

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 229/ 2007

Friday, this the 29th day of August, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

V.Sampath,
Technician-I/SIG/
Southern Railway,
Kottayam.

....Applicant

(By Advocate M.P.Varkey)

v.

1. Union of India represented by
General Manager,
Southern Railway,
Chennai-600 003.
2. Senior Divisional Signal &
Telecommunication Engineer,
Southern Railway,
Trivandrum-695 014.
3. Divisional Signal &
Telecommunication Engineer,
Southern Railway,
Trivandrum-695 014.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been finally heard on 24.7.2008, the Tribunal on
delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The grievance of the applicant is against Annexure A-7 order of the
disciplinary authority dated 5.4.2006 by which he was imposed upon the penalty
of reducing his pay from Rs.6000/- to Rs.5750/- (by two stages) for a period of

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one year with effect from 1.5.2006 without the effect of postponing his future increments.

2. The applicant was served with the Annexure A-1 memorandum dated 27.9.2005 proposing to hold an enquiry against him vide Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 with the following of Statement of Articles of Charge and the Statement of Imputation of Misconduct:

"ANNEXURE-I"

Statement of Articles of Charges framed against Shri V.Sampath, ESM/I/KTYM,SE/SIG/Office/Kottayam.

Shri V Sampath, Technician/I while performing duty as Technician/I/NCJ on 30th July 2005 has shown serious dereliction to duty in that

Train No. ITD Goods was waiting at NCJ bye pass to cross 6079 Up Express, Down LSS was cleared at about 11.05 Hrs. after the passage of the said Express. While starting the train, driver of ITD Goods observed that the point No.19A was set to sand hump and down LSS was cleared to TEN side. This was due to the unauthorised middling of signaling cable by duty ESM Shri Sampath who was assigned with the task of rectifying temporary cable joint to permanent cable termination. But this has executed without applying for disconnection of without suspending the gears concerned to ensure the safety of the train services.

Thus you have violated Rule No.3.51(3) of General Rules 1966 of Indian Railway and also violated Rule 3.51(vi)(a) & (b) and 3(1)(ii) & (iii) of the Railway Services (Conduct) Rules 1966.

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the articles of charges framed against Shri V Sampath, Technician/I/KTYM.

On 30th July 2005 while you were on duty as ESM/I/NCJ, Train No. ITD Dn Goods was waiting at NCJ bye pass to cross 6079 up Express. Down LSS was cleared at about 11.05 Hrs. after the passage of the said Express, while starting the train, driver of ITD Goods observed that the point No.19A was set to sand hump and down LSS was cleared to TEN side. This was due to the unauthorised middling of signaling cable by duty ESM Shri Sampath who was assigned with the task of rectifying temporary cable joint to permanent cable termination. But this has executed without applying for disconnection of without suspending the gears concerned to ensure the safety of the train services and caused serious unsafe condition."



3. By the Annexure A-2 Statement of Defence dated 20.10.2005, the applicant totally denied the aforesaid charge and stated that he was not assigned with the task of rectifying temporary cable joint to permanent cable termination at NCJ on 30.7.2005 or on any other date. He has also denied that he indulged "*in unauthorised meddling of signalling cables at any time, anywhere in his service, more so at NCJ on 30.7.2005.*" On the other hand, he submitted that he was attending his normal maintenance work at 'A' cabin at NCJ on 30.7.2005 and there was no question of his issuing disconnection memo (S&T/DN) or suspension of gears concerned with the said work. Not being satisfied by the aforesaid reply to the charges by the applicant, the respondents held proceedings against him from 9.12.2005 to 30.1.2006 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. At the close of the inquiry on 30.1.2006 applicant submitted the Annexure A-4 written brief dated 6.2.2006 to the Inquiry Officer. He stated that the charges were vague and not definite and distinct as required under Rule .9(6) of the DAR 1968. He has specifically pointed out that the word "middling" in the charge does not make any sense and if the intended word was "meddling", the respondents could not have made such an allegation as their case itself was that he had been assigned with the cable termination. The charge is also not specific in so far as does not say as to which act of the applicant has resulted in the wrong setting of point No.19-A and which gears were not disconnected or suspended. He stated that he was not done any cable termination and, therefore there was no question of asking for disconnection by means of a disconnection notice. He alleged that the enquiry officer has not given him any opportunity as provided under Rule 29, 20 and 21 of Rule 9 of DAR, 1968. He has also taken objection to the procedure adopted by the enquiry officer in relying upon the unlisted documents. During the enquiry, the enquiry officer called for a report regarding the alleged incident of

