

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 192
T. A. No.

199 0

DATE OF DECISION 22.3.91

K. Sadanandan Applicant (s)

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

Versus

Union of India through the Respondent (s)
General Manager, Souther Railway, Madras-3 and others

Ms. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. N. DHARMADAN, 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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant was a Pointsman I in the Operating Department of the Southern Railway. He was removed from service by the appellate authority with effect from 31.12.1986 as per Annexure A-11 order dated 8.12.1986 after issuing notice for enhancement of penalty and finding that the original penalty imposed by order No. V/C:569/517/84 dated 14.8.85 is inadequate. He filed this application under section 19 of the Administrative Tribunals' Act, 1985 to quash the orders passed in this connection against him and reinstatement in service with all consequential benefits.

2. While working as a Parcel Porter at Quilon, the Station Supdt. suspended the applicant in terms of the

order No. Q/SE dated 15.6.84 on the allegation that he misbehaved with the duty Parcel Clerk. It was revoked by Annexure-A-1 order. But the Assistant Commercial Supdt. issued Annexure-2 memorandum of charges with the allegation " Sri K. Sadanandan, Parcel Porter, Quilon (Staff No. 7085) has reported for duty at 15/15 hours instead of 13 hours on 15.6.84 and refused to do work allotted to him by the tranship Clerk Sri M. Sudalai and used filthy and abusive language towards him in the platform in presence of the public." Considering his explanation Annexure A-3 a minor penalty of withholding of annual increment for a period of 18 months without the effect of postponing future increments in the scale of Rs. 210-270, was imposed by Annexure A-4 dated 14.8.85. The applicant submitted Annexure A-5 appeal before the Appellate authority who issued Annexure A-6 notice proposing a Rule 9 enquiry for enhancing the punishment in respect of the charges noted below:

" That the said Shri K. Sadanandan while working as Parcel Porter QLN has reported for duty at 15.15 hrs. instead of 13.00 hrs on 15.6.84 and refused to do the work allotted to him by the tranship clerk Shri M. Sudalai and used filthy language and abusive language towards him in the platform in presence of the public. He thus violated rule No. 3 (1) (i) and (iii) of Rly Services conduct rules-1966.

Annexure-II

Statement of imputations of misconduct of misbehaviour in support of the Article of charges framed against Shri K. Sadanandan.

Shri K. Sadanandan on 15.6.84 turned up for duty at 15 hrs. instead of 13.00 hrs. He refused to do work allotted to him by the tranship clerk Shri M. Sudalai. Besides he abused Shri Sudalai in filthy language in the platform in the presence of public."

3. After enquiry Annexure A-11 proceedings was passed by the third respondent removing the applicant from service with effect from 31.12.1986. Annexure A-12 enquiry report was not given before the imposition of punishment.

But he filed appeal to the Chief Commercial Supdt. Madras which was directed to be submitted to Divisional Personnel Officer, Trivandrum. Accordingly, he filed Annexure A-13 appeal. It was rejected by order Annexure A-15. His revision petition was also rejected. Annexure A-17 is the order. All these orders are under challenge.

4. The learned counsel for the applicant Shri P. Sivan Pillai raised the following points:

- i) The original order imposing minor punishment itself is void and without jurisdiction because it was issued by Shri C. Appukutta Menon, ACS/TVM, but the applicant was working under the Operating Deptt. So he was not the proper and competent authority under the rules to impose penalty on the applicant. The enhancement of punishment based on such an order is also void.
- ii) The appellate authority in respect of a punishment imposed by an Asstt. Officer is an officer shown in Column 3 or 4 as the case may be, of Schedule II to the Railway Servants (Discipline & Appeal) Rules 1968 and not the Divisional Railway Manager who had issued the impugned notice and order of removal. Hence the entire proceedings are vitiated;
- iii) The copy of the enquiry report was not given to the applicant before the imposition of the punishment of removal from service. Therefore, the punishment order is illegal and unsustainable in the light of the latest decision of the Supreme Court;
- iv) The punishment of removal from service is illegal and it amounts to double punishment on the facts of the case because ~~xxxxxxxxxxxxxxxxxxxxxxxx~~

the order Annexure A-11 does not take into account the punishment of withholding of the increment for 18 months imposed with effect from 14.8.85, which had been fully undergone and suffered by the applicant;

5. All these grounds are urged for the first time before us. Hence the appellate and Revisional authorities could ^{not} go into them and enter their findings on these issues and contentions. Had they been placed for the consideration of the statutory authorities, their findings and conclusions would have been available for a better appreciation of the points made out by the applicant in a proper perspective. However, in the view that we take in this case it is not necessary for us to go into these issues and examine the various decisions cited by both sides.

6. It is admitted by the respondents that Annexure A-12 enquiry report containing the findings of the enquiry officer was given to the applicant only along with the penalty advice Annexure A-11 as indicated therein. This is a legal infirmity which vitiated the disciplinary proceedings. The Supreme Court in Union of India and others Vs. Mohammed Ramzankhan, 1991(1)SLR 159 concluded this issue and held as follows:

" Deletion of the second opportunity from the scheme of Art. 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping

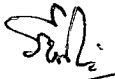
natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position."

7. In the light of the law laid down by the Supreme Court in the above case, we have to appreciate ground No. (iii) stated above and accept the contentions of the learned counsel for the applicant. Accordingly, we allow the application and quash the order of removal of the applicant from service pursuant to the disciplinary proceedings and direct the respondents to reinstate the applicant in service with all consequential benefits. But this will not stand in the way of the respondents either for taking fresh disciplinary proceedings in accordance with law on the very same charges or if ^{they} ~~so~~ decide to continue the same by the disciplinary authority from the stage of the submission of the enquiry report and complete it in accordance with law.

8. The application is thus allowed as indicated above. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

22.3.91.


(S. P. MUKERJI)
VICE CHAIRMAN

22/3/91

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