

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 204 of 2006

Monday, this the 25th day of September, 2006

CORAM:

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

K. Ashokan,
S/o. Keju,
Chief Travelling Ticket Inspector,
Grade II, Sleeper Section,
Kannur, Kerala

... **Applicant.**

(By Advocate Mr. K.P. Pradeep)

versus

1. Senior Divisional Commercial Manager,
Divisional Office, Southern Railway,
Palakkad, Kerala.
2. The Additional Divisional Manager,
Divisional Office, Southern Railway,
Palakkad, Kerala.
3. Chief Commercial Manager,
Headquarters Office, Personnel Branch,
Southern Railway, Chennai.
4. General Manager,
Southern Railway, Chennai.
5. Ministry of Railways, Union of India,
New Delhi – represented by its Secretary ... Respondents.

(By Advocate Mr. P. Haridas)

The Original Application having been heard on 25.9.06, this Tribunal on the same day delivered the following:

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The applicant has challenged the following orders:-

(a) Order dated 15-06-2004 passed by the Chief Commercial Manager, S.R., Chennai (Annexure A-1).

(b) Order dated 27th April, 2005 of the Divisional Railway Manager, S.R. Palakkad (Annexure A-2).

(c) Order dated 29-04-2005 of the Chief Personnel Officer, S.R. Chennai (Annexure A-3).

2. In so far as Annexure A-2 order is concerned, the same being one of advisory in nature (stating that request for regularization of the period of suspension from the date of removal to the date of reinstatement should be addressed to CCM/MAS i.e. the revisionary authority, through proper channel and Representation to the Hon'ble President for reducing penalty etc.,) the counsel for the applicant has submitted that he is not pressing for the same, save that he be permitted to submit necessary representations to the concerned authorities.

3. Briefly stated, the applicant was proceeded against under the Disciplinary proceedings for the following charges:-

"(i) Shri K. Ashokan, CTTI/II/CAN did not extend his co-operation to the Vigilance Inspectors in their legitimate duties. He refused to give a correct cash statement duly accounting for his personal cash and Railway cash separately.



(ii) Besides his non-cooperation and refusal to give a correct cash statement, he attempted to destroy the documentary evidence in support of the charge (I) listed above by forcibly snatching a pouch containing the vigilance documents, from the custody of Shri N. Suriyan, CVI/MAS and throwing it out of the moving train.

(iii) He interfered in the vigilance check by tearing a statement which was being taken from Shri P. Remashan, TTE/CAN in coach No. S2.

Thus, he had contravened Rule No. 3.1(i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966."

4. The Inquiry authority gave its findings vide Inquiry Report dated 29.11.2002 and the operative portion of the same is as under:-

"In this case, besides direct evidence the circumstantial evidence also points to the guilt of the C.O. Besides SWs-2, 3, 4, 5, 6 and 9, SW-1 is not only a direct witness (eye witness) but also an independent one. His evidence must be given due weight. The connected circumstances also make it probable that the incident of non-cooperation by the C.O., his refusal to give a correct cash statement, his forcible snatching and throwing of the pouch containing vigilance documents with intent to destroy the same and his interference with the vigilance check by tearing S-5 and throwing a portion of it had happened :

All these things tend to show that the C.O. failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway servant. It may not be out of place to make a mention that it has been repeatedly held that lack of integrity means departure from devotion to duty and that would be an act unbecoming of a Railway servant and tampering of evidence is a grave misconduct.

Conclusion: Based on the oral and documentary evidence advance in the enquiry, it is established that there is sufficient material to hold the charges against the C.O. 'proved.' "

5. The applicant had furnished his representation on 04-03-2003 and the Disciplinary authority had, by order dated 06-06-2003 imposed the penalty of removal from service. Appeal filed having been unsuccessful, the applicant filed revision petition and the revisional authority had passed the following order:-

“ This is a case of careless working and rude and unparliamentary behaviour. You have misbehaved very badly. However, considering your years of service, I am showing some consideration and reinstating you in service. On reinstatement, you are reduced to the post of Sr. TC on pay Rs. 4000/- in grade Rs. 4000-6000, for a period of 5 years without cumulative effect.”