"failure of point No.19 of NCJ" from (SE/SIG/NCJ for short) and handed over a copy of the same to the charged officer (applicant) (Annexure A-11). In the said report, it was stated that the signalling contract staff damaged 2 core aluminum power cable to Point No.19 on 14.7.2005 at 3.00 hour and it was restored by the applicant at 07.00 hours on the same date in the presence of SE/S/NCJ Shri D Ravi and Shri A Selva Kumara Swamy. Again, the temporary joint was made permanent by the applicant with the assistance of ESM/III/NCJ Shri Suria Kumar, helpers Senthil Kumar and Murugeshan and also contract's wireman Shri Agestin. The enquiry officer considered the evidence adduced by the witnesses to the effect that the applicant did not approach them with form No.T/351 (request for any disconnecting the working signalling gears which is mandatory) for any work. He has also concluded "*from the reported nature of failure of point No.19, which occurred after the arrival of 6079 Exp., it is evident that it was an unusual incident because the train 6079 Exp. was received with point No.19 in normal position and for the dispatch of ITD Goods the point has not moved to reverse position rather reverse indication appeared on the panel at 'A' cabin. This change of indication on the panel, without the disturbance of point position can happen only if the circuit is disturbed physically.*" The contention of the applicant before the enquiry officer was that the charge issued him was to make him a scape goat for an averted accident which happened due to signalling cable damage caused by contractor's workers. However, the enquiry officer observed that the applicant himself admitted that the averted accident happened due to the damage of signalling cable caused by the contractor staff and they were attached to him for the permanent restoration on 30.7.2005 as mentioned in the SE/SG/NCJ's statement. The enquiry officer has also rejected the contention of the applicant that he did only the normal maintenance work on that day as apparent from his maintenance report for that day and held that in the Maintainer's Report, work done was not mentioned but the only condition of the



apparatus at the end of visit was mentioned. The enquiry officer has, therefore, held that the charge against the applicant was proved as he himself has admitted that the averted accident happened due to the damage of signalling cable caused by the contractor staff and those staffs were attached to the Chief Engineer for the permanent restoration on 30.7.2005 as mentioned in the report of the SE/SIG/NCJ' for which the applicant has not asked for any disconnection under Form No.T/351, as stated by the witnesses.

4. On receipt of the enquiry report, the applicant made Annexure A-6 representation dated 18.3.2006. He has submitted that the findings of the enquiry officer was not tenable because it did not contain the essential ingredients as required under Rule 9(25)(i) of Railway Servants (Discipline & Appeal) Rules, 1968 and the findings were not based on any legal evidence. As regards the report of the SSE/SIG/NCJ, he submitted that it was not a part of the listed documents and the Senior Section Engineer, Signal, NCJ was not a listed witness, the Enquiry Officer has relied upon the report without summoning the SSE/SIG/NCJ as a witness to prove the charge, the report of the SSE/SIG/NCJ was not there immediately after the alleged incident which has taken place on 30.7.2005 or at the time of issuing the charge memo but it was prepared only on 9.12.2005, much after the incident and just because a copy of the same was given to him, it cannot be accepted as a proof for legal evidence and the findings based on the aforesaid report was perverse, violative of principles of natural justice and ultravires Constitution of India. He has also submitted that the Station Masters, Drivers and Points men were not enough to prove the charges which was of technical nature and the respondents have deliberately omitted whose who were competent to say how and why the signals and points were so. However, the disciplinary authority after considering the aforesaid report held that "*the unsafe condition could have been totally avoided if*

proper action has been taken as per the rules i.e. by taking proper disconnection" and the applicant did not take due care on the entrusted job for which corrective action is required. He has, therefore, imposed the penalty of reduction of 2 stages from his salary for a period of one year without the effect of postponing the future increments.

5. Applicant has also made Annexure A-8 appeal dated 24.4.2006 reiterating his contention in the Annexure A-4 written brief dated 6.2.2006 and his Annexure A-6 representation dated 18.3.2006. He submitted that the findings were based on surmises, conjunctures and extraneous matters as stated by him in his Annexure A-6 representation dated 18.3.2006. The appellate authority did not dispose of the aforesaid appeal and hence the applicant has filed the present O.A for the following reliefs:

- (i) Declare that the disciplinary action taken against the applicant was illegal, unjust, unconstitutional and against the principles of natural justice and; quash A-7.
- (ii) Declare that the applicant is entitled to have his reduced pay restored retrospectively with consequential benefits and direct the respondents accordingly.
- (iii) Declare that the applicant is entitled to promotion as Sr. Technician in scale Rs.5000-8000 on par with his juniors at A-9 and to seniority on par with his juniors, if selected as JE hereafter and direct the respondents accordingly.

