further efforts to serve the chargesheet on the respondent. A single effort, in the circumstances of the case, cannot be treated as sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex parte even from the stage of the charge sheet which, at no stage, was served upon the respondent.

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10 Where the disciplinary proceedings are intended by issuing a charge sheet, its actual service is essential as the person to whom the charge sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the 'show cause

notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established. It has already been found that neither the charge sheet nor the show cause notice were ever served upon the original respondent Dinanath Shangtaram Karekar. Consequently, the entire proceedings were vitiated."

11 In the above case dealt with by the Hon'ble Supreme Court, at least an effort was made to send the notice/orders by registered post and it was received back. But even this method of service was rejected by the Hon'ble Supreme Court. The Hon'ble Supreme Court also distinguished the legal position regarding the service of chargesheet and service of the termination order. In the instant case, neither the chargesheet nor the enquiry report or the penalty order appears to have been served on the applicant. In the absence of any proof to the contrary, the contention of the applicant regarding the same has to be accepted.

12 As regards the Annexure A-2 appellate order the respondents admitted that the appeal is preferred by the applicant on 11.8.2000 and it has been disposed of on 21.3.2005 after a lapse of five years. The fact that the Appellate authority has modified the punishment of removal to that of reduction to a lower stage does not mitigate the delay in any respect. In any case the Appellate authority condoned the delay in submitting the appeal and therefore it is to be presumed

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that he was satisfied by the explanation given by the applicant as to why he could not submit the appeal in time. The Appellate authority himself directed through an order the disciplinary authority to submit the related file but it was not complied with. The Appellate authority should have taken note of the non-compliance of his directions and remitted the matter for fresh enquiry by giving proper opportunity to the applicant in consonance with the principle of natural justice. That would have been the right course of action for the Appellate authority instead of modifying the penalty from removal to downgrading the applicant to the lower post of Traffic Porter. We are of the considered view that the Appellate authority has also not acted in the facts and circumstances of the case in the interest of natural justice.

13 In view of the above discussions, the penalty of removal from service imposed on the applicant and the Annexure A-2 order passed by the Appellate authority are to be set aside. About 10 years have passed after the alleged incident and considering the nature of the charge, we do not think that any purpose would be served now by remanding the matter to the respondent Department for a fresh enquiry. We therefore declare that the entire proceedings relating to the penalty of removal from service of the applicant is bad in law and set aside the Annexure A-2 order passed by the second respondent. The applicant shall be put back to his original position as Train Clerk as on 20.6.97 as if the penalty advice and the Appellate order are not in existence. However, he shall not be entitled to any back wages for



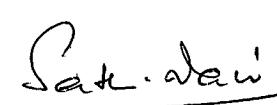
the periods that he has not worked The period from 25.6.1997 and the date of reinstatement shall be regularised as leave due to him and as Extra Ordinary Leave. He shall however, be entitled to other service benefits in accordance with the rules in force.

14 The OA is allowed as above. No costs.

Dated 3.10.2007.



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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