

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.274/2002.

Tuesday this the 24th day of August 2004.

CORAM:

**HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER**

N.Santhosh, Ticket Collector,
Southern Railway, Trivandrum Central,
residing at : Flat No.404,
Pandit's Colony, Kowdiyar P.O.,
Trivandrum-3.

Applicant

(By Advocate Shri K.M.Anthru)

Vs.

1. Union of India, represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai-3.
2. The Chief Commercial Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai-3.
3. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai-3.
4. The Additional Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14.
5. The Senior Divisional Commercial Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14.
6. The Chief Vigilance Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai-3. Respondents

(By Advocate Mrs. Rajeswari Krishnan)

The application having been heard on 24.8.2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Shri N.Santhosh, the applicant, while working as
Travelling Ticket Examiner was proceeded for a major penalty on

the basis of a Memorandum of Charge (A4) dated 10.11.98 framed on the basis of a decoy check. The Articles of Charges were:

i) he had demanded and accepted Rs.50/- from Sri. S. Mohd.Rafeeq, holding II M/E.ticket 50214799 ex.CLN - SRR, while allotting berth No.54 in S1 coach and issued conversion receipt for Rs.35/- and retained the balance amount for his personal gain;

ii) he had an excess of Rs.652/- in railway cash;

iii) he had allowed the following four passengers holding II M/E.tickets

- 1) No.50522423 ex.TVC - CGY
- 2) No.50522422 ex.TVC - KTYM
- 3) No.86354 ex.VAK - TCR
- 4) No.50526718 ex.TVC - CLT

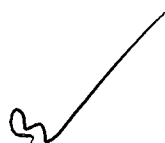
to travel in SL class without issuing of conversion receipts.

2. The applicant having denied the charges an enquiry was held. The Enquiry Officer submitted Annexure A-7 enquiry report finding Charge No.1 was partly proved to the extent that the applicant accepted Rs.50/- instead Rs.35/- from the passenger and utilised the balance for his personal gain, that Charge No.2 proved for excess of Rs.652/- in railway cash and Charge No.3 also only partly proved. The Disciplinary Authority on consideration of the enquiry report in the light of the representation submitted by the applicant, concurring with the finding of the enquiry authority found the Charge No.2 as proved and Charge Nos.1 and 3 partly proved and imposed on the applicant a penalty of reduction of pay to the next lower grade in the scale of Rs.3050-4590 with basic pay of Rs.3050/- for a period of five years(NR) by A-1 order. Aggrieved by this the applicant filed an Appeal to the Assistant Divisional Manager (R-4) who by order dated 10.3.2000 (A2) agreed with the finding of guilt, but modified the penalty by reducing the period of reduction to the next lower grade as Ticket Collector with basic pay of Rs.3050-4590 for a period of three years non-recurring. Although

the applicant submitted a revision, the 2nd respondent (Chief Commercial Manager) by A-3 order refused to interfere. A further revision petition was submitted by the applicant to the 1st respondent (General Manager) but it was not forwarded and returned by A-3(a) order dated 9.1.2002 on the ground that the applicant having exhausted all the channels no further appeal would lie. The applicant has, therefore, filed this application seeking to set aside A-1, A-2, A-3 and A-3(a).

3. Although several grounds have been raised in the application, the learned counsel of the applicant mainly pressed the following points.


- (i) Finding that the applicant is guilty of Charge No.2 in full and partly guilty of Charge Nos.1 & 3 are perverse as there is no evidence supporting this conclusion.
- (ii) The Enquiry held was not in conformity with the rules because after the close of evidence in support of the charge the applicant was not questioned as required under Sub-Rule 21 of Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968.
- (iii). Though the Enquiry Authority has found that only Charge No.ii has been established in full while Articles of Charge Nos.i and iii were established only in part and, without notifying any disagreement the Disciplinary Authority imposed the penalty as if all the articles of charges have been established in full, and this is unsustainable.



(iv). The appellate and revisional orders are perverse as they lack application of mind.

4. We have carefully gone through the materials on record and have heard Shri K.M.Anthru, learned counsel appearing for the applicant and Smt.Rajeswari Krishnan, learned counsel appearing for the respondents.

5. Shri Anthru, the learned counsel of the applicant argued that the evidence do not support the finding. With a view to see whether there is any evidence which supports the finding of guilt, we perused the enquiry proceedings, the evidence recorded and the report of enquiry. We find that regarding the article of Charge No.11 that the applicant was in possession of excess cash Rs.652/- not only that there was a clear evidence of witness but also it was admitted by the applicant and tried to be explained through the testimony of DWI. The explanation given by the DWI as to how this excess cash came to the possession of the applicant has been rightly rejected by the Enquiry Authority for convincing reasons. The finding is therefore, based on cogent evidence. Regarding Article of Charge No.1, evidence of witness Rafeeq which has been properly relied on by the Disciplinary Authority clearly established that the applicant accepted Rs.50/against actual charge of Rs.35/- and appropriated the balance for himself, though denied, has not been proved. Similarly, there is sufficient evidence to support the contention that four passengers not possessing Sleeper class tickets were travelling in the sleeper compartment under the charge of the applicant. Thus, we find no merit in the argument that the findings are perverse.



6. Learned counsel of the applicant argued that the applicant has not been questioned as required under Sub Rule 29 of Rule 9 of the Railway Servants (Discipline & Appeal) Rules. However, it has not been either pleaded in the Original Application or stated at the Bar as to what prejudice was caused to the applicant by not questioning him. Therefore, not questioning the applicant did not vitiate the proceedings or findings.

7. Learned counsel of the applicant with considerable vehemence argued that, although the Enquiry Authority held the Charge No.ii alone established in full and the rest of the charges have been established only in part, it would be seen from the impugned order that the Disciplinary Authority has taken all the Articles of Charges as proved in full and awarded the penalty. The penalty is therefore, unsustainable, argued the counsel.

8. We have gone through Annexure A-1 order in its entirety and found that the Disciplinary Authority has fully agreed with the finding of the Enquiry Authority and the penalty has been imposed only for the proved misconduct. The Disciplinary Authority has stated in its order as follows.

"By accepting the excess money and by possessing unaccounted cash Sri.N.Santhosh has acted in a manner unbecoming of a public servant, lacking integrity and devotion to duty. Hence in the interest of travelling public I am constrained to impose a major penalty on the above employee hoping that he will improve."

He has also observed in the impugned order that:

As regard the 3rd charge that he has allowed 4 passengers without valid tickets in the reservation compartment, the benefit of doubt is given to him, but here also it is seen that he has not discharged his duties diligently and sincerely."

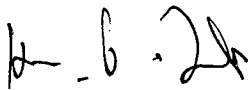


Putting these observations together, we find that the Disciplinary Authority has imposed a penalty only for those Articles of Charges which have been held to be established by the Enquiry Authority concurring with the said finding. Hence, the argument that the award of penalty by the Disciplinary Authority would show that the penalty imposed was taking the entire charges as established, is also not correct.

9. The last contention of the learned counsel of the respondents is that, the orders of the Disciplinary, Appellate and Revisional Authorities lack application of mind. On a careful scrutiny of the impugned orders we find that the authorities have considered the grounds raised by the applicant in detail and given reasons for their conclusions.

10. In the light of what is stated above, we find no merit in this application which is dismissed leaving the parties to bear their own costs.

Dated the 24th August, 2004.



H.P.DAS
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

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