

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.197/2006

Friday this the 2nd November 2007

C O R A M:

**HON'BLE SMT SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

**K.A.Johnson, S/o K.P.Antony,
AC Coach Attendant, Southern Rly,
Ernakulam Marshalling Yard, Kadavanthara.**

(By Advocate Mr.P.K.Madhusoodhanan)

Applicant.

Vs.

- 1 Assistant Divisional Electrical Engineer
Southern Railway, Trivandrum.**
- 2 Senior Divisional Electrical Engineer
Suthern Railway, Trivandrum.**
- 3 Additional Divisional Railway Manager
Suthern Railway, Trivandrum.**
- 4 Union of India represented through the
General Manager, Southern Railway,
Park Town, Chennai.**

(By Advocate Mr.K.M Anthru)

Respondents.

**(The OA having been heard finally on 9.10.07
the Tribunal delivered the following on 2.11.07)**

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HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

ORDER

The facts of the case in brief are that the applicant was working as AC Coach Attendant in the Ernakulam Marshalling Yard. While working as such, on 22.12.01 he was deputed to work in Train No.2645/2646 (Ernakulam to Nizamuddin, Ernakulam Express). One 'Sharma', Chief Travelling Ticket Inspector (CTTI for short) Jhansi who performed duty in the aforesaid Train had reported to the Senior Section Engineer Airconditioning, Southern Railway, Ernakulam on 26.12.2001 that the applicant was not available in the Coach from Jhansi to Nizamuddin on the onward trip and Nizamuddin to Jhansi on the return trip. In the said report, the same CTTI had also mentioned that the applicant was not available from Ernakulam to Jhansi also as reported by the CTTI in that Section (Annx.R1). On the basis of the said report, the Senior Section Engineer (Electrical) Ernakulam Marshalling Yard, asked the applicant to explain as to why he was not found in the AC Coach during his duty time. The applicant vide his explanation (Annxure A2) dated 31.1.02 submitted that he was not feeling well on the way to Nizamuddin and back and he could not remain throughout day and night in the corridor of the AC Coach and therefore he was managing his duties like watering, calling duties, taking of order for meals and refreshment etc from the adjacent coach and there was no complaints whatsoever from the passengers as it is evident from the opinion book. Not satisfied with the aforesaid explanation, respondent


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No.1, Assistant Divisional Electrical Engineer, Southern Railway, Trivandrum, who is also the disciplinary authority of the applicant, vide order, Annx.A1, had initiated disciplinary proceedings against the applicant under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 and served him with the following statement of imputation:

“Shri K.A.Johnson, while working as ACCA/ERM had committed serious misconduct in that he was deputed to work as ACCA by Train No.2645 which left ERS on 22.12.01. He was found missing from duty from JHS to NZM and also was not available by Train No.2646 from NZM to JHS. This has been noticed by the CTTI/JHS who worked from JHS to NZM and by 2646 from NZM to JHS. Absenting from duty unauthorisedly is a serious misconduct and violation of Clause 3(1)(ii)&(iii) of Railway Service Conduct Rule, 1966.”


2 Vide Annx.A4, letter dated 25.2.02, the applicant reiterated his earlier explanation that he performed his duties as AC Coach Attendant on 24.12.01 in Train No.2645/2646 without any complaint from the passengers. However, he had admitted that he was not fully available in the AC Coach throughout the journey for the reason that he was not feeling well on the way to Nizamuddin and he was forced to stay in the adjacent compartment for quite some time for relaxation. He further submitted that in case the CTTI had any doubt about the availability of Attendant he could have enquired the matter from the AC Coach In-charge and he would have taken alternative arrangements. However, the Disciplinary authority, did not find the Annx.A4 explanation satisfactory and issued the impugned Annx.A5, Penalty advice dated 25.10.02, imposing the penalty of with-holding of one increment of pay for a period of 36 months without affecting the postponing of his future

