

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A..NO. 253/2000

FRIDAY, THIS THE 19th DAY OF APRIL, 2002.

C O R A M

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

S. Padmanabhan S/o late Sri K.A. Sehadri
Station Master Grade-II
Southern Railway
Magudanchadavi
residing at Railway Quarters
Magudanchadadi
Sankari drug
Salem District..

Applicant

By Advocte Mr. T. C. Govindaswamy

Vs.

1. Union of India represented by
the General Manager
Southern Railway
Head Quarters Office,
Park Town P.O.
Chennai-3
2. The Divisional Railway Manager
Southern Railway
Palghat division
Palghat.
3. The Additional Divisional Railway Manager,
Southern Railway
Palghat Division
Palghat.
4. The Divisional Operating Superintendent
Southern Railway,
Palghat Division
Palghat.

Respondents

By Advocate Mr. Thomas Mathew Nellimootttil

The Application having been heard on 18.3.2002 the Tribunal
delivered the following on 19.4.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant is a Station Master Grade-II working in
the Palghat Division of Southern Railway. He was issued with
A1 minor penalty charge memo dated 10.6.98 by the 4th



respondent. The said A1 charge memo was served on him on 14.7.98. Applicant gave A2 reply dated 21.7.98 inter alia praying for holding an enquiry under Rule 11(2) of the Railway Servants (Discipline & Appeal Rules) 1968. Applicant received A3 reply dated 5.8.98 issued by the 4th respondent. In A3, applicant's request for conducting an enquiry was rejected. The applicant was directed to give reply within 7 days of the receipt of the letter. Applicant was also served with A-4 letter dated 17.9.98 asking him to give his explanation within one week from the date of issue of the said letter. By A-5 letter dated 4.11.98 the penalty advice withholding his increment due on 1.3.2000 for 12 months without the effect of postponing the future increments was issued to him. Applicant filed A-6 appeal addressed to the second respondent. By A-7 letter dated 30.11.98 4th respondent advised him to submit the appeal addressed to the ADRM. Applicant filed A-8 letter dated 16.12.98. Applicant received A-9 reply dated 8.2.99 which is impugned herein. Stating that he had been subjected to substantial prejudice and irreparable damages and alleging that A3, A5 and A9 were totally arbitrary, discriminatory, contrary to law and without application of mind and hence violative of Articles 14 and 16 and 300-A of the Constitution applicant filed this Original Application seeking the following reliefs:

- (a) Call for the records leading to the issue of Annexure A3, A5 and A-9 and quash the same.
- (b) Direct the respondents to grant the consequential benefits thereof.
- (c) Award costs of and incidental to this application
- (d) Pass such other orders of directions as deemed just, fit and necessary in the facts and circumstances of the case.

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Applicant advanced the following grounds in support of his case.

(i) the charges in A1 are vague, cryptic, ambiguous, non-speaking and hence incapable of being effectively defended. The charges were based on materials collected behind his back hence his request for conducting the enquiry as provided under Rules 11(2) of Railway Servants (Discipline & Appeal) Rules, 1968 was just and proper. Rejection of the same by reasons stated therein was opposed to the mandatory principles of natural justice and hence the same was violative of Articles 14 and 16 of the Constitution.

(ii) Annexure A-5 was highly arbitrary, ultravires Rule 11, opposed to the mandatory principles of natural justice and hence unconstitutional. A-5 was based on materials gathered behind his back.

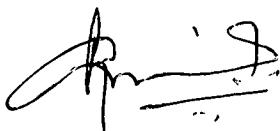
(iii) Annexure A-9 was without jurisdiction, arbitrary and unconstitutional. A-6 appeal was addressed to the second respondent competent authority who alone was bound to decide A-6. The 4th respondent had no power whatsoever to reject A-6. A-9 was illegal, ultravires Rule 22 of the Discipline and Appeal Rules and hence unconstitutional.

(iv) The operating department was not attached to the Additional Divisional Railway Manager and therefore the said authority had no jurisdiction. The Chief Personnel Officer had no authority to vest Disciplinary/Appellate jurisdiction upon ADRMs by demi official letters referred to in A-9. A-9 therefore was illegal.

2. Respondents filed reply statement resisting the claim of the applicant. They advanced a number of pleas in support. According to respondents the applicant was chargesheeted for minor penalty proceedings on the charge that he had issued a blank First Class Privilege Pass duly stamped and signed by him to an outsider for pecuniary benefits and also for not taking appropriate action regarding missing foil till it was detected by the Vigilance Organisation. Applicant had acknowledged the charge sheet on 14.7.98. He submitted a representation dated 21.7.98 to the 4th respondent who after considering all the aspects of the



case advised the applicant that since the charges were specific it was felt that no enquiry was warranted in that case. The advise was acknowledged by the applicant. Inspite of advise to him to submit his representation by A-3 the applicant did not submit his explanation. Hence, the Disciplinary authority after considering all aspects of the case decided the case ex-parte and imposed a penalty of withholding of increment due on 1.3.2000 for a period of 12 months (non-recurring) as per the penalty advice which was one of the impugned orders. As per instructions contained in CPO, Southern Railway, Madras dated 21.10.94 except in cases of accidents, appeal was with the third respondent Additional Divisional Railway Manager (ADRM) and not Divisional Railway Manager (DRM). Hence the applicant was advised to submit the appeal to the competent appellate authority viz. ADRM. The said communication was acknowledged by the applicant and he did not prefer any appeal. As per A-9 the 4th respondent again advised the applicant to address the appeal to the ADRM being the appellate authority. The applicant did not prefer any appeal and without exhausting all the available remedies the applicant had filed this O.A. and hence the OA was not maintainable and devoid of merit and was liable to be dismissed. The operating department in which the applicant was working was attached to ADRM as per R-1 letter dated 23.11.90. As per order No.J/P 227/P dated 12.1.2000 issued by the DRM in the matter of powers to be exercised under Schedule II of the Railway Servants (Discipline & Appeal) Rules, 1968 all the departments of the division were placed under the ADRM whereas the DRM alone would exercise the powers in cases related to train accidents.

