

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 286/2003

Monday this the 8th day of August, 2005

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER**

K.P.Kesava Panicker, aged 43 years,
S/o Purushothaman Pillai,
working as Station Master No.III,
Thrissur Railway Station,
residing at "Thusharam" Kazcha Parambu,
Kannadi, Palakkad District. Applicant

(By Advocate Mr. Santheep Ankarath)

V.

- 1 Union of India, represented by the General Manager,
Southern Railway, Park Town,Chennai.3.
- 2 The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.14.
- 3 The Chief Operations Manager,
Southern Railway, Chennai.
- 4 Divisional Railway Manager,
Southern Railway, Thiruvananthapuram. Respondents

(By Advocate Mr. Thomas Mathew Nellimootil)

The application having been heard on 27.7.2005, the Tribunal on
8...8...2005 delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant's case is briefly as under. The applicant is

presently working as Station Master Grade I. On 4.8.1999 when he was on duty as Station Master at Ernakulam Junction at 10.28 hours Train No.6302 Venad Express proceeded towards Kottayam instead of proceeding towards Shornaur and on that ground a penalty was imposed on him by Annexure.A1 order of withholding his annual increment for a period of four years with cumulative effect. The applicant preferred an appeal and the same was dismissed by the Divisional Railway Manager (Annexure.A2). A revision preferred before the Chief Operations Manager resulted in a modification of the appellate order to reduction of increments without cumulative effect. The charges framed against the applicant were as under:

"The said K.P.Kesava Panicker SM/III while on duty at ERS 'A' cabin on 4.8.99 committed serious dereliction to duty in that he failed to ensure correct setting of the route for despatch of T.No.6302 Exp. As a result the train took a wrong route towards ERM side and stopped at Point No.11 at 10.32 Hrs."

The only witness listed in the charge memo was the Guard of the Train and the documents of the charge memo were only made available later on request of the applicant. The applicant had denied the charges. An inquiry was ordered and was completed in one sitting held on 4.8.2000. An inquiry report was forwarded to the applicant and he submitted a written defence brief and a written representation also requesting for dropping of the charges as there was no valid evidence. The contention of the applicant is that no proper inquiry was conducted by the inquiry officer and disciplinary authority erred in their findings and there was no application of mind

by the appellate and revisional authorities of the points made in the representation and the appeal petition by the applicant. It is also contended that the inquiry officer did not comply with the provisions of Rule 9 of the Discipline and Appeal Rules, 1968 and no opportunity was given to the applicant to present the defence side of the case. The applicant has prayed for quashing the proceedings of the disciplinary authority and appellate and revisional authorities.

2. In their reply statement the respondents contend that due to the failure of the applicant in not ensuring proper setting of points for Venad Express the train proceeded to the wrong side and even though no accident took place it had the potential for an accident. They contend that the applicant has violated G.R.3.38 of the Indian Railway General Rules and para 6.72 of SWR. They also denied that the disciplinary authority, the appellate and revisional authorities have not applied their mind and affirm that the decision has been taken considering the violation of safety rules and the potential danger to the travelling public. The allegation of the applicant that the aspects pointed out in the written brief dated 6.8.2000 was not considered by the disciplinary authority is totally incorrect as the disciplinary authority has gone through in detail and passed a speaking order. The applicant has not demanded for any additional witnesses or additional documents except the statement of the Guard which was given to the applicant. It is, therefore submitted that all provisions under the Rules have been complied with and there was

no denial of natural justice. The revisional authority has reduced the punishment considering his past service record and any further reduction will not be in the interests of safety of travelling public.

3. The applicant has filed a rejoinder stating that the evidence of the Guard has been misunderstood and misinterpreted and hearsay evidence is not admissible and the averment of the respondents regarding his continuous duty for a long period and resulting fatigue are untenable.

4. The respondents filed an additional reply statement stating that the applicant had given a statement immediately after the incident and the Train Signal Register confirm the involvement of the applicant in the despatch of the train and that the points No. 11 and 18 were not reversed and also that the Railway administration found this type of incidents on par with train accidents where death/injury to the passengers and heavy loss to the public property occurred.

5. The learned counsel for the applicant contended in his arguments that the charges framed against the applicant were that he had committed serious dereliction of duty by failing to ensure correct setting of the route as a result the train took a wrong route and that the blocking of the route can be proved only by evidence of the Guard. He took us through the records of the inquiry and the examination of the Guard and in an answer to Question No.6 the Guard had admitted that the Station Master had not given any signal

for the train to start. The counsel also took us through the general instructions regarding starting of train and the respective functions of the Station Master, Guard and the Cabin Station Master. Our attention was drawn to the orders of the appellate authority which states that the Station Master on duty was responsible for the correct despatch of the train and to say that the wrong despatch was due to the tiredness on long hours of duty does not exonerate him. This implied that the appellate authority passed the order under the impression that the applicant was the Station Master on duty whereas he was only a Cabin Station Master. The contention of the applicant in his written brief that the train had started even before he could ensure the operation of the points and signals and that the driver was the only competent person to speak about the correct position of the signals was not considered by the authorities. The respondents' counsel reiterated the points urged in their reply statement that the proceedings were conducted in accordance with the rules and there was no violation of principles of natural justice.

6. We have gone through carefully the pleadings and the extracts of the relevant rules produced before us. To comprehend the situation correctly it is necessary to understand the rules regarding the respective functions of the staff members who are responsible for the despatch of train and the preparation of the route prior to the starting of the Train. Para 6.7 of Indian Railway Open Line General

67

Rules and 6.72 of the S.W.R deals with despatch of Train and 4.35 deals with the function of a driver, starting of trains and S.R. 3.19 with the placing of stop signals at divergent junctions. These are reproduced as under:

3.19 Placing of Stop signals at diverting junctions.

Xx xx xx xx xx

(iv) signals working in conjunction with non-directional type route indicators shall be deemed to have failed if the route indicators show no route or incorrect route when the signal is "off".

