

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 23/2004

Monday this the 11th day of December, 2006

CORAM

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

M. Sethumadhavan, aged 52 years
S/o M. Krishnan Nair,
Goods Guard, Southern Railway,
Ernakulam Junction,
residing at No. 109-D
Railway Quarters, Ernakulam Jn.Applicant


(By Advocate Mr. T.C. Govindaswamy)

V.

- 1 Union of India, represented by the
General Manager,
Southern Railway,
Headquarters Office,
Park Town PO,
Chennai.3.
- 2 The Chief Operations Manager,
Southern Railway, Headquarters Office,
Park Town PO, Chennai.3.
- 3 The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum.14.
- 4 The Senior Divisional Operating Manager,
Southern Railway, Trivandrum Division,
Trivandrum.14.Respondents

(By Advocate Mr. P. Haridas)

The application having been finally heard on 27.11.2006, the Tribunal on 11.12.2006 delivered the following:



ORDER***Hon'ble Mr. George Paracken, Judicial Member***

The applicant has challenged Annexure.A1 penalty advice dated 1.2.2002 by which his pay has been reduced to Rs. 6125/- from Rs. 6250/- in the scale of Rs. 4500-7000 for a period of two years (recurring) with effect from 2.3.2002, with the effect of postponing of his future increments of pay, Annexure.A2 Appellate Order dated 18.7.2002 confirming the aforesaid penalty advice and also the Annexure.A3 order in revision dated 25.9.03 rejecting his Revision Petition dated 10.7.03 and upholding the punishment already imposed.

2 Before imposing the aforesaid penalty the applicant was proceeded under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 for the following charge:

"The said Shri M.Sethumadhavan, Goods Guard/ERS while functioning as relieving guard of ESD goods at PUK on 09/11/2000 committed serious dereliction to duty in that he failed to take over charge of ESD goods properly on joining duty. He has also unauthorizedly entered into the PUK-OLR down section aboard WDM2 18337 with an ulterior motive of bringing back the run away wagons to destroy evidence. Thus he has violated SR Para 5.14 (1)(a), 6.02(iv), GR 8.01(i)(1) of GRS and Rule 3.1(ii) and (iii) of Railway service Conduct Rules, 1966."

On receipt of the aforesaid charge, the applicant made Annexure.A5 representation dated 28.4.2001 requesting the respondents to provide him with a copy of the "ACC-7 recorded immediately after the incident", a copy of the accident message issued by the Station Master on duty and a copy of the report of the Area Manager being the first supervisory official who arrived at the spot. He also wanted to peruse the fact finding inquiry report submitted by the Commissioner, Railway Safety. When the inquiry began the applicant submitted that he perused all the relevant records

except the report of the Commissioner of Railway Safety. As regards the said report was concerned, the stand of the respondents was that it was a classified and confidential document. However, the applicant was prepared to proceed with the inquiry since he perused the other relevant records.

3 The Inquiry officer held a detailed inquiry into the following two aspects of the charge, namely, (i) He (applicant) failed to take over charge of ESD Goods properly on joining duty and (2) he has also unauthorizedly entered into the PUK-OLR down section aboard WDM2 18337 with an ulterior motive of bringing back the run away wagons to destroy evidence.

4 As regards the first part of the charge the inquiry officer held that it was proved beyond doubt and the following reasons were recorded to justify his conclusion:

- (1) Shri M. Sethumadahvan was aware that he have to perform shunting at PUK when he was ordered to PUK by CLE on 9.11.2000.
- (2) He arrived PUK by CLE at 2.10 Hrs.
- (3) He was aware that there was shunting of ESD Goods and the same was not completed.
- (4) He did not speak to the guard, who was performing shunting at PUK prior to his arrival, immediately on his arrival at 2.10 hrs at PUK.
- (5) He did not report to the SM/PUK immediately on his arrival at 2.10 hrs at PUK.
- (6) He reported to the SM/PUK only at 2.20 hrs.
- (7) He got the yard position from SM/PUK at 2.21 Hrs.
- (8) He met the outgoing guard at 2.23 hrs and talked to each other.
- (9) He got the VG and caution order of ESD Goods from the outgoing guard at 2.23 Hrs.
- (10) He was aware that Sri V.D. Sivan is the driver to perform shunting along with him.
- (11) He and Shri V.D. Sivan driver arrived PUK by one and the same CLE at 2.10 hrs.
- (12) He was available with the duty SM, when the SM instructed the driver Sri V.D. Sivan to take over the loco WDM2 18337 TE of ESD Goods from the two box wagons from Rd.2.
- (13) He was aware that those two box wagons on road w,

are to be attached to ESD Goods.

