

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.253 / 2006

Friday, this the 18th day of January, 2008.

CORAM

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

N.Doraisamy,
S/o K Nanjan, Ex Pointsman-A,
Southern Railway, Walayar R.S.
Palakkad Division,
Residing at : C/o Velappa Gounder,
Nalla Nayackan Thara,
Parasuraman Ngar,
Sangagiri.P.O. And Taluk
Salem District.

....Applicant

(By Advocate Mr TC Govindaswamy)

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Tow.P.O.
Chennai-3.
2. The Additional Divisional Railway Manager,
Southern Railway,
Palakkad Division,
Palakkad.
3. The Divisional Operations Manger,
Southern Railway,
Palakkad Division,
Palakkad.
4. The Senior Divisional Safety Officer,
Southern Railway,
Palakkad Division,
Palakkad.
5. The Divisional Personnel Officer,
Southern Railway,
Palakkad Division,
Palakkad.

....Respondents

(By Advocate Mr. Sunil Jose)

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This application having been finally heard on 8.1.2008, the Tribunal on 18.1.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against Annexure A-1 penalty advice dated 5.11.2001 removing him from service. He is also aggrieved by the Annexure A-2 appellate order dated 9.9.2005 by which his appeal against the order of the disciplinary authority removing him from service has been rejected.

2. The brief back ground of the case is that the applicant was issued with the Charge Memorandum dated 9.9.1999 that he absented himself from duty unauthorozedly from 4.10.1988 onwards contravening F.R. 2.08 of GRS 1976 and failed to maintain devotion to duty and behaved in a manner quite unbecoming of a Railway servant and thereby violated Rule 3(i), (ii) & (iii) of Railway Services (Conduct) Rules 1966 on 9.9.1999. As the whereabouts of the applicant was not known to the respondents, the charge memo could not be served upon him . The registered letters sent to his Walayar address and his last known address were returned by the Postal authorities as he was not traceable. The Enquiry Officer, therefore, proceeded with the enquiry exparte after pasting the Memorandum/Notices on the Station Notice Board. The Enquiry Officer fixed the enquiry on 15.8.2000 and also on 6.1.2001 but the applicant did not turn up. Thereafter, the Enquiry Officer conducted the enquiry exparte and submitted the report to the Disciplinary Authority holding that the charge against him was proved. As the said report could not be served upon him for want of his address, it was again pasted on the Station Notice Board. Based on the said report, the Disciplinary Authority, viz, the DOM/PGT passed the impugned Annexure A-1 penalty advice dated 5.11.2001 removing him from service and informing him further that he could appeal against the said order to the Appellate Authority, viz,



ADRM/PGT through proper channel within 45 days of receipt of the same. After several years, the applicant made the Annexure A-4 Appeal on 13.5.2005 against the aforesaid penalty advice stating that he got the penalty advice only on 14.2.2005. His contentions were that the enquiry was held without any notice to him, copy of the enquiry report was not furnished to him, the authority which removed him from service was not competent to issue such an order as the said authority was neither his appointing authority nor a higher authority and the punishment was extremely disproportionate considering the nature of the charge. The Appellate Authority in its Annexure A-2 impugned order observed that though the applicant was removed from service on 20.12.2001, he had submitted his appeal only on 13.5.2005. He was unauthorizedly absent from duty continuously from 4.10.1998 onwards. The appellate authority also observed that since the communications/notices sent to the applicant was returned by the Postal authorities as his whereabouts were not known, such communication/notices were pasted on the Notice Board of the Station and the applicant has not given any explanation as to why there was a such long delay of several years in making the appeal. As regards the penalty was concerned, the Appellate Authority held that it was warranted by the evidence on record and it was adequate. As regards the applicant's contention that penalty of removal from service was imposed upon him by an authority lower than the authority which had appointed him, the Appellate Authority had found it totally incorrect as per the records. The appellate authority has thus rejected the Appeal of the applicant.