"4.36. Starting of Trains.

(i) A Driver shall not start his train from a station without the authority to proceed. Before starting the train, he shall satisfy himself that all correct fixed signals and, where necessary, and hand signals are given and the line before him is clear of visible obstructions and the Guard has given the signals to start.

(ii) The guard shall not give the signal for starting the train unless he has received the permission of the Station Master to start, in the manner prescribed by special instructions.

(iii) The Guard shall not give the signal for starting unless he has satisfied himself that, except in accordance with special instructions, no person is travelling in any compartment or vehicle not intended for the use of passengers.

(iv) The Station Master shall see, before he gives the Guard permission to start a train, that all is right for the train to proceed.

(v) The permission of the Station Master referred to in sub- rule (2) may be dispensed with in case of suburban trains on such sections of a railway as may be specified by special instructions.

(vi) When permission of the Station Master to start has been dispensed with under sub-rule (5) or at a station

where no Station Master is posted, the Guard shall see, before giving the starting signal that all is right for the train to proceed."

S.R.4.35(iv): The signal for starting shall be given by the Guard by blowing his whistle and exhibiting to the Driver, by day, a green flag and, by night a green light waved from side to side over head. This signal shall also be given by the Guard when a train has to be re-started after being stopped outside station limits, for any reason. It shall be given at stations normally on the platform side. However, at stations where it cannot be seen by the driver due to curve, overhead structure etc., it shall be given on the side where it can be seen best. The Station Master also, where necessary, shall arrange to relay the signal given by the Guard to the Driver while starting the train.

6.72 Despatch of a train from Road 1/2/3/4/5/6 to ERN.

(a) When a train is to be despatched to ERN, the SM on duty shall advise the cabin SM/Cabin 'A' the particulars of the train and the number of the line from which the train is to be despatched. The cabin SM shall ensure that the despatch route is clear, obtain line clear supported by a private number from SM/ERN, ensure closure of the LC at Km.105/5-6 set and lock the route correctly as required, take OFF the despatch signals after ensuring that the correct slot released indication is available duly issuing caution/Nil Caution order to the driver.

(b) On observing the correct despatch signals taken OFF and after ensuring that Caution/Nil caution orders is issued to the driver and when everything is ready for the train to leave, the SM on duty shall authorize her to depart."

7. From a combined reading of the above instructions it is evident that various functionaries like the Station Master on duty, the Cabin Station Master, the Driver and the Guard are expected to work in tandem and unless the functions allotted to each functionary are performed one after the other, the final operation of despatch of the

train cannot take place. Checks and balances as observed from the instructions for signals in S.R. 3.19 have also been provided so that even if any mistake are committed the driver of the Train is alerted of the same. In this case it is not disputed that the applicant was the Station Master of the Cabin and not the Station Master on duty. His function is to ensure that the depatch route is clear and ensure the locking of the route correctly and take off despatch signals. This position has to be verified by the Station Master on duty and on observing that all the signals are correct and that caution orders are issued to the driver then only the Station Master on duty shall authorize the train to depart. The Guard shall not give signal for starting the train unless he has received permission of the Station Master. The Driver cannot start the train without authority and he is to satisfy himself that all correct signals are fixed and the line before him is clear and the Guard has given the signal. In such a situation any assessment of the failure of one functionary in the operation cannot be judged in isolation and has to be based on the evidence of the other three functionaries who are involved in the operation namely, the Guard, the Station Master on duty and the Driver. In the whole proceedings only the Guard has been cited as a witness and examined. The evidence of the Guard as pointed out by the counsel for the applicant before us is based on what the Driver said to him and he had not made any independent observation of the position on the signals. In fact in one point in the evidence he clearly mentions

that the Driver told him that the signals were right. There is nothing on record to show that the Station Master and Driver, who would have been the crucial witnesses to speak about the position of the signal and the setting of points ~~was not~~^{were} examined. The respondents contend that the applicant had not asked for examining them as defence witnesses. This argument is not acceptable as it is for the respondents to lead evidence for establishing the charge and no reason has been given why the other functionaries were not cited as witnesses. We do not want to enter into a detailed appreciation of the evidence as that is not the function of the courts but are of the view that the non-examination of material witnesses in the inquiry has prejudiced the case of the applicant. Basing the findings and the inquiry and only statement given by the applicant during the fact finding inquiry which had only *inter alia* mentioned about his having worked continuously for a long time on that day and the evidence of the Guard which is incomplete and indirect is not legally tenable in that the findings have to be necessarily related to the evidence adduced during the inquiry. We are in full agreement with the contention of the respondents that the safety of the travelling public should be the paramount consideration. However, it is also to be borne in mind that in such cases it is necessary to fix the responsibility for such failure by fair and just means and to detect the actual culprits and the system failures if any, rather than adopting an approach of ~~meting~~^{meting} out punishing to some person down the line

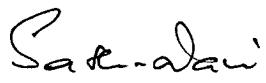
without a proper analysis of the incident and what led to the failure. It is in this context we would like to remit this case back to the respondents to conduct a de novo inquiry examining the other material witnesses like the Driver and the Station Master and giving an opportunity to the applicant to cross-examine these witnesses so that the principles of natural justice are fully complied with.

8. With the above directions the Original Application is allowed. The orders at Annexure A.1 to A3 are quashed and the respondents are directed to conduct a de novo inquiry starting from the stage of enquiry. The proceedings shall be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Dated this the 8th day of August, 2005



K.V.SACHIDANANDAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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