- (14) He was aware that, he arrived PUK as the reliving guard of ESD Goods.
- (15) He was having sufficient time to take over charge of ESD Goods properly after his arrival at 2.10 hrs.
- (16) He did not go to the yard and taken over charge of ESD Goods and the 2 Box wagons stabled on Rd 2 for attaching to ESD goods after reporting to SM at 2.20 hrs.

5 As regards the other part of the charge was concerned, according to the inquiry officer, the evidence on records were not sufficient enough to prove that charge beyond doubt. However, the inquiry officer relied upon the circumstantial evidence to prove this charge and held that it was only partly proved as the benefit of doubt should go to the charged official. His reasoning of the said conclusion was the following:

- i) He went to the accident site at 2.40 hrs by his own by running and spent 30 mts there and returned by the LE WDM2 18337, which arrived at the accident site at 3.15 Hrs.
- ii) He met the GDR of 6330 Exp and extended his willingness to give any assistance but it was not entertained by them.
- iii) He went to the accident site and returned to A Cabin at 3.00 hr and informed the SM about collision and again went to the accident site.
- iv) He was not aware who were all the persons arrived by light engine at the accident site at 3.15 hrs.
- v) He checked up with the SM about the purpose of bringing the LE WDM2 18337 at the accident site.
- vi) He arrested the movement of two box wagons by placing chappals at stone.
- vii) Sri P. Jovi George chief guard of 6330 exp. Has seen Sri Sethumadhavan running in front of the box wagons, holding hand danger signal.
- viii) Sri Sethumadhavan said to be guard Sri Jevi George, that he was the Goods guard arrived PUK.
- ix) The chief guard of 6330 exp. Did not see any assistance from Sri Sethumadhavan, because he did not remain at the site for his disposal.
- x) The engine No. WDM2 18337 which chased the boxes was stopped by Sri Jovi George and advised the driver not to move towards the train. The station staff goods guard returned back with the engine immediately as stated by Jevi George in his statement.
- xi) Sri Jevi George said there was no guard arrived by the LE WDM2 18337.
- xii) Sri Jovi George could not identify the station staff arrived by the light engine.

- xiii) There were two in uniform one in kakhi pant and shirt and the other in white pant and short.
- xiv) AT 2.45 hrs Sri Sethumadhavan informed the duty SM/PUK that the escaped wagons collided with 6330 exp.
- xv) Sri C.A. Varghese piloted WDM2 18337 to the accident site.
- xvi) Sri C.A. Varghese did not take Sri Sethumadhavan by Engine WDM2 18337 to the accident site.
- xvii) Sri V.D. Sivan,, driver with SM/PUK went to the accident site and Sethumadhavan did not come with him.
- xviii) Sri V.D. Sivan has seen Sri MK. Sethumadhavan at the accident site.
- xix) Sri Sethumadhavan returned in the loco to the station from accident site.
- xx) Sri V.D. Sivan did not agree to the statement of Sri P. Jovi George that WDM2 18337 was stopped by him and advised the driver not to move towards the train.
- xxi) Sri S. Silvester, DAT has gone to the accident site and he has seen Sri M. Sethumadhavan at the accident site.
- xxii) Sri P.C. Sivan, SCP observed that Sri C.A. Varghese SM and GK Sri Pappu arriving by a light engine at the accident site.
- xxiii) Sri P.C. Sivan SCP has seen Sri Sethumadhavan at the accident site after the arrival of the light engine.
- xxiv) No witness has given any evidence to prove Sri Sethumadhavan travelled in WDM2 18337 to the accident site.
- xxv) But the presence of Sri Sethumadhavan at the site is well established as all the witnesses have seen him at the accident site.
- xxvi) The circumstantial evidences lead to believe that he entered PUK-OLR section unauthorizedly with an ulterior motive of bringing back the run away wagons to destroy evidence.

