

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 262 of 1998

Tuesday, this the 20th day of March, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. R. Radhakrishna Raju,
S/o A. Ramachandra Raju,
Station Master, Southern Railway,
Valliyur,
Permanent Address: Bessy Bhavan,
Pallipad Post, Alleppey District.Applicant

[By Advocate Mr. T.C. Govindaswamy (represented)]

Versus

1. Union of India through the
General Manager, Southern Railway,
Headquarters Office, Park Town PO,
Madras-3
2. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum-14
3. The Senior Divisional Operations Manager, Southern Railway,
Trivandrum Division, Trivandrum-14
4. The Chief Operations Manager,
Southern Railway, Headquarters Office,
Park Town PO, Madras-3
5. The Station Manager,
Southern Railway, Nagercoil Junction.Respondents

[By Advocate Mr. Thomas Mathew Nellimootttil]

The application having been heard on 20-3-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

This Original Application was heard by a Division Bench. Since the opinion was equally divided between the members of the Division Bench, the Original Application is placed before me by invoking Section 26 of the Administrative Tribunals Act.

2. The points on which divergence of views have been expressed are:

- "(i) Whether the non supply of documents requested for by the applicant and non summoning of one witness requested for by the applicant has caused prejudice to the applicant's case;
- (ii) Whether non questioning by the Enquiry Officer of the applicant generally on the evidence appearing against him under Rule 9(21) has caused any prejudice to the applicant's case;
- (iii) Whether keeping in view the articles of charges against the applicant the Disciplinary authority's A-10 order can be treated to be an order passed after application of mind and after going through all aspects of the case; and
- (iv) In the facts and circumstances of the case whether the applicant is entitled to for the reliefs sought for under paragraphs 8 (a), (b) and (c)."

3. The applicant is a Station Master. Disciplinary proceedings were initiated against him and as per A-10 the Disciplinary Authority found him guilty of the charges and awarded the penalty of reduction to the grade of Assistant Station Master in the grade of Rs.1200-2040 for a period of 10 years. Against the same he preferred an appeal and as per A-14 the Appellate Authority reduced the penalty to 6 years instead of 10 years. Being not satisfied with A-14 order, he preferred a revision and the Revisional Authority refused to interfere saying that there is no reason to modify the penalty which has been reduced by the Appellate Authority.

4. As far as the first point whether the non supply of documents requested for by the applicant and non summoning of one witness requested for by the applicant has caused prejudice to the applicant's case is concerned, it was submitted by the learned counsel appearing for the applicant that documents not mentioned in the chargesheet have been relied on by the Inquiring Authority and the applicant inspite of having

specifically requested for making available copies of those documents, those documents were not made available to him. It is further submitted by the learned counsel for the applicant that refusal to provide copies of the documents was done not by the Inquiring Authority, but by the Disciplinary Authority and that is against the rules. Reliance is placed by the learned counsel for the applicant on sub-rules 15 and 16 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. Sub-rule 15 says that the inquiring authority shall, on receipt of the notice for discovery of production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in the requisition. Proviso says that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case. Sub-rule 16 says that on receipt of the requisition referred to in sub-rule 15 every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority by the specified time.

5. A8 is the copy of the Enquiry Report. There it is stated that six documents were examined. Those documents are:

- (1) The relevant page of P.N. exchange register kept at station;
- (2) The relevant page of P.N. exchange register kept at B Cabin;
- (3) Copy of the concerned page of ISR;
- (4) Copy of T.369-B No.753088 issued to the driver by the CE;
- (5) Copy of T.369-B No.753089 issued to the driver by SS/NCJ; and
- (6) Copy of lever position readings recorded and signed jointly by SS and SI/II/NCJ.

6. Documents (1) to (3) are referred in the charge memorandum. Documents (4) to (6) do not find a place in the charge memorandum. So, it is clear that the documents relied by the Inquiring authority are not only the documents mentioned in the charge memorandum, but other documents also. From A6 issued by the Disciplinary Authority it is seen that the request of the applicant for making available copies of the documents not mentioned in the charge memorandum has been turned down. If there are reasons for refusal to supply copies of the documents sought by the delinquent, it is for the Inquiring authority as per sub-rule 15 of Rule 9 to do so for the reasons to be recorded in writing. In this case, the Inquiring authority has not exercised that power, but the Disciplinary Authority has exercised that power. Rules do not provide such a power to be exercised by the Disciplinary Authority. That being so, the refusal by the Disciplinary Authority as per A6 is not in accordance with the rules.

7. From A5 it is seen that the applicant sought for supply of the copy of statements recorded in the preliminary enquiry. That was also turned down as per A6 by the Disciplinary Authority.

8. The applicant also sought for examining one Sambath, ESM/NCJ as a defence witness. That request was also turned down as per A6 by the Disciplinary Authority.

9. The learned counsel appearing for the respondents submitted that an officer, who is superior in rank to Sambath, was examined in the enquiry proceedings and that is the reason why Sambath was not permitted to be examined as defence

witness. I do not think that the stand is justifiable and the refusal to examine Sambath as defence witness is to be countenanced.

10. In State of U.P. Vs. Shatrughan Lal & Another [(1998) 6 SCC 651], it has been held thus:

"Preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita v. Union of India* wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence."

11. In the light of the said ruling, non-supply of documents requested by the applicant including non-supply of copies of the statements of witnesses recorded during the preliminary enquiry has caused prejudice to the applicant in this case.

12. Non-summoning of the defence witness sought by the applicant for no valid reason has also caused prejudice to the applicant.

