CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 254 of 2000

Thursday, this the 21st day of February, 2002

CORAM

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

1. P.T. Ahamed Kabir,
Son of P.T. Thampikannu,
Station Master, Grade II,
Piravom Road Railway Station,
residing at Railway Quarters No.3/B,
Piravom Road Railway Station,
Mevelloor Post, Kottayam District. ....Applicant

[By Advocate Mr. M.P. Varkey]

Versus

1. Union of India represented by
General Manager, Southern Railway,
Chennai - 600 003

2. The Divisional Railway Manager,
Southern Railway, Trivandrum - 695 014

3. The Additional Divisional Railway Manager,
Southern Railway, Trivandrum - 695 014

4. The Senior Divisional Operations Manager,
Southern Railway,
Trivandrum - 695 014 ....Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil]

The application having been heard on 21-2-2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant, the Station Master Grade-II at Piravom Road Railway Station under the respondents, aggrieved by A4 penalty advice dated 23-10-1998 issued by the 4th respondent imposing on him the penalty of withholding of annual increments for a period of 24 months (non-recurring) and A6 appellate order dated 14-7-1999 issued by the 3rd respondent disposing of

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his appeal and reducing the penalty of withholding of annual increments for a period of 6 months (non-recurring), has filed this Original Application seeking the following reliefs:-

"a) Declare that Annexure A-4 and Annexure A-6 orders are arbitrary, unjust, discriminatory, devoid of application of mind and passed contrary to rules and; quash the same.

b) Declare that the applicant is entitled to draw his annual increment, if otherwise eligible on 1-3-2000 and direct the respondents accordingly.

c) Pass such other orders or directions as deemed, just and fit in the facts and circumstances of the case."

2. According to the applicant, an agitation took place on 30-4-1998 during his duty at Vaikom Road station. As per orders of the Section Controller on duty No.344 Kottayam-Ernakulam Passenger (a commuters train in evening) was to be detained at Vaikom Road for crossing of 6301 Express and for precedence of 6320 Mail. The applicant claimed that he crossed 344 Passenger and 6301 Express and detained 344 Passenger for precedence of 6320 Mail and thereupon the commuters of 344 Passenger became restive, rushed to his office and questioned him as to why their train was not started after crossing 6301 Express. As his explanation was not acceptable to them, they abused him and squatted on the main line to prevent precedence and passage of 6320 Mail. He reported to the Section Controller and Sub Inspector of Police, Kaduthuruthy. Section Controller asked the applicant to pass 6320 Mail on the main line, ignoring the squatting commuters, which was not agreed to by him. Before the police could arrive, 6320 Mail came to the signals and stopped. The police Sub Inspector and 3 Constables could not clear more than the 100 people squatting on the main line and this fact was conveyed to the Section Controller and thereupon, the Section Controller ordered to start 344 Passenger in advance of 6320

Mail. Then 6320 was admitted into the station and it remained there for crossing of E.O.1 Passenger, as per instructions of the Section Controller. According to the applicant, the detention to trains at Vaikom Road on 30-4-1998 was due to circumstances beyond his control. He averred that the Section Controller informed him that the Senior Divisional Operations Manager (4th respondent herein) was unhappy for not passing 6320 Mail through the main line on which the commuters were squatting. According to him, the squatters would have run helter skelter when they see the train coming on the main line. On 19-6-1998 the Section Traffic Inspector informed the applicant that a charge memorandum issued by the 4th respondent against the applicant had reached him and the same was regarding the train detention on 30-4-1998 and he would be sending the same to the applicant shortly for acknowledgement and reply. Thereupon, the applicant submitted A1 representation dated 20-6-1998 to the 2nd respondent through proper channel explaining what happened on 30-4-1998 and complaining against the hostile and discriminatory acts of the 4th respondent. On 22-6-1998 the applicant received A2 charge memorandum dated 26-5-1998, according to which the applicant had refused to run through 6320 Mail in preference to 344 Passenger while on duty at Piravam Road on 30-4-1998, thereby violating Rules 3.1 (ii) and (iii) of Railway Service Conduct Rules, 1966. The applicant submitted A3 representation dated 27-6-1998 through proper channel under clear acknowledgement from the Station Master, Piravam Road, submitting that the charge memorandum was not maintainable on facts or in law and denying the charges and praying for cancellation of the charge memorandum. The applicant received A4 order dated 23-10-1998 imposing the penalty of withholding of his annual increment due on 1-3-2000 for 24 months (non-recurring). Aggrieved, the applicant submitted A5 appeal dated 18-1-1999. A6 order of the

appellate authority dated 14-7-1999 rejecting his appeal, but reducing the duration of the penalty to 6 months was received by him. The applicant had advanced a number of grounds for the reliefs sought for by him.

3. Respondents filed reply statement resisting the claim of the applicant.

4. Heard the learned counsel for the parties.

5. Learned counsel for the applicant drew our attention to A4 penalty advice and submitted that the same contained contradictions. According to him, the 2nd respondent might have forwarded A1 to the 4th respondent for his comments and the 4th respondent had imposed the penalty. He pointed out that while A1 had been treated as an explanation, in A4, at the same time, it had been stated that the case had been decided as `ex parte' stating that no explanation from the applicant had been received. Practically A1 complaint had been utilised as a tool against himself, he argued. Relying on A7 and A8 which were sent to the staff posted at Vaikom who had been similarly charge-sheeted, he submitted that if the reply to the chargesheet had not been received, the practice was to send reminder and that denial of such a facility to the applicant was discriminatory. It was further submitted by him that A4 had been issued as an `ex parte' order, but the evidence available had not been analysed in the said order. Practically A4 had been passed on some additional charges rather than on the original charges. Eventhough all these were pointed out in the appeal filed before the 3rd respondent and the 3rd respondent had taken note of all those points, instead of remitting back the case to the disciplinary authority in accordance with the provisions of Rule 22(2) of the Railway

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Servants (Discipline & Appeal) Rules, 1968, the appellate authority had decided only to reduce the withholding of increment for a period of 6 months stating the same as due to intricacies involved in the working. The said authority had also not considered the points raised in A3. He also relied on A9 and submitted that the charges did not get covered by the items listed in A9.

6. Learned counsel for the respondents submitted that the applicant's contention that the penalty advice was an indictment rather than a penalty advice was not correct. The applicant, instead of submitting the explanation to the charge memorandum, had rushed to the Divisional Railway Manager. It was submitted that the respondents had not taken A1 representation dated 20-6-1998 while coming to the decision in A4. The denial of charges by the applicant was on flimsy reasons like disputing the charges on the basis of the typing mistake etc. The reliance placed by the applicant on A9 was not valid as would be seen from A9 itself and A9 would in no way absolve the applicant from the acts done by him on 30-4-1998.

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

8. It is now well laid down that while exercising the powers of judicial review, Courts/Tribunals are mainly to see the decision making process rather than the decision itself. It is proposed to examine the case as to whether the procedure followed by the respondents in imposing the penalty on the applicant is legal or not.

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9. As seen from A2, the charges levelled against the applicant are as follows:-

> "Shri.Ahammed Kabir, RASM/PVRD while on duty at PVRD on 30-4-1998, 10-20 hrs duty, he refused to run through 6320 Mail in preference over 344 Passr. by detaining 344 at VARD for 62 mts which resulted in extra detention to 6320 Mail at VARD Signals for 56 mts and at Station 18 mts. Thus he has violated rules 3.1(ii) and (iii) of Railway Service Conduct Rules of 1966."

The charge memorandum is dated 26-5-1998. According to the applicant, this has been received by him on 22-6-1998. Respondents admit that the applicant had received the same on 22-6-1998 as could be seen from A4. The applicant had produced his explanation dated 27-6-1998 as A3. Whether the said explanation dated 27-6-1998 had been received or not by the Senior Divisional Operations Manager/TVC, the 4th respondent herein, is not stated anywhere in the reply statement. But, in A4, the 4th respondent had stated that no explanation had been received, but, at the same time, as pointed out by the learned counsel for the applicant, A1 representation sent by the applicant to the 2nd respondent had been taken note of in A4. Eventhough the said A1 had been taken note of, it would appear that the contents of the same had not been taken note of in A4, because in A4 the 4th respondent stated that he was constrained to treat and decide the case `ex parte'. The evidence that is available with him to come to the conclusion that the applicant was responsible for the charges have not been indicated in A4 at all. In this view of the matter, we find substance to the first ground advanced by the applicant. We also find the 4th respondent has taken objection to the representation submitted by the applicant and perhaps this was also a factor for his decision.

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10. From the charges reproduced above, it is very evident that there is an error in that the applicant had been shown to be on duty at PVRD instead of VARD. The applicant had pointed out the said mistake and had denied the charges. Even if his explanation had not been received by the 4th respondent, the 3rd respondent had received the same as would be seen from A6. But we find that he had brushed it aside in A6 order.

11. Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 deals with `Consideration of appeal'. The said rule reads as under:-

> "22. Consideration of appeal
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> (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
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> (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-
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> (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;
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> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
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> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
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> (i) confirming, enhancing, reducing or setting aside the penalty; or
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> (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:
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> Provided that-
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> (i) the Commission shall be consulted in all cases where such consultation is necessary;

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(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit; and

(iv) subject to the provisions of Rule 14, the appellate authority shall-

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

12. Rule 22.(2) (b) and (c) specifically provide as indicated above, i.e. whether the findings of the disciplinary authority are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or severe and pass orders confirming, enhancing, reducing or setting aside the penalty or 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. Thus, while the appellate authority has to with the powers available to him independently evaluate the evidence and come to a finding; from a reading of A6 we find that no such thing had been done by him in this case. In our view, this would indicate that the consideration of the appeal by the appellate authority had not been in accordance with Rule 22. On this ground, we hold that the appellate order is liable to be set aside.

13. In the light of the foregoing, after considering all materials placed before us, we are of the view that the applicant has had no fair hearing. Accordingly, we set aside and quash A4 and A6 orders. The applicant shall be entitled for the consequential benefits arising from the above order, which we direct the respondents to give him within a period of three months from the date of receipt of a copy of this order.

14. The Original Application stands allowed as above with no order as to costs.

15. When we finished dictating the above order learned counsel for the respondents submitted that liberty may be given to the respondents to proceed afresh in the matter which we declined in the facts and circumstances of the case.

Thursday, this the 21st day of February, 2002

K.V. SACHIDANANDAN
JUDICIAL MEMBER

G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of representation dated 20-6-98 submitted by the applicant.

2. A-2: True copy of charge memorandum No.V/T.348/DAR/SF-11/11/98 DATED 26.5.98 issued by the 4th respondent.

3. A-3: True copy of representation dated 27-6-98 submitted by the applicant.

4. A-4: True copy of penalty advice No.V/T.348/DAR/SF-11/11/98 dated 23-10-98 issued by the 4th respondent.

5. A-5: True copy of appeal dated 18-1-99 submitted by the applicant.

6. A-6: True copy of appellate order No.V/P.227/A/99/20/Optg. dated 14-7-99 issued by the 2nd respondent.

7. A-7: True copy of letter No.V/T.GL/SF-11/25/98/VARD dated 10-11-98 issued by the 4th respondent.

8. A-8: True copy of letter No.V/T.GL/SF-11/39/98/VARD dated 11.11.98 issued by Assistant Operations Manager, Trivandrum.

9. A-9: True copy of Railway Board's letter No.E/D&A/90/GS 1-3 dated 22.3.90.

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