6 On receipt of the inquiry report, the disciplinary authority forwarded a copy of the same to the applicant vide its letter No.V/T/5/1/214/200-01/DAR/2 dated 11.12.2001 granting him an opportunity to make representation, if any, against the report. The applicant narrated his version of the incidents as mentioned in the charge and once again denied the allegations against him in his A9 representation dated 26.12.2001. His contention with regard to the first charge was that a guard cannot work against the instructions of the Station Master to commence the shunting only after the passage of Express No.6330. His contention with regard to

the second charge was that a guard in charge of shunting operation could not have taken an engine into the mid section without the authority of the Station Master. He has, therefore, once again pleaded innocence and stated that he has not violated any of the rules as stated in the charge. After considering the inquiry report, the representation of the applicant and other relevant records available on the inquiry file, the disciplinary authority passed the Annexure.A1 penalty order. In his appeal dated 16/3/2002 (A10) the applicant has submitted that the charges made against him were opposed to truth, facts and law. He has also alleged procedure irregularities in the conduct of the inquiry as the inquiry was not held in terms of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. He has also submitted to the Appellate Authority that the findings were not based on the evidence adduced during the inquiry. The disciplinary authority has not complied with the relevant rules/orders and the penalty advice was a non-speaking order. He has, therefore, appealed to the appellate authority to examine his submissions in the light of the records of the case and rules and to exonerate him from the charges. However, without considering any of the contentions raised by the applicant, the appellate authority rejected the applicant's appeal vide the Annexure.A2 order dated 18.7.2002. Thereafter, he made Annexure A.11 revision dated 10.7.2003 which was also rejected by the revisionary authority vide Annexure.A3 order dated 25.9.2003.

7 The applicant has challenged the aforesaid disciplinary order, appellate order and the revisional order on the following grounds that (i) Annexures A1, A2 and A3 are without application of mind, arbitrary, discriminatory and contrary to law violating Articles 14 & 16 of the

Constitution of India, (ii) Since there were seven persons involved in the accident, the inquiry proceedings against all the seven ought to have been common as provided in Rule 13 of the Railway Servants (Discipline & Appeal) Rules, 1968 and the failure to do so has caused substantial prejudice to the applicant., (iii) The charges levelled against him were not definite and distinct but were vague and ambiguous in as much as there were no details as to how the applicant has failed to comply with General Rules 4.34 as alleged in the charge. According to him, SR 5.14(1)(a) mandates that the guard shall supervise the shunting. The charge that the applicant violated the said rule would mean that he has not supervised the shunting. In other words WDM.2 18337 was not detached under the applicant's supervision or it was an unauthorized shunting by Driver Shri V.D.Sivan and the Sweeper cum Porter Shri P.C.Svian. (iv) Though Shri P.Jovi George has been summoned as a defence witness, he was examined as a prosecution witness contrary to Rule 9(2) of RS (DA) Rules but the applicant was not given opportunity to state his defence orally or in writing as provided in Rule 9(19) of RS (DA) rules. (v) The applicant was denied access to the fact finding inquiry report on the flimsy ground that it was confidential. (vi) The findings of the Inquiry officer were not based on evidence adduced during the inquiry, (vii) The depositions in favour of the applicant were ignored whereas the depositions against the applicant were accepted as gospel truth without giving any reason therefor. (viii) The findings of the Inquiry Officer that first charge was proved and the second charge was partially proved were not based on evidence adduced in the inquiry but based only on surmises and conjectures. (ix) The disciplinary authority agreed to the inquiry report in a mechanical manner and,

therefore, there was lack of application of mind on the part of the disciplinary authority. (x) Annexure.A2 Appellate Order is cryptic, laconic and without application of mind whereas the Appellate Authority ought to have considered the inquiry report and ensured that the applicant was given adequate opportunity of being heard. The Appellate Authority failed to consider the appeal submitted by the applicant in accordance with Rule 22(2) of RS (D&A) Rules, 1968 and (xi) The Revisional order also lacks proper application of mind as the Revisional Authority has simply affirmed the Appellate Order on the erroneous premise that the charges have been fully proved.