6. The applicant has thus challenged the aforesaid orders and prayed for quashing of the same and for a direction to the respondent for regularization of the period of suspension as one of duty and for treating the period from the date of removal till the date of reinstatement again as one of duty and afford the consequential benefits. The following are the main grounds urged:-

(a) The enquiry conducted by the enquiry authority and the procedure adopted by him for conducting the enquiry are all illegal. As per the enquiry proceedings the enquiry authority has relied on statements alleged to have been given by the witness during the course of enquiry conducted by the disciplinary authority. Those statements were accepted and marked as documents in the enquiry.



(b) Such statements are inadmissible because those are statements given by those witnesses, during the course of enquiry by the disciplinary authority, which was conducted behind back the applicant. Though copies of statements were furnished to the applicant, but he was not given an opportunity to cross examine those witness with respect to the alleged incident. None of the witnesses have deposed before the enquiry authority as to what exactly is the incidents happened on the day of the incident. The enquiry officer has relied on the previous statements of witnesses and got admission from them that they are recorded during the course of the preliminary enquiry conducted before charge sheet was furnished to the applicant. Serious prejudice is caused on account of this. The entire disciplinary proceedings are initiated on the basis of the inadmissible evidence adduced at the enquiry and therefore, findings that the applicant is guilty of charges alleged against him are baseless.

(c) The witnesses have no case that the applicant snatched away the pouch from Sri Soorya, the Vigilance Inspector. This alleged incident is the crucial incident found against the applicant. The recovery of the pouch from near the Railway Track and the story of the Vigilance Team are suspicious.

7. Respondents have contested the O.A. They have contended that the misbehaviour of the applicant has been proved in the Inquiry held as per the Discipline and Appeal Rules, 1968 and while the disciplinary authority had imposed penalty of removal from service, the Revisional authority, duly considering the services rendered by the applicant, reinstated him. The



applicant would be restored to the original grade in the scale of Rs. 5,500-9,000 after five years, and the penalty will not have the effect of postponing the future increment in the higher grade. Thus, according to the respondents the penalty imposed is in order and the OA is liable to be dismissed.

8. Counsel for the applicant argued that there are certain variations in the deposition, in regard to the place where the alleged incident had occurred. Thus, the preponderance of probability tilts in favour of the applicant.

9. Counsel for the respondents has stated that the applicant's case has been proved as per the Inquiry Report and thus, there is no case in favour of the applicant.

10. Arguments were heard and documents perused. No legal flaw, save the so called variation as to the place where the alleged incident had occurred had been brought out by the counsel in the argument. It is settled law, as recently held in the case of State of U.P. v. Sheo Shanker Lal Srivastava, (2006) 3 SCC 276, that the tribunal cannot undertake judicial review of the decision, but only of decision making process. The Apex Court has, in that case, held as under:-

"23. In *V. Ramana v. A.P. SRTC* (2005) 7 SCC 338 this Court upon referring to a large number of decisions held: (SCC p. 348, para 11.)



"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* (1948) 1 KB 223 the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. **The scope of judicial review is limited to the deficiency in decision-making process and not the decision.**" (Emphasis supplied)

(See also *Hombe Gowda Educational Trust v. State of Karnataka* (2006) 1 SCC 430 and *State of Rajasthan v. Mohd. Ayub Naz* (2006) 1 SCC 589.)"

11. In view of the above, the applicant has not made out any case. Of course, in terms of order dated 27th April, 2005, it is left to the applicant to move any representation to the Hon'be President for reduction of penalty etc., As regards treatment of the period of suspension as one of duty etc., it appears that the competent authority has already dealt with the same while passing the impugned order dated 29-04-2005. The applicant could not justify or substantiate his contention to have this order quashed.