3. The applicant's contention in the O.A is that it was because of the reasons beyond his control that he could not report for duty on 4.10.1998 as his son was suddenly missing from that date and his whereabouts were not known and he had informed the Station Master about his inability to report for duty. The

sudden disappearance of his son left his family members in distress and he had gone to different places in search of his son. Later, when the applicant was reported for duty, he was not allowed to join by the respondents. He was served with Annexure A-1 penalty advice only on 4.12.2005 and he had immediately consulted the counsel and submitted the appeal on 13.5.2005. He has also raised all the contentions he had raised in his appeal in the O.A also. In support of his contention that he was removed from service by an authority lower in rank than his appointing authority, he produced the Annexure A-3 Office Order dated 16.1.1995 issued by the DPO/PGT by which he was promoted to officiate as PM'A'/PNMB in the scale of Rs.950-1500 from the post of PM'B'/PNMP in the scale of Rs.800-1150 wherein it was stated that the said order was "issued as per the orders of Sr.DSO". The applicant's counsel Shri TC Govindaswamy has also relied upon the RBE No.211/2002 [letter No.E(D&A) 2002 RG 6-36] dated 25.11.2002 regarding determination of appointing authority for imposition of the penalties of dismissal, removal or compulsory retirement which reads as under:

"It has been brought to the notice of the Board by the NFIR, that on the Railway disciplinary powers as appointing authority for the purpose of imposing the penalties of dismissal, removal or compulsory retirement are even exercised by the authorities who have merely issued the offer of appointment or order of promotion.

The contents of Rule 2(1)(a) of RS (D&A) Rules, 1968 relating to definition of 'Appointing Authority' as elaborated vide Board's letter No.E(D&A) 88 RG 6-12, dated 7.5.1990 are reiterated. The gist of the rule and the said instructions is also explained below for easy understanding.

As the Railways are aware, in terms of Rule 2(1)(a) of RS (D&A) Rules, appointing authority in relation to a railway servant means the authority empowered to make appointment to the service of which the railway servant is, for the time being a member or to the grade of the service in which the railway servant is, for the time being included or the authority empowered to make appointment to the post which the Railway servant for the time being holds or the authority which actually appointed the Railway servant to such service, grade or post as the case may be, whichever is the highest authority. It is advised that the authority empowered to make appointment, referred to in Rule 2(1)(a) above, means the authority empowered to make appointment to the grade or post which the railway servant is holding at the time of imposition of penalty. This authority may be higher or lower in rank than the authority which was empowered to make appointment at the time of induction of the



Railway servant to the relevant grade or post or the authority which actually appointed him to that grade or post. The intention of the rule is that the penalties of dismissal, removal or compulsory retirement from service on a Railway servant should be imposed only by the highest of these authorities i.e. Either by the authority which actually appointed the railway servant to the relevant grade or post or the authority which is empowered to make appointment to that grade or post at the time of imposition of penalty, whichever is the higher authority. The penalty of dismissal, removal or compulsory retirement from service should obviously not be imposed by an authority which have merely issued the offer of appointment or order of promotion, with regard to the appointment or promotion ordered by a competent authority higher to that authority."

4. The respondents in their reply, rejected all contentions raised by the applicant in the O.A as well as in his appeal. They have submitted that the present O.A is premature as the applicant has approached this Tribunal without availing himself of the revisionary jurisdiction available to him under the rules. They further submitted that he was initially engaged as Substitute Sweeper under the Health Inspector's Office, Olavakode Junction, now Palghat Junction on 1.2.1070. He was finally promoted as Pointsman'A' with effect from 23.1.1995 as per the orders of the Divisional Personnel Officer, who is a Senior Scale Officer in grade and cadre. He was removed by the Divisional Safety Officer who is also a Senior Scale Officer in grade and cadre. Therefore, the applicant was appointed and removed by the authorities of the same rank. As regards Annexure A-3 Office Order dated 16.1.1995 is concerned, the respondents have submitted that since the said order was also a posting order, they obtained the orders from the controlling officer, viz, the Senior Divisional Safety Officer for his posting at the same station and not as his appointing authority..