8 We have heard Advocate Shri T.C.G.Swamy and Advocate Ms. Deepa G.Pal for Advocate Haridas. We have also perused the records relating to the inquiry submitted by the Respondents. We have particularly gone through Annexure.A10 appeal of the applicant dated 16.3.2002 raising various issues as observed earlier and the Appellate Authority's Annexure.A2 order dated 18.7.2002 in the light of the specific ground raised by the applicant that the Appellate Authority's order at Annexure.A2 was cryptic, laconic and without application of mind. We, therefore, reproduce the Annexure.A2 order herein-below and it reads as under:

"Ref: Your appeal dated 16.3.2002.

The undersigned has considered your appeal cited above in terms of Rule 22(2) of RSD & A Rules, 1968 and has observed as under:

The procedure laid down under Railway Servants D&A rules has been complied with.

The findings of the Disciplinary Authority are warranted by the evidence on record.

I have gone through the appeal submitted by the appellant, the inquiry report, the decision taken by the

Disciplinary authority on the report and the speaking orders of the Disciplinary Authority. The charges framed against Shri M. Sethu Madhavan is proved beyond doubt. The contention of the charged employee that the procedure followed was irregular is not tenable, as the charges framed against each employee is different and the rules violated are also different except the conduct rules. The appellant has not brought out any fresh evidence to disprove the charges framed against him.

I agree with the decision of the Disciplinary Authority and the appeal is regretted.

Accordingly the penalty of eduction of pay from Rs. 6250/- to 6125/- in scale Rs. 4500-7000 for two years with cumulative effect imposed by Sr.DOM vide V/T5/T/214/2000-01/7/DAR/2 dated 01.02.2002 is confirmed.

Please acknowledge receipt.

Sd/-
C.K.Sharma
Divisional Railway Manager
Trivandrum."

9 The role of an Appellate Authority in a departmental inquiry as given in Rule 22 (2) of Railway Servants Conduct Rules, 1966 is a very significant one. The said Rule provides as under:-

"Rule 22(2): In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider:-

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice.;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders--

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.




10 The Apex Court in R.P.Bhat Vs. Union of India and others (1986) 2 SCC 651 while considering the requirements of Rule 27(2) of CCS (CCA) Rules, 1965 which is analogous to the provisions of Rule 22(2) of the RS (D&A) Rules, 1966, emphasized the need of the Appellate Authority to apply its mind before the appeal is disposed of. The Apex Court has also explained the scope of the word "consider" in the said Rule 27(2) in the following words:

"4 The word 'consider' in Rule 27(2) implies 'due application of mind.' It is clear upon the terms of Rule 27 (2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with' and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming enhancing etc., or may remit back the case to the Authority which imposed the same. Rule 27(2) casts a duty on the appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (C) thereof.

5 There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with' and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the Disciplinary Authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (C) of Rule 27(2), viz whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

11 In Narinder Mohan Arya Vs. United India Insurance Co.Ltd. And others (2006) 4 SCC 713 the Apex Court considered the question as to what extend the Appellate Order should be a speaking one and held as



under:

"32 The appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the Civil Court being inter parties was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33 An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

34 In *Apparel Export Promotion Council V. A.K.Chopra*, (1999) 1 SCC 759 which has heavily been relied upon by Mr.Gupta, this Court stated (SCC p.770 para 16).

"16 The High Court appears to have overlooked the settled position that in departmental proceedings, the Disciplinary Authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities." (emphasis supplied).

35 The Appellate Authority, therefore, could not ignore to exercise the said power.

36 The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression "consider" is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with (ii) the inquiry officer

was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary Authority was excessive."

12 Having heard the parties and after going through the pleadings, as well as the records relating to the departmental inquiry, we are satisfied that the Divisional Railway Manager, Trivandrum has not applied his mind to the requirements of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1966. Accordingly this O.A must succeed and is allowed. The impugned order passed by the said Divisional Railway Manager (Annexure.A2) is set aside and he is directed to dispose of the appeal afresh after applying its mind to the requirement of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1966 with proper advertance to all the points raised by the applicant in his Annexure.A10 appeal dated 16.3.2002 within a period of three months from the date of receipt of this order. As the charge is related to an incident which happened in the year 2000, the Divisional Railway Manager shall also afford an opportunity to the applicant to be heard personally. There shall be no order as to costs.

Dated this the 11th day of December, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN