

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.225 of 1987

Monday, this the 30th day of October, 1995.

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR S P BISWAS, ADMINISTRATIVE MEMBER

K G Appan, S/o T H Krishnankutty Nair,
'Sree Sailam', Mancomb Post,
Alleppey District.

..Applicant

(By Advocate Mr T C Govindaswamy)

Vs

1 Union of India, represented by the
Secretary, Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi.

2 The Chief Operating Superintendent,
South Central Railway,
Rail Nilayam, Secunderabad.

3 The Divisional Railway Manager,
Office of the Divisional Railway Manager,
South Central Railway, Hubli Division,
Hubli, Karnataka.

4 The Divisional Operating Superintendent,
Office of the Divisional Railway Manager,
South Central Railway, Hubli Division,
Hubli, Karnataka. .. Respondents

(By Advocate Mr M C Cherian)

The application having been heard on 30th October 1995,
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Applicant, an ex-Assistant Station Master in
the Hubli Division, was dismissed by A-13 order, and
by A-16 order the dismissal was affirmed. He approached
this Tribunal by O.A. 225/87, and the Tribunal set aside
the order of dismissal on the ground that the authority
passing the order lacked jurisdiction. The other
grounds raised were not considered.

2 Respondent Railways challenged the order of the Tribunal before the Supreme Court, and by orders in Civil Appeal No.7435/95 the Supreme Court set aside the order of the Tribunal as erroneous and remitted the matter.

3 The charge against applicant was that he misused the control phone, and exhorted his colleagues to stop the running of trains until the authorities came down for negotiations in respect of the suspension of another Assistant Station Master. Counsel for applicant submitted that serious irregularities were committed by respondents both in the matter of holding the enquiry and in the matter of disposing of the appeal.

4 In the disciplinary enquiry the applicant made a request to examine certain witnesses on his behalf. The request A-8 was rejected by A-14 on the ground that the witnesses 'will not depose for the applicant' (see ground -8). *Prima facie*, whether a witness would speak for someone or other, is not a matter of concern for the disciplinary authority. His only concern should be whether the evidence would be relevant, and whether examining the person is part of the right of a reasonable opportunity to defend himself, available to the charged officer.

5 Again, a tape recorded conversation was acted upon by the disciplinary authority. We do not have a transcript or transliteration of the contents of audio cassette, we have only a distorted version of its content through one Sivaraman Nair. It is also alleged that applicant was not questioned as required by Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules,

1968. To round it off, when the matter came to the Appellate Authority he paid less than lip service to the cyclostyled form in passing the order incorporated in A-16. It only states that the Appellate Authority had carefully considered the appeal and upheld A-13.

6 Application of mind by the authorities at different levels, is an important safeguard available to a charged official. However serious the charges are, the seriousness of the charges would not justify the imposition of penalty. The authority has to satisfy itself that there is evidence to sustain the charges, that a reasonable opportunity was afforded to the delinquent to defend himself and that a fair and objective consideration consonant with the statue and rules of natural justice have been extended. In Ram Chander's case, 1986 (3) SCC 103, the Supreme Court has stressed the need for the appellate authority to deal with the contentions raised in appeal, and reach conclusions supported by reasons. The order of the appellate authority in the case on hand, is one which anyone could have passed without even opening the files. We cannot assure ourselves in spite of elaborate and vehement arguments of Shri M C Cherian for the Railways, that there was application of mind.

7 We quash A-16 appellate order, and remit the matter to the Appellate Authority. The said authority will examine each of the grounds raised in the appeal, refer to the material leading to his conclusions, and pass a speaking order within four months from today, and communicate the same to applicant. If he finds that

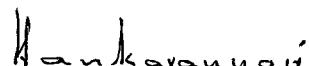
irregularities have been committed in the disciplinary enquiry he will do well to mend matters, instead of leaving the case to run another full circle. Illegalities, if any, would cost the Railways and the employee not only in terms of money but also in terms of morale. Cases are not rare where proceedings are prolonged, leading to heavy financial costs. We make it clear that we have not expressed any opinion on the merits of the contentions except the contention relating to non-application of mind by the appellate authority.

8 Application is allowed as aforesaid. No costs.

Dated the 30th October, 1995.



S P BISWAS
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

P/31-10

List of Annexures

Annexure A-8: Nomination of Defence helper and schedule of witnesses by the applicant.

Annexure A-13: Order of imposition of penalty passed by the Disciplinary Authority imposing "Dismissal from Service" of the applicant.

Annexure A-14: Enquiry Officer's report submitted to the Disciplinary Authority by the Enquiry Officer, stating that all the charges against the applicant stands proved and copy of the whole enquiry proceedings against the applicant.

Annexure A-16: Order of Appellate Authority disposing of the appeal of the applicant confirming the penalty of Dismissal from service alongwith the covering letter dated 16.5.1986 from the Assistant Personnel Officer, South Central Railway, Hubli addressing the same to the applicant in his house address at Kerala.