increment of pay and recovering the amount which he received as OT, TA and salary for the period 22.12.01 to 27.12.01 treating the said period as absent. Thereafter, the applicant filed Annx.A6 appeal dated 19.12.02 stating that there was no finding in the penalty advice that the applicant was guilty of the charges and, therefore, the penalty imposed on him was unwarranted and opposed to law. He has also submitted that the disciplinary authority did not had any enquiry with the ACC In-charge of the concerned coach or with any passengers in the AC coach or with the concerned CTTI to elicit the truth of the allegations, with notice to him. He has also alleged that the penalty advice was multiple punishment for a single charge and the same is not sustainable in law. The appellate authority however, held that he had gone through the case carefully and agreed with the observations of disciplinary authority and rejected his appeal vide Annx.A7 order dated 16.4.04, stating that the disciplinary authority's order was not warranted by the evidence on record and it was further held that the applicant, who was on duty was not expected to take rest in the next coach thereby he failed to discharge his responsibility and such dereliction of duty was not acceptable. The Revision Petition dated 20.5.05 (Annx.A8), filed by the applicant was also rejected by Annx.A9 order dated 10.6.05 agreeing with the findings that the applicant had committed a serious misconduct and he was found missing from duty from Jhansi to Nizamuddin by Train No.2645 which left Ernakulam on 22.12.01 and he also was not available by Train No.2646 from Nizamuddin to Jhansi.



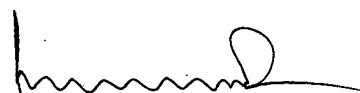
3 In the reply statement the respondents have submitted that the applicant was the only one AC Coach Attendant in Train No.2645 and 2646 (Ernakulam Express) which left Ernakulam on 22.12.01 and as reported by Sh.Sharma, CTTI, Jhansi, who worked in the Train vide letter dated 26.12.01 (Annx.R1) to the Senior Section Engineer, Air Conditioning, Southern Railway Ernakulam that he was found missing in the coach from Jhansi to Nizamuddin on the onward trip and Nizamuddin to Jhansi on the return trip. According to the said Annx.R1 letter, since the Coach Attendant was not available in the Coach, the CTTI faced a lot of problem in the Train. The respondents have also produced Annx.R2 letter dated 22.4.02 from the applicant requesting for grant of LAP from 22.12.01 to 29.12.01.

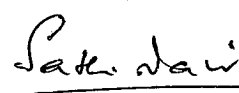
4 We have heard Mr.P.K.Madhusoodhanan, counsel for the applicant and Mr.K.M.Anthru, counsel for the respondents and have perused the record. We have seen that the applicant himself has admitted that he was not fully available in the AC Coach throughout the journey for the reason that he was not well on the way to Nizamuddin and he was forced to stay in the adjacent coach for relaxation. As a disciplined employee, if he was not well, it was expected of him to inform his superior officer in the Train, namely, AC Coach In-charge who would have made alternative arrangement, in case he was found actually not well. His explanation that there was no complaint from any passenger and the AC Coach In-charge is irrelevant. It is on record that Sh.Sharma, CTTI Jhansi, had informed the Sr.Section Engineer,



Ernakulam on 26.12.01 itself that while he was working by 2645 Express on 24.12.01 from JHS Station to NIZ, the coach attendant was not available in the coach and same was the case in Train No 2646 from NIZ to JHS. The applicant himself has requested the respondents to grant him LAP from 22.12.01 to 29.12.01. In such circumstances, the explanation given by the applicant cannot be considered as a convincing one. Absenting from duty without prior permission is a very serious misconduct. The gravity of the misconduct of absenting is very high when the only AC Coach Attendant in the Train has absented himself from his train duty. In the above facts and circumstances we do not find any infirmity in the Annx.A5 penalty advice imposing upon him the minor penalty of withholding of increment of pay for a period of 36 months without affecting the postponing of his future increment of pay and recovering the amount which he received as OT, TA and salary for the period 22.12.01 to 27.12.01 duly treated the said period as absent. We also do not find any merit in the contention of the applicant that he was subjected to double punishment for the same offence. We also do not find any infirmity with the Annx.A7 appellate authority order dated 16.4.04 and the Annx.A9 Revisionary authority order dated 10.6.05 upholding the penalty. The O.A, being devoid of any merit, is dismissed.

No order as to costs.


(George Parackal)
Judicial Member


(Sathi Nair)
Vice Chairman.