

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 26 of 2010

Esnakwam, this the 30th day of August, 2011

CORAM:

**Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member**

B. Gopinath, Ex Catering Supervisor/
I, Kerala Express, Southern Railway,
Trivandrum, Residing at Chennampallil Houe,
Moolavattom PO, Kottayam District. **Applicant**

(By Advocate – Mr. M.P. Varkey)

Versus

1. Union of India, represented by General Manager, Southern Railway, Chennai-600003.
2. Chief Commercial Manager, Southern Railway, Chennai-600003.
3. Divisional Railway Manager, Southern Railway, Trivandrum-695014.

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 02.08.2011, the Tribunal on 30th Aug.2011 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant while serving as Catering Supervisor Grade-I in train No. 2625/2626 Kerala Express was subjected to a check on 11.5.2000 by the vigilance wing of the Railways. Consequently the applicant was served with a memorandum on the following charges:-

- “(i) He had a shortage in stores to the value of Rs. 653.75 and abnormal excess in stores on seven items at the time of check.
- (ii) He was in possession of Rs. 20,060/- as unaccounted cash at the time of check.
- (iii) Despite instructions from vigilance, he had failed to remit the Rs. 20,000/- unaccounted cash, and Rs. 24/- found excess in railway cash to the railways.
- (iv) Of the 7 items found excess in stores, he had failed to take into account of the DBR, 30 Kgs of excess Atta, despite instructions from the vigilance.”

2. In the inquiry that followed, all the four charges were held as proved. After considering the representation of the applicant on the inquiry report the disciplinary authority imposed the penalty of compulsory retirement on him vide penalty advise dated 3.3.2004. The appellate authority confirmed the penalty advise by its order dated 18.10.2004. This Tribunal allowed the OA No. 903 of 2004 filed by the applicant and directed to reinstate the applicant in service with continuity of service and the matter was remitted to the disciplinary authority for considering a lesser punishment as the only sustainable charge against him was that he was carrying an amount of Rs. 20,060/- as unaccounted cash for which there was no entry in the permanent cash declaration register. Payment of arrears of pay and allowances from the date of compulsory retirement to the date of reinstatement and regularization of the period of suspension from 16.5.2000 to 9.10.2000 as duty were also directed. Both the applicant and the respondents preferred appeals before the Hon'ble High Court of Kerala against the order of this Tribunal. By a common judgement dated 4.2.2009 the Hon'ble High Court confirmed the quashing of the penalty advise and the appellate order and directed the disciplinary authority to pass fresh speaking order dealing with



the impact of Rule 2429 of the Indian Railways Commercial Manual Volume II while taking a decision regarding the possession of excess cash to the tune of Rs. 20,060/- and the representation of the applicant against relying on previous punishments and the explanation of the applicant regarding the presence of two bags of atta found in the store, within a period of two months failing which the applicant shall be reinstated in service with all consequential benefits. Accordingly, the disciplinary authority passed a detailed order dated 20.4.2009 reducing the applicant in service to the lower grade as Catering Supervisor Grade-III for a period of ten years with recurring effect and loss of seniority without adverting to the previous punishments ordered to the employee. Against the fresh penalty advise the applicant approached this Tribunal in OA No. 456 of 2009 which was disposed of by directing the applicant to prefer an appeal. Vide order dated 2.11.2009 the appellate authority confirmed the penalty advise. Challenging the orders of the disciplinary authority and the appellate authority the present OA has been filed by the applicant for the following reliefs:-

- “a) Declare that Annexure A-3 and A-5 orders are unjust, illegal, unconstitutional and without jurisdiction and; quash the same.
- b) Declare that the applicant is entitled to be reinstated in service with effect from 10.3.2004 with all attendant benefits including arrears of pay, less the amount drawn as pension and; direct the respondents accordingly.
- c) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

3. The contentions of the applicant are summarized as under:-

The third respondent acted without jurisdiction as it was Additional Divisional Railway Manager who was directed to comply with the



direction in the judgement of the Hon'ble High Court. He was prejudiced against the applicant as evident from the fresh allegations in Annexure A-3 penalty order dated 20.4.2009. The disciplinary authority ought to have heard the applicant and considered his representation before imposing the punishment. The impact of Rules 2429 on possession of excess cash of Rs. 20,060/- found in the applicant's brief case and the 30Kgs. of excess atta before imposing any penalty and by just stating that the said penalty is imposed without adverting to the previous punishment and failure to put the applicant on notice cannot be overcome. The impugned penalty is harsher and disproportionate to the alleged possession of Rs. 20,060/- and existence of 30 Kgs. of Atta. Annexure A-3 order was not passed within two months from then date of production of a copy of the judgement of the Hon'ble High Court.

4. The respondents submitted that the judgement of the Hon'ble High Court of Kerala was received on 24.2.2009. Fresh penalty advise was issued by the disciplinary authority on 20.4.2009 i.e. within the time frame of two months and it was served on the 60th day i.e. 25.4.2009 on the applicant. As the ADRM proceeded on long leave the next higher authority namely the DRM as per rules issued the fresh penalty advise with due application of mind. The applicant had absolute liberty to submit a representation with due justification not only against relying on previous punishments but also on any other aspect of the case but he did not do so. However, the disciplinary authority issued the penalty advise dated 20.4.2009 without adverting to the

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previous punishments awarded to the applicant. Therefore, the explanation of the applicant in this regard was not called upon. Nevertheless it remains a fact that there have been 9 instances of DAR action against the applicant excluding the present case in which penalties have been awarded including two instances of major penalties. The applicant's cabin is located within the pantry car wherein his brief case carrying unaccounted cash was found. Since his cabin is located inside the pantry car, this case would fall within the ambit of Rule 2429. Thus Rule 2429 of Indian Railway Commercial Manual fully covers the issue.

5. We have heard the learned counsel for the applicant Mr. M.P. Varkey and learned counsel appearing for the respondents Mr. Thomas Mathew Nellimoottil and perused the records.

6. For the sake of convenience, the operative part of the order of this Tribunal in OA No. 903 of 2004 filed by the applicant against compulsory retirement is reproduced as under:-

“16. In the above conspectus of the case, we allow the OA and quash and set aside the Annexure A6 penalty advice dated 3.3.2004 and the Annexure A8 appellate order dated 18.10.2004. The applicant shall be entitled to be reinstated in service within 30 days from the date of receipt of this order with continuity in service. The matter is remitted to the disciplinary authority who may pass an order imposing a lesser punishment on the applicant considering only the sustainable charge proved against him namely, that the applicant was carrying an amount of Rs. 20,060/- as “unaccounted cash” for which there was no entry in the Permanent Cash Register and ignoring the other two reasons given by the disciplinary authority in his order that the word “omnibus” used by the applicant was in bad taste and his past service was unsatisfactory. The disciplinary authority shall also consider payment of arrears of his pay, allowances and all other financial benefits which shall be available to him for the period from 10.3.2004 till the date of

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reinstatement as already directed and take appropriate decision regarding treating his suspension period as duty from 16.5.2000 to 9.10.2000 and pass necessary orders. The above direction shall be complied with within three months from the date of receipt of this order. There shall be no order as to costs.”

7. In WP(C) Nos. 29559/2006 and 21183/2006 filed against the above order of this Tribunal, the Hon'ble High Court of Kerala held as under:-

“5. Having regard to the facts of the case, we agree with the finding of the Tribunal that the impugned orders of the disciplinary authority and the appellate authority Annexures A6 and A8 should be set aside. We uphold the order of the Central Administrative Tribunal to the extent it quashes those orders. But we feel that the disciplinary authority should be given a free hand to consider the matter afresh. Therefore, we make the remand an open remand. The applicant shall be given a chance to represent against relying on the previous punishments for imposing penalty on him. The disciplinary authority, needless to say, will consider the same. It shall also consider the impact of Rule 2429 of Indian Railways Commercial Mannual Volume II while taking a decision regarding the possession of the petitioner of excess cash to the tune of Rs. 20,060/. The disciplinary authority shall also take into account the explanation of the applicant regarding the presence of two bags of atta found in the store. The disciplinary authority shall pass a fresh speaking order dealing with the above aspects. This the disciplinary authority shall do within two months from the date of production of a copy of this order. In case it is not done within the said time limit, the respondents in WP(C) 21183/2006 and the writ petitioner in WP(C) 29559/2006 shall be reinstated in service with all consequential benefits.”

8. The order of this Tribunal got merged in the order of the Hon'ble High Court. The four points of action for the respondents on making an open remand of the case are as under:-

- 1) Give a chance to the applicant to represent against relying on the previous punishments for imposing penalty on him and consider the same.
- 2) Consider the impact of Rule 2429 of the Indian Railway



Commercial Manual Volume II in respect of the unaccounted cash of Rs. 20,060/-.

3) Consider the explanation of the applicant in respect of two excess bags of atta.

4) Issue a fresh speaking order within two months of receipt of a copy of the orders of the Hon'ble High Court.

9. A fresh speaking order dated 20.4.2009 as at Annexure A-3 was issued by the 3rd respondent who is a higher authority than the authority which issued the penalty advice dated 3.3.2004. The Additional Divisional Railway Manager who issued the order dated 3.3.2004 had gone on long leave. Therefore, the next higher authority, the Divisional Railway Manager had issued the fresh penalty advice dated 20.4.2009 as per rules; which we find in order. We also find that the fresh penalty order was issued within the prescribed time limit. The relevant part of the penalty order dated 20.4.2009 is extracted as under:-

"In compliance with the directions of the Hon'ble High Court of Kerala, I have examined this case with specific reference to:-

- i. The impact of Rule 2429 of IRCM (Vol.II)
- ii. Explanation of employee on 2 bags of Atta found in the store.

In this regard, Rule 2429 of IRCM (Vol.II) states as under:-

(a) "Private cash should not be kept in the railway cash chest, drawers, ticket tubes, cash safes etc. If any such amount or extra cash, whether stated to be private or otherwise, is found by the supervisory staff or inspecting official, it should be remitted to the cash office.

(b) The staff working in booking offices, parcel offices and goods sheds, whose duties actually involve cash transactions



with the public, must declare in writing their private cash daily before they take up their duties in the station diary or in the cash book or in a separate register to be maintained for this purpose. The specific categories of staff to whom these instructions will apply, will be notified by the railway administrations concerned."

Staff manning pantry car of trains fall under the "notified category" of staff who are required to declare their private cash. The employee had admittedly not 'declared' a sum of Rs. 20,000/- and the same was detected by vigilance in the course of the check as "unaccounted cash". In such situations, Rule 2429 is very clear in providing that such extra cash "whether stated to be private or otherwise" should be remitted to the cash office. The essence of the rule provision is that when 'excess cash' is detected, it is deemed to be a result of corrupt practices, that has been deliberately left as "unaccounted" by the employee for illegal gratification. Hence the amounts in question would have accrued to the exchequer had it been properly accounted, and therefore, the same has to be remitted to cash office as per Rule 2429 ibid.

The explanation of the employee that Rs. 20,000/- was given to him at Delhi by his friend who is an Army Officer to be given away to a relative in Kerala is far from convincing, and in all probability, is a cooked up story after having been caught red-handed. It is un-likely that such large sums of money are sent through a railway employee, when fast & safe modes of money transfer are very much available such as through banks etc. Even in that possibility, the employee had not 'declared' this amount in his private cash. The employee's defence that this amount was not declared in the 'Private Cash Declaration Register', as it was kept in a brief case at his resting place is not acceptable. A catering staff has to declare all cash held with him in the pantry car. The word 'etc' appearing in Rule 2429 after 'cash safes', point that the items listed therein is only illustrative, and not exhaustive. For an on-board catering staff, pantry car is the 'place of work', and all cash & materials carried therein have to be necessarily accounted. The possibility of corrupt practices in the pantry car such as projecting diminished sales etc. cannot be ruled out, and the detection of excess cash coupled with serious discrepancies in store items point to this possibility.

As regards the excess Atta found by vigilance in the store of the pantry car, it is very much obvious that Atta is one of the times of day to day use in a railway pantry car, especially that of a long distance train such as Kerala Express. Hence presence of 30 Kg of excess Atta in the pantry car is a serious irregularity. The employee contends that the Atta actually belonged to some other 'pantry staff' who had not turned up to claim ownership of the same fearing vigilance action. In that case, the least the employee ought to have done is to take on stock the same when directed to do so by the inspecting team. Such a course of action (which is also mandated under the rules) would not have

caused any pecuniary loss to the employee. Further, the employee also had no rationale to defend any such staff who had not turned up at the appropriate time of vigilance check.

For the facts and reasons mentioned above, I, upon diligent re-examination of the issue, is of the opinion that the acts of omission/commission on the part of the said Sri B. Gopinath are gravely culpable. However, in view of the directives of the Hon'ble High Court of Kerala, I would like to bestow leniency though not really warranted, and hereby impose the penalty of reduction to the lower grade of Catering Supervisor Grade III, and fixing of pay at the lowest stage, for a period of 10 years with cumulative effect, and loss of seniority without adverting to the previous punishments awarded to the employee.

Accordingly the penalty of compulsory retirement from service with effect from 10/3/2004 imposed by ADRM vide V/VO/T/FR/65/2000 dt. 3/3/2004 and confirmed by CCM is modified to that of reduction to lower grade as CSIII in scale Rs. 5200-20200 with Grade Pay Rs. 2000/- for a period of 10 years with recurring effect and loss of seniority.

This will have the effect of postponing his future increments. The intervening period between the date of compulsory retirement and reinstatement is treated as non-duty.

10. The disciplinary authority has considered the impact of Rule 2429 of Railway Commercial Manual Vol.II and held that the pantry car is the place of work for catering staff and that the defence of the applicant that Rs. 20,060/- was not declared in the private cash declaration register as it was kept in a brief case at his resting place is not acceptable. The explanation of the applicant in regard to the excess stock of Atta that it belonged to some other pantry staff was also found not acceptable. What is held as proved against the applicant are serious irregularities of having unaccounted cash and excess stock. In our considered view the penalty of reduction to lower grade as CSIII in scale of pay of Rs. 5200-20200/- with GP Rs. 2000/- for a period of 10 years with recurring effect and loss of seniority is highly disproportionate to the gravity of the proved charges against the applicant.



11. What remains now for consideration is giving a chance to the applicant to represent against relying on the previous punishments for imposing penalty and consideration of the representation. The direction of the Hon'ble High Court is mandatory. The applicant was not given a chance to represent as above. It is mentioned in the penalty order dated 24.4.2009 at Annexure A3 that the penalty is imposed "without advert to the previous punishments awarded to the employee". For the said reason, the respondents in their reply submitted that the disciplinary authority did not call for the explanation of the applicant. The stand of the respondents is untenable on two counts. Firstly, the direction of the Hon'ble High Court to give a chance to the applicant to represent against relying on previous punishments and to consider it, is not complied with. Secondly, there was no direction from the Hon'ble High Court not to consider previous punishments for imposing penalty. The disciplinary authority is justified in imposing harsher punishment on a habitual offender. For this purpose advert to previous punishments is necessary. All that the Hon'ble High Court directed was to consider the representation of the applicant against relying on previous punishments, if he chooses to represent, for which purpose he should be given a chance. By simply not relying on the previous punishments for imposing punishment in the case under consideration here, the disciplinary authority does not comply with the direction of the Hon'ble High Court and at the same time does not advance the cause of justice by ignoring the repeated violation of rules, if any, by the applicant. The Appellate Authority also failed to notice the non-compliance of the direction given by the Hon'ble High Court.

12. In the light of the above discussion, the impugned orders are liable to be set aside and the matter is required to be remanded to the disciplinary authority.

13. Before parting with the case, we would observe that some of the expressions in the penalty order dated 24.4.2009, as rightly objected against by the counsel for the applicant, could have been avoided. The charges stated in the charge memorandum should not be embellished in the penalty order. An order is better if it is less subjective and if its language is restrained and moderate.

14. For the reasons stated above the Annexure A-3 order dated 20.4.2009 and the Annexure A-5 order dated 20.11.2009 are set aside. The case is remanded to the disciplinary authority to proceed further as per law from the stage of giving a chance to the applicant to represent against relying on the previous punishments for imposing penalty on him, within a period of three months from the date of receipt of a copy of this order.

15. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”