12. The OA is, therefore, dismissed. No costs.

(Dated, the 25th September, 2006)



N. RAMAKRISHNAN

ADMINISTRATIVE MEMBER



K B S RAJAN

JUDICIAL MEMBER

CVR.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 204 of 2006

Tuesday, this the 18th day of January, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

K. Ashokan, S/o. Kegu, aged 49 years,
 Chief Traveling Ticket Inspector, Grade II,
 Sleeper Section, Kannur, Kerala. **Applicant**

**(By Advocate – Mr. K.R.B. Kaimal, Sr.
 Mr. B. Unnikrishna Kaimal)**

V e r s u s

1. Senior Division Commercial Manger, Divisional Office,
 Southern Railway, Palakkad, Kerala.
2. The Additional Division Manager, Divisional Office,
 Southern Railway, Palakkad, Kerala.
3. Chief Commercial Manager, Head Quarters Office,
 Personnel Branch, Southern Railway, Chennai.
4. General Manager, Southern Railway, Chennai.
5. Ministry of Railway, Union of India, New Delhi,
 represented by its Secretary. **Respondents**

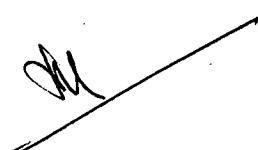
(By Advocate – Mr. P. Haridas)

This application having been heard on 18.01.2011, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant an employee of the Railways at the relevant time was working as a Chief Travelling Ticket Inspector Grade-II in the sleeper

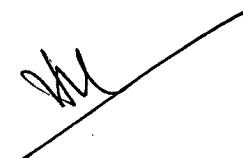


section of Kannur Division in the West Coast Express (Mangalore-Chennai). While he was on duty on 18.5.2000 a vigilance team conducted an inspection but it was alleged that he did not extend his co-operation to the vigilance inspectors in their legitimate duties. He refused to give the correct cash statement duly accounting his personal cash and railway cash separately. He also attempted to destroy the documentary evidence in support of the charges by forcibly snatching a pouch containing the vigilance documents from the custody of one Shri N. Suriyan and throwing out of the moving train and which was being taken from P. Rameshan in coach No. S2. He was accordingly charge sheeted for contravention of Rule 3.1(i),(ii) & (iii) of the Railway Services (Conduct) Rules, 1966. The charge sheet was served on him along with the statement of allegations. Though he submitted his explanation the same was found to be non-satisfactory. A domestic inquiry was held into the charges levelled against him in which he participated. After culmination of the inquiry the inquiry officer submitted his report where he found that the delinquent was guilty of the charges. The disciplinary authority after going through the findings of the inquiry officer agreed to the same and imposed the punishment of removal from service. The delinquent officer appealed to the authority against the said order. The appellate authority after evaluating the evidence on record and material produced, agreed with the finding of guilt and also found that the punishment is commensurate with the offence proved. Accordingly, he dismissed the appeal. Thereafter, he filed revision before the then Commercial Manager (3rd respondent) who by his order dated 29.4.2005 Annexure A-3 produced in the case modified the penalty to one of reduction



to the post of Sr. TC on pay of Rs. 4000/- in grade of Rs. 4000-6000/- for a period of five years without cumulative effect and he was reinstated. The intervening period from the date of removal from service and the date of reinstatement cannot be treated as period spent on duty for any purpose under Rule 1343 of the Indian Railway Establishment Code since he was not exonerated of the charges. Hence, the intervening period was treated as leave of any kind due and admissible to him provided that a representation is made on that behalf. Challenging the order dated 15.6.2004 (Annexure A-1) passed by the Chief Commercial Manager the disciplinary authority, order dated 27.4.2005 (Annexure A-2) passed by the Divisional Railway Manager the appellate authority and the order dated 29.4.2005 (Annexure A-3) passed by the Chief Personnel Officer the revisional authority, the applicant has preferred the present Original Application.

2. After consideration of the matter the Tribunal by a previous order dated 25th September, 2006 dismissed the OA after holding that the Tribunal cannot undertake judicial review of the decision, but only of decision making process and that the applicant has not made out the case for interference. The Tribunal placed reliance on the decision of the State of UP Vs. Sheo Shanker Lal Srivastava - (2006) 3 SCC 276 and also the decision in Hombe Gowda Educational Trust Vs. State of Karnataka – (2006) 1 SCC 430 and State of Rajasthan Vs. Mohd. Ayub Naz – (2006) 1 SCC 589. The applicant preferred a Writ Petition before the Hon'ble High Court of Kerala against the said order as Writ Petition No. 29311 of 2006. The Hon'ble High Court agreed with the principle as stated by the Tribunal in its order that it



cannot undertake a judicial review of the decision, but only of the decision making process but found that the said principles have not been demonstrated to have been appropriately applied to the facts and materials on record by the Tribunal as no specific finding overruling the contention as raised by the petitioner was addressed in the order passed by the Tribunal.