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3. Heard learned counsel for the parties.

4. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and perused the documents brought on record.

5. On a careful consideration of the submissions made by the learned counsel for the parties and the rival pleadings we are of the view that the first issue to be decided in this O.A. is the validity of A-9 letter by which the applicant had been advised that ADRM is the appellate authority against A-5 order. In A-5 also it is stated that appeal against the said order lie with ADRM. In our view this matter could be decided by referring to Railway Servants (Discipline and Appeal) Rules, 1968 (RS (D&A) Rules for short).

6. Sub rule 2 of Rule 7 of the said RS(D&A) Rules provides that any of the penalties specified in Rule 6 may be imposed on a railway servant by authorities specified in Schedule I, II and III. Rule 19(1) of the RS (D&A) Rules, 1968 stipulates that "a Railway servant including a person who has ceased to be in Railway service, may prefer an appeal against all or any of the orders specified in Rule 18 to the authority specified in this behalf either in the Schedules or, where no such authority is specified as stated in the rule as indicated therein. Schedule II is the Schedule of disciplinary powers and powers of suspension of different grades of Railway Officers/Senior Supervisors in respect of non-gazetted staff of Zonal Railways, Chittaranjan Locomotive

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Works, Diesel Locomotive Works, Integral Coach Factory and Metro Projects (Railways)". In the 'Notes' below the said Schedule it is stipulated as follows:

Note:- (1) The appellate authorities in the case of authorities mentioned in this schedule shall be as shown in the next column, whereas in the case of the authority specified in the last column, the appellate authority shall be the President provided that, if post of the rank shown in any particular column does not exist, the appellate authority shall be that shown in the next column.

Col. 4 of Schedule-II and Col. 5 of Schedule-II are two columns with which we are concerned with in this O.A. Col. 4 reads as under:

Junior Administrative Grade Officers and Senior Scale Officers holding independent charge/incharge of a Department on the Division

Col. 5 reads as under:

Additional Divisional Railway Managers in relation to the Departments attached to them/Divisional Railway Managers

Therefore as per Note (1) of the Schedule read with Rule 19(1) in respect of the employees whose disciplinary authorities are as shown in col. 4, appellate authority will be shown as in col.5. We find no ambiguity in col. 5 that in relation to the specific Departments attached to the ADRM his powers are the same as those of the DRM.

7. By R-1 letter dated 23.11.90 the DRM had advised that all the staff of operating/commercial and Mechanical Department of Palghat Division had been put under the administrative control of the ADRM, Palghat Division. When such is the case we have no hesitation in rejecting the plea

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of the applicant that because the ADRM is not attached to the operating Department he cannot be the appellate authority of the employees of the Operating Department. In the light of the above we are of the considered view that the applicant's challenge against the ADRM being his appellate authority is without any force of law. We do not find any reason to interfere in A-9. Further we find that in A-5 while imposing the penalty on the applicant he had been specifically advised that ADRM, Palghat Division would be the appellate authority and the applicant could file appeal to him within 45 days. We are of the considered opinion that in the face of the statutory position as brought out by us above we do not find any infirmity in this part of A-5 order.

8. In the light of our above finding we find substance in the respondents' plea that this OA has been filed by the applicant without exhausting the statutory remedy and hence premature. Accordingly, without going into further aspects of the case we dismiss this O.A. with no order as to costs.

Dated the 19th April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Minor Penalty Charge Memorandum under No.J/T.Misc/98/SGE/SP dated 10.6.98 issued by the Divisional Operating Manager, Palghat.
2. A-2: A true copy of the representation dated 21.7.98 submitted by the applicant to the 4th respondent.
3. A-3: A true copy of the reply under No.J/T.Misc/98/SGE/SP dated 5.8.98 issued by the 4th respondent.
4. A-4: A true copy of the letter No.J/T.Misc/98/SGE/SP dated 7.9.98 issued by the 4th respondent.
5. A-5: A true copy of the Penalty Advice bearing No.J/T.Misc/98/SGE/SP dated 4.11.98 issued by the 4th respondent.
6. A-6: A true copy of the representation dated 14.11.98 submitted by the applicant to the 2nd respondent.
7. A-7: A true copy of the letter dated, 30.11.98 letter No.J/T.Misc/98/SGE/SP issued by the 4th respondent.
8. A-8: A true copy of the letter submitted by the applicant to the 4th respondent dated 16.12.98
9. A-9: A true copy of the Appellate order No.J/T.Misc/98/SGE/SP dated 8.2.99 issued by the 4th respondent.

Respondents' Annexures:

1. R-1: True copy of the letter No.J/P-227/P dated 23.11.90.
2. R-2: True copy of the D.O.No.P(A)227/P/Vol.XX dated 21.10.94.

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