13. As far as the second point is concerned, i.e. whether non-questioning by the Enquiry Officer of the applicant generally on the evidence appearing against him to enable him to explain the evidence appearing against him under Rule 9(21) has caused any prejudice to the applicant's case, it is relevant to note that Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules, 1968 says that 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. In this case the applicant has not examined himself. In that situation, the Inquiring authority was duty bound to question the applicant on the circumstances appearing against him in the evidence for the reason that the word used is "shall", when the railway servant has not examined himself. It is not an empty formality. Why it is mandatory is evident from a reading of Rule 9(21). Rule 9(21) itself is clear for it specifically says that the purpose is to enable the delinquent to explain the circumstances appearing in the evidence against him. It is a valuable right that the delinquent has got and it cannot be taken away. When Rule 9(21) of Railway Servants (Discipline & Appeal) Rules, 1968 is not complied with, it is a matter of preventing the delinquent from enabling him to explain the circumstances appearing in the evidence against him and that would amount to causing prejudice to him.

14. As far as the third point whether A-10, the order of the Disciplinary Authority, can be treated as an order having passed after due application of mind is concerned, it is to be stated that in view of my findings on point Nos. (i) and (ii) it could only be said that A-10 cannot be treated as an order passed after due application of mind.

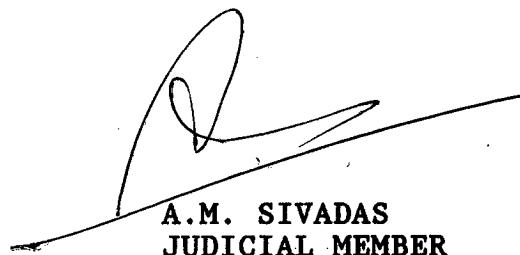
15. The learned counsel appearing for the respondents vehemently argued that the applicant is really guilty in this matter for the reason that as per rules when signals or points at interlocked station or at stations where points are detected by (or key locked with) the signals became defective or cease

to work properly, the Station Master shall personally inspect the points detected by the defective signals and satisfy himself that such points are correctly set and in this case the applicant did not personally inspect the points detected by the defective signals and he instead passed message to the driver of the train through a Porter to allow the train to pass and therefore there is no prejudice caused to the applicant. While sitting in judicial review, the Tribunal is more concerned with the decision making process than the decision. Apart from the fact whether the applicant is really guilty or not, whether he has been found guilty by following the procedures prescribed is a matter that is to be looked into, while sitting in judicial review. The applicant is entitled to get a reasonable opportunity for effectively defending his case and the rights provided to him as per the rules cannot be taken away. It may be a case that the applicant is guilty, but with all that he cannot be found guilty without following the proper procedure and affording him a reasonable opportunity for effectively defending his case. That being the position, the arguments advanced by the learned counsel for respondents cannot be accepted, since there is violation of the rules and the violation of rules has caused prejudice to the applicant.

16. As far as the last point is concerned, i.e. whether the applicant is entitled to the reliefs sought for under paragraphs 8 (a), (b) and (c), in view of my findings on the other points the applicant is entitled to the relief under paragraph-8 (a), i.e. to quash A-10, A-14 and A-16, and also the relief under paragraph-8 (b), i.e. to direct the respondents to restore the applicant back to his original grade and post with consequential benefits including arrears of pay and allowances. Relief under paragraph-8(c) pertains to costs. I do not think circumstances warranted awarding of costs.

17. Accordingly, the Original Application is allowed quashing A-10, A-14 and A-16 and directing respondents to restore the applicant back to his original grade and post him with consequential benefits including arrears of pay and allowances. It is made clear that this order will not stand in the way of the department to proceed with the disciplinary proceedings against the applicant from the stage of supply of documents sought by the applicant to enable him to effectively defend his case in accordance with law giving him an opportunity to examine the witnesses on his side. No costs.

Tuesday, this the 20th day of March, 2001



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A5 True copy of the representation submitted by the applicant to the Enquiry Officer dated 9-4-96.
2. A6 True copy of the Order No. V/T 157/Misc/6525/NCJ/1-1/96 dated 20-5-96 issued by the 3rd respondent.
3. A8 True copy of the Enquiry Report No. V/T 157/Misc/6525/NCJ/1-1/96/I dated 13-8-96.
4. A-10 True copy of the letter No. V/T 157/Misc/6525/NCJ/1-1/96-I dated 7-1-97 issued by the 3rd respondent.
5. A-14 True copy of the letter No. V/T 157/Misc/6525/NCJ/1-1/96(1) dated 17-2-97 issued by the 2nd respondent.
6. A-16 True copy of the letter No. P(A)94/Misc/138 dated 22-8-97 issued by the 4th respondent.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 262/98

FRIDAY THIS THE 2nd DAY OF FEBRUARY, 2001.

CORAM

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

R.Radhakrishna Raju
S/o A. Ramachandra Raju
Station Master
Southern Railway
Valliyur.
Permanent Address:
Bessy Bhavan
Pallipad Post
Alleppey District.

Applicant.

By advocate Mr.T.C.Govindaswamy

Versus

1. Union of India through
The General Manager
Southern Railway
Headquarters Office
Park Town P.O.
Madras.
2. The Divisional Railway Manager
Southern Railway
Trivandrum Division
Trivandrum.
3. The Senior Divisional Operations Manager
Southern Railway
Trivandrum Division
Trivandrum.
4. The Chief Operations Manager
Southern Railway
Headquarters Office
Park Town P.O.
Madras.
5. The Station Manager
Southern Railway
Nagercoil Junction.

Respondents.

By advocate Mr.Thomas Mathew Nellimootttil.

Application having been heard on 21st November, 2000,
the Tribunal on delivered the following on 2.2.2001.

O R D E R

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, an Assistant Station Master in Trivandrum



Division of Southern Railway filed this Original Application aggrieved by A10 order dated 7.1.97 issued by the 3rd respondent (disciplinary authority) imposing a punishment of reduction to the lower grade of ASM in grade of Rs.1200-2400 with effect from 11.1.97 with a basic pay of Rs. 1200/- for a period of 10 years, A14 order dated 17.2.97 issued by the 2nd respondent (appellate authority) reducing the period of punishment from 10 years to 6 years and A16 order dated 22.8.97 issued by the 4th respondent (revisional authority) confirmed the order of the appellate authority.