6. One of the main grounds raised by the applicant in the O.A is that the charges were not consistent. He denied that he was assigned with the task of rectifying temporary cable joint to permanent cable termination because such a work would require the assistance of at least one more technicians and the supervision of a Junior Engineer. According to him, if he had been assigned with the task of rectifying temporary cable joint, he could not be charged with meddling of signalling cable. He has also submitted that the charges were vague in so far as there is no mention of the particular gear to be

disconnected/suspended and how it resulted in wrong signals or wrong setting of Point No.19-A. Further, none of the documents or their makers listed in A-1 charge memorandum do not belong to Signals & Telecom Department and they could only show that when Down ESS was cleared, Point No.19-A was set to second hump which is an undisputed fact. The other contention of the applicant was that there is no evidence as no document or oral evidence was adduced in the inquiry to show that the task of cable termination was assigned to him and he undertook the said task and his act resulted in the wrong setting of Point No.19-A. He has also alleged that the findings of the enquiry are perverse and unfounded because the enquiry officer ignored all his submissions made in written brief. According to him, the findings were not based on any documentary or oral evidence adduced during the inquiry but they were based on a "report" which was never produced by either side. In other words, the enquiry officer relied upon extraneous matters in order to prove the charge. The other allegation of the applicant was that the enquiry was one sided and no opportunity was given to him under sub rules 19, 20 and 21 of Rule 9 of D&A Rules. He has also challenged Annexure A-7 penalty order as non-speaking and cryptic one.

7. Respondents in their reply have denied all the contentions and allegations of the applicant in challenging the enquiry report and the disciplinary authority's order. They have submitted that according to the enquiry report, the applicant who was in-charge of the maintenance of Nagercoil Station has not followed the proper procedure during his routine maintenance and violated Railway Service (Conduct) Rules. They have also denied the contention of the applicant that the contractor had damaged the signalling cable. Even if the contractor had damaged signalling cable, according to the respondents, it was the duty of the Technicians to make arrangements for normalisation and to restore normal

working. The respondents have reiterated that the applicant was assigned with the job of transferring temporary joint to permanent cable termination. They have also submitted that the applicant had undergone refresher course at Signal and Telecommunication Training Centre, Podannur from 14.2.2005 to 5.3.2005 and the competency certificate was issued to him by the Principal of that Training Centre which authorised him to carryout independent work without supervision of a Junior Engineer or a higher official. They have further submitted that the applicant was doing ordinary maintenance work near Point No.19 at NCJ and as per the Signal Engineering Manual, the termination of temporary joint into a permanent cable termination was one of the duties of routine maintenance. They have also submitted that reducing the pay from Rs.6000/- to Rs.5750/- for a period of one year was as per the directives of Railway Board for similar cases.

8. In the rejoinder, the applicant has reiterated that none from the Signal Department was listed or examined as a witness to prove the technical questions involved in the matter and the findings were entirely based on the report of the SE/SIG/NCJ (Annexure A-11). He has again submitted that the said letter was neither listed nor produced in the enquiry held between 9.12.2005 and 30.1.2006 and it was prepared as an afterthought and as a belated effort to create false evidence against him and the enquiry officer and the disciplinary authority have joined hands in the attempt.

9. The applicant has relied upon the following judgments:

(i) **Ministry of Finance & another v. S.B.Ramesh** [1998 SCC (L&S)

865]

(ii) **Narinder Mohan Arya v. United India Insurance Co. Ltd.** [2006

SCC (L&S) 840]

(iii) **Latoor Singh V. Union of India & others** [2003(1) ATJ 105]



(iv) **M.V.Bijlani v. Union of India & others [2006 SCC (L&S) 919].**

10. In the case of S.B.Ramesh (supra) the Apex Court has upheld the findings of the Tribunal that "*under sub rule (18) of Rule 14 of the CCS(CCA) Rules, it is incumbent on the enquiry authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness*". Similar provisions are there in sub rule (21) of Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 which reads as under:

"(21) The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him."

The applicant's contention in the Annexure A-4 written brief dated 6.2.2006, in the Annexure A-6 representation dated 18.3.2006, in the Annexure A-8 appeal and in this Original Application that the Enquiry Officer has denied him the opportunity admissible to him under the aforesaid rules.

11. In the case of Narinder Mohan Arya (supra), the Apex Court held that despite limited jurisdiction a civil court is entitled to interfere in a case where the report of the enquiry officer is based on no evidence and in the event the findings arrived at in the departmental proceedings are questioned before it, the following aspects have to be kept in mind:

"(1) The enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (see **State of Assam v. Mahendra Kumar Das [AIR 1970 SC 1255]**). (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (see **Khem Chand v. Union of India [AIR1958 SC 300]** and **State of U.P. v. Om Prakash Gupta [(1969) 3 SCC 775]**). (3) Exercise of discretionary power involves two elements -(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the



subjective element. (see **K.L.Tripathi v. State Bank of India** [AIR 1984 SC 273]) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (see **Sawai Singh v. State of Rajasthan** [AIR 1986 SC 995]). (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. (see **Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra** [(1987) 2 Cal LJ 344]). (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (see **Central Bank of India Ltd. v Prakash Chand Jain** [AIR 1969 SC 983], **Kuldeep Singh v. Commr. Of Police** [1999 SCC (L&S) 429].")