5. We have heard Shri TC Govindaswamy for applicant and Shri Sunil Jose for respondents. We have gone through the O.A as well as the reply and



perused the relevant records produced by the respondents. It is seen that the applicant himself has not denied that he absented from duty with effect from 4.10.1998 without any authority. According to him, he came to know about the impugned order of removal from service dated 5.11.2001 only on 14.2.2005 i.e. after about 3 years and 3 months. He was absent from duty unauthorisedly from 4.10.1998 onwards, i.e. about 7 years, when he reported for duty, according to him, on 14.2.2005. In his appeal, apart from raising certain technical objections regarding the impugned order of removal from service imposed upon him, he has not given any explanation whatsoever about his unauthorised absence for 7 years. It is only in the O.A that the applicant has given a reason that his son was missing from 4.10.1998 and he was disturbed. In our considered opinion, the said reason given by the applicant is nothing but silly. No reasonable and responsible employee would abstain from duty unauthorisedly for seven years just for the reason that his son was missing. Absentism of the employees in Government and Railways is quite rampant and no administration can be run effectively if the employees are not punctual and disciplined. Such indiscipline cannot be tolerated at all. Such erring employees have to be dealt with very sternly. We are satisfied that in fact the applicant deliberately absented himself from duty from 4.10.1998 and did not bother about the disciplinary proceedings initiated against him which culminated in his removal from service with effect from 5.11.2001. It was also not his first absence. He had absented himself from duty unauthorisedly on earlier occasions also. No Government/Railway employee shall also be under the wrong notion that one can unauthorisedly absent from duty with impunity for long period and later oppose the exparte enquiry and frustrate the same on the ground that the enquiry was conducted in violation of the principles of natural justice without serving notice for the proceedings and without furnishing the copy of the enquiry report to him. After several years of unauthorised absence, no employee can be allowed to walk into



the office, as if nothing had happened and to join duty on a fine morning and accept his contention that he was never aware of the disciplinary proceedings held against him.

6. The Apex Court in *Ajit Kumar Nag v. G.M. (PJ), India Oil Corpn. Ltd.* [(2005) 7 SCC 764], (pp.785-86, para 44) held as under:

"But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: 'To do a great right' after all, it is permissible some times 'to do a little wrong'. [Per Mukharji, C.J. In *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613] (Bhopal Gas Disaster), SCC p.705, para 124]. While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than 'precedential'."

7. Reiterating the above principle, the Apex Court again held in *P.D. Agrawal v. State Bank of India and others* [(2006) 8 SCC 776] held as under:

"30. The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

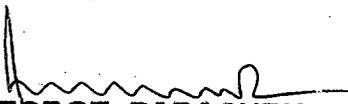
8. In our considered opinion, none of the grounds raised by the applicant would come to his rescue from the clutches of the penalty of removal from service imposed upon him. The counsel for the applicant was very vehement in his argument that the impugned Annexure A-1 order and Annexure A-2 order are arbitrary and violative of the Constitutional guarantees enshrined under Article 311(1) of the Constitution. He argued that the applicant was removed from service by an incompetent authority. The respondents have very clearly explained the reasons for issuing for Annexure A-3 order dated 16.1.1995

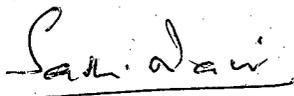


promoting him as Points'A' vide signature of DPO/PGT "as per the orders of the Sr.DSO". We are convinced by the explanation given by the respondents in the reply in this regard.

9. We, therefore, do not find any infirmity in the Annexure A-1 penalty advice 5.11.2001 removing the applicant from service and the Annexure A-2 appellate order dated 9.9.2005 rejecting the appeal of the applicant dated 13.5.2005 against the Annexure A-1 penalty advice. Being devoid of any merit, the O.A is dismissed. There shall be no order as to costs.

Dated, the 18th January, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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