2. According to the applicant's statement in the OA, on 1.1.96 when he was working as on duty station master, Nagarcoil Junction, 6525 Kanyakumari-Bangalore Express Train which left CAPE at 7.20 hours was held up at the Up Home Signal of Nagarcoil Station and subsequently piloted to Road-I with T.369-B as the reception signals could not be cleared. Applicant submitted that he had sent the Electrical Signal Maintainer to the cabin and further in order to avoid delay he deputed the platform porter to pilot the train in accordance with the rules. The platform porter was further instructed to verify whether the points were correctly set or not. After having done so, the train was piloted to Road No.I. But upon approaching the points, on knowing that the points were set for Road III, the train was stopped before the points by the driver. On knowing this, the applicant immediately reported the matter to the Station Manager and the Signal Inspector who rushed to the spot. Since the applicant kept all the roads free from obstructions, the Station Manager received the train



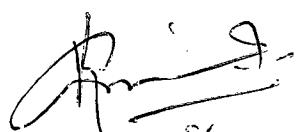
on Road III without changing the points which ultimately caused 30 minutes extra detention at the applicant's station. He sent A1 report on the same day to the third respondent. On the same day the applicant was placed under suspension. According to the applicant, a fact finding enquiry was conducted into the incident wherein it was found that B.Sankarapandy was the real culprit. The suspension of the applicant was revoked, but he was issued with a charge memorandum Annexure A2 dated 24.1.96. Applicant replied to A2 by A3 representation dated 4.2.96. By A4 order dated 8.2.96, third respondent appointed K.E.Velayudhan as Enquiry Officer. On conclusion of the enquiry, applicant submitted A7 defence statement dated 27.7.96. The proceedings of the enquiry report dated 13.8.96 were sent to the applicant by A8 letter dated 9.9.96. Against the enquiry report, applicant submitted A9 objections on 10.10.96. According to the applicant, without considering any of the points raised in A7 and A9 and the evidence on record, by A10 order dated 7.1.97 he was imposed with a penalty of reduction in scale Rs. 1200-2040, fixing the pay at the stage of Rs. 1500 for a period of ten years. Against A10 applicant submitted A11 appeal dated 23.1.97 under A12 representation dated 23.1.97 to the second respondent Divisional Railway Manager. When he found that without considering A11 and A12, respondents were taking hasty steps to enforce A10, he approached this Tribunal in OA 197/97 inter-alia praying to call for the records leading to the issuance of A10 and to quash the same. When the OA came up on 5.2.97, this Tribunal directed the second respondent, the appellate authority, to consider A12 representation and to take a decision within 2



weeks. The Tribunal also directed the appellate authority to pass appropriate orders on the appeal within two months from the date of A13 judgement dated 5.2.97. In compliance with the directions of the Tribunal contained in A13, the second respondent - the appellate authority - passed A14 order dated 17.2.97 by which the punishment imposed was reduced from 10 years to 6 years. Aggrieved by A-13, applicant submitted A15 revision petition dated 10.3.97 to the 4th respondent-Chief Operations Manager, Southern Railway. The Revisionary Authority by A16 order dated 22.8.97 rejected A15 revision petition and confirmed the penalty as modified by the appellate authority. Aggrieved by A10, A14 and A16, the applicant sought the following reliefs through this OA:

- (a) Call for the records leading to the issuance of A10, A14 and A16 and quash the same.
- (b) Direct the respondents to restore the applicant back to his original grade and post with consequential benefits, including arrears of pay and allowances.
- (c) Award costs of and incidental to the application.

3. Applicant has raised a number of grounds in the OA for the reliefs sought. His plea was that the conclusion/finding of various authorities at different levels was not at all supported by any reason much less any valid reason. According to him, he was denied an opportunity to defend his case in that documents and witnesses sought by him were denied to him

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without stating any reasons. He alleged that the procedure laid down in the Railway Servants (Discipline and Appeal) Rules Rule 9(17), Rule 9(20) and Rule 9(21) were not followed. The enquiry officer did not conduct the enquiry independently and he was acting clearly under the dictat of the third respondent—the disciplinary authority in support of which he annexed A6. His case was that the entire proceedings of the enquiry were ab initio void, arbitrary and illegal. A10 apart from being without application of mind was without jurisdiction also. Even though the applicant raised the point that the penalty imposed on the applicant in terms of A10 was against the penalty rules, he did not press this point during the course of the argument. A14 order was without application of mind and not in accordance with Rule 22 (2) of Railway Servants (Discipline and Appeal) Rules, 1968. By A16 the 4th respondent rejected all the contentions raised by the applicant by merely stating that he was satisfied that the procedure laid down under Discipline and Appeal Rules had been completely followed. Further according to the applicant the penalty imposed was severe and disproportionate to the offence committed.

4. Respondents filed reply statement resisting the claim of the applicant. According to respondents, applicant had violated General Rules 3.68 (ii)(a) (i) and Station Working Rules provision para 6.9.7 of SWR No.V/5/NCJ dated 20.1.89. According to them, even though the cabinman Sri Sankarapandy informed the applicant of the failure of the Home Signal for 6525 Express, he did not bother to find out the reason for the failure. Their case was that the first train that started

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during the duty hours of Sankarapandy was 393 passenger to CAPE from Road III at NCJ. 6525 Express was the next train from CAPE to be received on Road-I at NCJ. Point lever No.7 at "B" cabin was to be reversed before exchanging the private number for reception of 6525 Express on Road-I. The cabin man failed to reverse this lever No.7 but exchanged private number and tried to clear the signals which did not obey. The applicant instead of verifying physically the condition of the points and signals started suspecting some foul play on the part of the cabinman and directed the Electrical Signal Maintainer to the cabin. He issued T.369 B for piloting the train to Road-I when it was set for Road-III. The DAR inquiry conducted had since proved the charges. The disciplinary authority imposed on him the punishment of reduction to the lower grade of Assistant Station Master with a basic pay of Rs. 1200 on recurring nature for a period of 10 years and ordered for posting him as Assistant Station Master, Valliyur shifting him from NCJ which was a junction station, in view of safety. Justifying the action taken by the respondents, they submitted that the applicant was not entitled to any further relief and prayed for dismissal of the original application.