The applicant has taken objection to action of the Enquiry Officer calling for the Annexure A-11 report from SE/SIG/NCJ and relying upon it even though such a document was not even in existence at the time of issuing the statement of Article of Charges to him on 27.9.2005. The Annexure A-11 report relied upon by the Enquiry Officer was dated 9.12.2005 and it was not a part of the listed documents by which the articles of charges framed against the applicant were proposed to be sustained.

12. In the case of Latoor Singh (supra), the Principal Bench of this Tribunal has held as under:

"13. Moreover, any document which is produced in the inquiry, cannot be validly proved if the maker of that document is not summoned in the inquiry, for the purpose of affording the reasonable opportunity to the charged officer to cross examine him. The right of cross examination is a cardinal principle of natural justice, which cannot be rightly done away by withholding the witnesses though available"

The contention of the applicant was that the author of the Annexure A-11 report was neither a listed witness by whom the articles of charges were proposed to be sustained nor he was cited or examined as a witness during the enquiry.

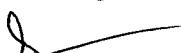
13. In the case of M.V.Bijlani (supra), the Apex Court has held as under:

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

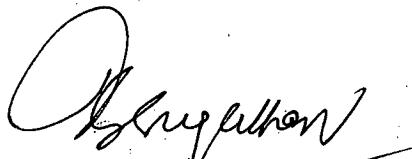
14. We have heard Shri M.P.Varkey, learned Advocate for the applicant and Shri Thomas Mathew Nellimoottil, learned Advocate for the respondents. In our considered opinion, the Enquiry Officer's report is liable to be quashed and set aside for the simple reason that it is based on the Annexure A-11 report of the Senior Section Engineer/Signal dated 9.12.2005. The reason given by the Enquiry Officer for calling for the report from SE/SIG/NCJ (Annexure A-11) and relying upon the same is that the Charged Employee (the applicant) in answer to Question No.7 in the enquiry has asked for more details and, therefore, he (the enquiry officer) sought the report from SE/SIG/NCJ, is absolutely untenable. The applicant has never requested the Enquiry Officer to call for a fresh report in the matter. The enquiry officer can call for a document, on the request of the charged official, which is in existence before the Article of Charge was issued to the charged employee and not to direct an authority to prepare a report and submit it for the consideration of the enquiry officer during the enquiry. In the present case, the applicant was issued with the Article of Charge vide memorandum dated 27.9.2005. The Annexure A-11 report dated 9.12.2005 was neither a document considered by the Disciplinary Authority nor it was in

existence before issuing the Memorandum dated 27.9.2005. Further, the Senior Section Engineer/Signal has neither been a listed witness by the prosecution nor he has been subjected to cross examination by the charged employee during the enquiry proceedings. The Disciplinary Authority has also not included him as an additional witness. The Enquiry Officer, has called for a report from an official and relied upon the same without any authority which has vitiated the entire proceedings. In the findings contained in the report, the Enquiry Officer squarely blamed the applicant and stated that the Annexure A-11 report was called for, on the demand of the charged employee". Such an action on the part of the Enquiry Officer is nothing but arbitrariness and, therefore, it is against the principles of natural justice. Except for the aforesaid report of the SE/SIG/NCJ, there is absolutely no other evidence against the applicant to substantiate the charge levelled against him. Therefore, it can safely be said that the report of the Enquiry Officer is based on "no evidence" and therefore, the same is perverse. Consequently, the Disciplinary Authority's order based on the aforesaid enquiry report is also liable to be rejected. We also find substance in the other argument of the learned counsel for the applicant that the enquiry has violated sub rule 21 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 as held by the Apex Court in S.B.Ramesh's case (supra).

15. We, therefore, allow the O.A and quash and set aside the Annexure A-5 enquiry report forwarded to the applicant vide letter No.V/SG.155/DAR/53 dated 6.3.2006 and also the Disciplinary Authority's order No.V/SG/155/DAR/53 dated 5.4.2006 based on the said report. Respondents are, therefore, directed to restore the pay of the applicant at Rs.6000/- as on 5.4.2006. Any other consequential loss suffered by the applicant including the non-consideration of his candidature for promotion to the post of Senior Technician shall also be made good by the respondents. If any of the juniors of the applicant have been



considered for promotions to the higher post if he has been left out for such consideration because of the pendency of the disciplinary case against him and the impugned Annexure A-9 penalty order dated 5.6.2006, he shall be considered for such promotions in accordance with the rules and, if he is found eligible, he shall be given the notional promotions from the date his junior has been so promoted. The respondents shall issue appropriate orders in this regard within two months from the date of receipt of this order. There shall be no order as to costs.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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