Hence, the matter was remanded for consideration.

3. The main contention of the applicant is that the inquiring authority relied on the statement alleged to have been given by the witnesses during the course of inquiry conducted by the disciplinary authority. According to him they are in-admissible for different reasons. Those materials were recorded by the disciplinary authority and it was without giving him an opportunity even to cross-examine the witnesses regarding the alleged incident.

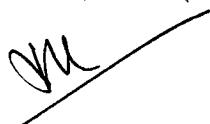
4. This being an attack against the procedure adopted by the inquiry officer, we shall precisely examine the same based on the materials produced. The charge levelled against the applicant are as follows:-

"(i) Shri K. Ashokan, CTTI/II/CAN did not extend his co-operation to the Vigilance Inspectors in their legitimate duties. He refused to give a correct cash statement duly accounting for his personal cash and Railway cash separately.

(ii) Besides his non-cooperation and refusal to give a correct cash statement, he attempted to destroy the documentary evidence in support of the charge (I) listed above by forcibly snatching a pouch containing the vigilance documents, from the custody of Shri N. Suriyan, CVI/MAS and throwing it out of the moving train.

(iii) He interfered in the vigilance check by tearing a statement which was being taken from Shri P. Remashan, TTE/CAN in coach No. S2.

Thus, he had contravened Rule 3.1(i), (ii) and (iii) of Railway



Service (Conduct) Rules, 1966."

5. The inquiry authority found that evidence and circumstantial evidence points to the guilt of the charged official. Besides SWs-2, 3, 4, 5, 6 and 9, SW-1 is not only a direct witness (eye witness) but also an independent one. The circumstances also make it probable that the incident of non-cooperation by the charged official, his refusal to give a correct cash statement, his forcible snatching and throwing of the pouch containing vigilance documents with intent to destroy the same and his interference with the vigilance check by tearing S-5 and throwing a portion of it had happened. All these things tend to show that the charged official failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway servant. He concluded that based on oral and documentary evidence advanced in the inquiry, it is established that there is sufficient material to hold the charges against the charged official as proved. Needless to say that the above charges are so grave in nature and as already held by this Tribunal and confirmed by the Hon'ble High Court. Even at the the risk of repetition we may state that the jurisdiction which the Tribunal is exercising, under Articles 226 and 227 is akin to the jurisdiction of the constitution in respect of service matters. In the matter of judicial review of administrative action, the very decision unless it is so perverse by the inquiry authority cannot be interfered with. However, the procedure adopted if it is vitiated, should be fair in accordance with the principles of natural justice. In so far as the materials and the evidence on record is concerned, we find that the conclusion reached are not perverse and are

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based on the materials produced in the inquiry and hence cannot be interfered with. With regard to the contention of the applicant that previous statements recorded by the witnesses were produced and opportunity to cross-examine the witnesses was not given to him, we examined the records as produced by the applicant himself and we find that each of the witnesses who has given such previous statements has been examined by the inquiry officer. The previous statements were produced and marked in the case which show that the charged official has cross examined the witnesses and he has availed such opportunity. The previous recorded copy of such statements have also been furnished along with various other documents sufficiently in advance. As a matter of fact these previous recorded statements are enlisted as documents along with the articles of charges contained in Annexure-III besides other documents. Further the list of witnesses by whom the articles of charges are proposed to be sustained are also contained in Annexure-IV. The applicant has no case that these documents were not made available to him for perusal before the witnesses were examined in the inquiry. Merely because previous statements were produced before the inquiry, that does not vitiate the inquiry unless the witnesses are failed to be produced before the inquiry. In other words dispensation of examination in chief of these witnesses is permissible in a domestic inquiry by producing the statements recorded and furnishing the copy thereof and making available the witnesses for cross-examination. As a matter of fact the present Code of Civil Procedure itself permits the examination in chief by affidavits filed and witnesses summoned for cross examination by the other side. It is thus an accepted mode of recording the

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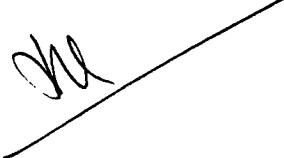
evidence. Since the witnesses were examined in the presence of the charged official and he had been given an opportunity of cross-examination which he did it as stated earlier, we do not find that the procedure adopted is in any way vitiated and there is no violation of the principles of natural justice.

6. Nextly it is contended that the charged officer was also proceeded with criminally and ultimately it ended in acquittal and it is contended that on the self same charge and self same material when the Court has acquitted him of the charges, the same charges in the disciplinary proceedings cannot be sustained. We have gone through the judgement of the appellate court in the criminal case which is marked as Annexure A-14. On a perusal of which it is seen that the Trial Court found him guilty but instead of imposing a punishment he was released under the provisions of Probation of Offenders Act. However, the appellate court acquitted him by giving benefit of doubt. The operative portion of the order passed by the appellate court in Annexure A-14 is as follows:-

“23. Without considering these aspects, the lower court has found him guilty and convicted and released on Probation of Offenders Act. That finding is incorrect. That wants to be set aside. The prosecution has not proved the case against the accused beyond all reasonable doubt and he is entitled to get an acquittal. The points answered accordingly.

In the result, the appeal is allowed and the conviction and sentence of releasing him on Probation of Offenders Act passed by the lower court is set aside. The appellant/accused is set at liberty after cancelling the Bond executed by him.”

7. The appellate court also held that from the evidence it is not satisfactorily proved that the applicant/accused has made any disobedience to PW1 and 2 and snatched away the pouch and cash statement and threw it away from the train. There is some doubt with regard to the evidence given

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by PW-1 and 2 with regard to the incident. The benefit of doubt is given to the applicant/accused. Thus, it can be seen that it is not a honourable acquittal but an acquittal giving him benefit of doubt.

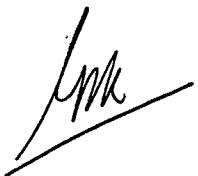
8. In 2008 (4) SCC 1 – Union of India Vs. Naman Singh Shekhawat it was held that initiation after acquittal in a criminal case is permissible in law but such power has to be exercised bonafide, fairly and reasonably, when there is evidence to prove the charges. That was a case where the departmental proceeding was initiated after the acquittal in the criminal case. On facts it was found that such initiation though legally permissible was not warranted as the action was not fairly and reasonably exercised.

9. In G.M. Tank Vs. State of Gujarat & Ors. - 2006 (5) SCC 446, it was held that the departmental inquiry and criminal proceedings based on same set of facts when there is no evidence against the employee to hold him guilty and when he was honourably acquitted in a criminal trial the finding contrary recorded in the departmental proceedings, is unjust and unfair and oppressive. Therefore, it is well settled that a departmental inquiry on the self same charges tried in a criminal court is not totally opposed or impermissible but after the criminal court has acquitted him honourably then if on the self same materials if he is found guilty in the departmental proceedings the action must be proved fair and reasonable. In this case as already pointed out the applicant was not given a honourable acquittal but was only given a benefit of doubt that too by the appellate court whereas the trial court has found him guilty. It was after verification of the material on record that the inquiry officer has found him guilty of the charges. Hence,

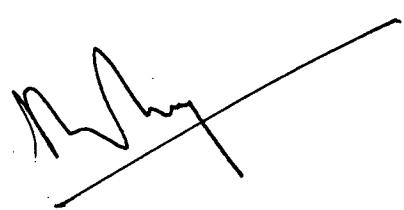
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the findings of the inquiry officer cannot be said to be perverse. The punishment has also been reduced by the revisional authority. Therefore, it cannot be said to be disproportionate or harsh.

10. In view of the above the OA has no merits and is accordingly dismissed. However, consequent upon the final punishment order if the suspension period is yet to be regularized and any representation is filed by the applicant, such representation be considered by the concerned authority arrayed and dispose of the same in accordance with law. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”