5. Applicant filed rejoinder reiterating the points raised in the OA.

6. Respondents filed additional reply statement.

7. Heard learned counsel for the parties. Learned counsel of the applicant took us through the pleas included in the OA.

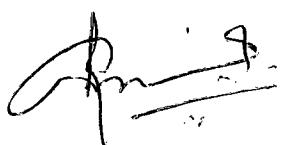
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According to him, A10 suffered from errors apparent on the face of the record since it neither made any appraisal of the evidence on record nor did it indicate that the Disciplinary Authority had gone through the evidence on record. Similarly even though in A14 there was a mention that Appellate Authority had gone through the appeal, none of the grounds raised by the applicant in his appeal had been considered by him with due application of mind. He submitted that the appellate authority had merely relied on A8 enquiry report which itself was vitiated. The revisional authority had also not considered any of the points raised in the revision petition. Hence the findings of the various authorities were not supported by any reason. According to the learned counsel, this was a case of 'no evidence'. There was no evidence on record to substantiate the allegations against the applicant. Further the applicant was denied reasonable opportunity to defend his case in that the documents and witnesses sought by him had been denied to him without stating any reason. Further the provisions of Sub Rule 20 & 21 of Rule 9 of Railway Servants (Discipline and Appeal) Rules 1968 had not been complied with and thus the mandatory principle of natural justice had been violated. Learned counsel for the respondents took us through the reply statement and submitted that none of the impugned orders suffered from any of the alleged illegalities and irregularities stated in the OA and the punishment imposed was warranted on the basis of the evidence on record.

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

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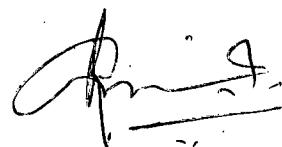
9. According to the applicant, there was no evidence on record to substantiate the allegations against him and it had come in clear evidence that the cabinman, B.Sankarapandy was guilty of misrepresentation to the applicant. The charge against him was for the alleged misconduct of incorrect setting of points and the resultant detention to a train, which was in violation of General Rules 3.68(a)(i) and para 6.9.7 of Station working Rules No.V/5/NCJ dated 20.1.89 of Nagercoil and Rule 3.1(ii) and (iii) of the Railway Services (Conduct) Rules, 1966. He stated that there was no rule as General Rule 3.68 (a)(i) as quoted by the disciplinary authority, but only subsidiary rule which would be applicable only if there was a failure of points or signals. Applicant submitted that as per para 6.9.7 of the Station Working Rule of Nagercoil the SM on duty should take care to ensure the reception line was clear and free from obstructions and the route was correctly set and locked during failure and that the disciplinary authority did not have a case that the applicant had not kept the reception line free of obstructions nor had he a case that there had been failure of points and signals. The enquiry had relied on the evidence of Sri Sankarapandy, cabinman who was guilty of misrepresentation to the applicant. The fact finding enquiry had found Sri Sankarapandy responsible for the incident but the disciplinary authority initiated proceedings against the applicant and dropped the proceedings against the cabinman. Respondents in the reply statement quoted the article of charges. Subsidiary Rule 3.68 (ii)(a) (i) and para 6.9.7 of the Station Working Rule of Nagercoil Station and submitted that in spite of the applicant being informed by Sri

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Sankarapandy of the failure of the signal, the applicant did not inspect the points to ascertain the condition of the same as required by the said Rules. According to them the first train that started during the duty hours of Sri Sankarapandy, cabinman, was 393 Passenger to CAPE from Road-III at NCJ. 6525 Express was the next train from CAPE to be received on Road-I at NCJ. Point lever No.7 at 'B' cabin was to be reversed before exchanging the private number for reception of 6525 Express on Road-I at NCJ. The cabinman failed to reverse lever No.7 but exchanged private number and tried to clear the signals which did not obey. Applicant admitted that the cabinman on duty Sri Sankarapandy informed him that the reception signals could not be cleared. But instead of acting as per the Rules, directed the Electrical Signal Maintainer on duty to the cabin to ascertain the position. He had also directed the platform porter Sri Oval to pilot the train with instructions to verify the points as to whether they were correctly set and locked and thus by his own statement he did not act as required by the rules.

10. In the face of the above rival contentions, we will examine the plea of 'no evidence' put forward by the applicant, keeping in view the following.

11. It is now a well established law that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegations against the delinquent officer must be established by such evidence acting upon which a reasonable person acting

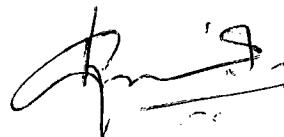
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reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. The Court or Tribunal cannot reappreciate the evidence or weigh the same like an appellate authority in judicial review. The role is limited to examine whether there is some evidence to support the view taken by the departmental authority.

12. As per A2 memo dated 24.1.96, the article of charge against the applicant was as follows:

"Sri Radhakrishnaraju, SM/III/NCJ while on duty at 06.00 hrs to 10.00 hrs on 1.1.96 has shown serious dereliction of duty in that he has not ensured the correct setting, clamping and locking of points for the correct road before authorizing the SCP on duty with T.369-B to pilot No.6525 Exp from CAPE side to Road-I at NCJ. But for the timely action by the driver to stop at the Top Point on detection of wrong points, the train would have negotiated into Road-3 instead of Road 1. He also has not bothered to check up the version of the cabinman, when the latter informed him that the Up home for Road-I could not be cleared, while the points were set for Road-3.

Thus he has violated GRS 3.68 (ii)(a)(i) and SWR provision para 6.9.7 of SWR No V/5/NCJ dated 20.1.89 applying to NCJ & Rly services II Conduct Rules 3.1(ii) and (iii) of 1966."

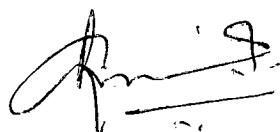
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13. It is evident from the above that the the charge against the applicant was that he had not ensured the correct setting, clamping and locking of points for the correct road before authorizing the SCP on duty with T.369-B to pilot No.5625 Express from CAPE side to Road-I at NCJ. Thus we find that the averment of the applicant that the charge against him was for incorrect setting of points and the resultant detention to a train stated in para 5 (c) of the OA is not correct. On this score alone we are of the view that the applicant's contention of no evidence has no force.

14. Further we find from A8 enquiry report dated 16.8.96 that the enquiry officer after analyzing the available evidence came to the conclusion that the applicant had not ensured the correct setting, clamping and locking of points for the correct road before authorizing the SCP on duty with T.369-B to pilot No.6525 Express from CAPE side to Road-I at NCJ. We also find that the disciplinary authority in A10 order has analyzed this aspect and has come to the conclusion that the charge against the applicant has been proved. From A-14 appellate authority's order and A-16 revisionary authority's order we find that they had also gone into this aspect.

15. In the OA the applicant has averred as follows:

"Accordingly while the applicant was on duty at Nagercoil Junction on 1.1.96 and for the reception of 6525 Kanyakumari-Bangalore Express on Road-I, the cabinman Shri B.Sankarapandy at B-Cabin informed by

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exchange of private numbers (recorded in the private number exchange registers) that the facing and trailing points are correctly set and locked for reception of Train No.6525 on Road-I and that however reception signals could not be cleared. The applicant immediately sent the Electrical Signal Maintainer to the cabin. However, in order to avoid delay the applicant deputed the platform porter Shri Oval to pilot the train in accordance with the rules. The platform porter was further instructed to verify the points whether they were correctly set and locked. After having done so the train was piloted to Road-I.....".

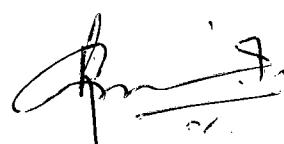
16. Rule 3.68 (ii)(a)(i) quoted in the reply statement reads as under. "When signals or points at interlocked station or at stations where points are detected by (or key locked with) the signals, became defective or cease to work properly, the Station master shall personally inspect the points detected by the defective signals and satisfy himself that such points are correctly set and secured with cotter and bolt and pad locked or clamped and pad locked before authorizing movement of any train over them and the pad lock or clamp keys are kept in his personal custody, that all the trailing points over which the train will pass are correctly set, that the level crossing gates, if any, are closed and locked against road traffic and that the route governed by the defective signal is clear and free from obstructions".

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17. We find from the above Rule that when signals or points fail the Station Master should personally ensure the correct setting and locking of points before authorizing movement of any train. In the face of the above rule position and the statement of the applicant in the disciplinary proceedings as brought by enquiry officer and disciplinary authority and his averment in the OA as reproduced in para 15 above, we do not find any substance in the plea of 'no evidence' advanced by the applicant.

18. The next plea advanced by the applicant was that he was not given reasonable opportunity to defend his case in that documents and witnesses sought for by him had been denied to him without stating any reason. According to him, documents and witnesses sought by him by A5 were very much relevant in the facts and circumstances of the case. In A-5 the documents listed were as follows:

1. Copy of PN exchange register of 'A' Cabin pertaining to reception of 6525 Exp. on 1.1.96.
2. 369 'B' Book used for piloting 6525 Exp. on 1.1.96.
3. Statements recorded by the preliminary enquiry committee consisting of DSO/TVC & ASTE/TVC on 1.1.96 and the enquiry report.
4. Document recording the position of levers in 'B' cabin/NCJ signed by SS/NCJ and S1/111/NCJ.
5. Signal failure register.

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19. Applicant had cited S1/III/NCJ and ESM/NCJ Shri V.Sambath as defence witnesses. Respondents in the reply statement submitted that the documents under 3 & 4 above were not cited in the charge sheet as documents to support the charges as they were confidential records and were not given. Further private number was exchanged for reception of 6525 Exp from 'B' Cabin. Hence 'A' cabin has no bearing in the incident and hence item 1 above was rejected. The need for signal failure register under item 5 did not arise as the copy of lever position readings as recorded by SS/NCJ and SI/II/NCJ during the time of the incident was given. It was further clarified that copies of the concerned pages from T.369 B were given and hence there was no need for the entire book under item 2 above arose. Thus we find that out of the five documents demanded by the applicant, three had been furnished to him. As regards the two witnesses demanded by the applicant, respondents submitted that Signal Inspector being a supervisory official, much experienced than the Electrical Signal Maintainer and he having witnessed the position along with SS/NCJ immediately after the incident in the cabin, was permitted as witness of the applicant.

20. The question that arises is whether non supply of the two documents and a witness had caused prejudice to the case of the applicant. When we specifically posed this question to learned counsel of the applicant, no prejudice could be shown to have been caused. As already stated by us earlier, in the

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disciplinary proceedings and in the pleadings in the OA, the applicant has practically admitted the charges levelled against him. Moreover we find that the finding of guilt had not been arrived at on the basis of the documents not supplied. In the above background, we are of the considered view that non supply of the documents has not in any way prejudicially affected the case of the applicant. Therefore we reject this plea of denial of reasonable opportunity.

21. The next plea taken by the applicant was that on the closure of the evidence, the enquiry officer had not questioned the applicant on the circumstances, if any, appearing against him in evidence as required under Rule 9 (21). Here again, the applicant has failed to indicate as to how this has caused prejudice to his case. The applicant had an opportunity to file his written brief before the enquiry officer and he had done so as could be seen from the enquiry report. In this written brief the applicant got an opportunity to state whatever he wanted to say on the evidence emerging in the enquiry. Hence we do not find any substance in this ground.

22. The plea of the applicant that the disciplinary authority had not made any appraisal of the evidence on record is also without any substance. On going through A10 order of the disciplinary authority dated 7.1.97, we find that he has gone into all the aspects before arriving at the decision in the matter.

23. As regards the plea of the applicant that the penalty

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imposed. is severe and disproportionate, we find that the charge against the applicant is one of violation of safety rules. The fact that no accident had happened does not reduce the gravity of the offence. Further we find that the appellate authority had reduced the penalty imposed by the disciplinary authority and revisionary authority had confirmed the same. In the circumstances, we do not find any reason to interfere in the penalty imposed.

24. We also find that applicant's plea that the appellate authority's order was without application mind is without any substance. On a perusal of A-14 appellate authority's order we find that the same has been passed in accordance with the provision of Rule 22 of Railway Servants (Discipline & Appeal) Rules, 1968. We do not find any infirmity in the said order. We also find that the revisionary authority has covered the points raised in A-15 revision petition in his A-16 order and no interference is called for.

25. On the whole after analyzing the various pleadings and the documents brought on record, we find that the applicant had a fair hearing before he was imposed with the punishment by A-10 order which was modified by A-14 order of appellate authority.

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26. In view of the foregoing, we hold that the Original Application is devoid of any merit and the applicant is not entitled to any of the reliefs sought for. Accordingly we dismiss this Original Application with no order as to costs.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A.V.HARIDASAN
VICE CHAIRMAN

aa.

Annexures referred to in this order:

A10: True copy of letter No.V/T 157/Misc/6525/NCJ/1-1/96/I dated 7.1.97 issued by the 3rd respondent.

A14: True copy of the letter No.V/T 157/Misc/6525/NCJ/1-1/96(I) dated 17.2.97 issued by the 2nd respondent.

A16: True copy of the letter No.P(A)94/Misc/138 dated 22.8.97 issued by the 4th respondent.

A1: True copy of the report submitted by the applicant to the 3rd respondent dated 1.1.96.

A2: True copy of the charge memo No.V/T.157/Misc/6525/NCJ/1-1/96/I dated 24.1.96 issued by the 3rd respondent.

A3: True copy of the reply submitted by the applicant to the 3rd respondent dated 4.2.96.

A4: True copy of the letter No.V/T.157/Misc/6525/NCJ/1-1/96-I dated 8.2.96 issued by the 3rd respondent.

A7: True copy of the defence statement submitted by the applicant to the enquiry officer dated 27.7.96.

A8: True copy of the enquiry report No.V/T 157/Misc/6525/NCJ/1-1/96/I dated 13.8.96.

A9: True copy of the objection against the enquiry report submitted by the applicant dated 10.10.96.

A11: True copy of the appeal submitted by the applicant to the 2nd respondent dated 23.1.97.

A12: True copy of the request dated 23.1.97 submitted by the applicant to the 2nd respondent.

A13: True copy of the judgement in OA 197/97 dated 5.2.97 delivered by this Tribunal.

A15: True copy of the Revision submitted by the applicant to the 4th respondent dated 10.3.97.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

I have gone through very carefully the draft opinion of the learned Member. With due respect I am not able to agree with the conclusion arrived at. Hence I am giving my Oviews in the matter in the following paragraphs.

2. The applicant has in his statement filed on receipt of the memorandum of charges emphatically denied the charge and has placed his version of the occurence. The finding that the applicant was guilty was not entered on his admission but on the basis of the enquiry held. The applicant has a definite case that the enquiry was not held in accordance with the Rules inasmuch as he was not given reasonable opportunity to defend himself as the documents requisitioned by him were not made available without proper reason and one defence witness cited by him was not permitted to be examined, that he was not questioned generally on the evidence appearing against him to enable him to explain the evidence appearing against him as required under rule 9(21) and that the disciplinary authority has not in the order Annexure A10 given the reason for holding him guilty discussing the evidence. He has also contended that the finding is not supported by any evidence. It is his further case that the appellate and revisional orders are also bad for non-application of mind since the

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authorities have not considered the procedural irregularities and various other grounds taken by the applicant.

3. A careful scrutiny of the impugned order, the enquiry report and the other materials available on record, I find that there is considerable merit in the contention of the applicant that the enquiry has been held improperly without giving the applicant reasonable opportunity to defend himself. As is evident from Annexure A5 the letter dated 9.4.96 of the applicant to the enquiry officer, the applicant had requested for production of 5 documents and to make available two witnesses SI/III/NCJ and E.S.M./NCJ as his defence witnesses. The procedure to be followed on receipt of a request for additional documents is laid down in sub-rules 15 and 16 of Rule 9 of the Railway Servants Discipline and Appeal Rules, 1968 (Rules for short) which are extracted below:

"(15) The Inquiring authority shall, on receipt of the notice for discovery of production of documents, forward the same or copies thereof to the authority to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition.

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(16) On receipt of the requisition referred to in sub-rule (15) every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority by the specified time.



Provided that if the authority having the custody or possession of requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the railway servant and withdraw the requisition made by it for the production or discovery of such documents."

4. It is evident from sub rule 15 and the proviso thereunder that unless the enquiry authority refuses to requisition the documents if the documents are in his opinion not relevant to the case, the enquiry authority should requisition the documents. It is seen that the enquiry authority made the requisition on the basis of Annexure A5 but the disciplinary authority vide its letter to the enquiry authority dated 20.5.96(A6) ordered the enquiry authority that the documents need not be made available and the request of the applicant to examine SI/III NCJ may be accepted meaning thereby that the other witness cited by the applicant ESM/NCJ may not be examined. It is seen that the enquiry authority has faithfully obeyed the order. In the enquiry report(A8) just above the finding, the enquiry authority has stated as follows:-

" The joint reading of levers position at B Cabin was produced by SI/II/NCJ and it has been accepted as documents of evidence (Q.No.86). Original T.369-B book and the signal failure register is irrelevant for the enquiry so long as the contents of which were never been a point of dispute or discussion. The fact finding enquiry report(copy) statements recorded by the preliminary enquiry committee was not allowed as the same was not permitted by the DA."

The enquiry authority had not held any of the documents sought as irrelevant at the appropriate time. He forwarded

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the A5 letter to the Disciplinary Authority. Since the Disciplinary Authority did not agree to make available the documents, they were not made available. If the enquiry authority was of the view that such documents were not relevant it was not to be stated in the enquiry report, but in the proceedings before the recording of evidence. Further the fact finding enquiry report and statement of witnesses were not made available to the applicant not because the enquiry authority found they are not relevant but because the Disciplinary Authority did not permit it. From what is extracted from the enquiry report it is evident that the enquiry authority was not functioning independently but as directed and dictated by the Disciplinary authority. I am of the view that this is not the manner in which an enquiry should have been held. It cannot be seriously argued that non-supply of the documents sought by the applicant for making an effective defence would not have caused any prejudice to the applicant, especially when the enquiry authority has not held that these documents were irrelevant and therefore cannot be made available. The preliminary enquiry report and the statement recorded were necessary for the applicant to cross-examine the witnesses examined at the enquiry for the purpose of confronting them with the previous statements, argued the learned counsel of the applicant. The counsel argued that since it has been the applicant's specific case even before the charge was framed, in his report dated 1.1.96 (Annexure A1) that the Cabin Man Sankarapandy (who was examined as witness No.4)

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was the only person at fault and that the fact finding enquiry exonerated the applicant and indicted only Sankarapandy , the statements of witnesses recorded during the fact finding enquiry was absolutely essential for the applicant to effectively cross-examine the witnesses and that the refusal to give the documents has caused substantial prejudice to his defence.I find considerable merit in this argument.

5. In the reply statement the respondents seek to justify the non-supply of statements 3 and 4 in Annexure A5.

"3.Statements recorded by the preliminary enquiry committee consisting of DSO/TVC & ASTE/TVC on 1.1.96 and enquiry report.

4. Document recording the position of levers in 'B' cabin/NCJ signed by SS/NCJ and SI/III/NCJ."

as they are confidential records and are neither cited in the charge sheet as documents to support the charges nor given to the charged employee/witness based on Railway Board instructions. Regarding documents 1,2 and 5 in A5, it is stated that they have no bearing on the incident or charge. According to proviso to sub-rule 16 of Rule 9 of the Rules the officer who is in the custody of the documents requisitioned can withhold the document only if he is satisfied that the production of such document would be against public interest and security of the State for reasons to be recorded in writing and that reason should be

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communicated to the employee. In Annexure A6 nothing of that sort was stated. The Disciplinary Authority has simply ordered that the documents need not be given. Further these documents from the very nature, do not fall under the category of privileged documents also. I am convinced that the argument of the learned counsel of the applicant that the non-supply of these documents has caused substantial prejudice to the applicant in his defence has considerable and unquestionable force. Similarly the denial of permission to examine ESM/NCJ as a defence witness also amounted to denial of reasonable opportunity. The fact that SI was examined as a defence witness is not a valid ground for denying an opportunity to examine the ESM. The applicant alone knows as to why he wanted to examine the ESM. If the Enquiry Officer had any doubt regarding the relevance or the purpose of examination of ESM he could have asked the applicant to explain and then taken a decision. The Enquiry Officer did not do so, but faithfully obeyed the direction of the disciplinary authority to permit the examination of SI alone, refusing permission to examine the witness in defence. According to me this amounts to denial of reasonable opportunity to defend.

6. I do not agree with the ^{banning} ~~observation~~ contained in the paragraph 20 of the opinion of the learned Administrative Member :



"The question that arises is whether non supply of the two documents and a witness had caused prejudice to the case of the applicant. When we specifically posed this question to learned counsel of the applicant, no prejudice could be shown to have been caused."

When documents necessary to cross-examine the witnesses examined in support of the charge are not supplied at the dictate of the disciplinary authority and when permission is refused to examine defence witness, prejudice is apparent.

7. It is well-settled by now that the judicial review should be limited to see whether the decision making process has been properly gone through and not to the extent of finding whether the decision is correct or not. However the decision making process in a departmental disciplinary proceedings can be said to have been gone through properly only if the enquiry has been held in conformity with the rules giving the official facing the charge a reasonable opportunity to defend. In this case as observed by me supra not making available the document required by the applicant for an effective cross-examination of the witnesses and refusing permission to examine one defence witness for no justifiable reason but solely as the disciplinary authority did not agree to the request has resulted in denial of reasonable opportunity and to that extent, the enquiry held is vitiated and is against the rules. Further sub-rule 21 of Rule 9 of the Rules provides that in a case where the Railway servant has not examined himself as a witness on his

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side, the Enquiry Authority should after the evidence in support of the charge has been taken, question the Railway servant broadly on the evidence appearing against him. The purpose of this questioning is to enable the Railway servant to explain the circumstances appearing against him in the evidence adduced in support of the charge. In this case, the Enquiry Authority has not questioned the applicant on the evidence as required by the rules. That the applicant could have examined himself as a witness is not an answer for not questioning the applicant by the Enquiry Authority as provided in the Rules. Only if that evidence which appears against him is brought to his notice, the Railway servant would be in a position to tender his explanation. This opportunity has been lost to the applicant in this case. The Disciplinary Authority, the Appellate Authority as also the Revisional Authority held that the enquiry has been held in conformity with the rules. Had these authorities taken care to read the explanation submitted by the applicant to the enquiry report, the appeal memorandum and the revision petition, the authorities would have understood that there has been serious procedural flaws in holding the enquiry which resulted in deprivation of reasonable opportunity to defend. Without doing so and without application of mind these authorities held that the enquiry had been held properly in accordance with the rules. If the Tribunal also loses sight of these important aspects, I am afraid the judicial review by it would be rendered an empty formality. I am therefore of the considered view that the

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enquiry held in this case was vitiated for non-compliance of the procedural rules which resulted in deprival of reasonable opportunity to defend.

8. The applicant has got a case that Annexure A10 order of the disciplinary authority is a non-speaking order which does not contain appraisal of the evidence. The learned Member has in paragraph 22 of his judgment observed as follows:-

On going through A10 order of the disciplinary authority dated 7.1.97, we find that he has gone into all the aspects before arriving at the decision in the matter"

I have also very carefully gone through the Annexure A10 order. After extracting the charge, the Disciplinary Authority has stated as follows:-

" I have gone through the whole file including the Enquiry report submitted by the E.O. and the representation by Sri R.Radhakrishna Raju the charged employee on 10.10.96. After going through the representation I came to the conclusion that the charges framed against Sri R.Radhakrishna Raju are proved beyond doubt. Sri R.Radhakrishna Raju the then SM/III/NCJ now SM/II/NCJ is charged with violation of provisions for reception of a train when signals became defective at a station. In this specific case he has failed to follow the correct procedures for reception of No.6525 Kanyakumari-Bangalore city Express train on Road One at Nagercoil Jn. station when signals corresponding to Road One has failed to work. to his explicit failure to ensure that the points leading to No. One are correctly set and clamped and padlocked before preparing the pilot memo and sending the same through a Railway servant the train was about to go to an altogether a different route i.e. to Road three instead of Route One. Fortunately the Driver has noticed the same in time and stopped the train.

The most saddening thing is the lack of application of his faculties by the Charged employee. When the Charged employee's subordinate has reported that the signal for Road One has failed the charged employee has not bothered to check the reasons for the same. Had he checked he could have easily found out the reason and the train could have been received on signals as the cause of the failure is only an operational error and not a technical error. The Enquiry has been conducted giving full reasonable opportunity for the Charged employee to prove his innocence. The Charged employee in his original explanation to the charges and in the defence to the E.O. could not bring out any valid point to prove his innocence. In his representation to the findings of the E.O. there is no valid point., in the absence of the same he has brought out some objectionable allegations against some of the witnesses and E.O mentioning "Caste" factor. Leaving apart this factor there is no valid point. During the course of the enquiry also the charged employee had no sense of remorse for the blatant violation of the safety rules for train passing staff and was trying to give justification for the same. The charged employee is engaged in the train passing duties. Staff engaged in the train passing duties are expected to follow the safety rules prescribed for train passing and violation of the same will entail into serious accidents like collisions which are worst type of train accidents. Hence in the interest of the travelling public and public at large I am forced to impose a major penalty on the charged employee so as to act as a deterrent. The penalty is reversion to the grade of ASM in grade Rs.1200-2040 as ASM/VLY with effect from 11.1.97 with a basic pay of Rs.1200/- for a period of 10 years. The period of suspension will continue as suspension."

To my surprise, I do not find any discussion of the evidence in the order by the Disciplinary Authority which enabled it to come to the conclusion which he reached. Apart from stating accusations against the applicant and that the applicant did not disprove the charge it has not been stated in the order as to what evidence led during the enquiry enabled it to reach the conclusion. If the Disciplinary Authority had stated in the order that he agreed with the finding of the Enquiry Authority, that would have been probably sufficient to hold that the evidence has been

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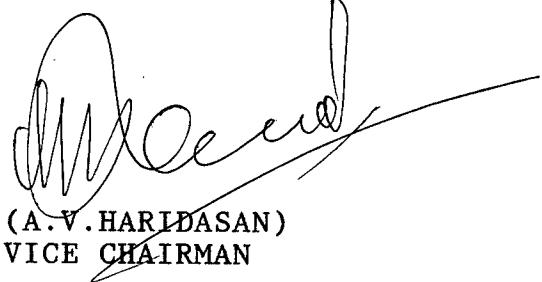
appreciated by the D.A. But in its order the Disciplinary Authority has not stated that he agreed with the finding of the enquiry authority also. In my view the order cannot be considered as a speaking order for it is not seen that the finding has been established by discussing the evidence. The Annexure A10 order is liable to be set aside on that ground alone. The appellate and revisional orders also suffer from the same infirmity of non-application of mind. Neither the appellate authority nor the revisional authority properly considered the grounds raised by the applicant that the enquiry was not properly held, nor is there any discussion of the evidence in these orders as well.

9. In the light of the foregoing discussion, I am of the considered view that the impugned orders are liable to be set aside giving liberty to the Disciplinary Authority to resume the disciplinary proceedings after giving the applicant the documents which he sought and allowing him to cross-examine the witnesses in support of the charge and also allowing him to examine the ESM and to complete the enquiry observing the procedural rules laid down in the Railway Servants Discipline and Appeal Rules.

10. In the result, the application is allowed. The impugned orders are set aside. The respondents are directed to reinstate the applicant in service with all consequential benefits. The Disciplinary authority will be at liberty to resume the disciplinary proceedings from the stage of supply

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of additional documents to the applicant to enable him to cross-examine effectively the witnesses examined in support of the charge and complete the proceedings in accordance with law giving him opportunity to examine the witnesses in defence.



(A.V. HARIDASAN)
VICE CHAIRMAN

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ORDER OF THE BENCH

In view of the divergence of opinion between us the matter shall be placed before the Hon'ble Chairman for appropriate action under section 26 of the Administrative Tribunals' Act, 1985.

The points on which divergence of views have been expressed and which need to be decided are as given below:

(i) Whether the non-supply of documents requested for by the applicant and non-summoning of one witness requested for by the applicant has caused prejudice to the applicant's case;

(ii) Whether non-questioning by the Enquiry Officer of the applicant generally on the evidence appearing against him to enable him to explain the evidence appearing against him under Rule 9(21) has caused any prejudice to the applicant's case;

(iii) Whether keeping in view the articles of charges against the applicant the Disciplinary authority's A-10 order can be treated to be an order passed after application of mind and after going through all aspects of the case;

(iv) In the facts and circumstance of the case whether the applicant is entitled to for the reliefs sought for under paragraphs 8 (a), (b) and (c).

Dated the 2nd February, 2001.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN