CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 3 OF 2010

Friday, this the 29th day of July, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.G.Ajikumar
Loco Pilot (Goods)
Southern Railway / Kollam
Residing at "Karthika" KLR(A)-37-B
Mundakkal, Kollam ... Applicant

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the
General manager, Southern Railway
Headquarters Office, Park Town PO
Chennai – 3

2. The Chief Operations Manager
Southern Railway
Headquarters Office, Park Town PO
Chennai – 3

3. The Divisional Railway Manager
Southern Railway
Trivandrum Division
Trivandrum – 14 ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 29.07.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is working as Loco Pilot (Goods) in the Pay Band of ₹ 9300-34800 with a Grade Pay of ₹ 4200/-. While he was working as Loco Pilot (Passenger), disciplinary action was initiated against him for certain charges as contained in Annexure A-3. The summary of which is

that when Train 2625 which arrived at 12.43 hours on 08.12.2007 had a detention of 562 minutes at Quilon, since the applicant was the Loco Pilot who did not turn up, as part of illegal strike on that day. At the end of the day, after causing huge detention to the train, he returned for duty without producing any sick / fit certificate as required by Railway rules. As a result of the above said act, of the applicant caused untold miseries to traveling public and leakage of revenue amounting to crores of rupees, besides tarnishing the image of the Railways. The above act amounts to mis conduct, irresponsible and obstructive action and acted in a way quite unbecoming of a Railway servant without showing any devotion to duty and thereby violated Rule 3(1)(ii) & (iii) of Railway Service Conduct Rules, 1966. The Inquiry Officer was appointed and so called inquiry was held and the Inquiry Officer submitted his report finding him guilty and the Disciplinary Authority accepting the report imposed the punishment of reducing him to the post of Loco Pilot (Goods) in the scale of ₹ 5000-8000 fixing his pay at ₹ 5000 for a period of five years with recurring effect and loss of seniority. During the relevant time, he was Loco Pilot (Passenger) in the scale of ₹ 5500-9000 with basic pay of ₹ 7075/- On appeal by the applicant, the Appellate Authority reduced the punishment for a period of three years without the effect of postponement of increments and loss of seniority. Aggrieved by the orders passed by the Disciplinary Authority and Appellate Authority, produced as Annexure A-1 and A-2 and seeking to quash the same, the present OA is filed.

2. The main contention of the applicant is that he was served a charge sheet only on 08.03.2008 and within a few days thereafter the inquiry was held. In the inquiry he denied the charges, and not even a

formal evidence was adduced to prove the guilt of the applicant. That the statement referred to in the charge sheet is not obtained in the presence of the applicant and no witness was examined in the presence of the applicant to mark the statement and no materials in the inquiry to be relied upon.

3. Thus this is a case where the findings were raised without evidence on record and as such punishment cannot be sustained. Alternatively, it is alleged that the punishment is disproportionate and harsh. During the course of argument, it is specifically urged with reference to the 6th Pay Commission recommendations, were yet to be implemented at a time when the punishment was imposed to the applicant. As a result the punishment became harsher and that aspect had to be taken into consideration by the Appellate Authority.

4. In the reply statement filed by the respondents it is stated that the applicant has not exhausted of the statutory remedy and instead of filing a revision he has approached this Tribunal. On merits it is contended that All India Loco Running Staff Association sponsored a flash strike by not reporting for working the nominated trains without any notice and the conduct on the part of the applicant in not reporting for duty has created havoc and great pain and suffering to the larger public which is a serious misconduct inviting harsher punishment than what is imposed. They support the order of punishment inter-alia stating that charge memo was issued to him on 28.01.2008. The applicant did not accept the same and it is exhibited in the Notice Board on 01.02.2008 and remained there upto 11.02.2008 in the area Superintendent (Mechanical)'s office at Quilon

where the applicant was working. The Disciplinary Authority appointed Senior Divisional Mechanical Engineer, Trivandrum as Inquiry Officer and notice of inquiry was issued. The Inquiry was fixed by the Inquiry Officer on 10,03.2008 and advice given to the applicant duly enclosing copy of Annexure A-3 document vide Annexure A-5. But the applicant chose not to accept the document on 10.03.2008. On the first sitting of the inquiry on 10.03.2008, he sought ten days time to nominate a Defence Helper and accordingly it was adjourned to 19.03.2008. That the charge sheet when attempted to be delivered was refused to be accepted, the pasting of the same on the Notice Board is sufficient notice and the appointment of the Inquiry Officer is perfectly valid. The inquiry was completed on 19.03.2008. It is submitted that to the specific question at the time of inquiry, as question No.4 as mentioned in Annexure A-7, the applicant denied the charges totally and did not substantiate the same in the reply through question No.5. He did not submit before this Tribunal that he has not committed the offence. Annexure A-3 document was given to him as enclosure to Annexure A-5 on 18.02.2008. Hence the inquiry is valid. The order of the Disciplinary Authority is therefore valid.

5. A rejoinder has been filed by the applicant producing Annexures A-11 and A-12 and to contend that the 6th Central Pay Commission recommendations, were implemented subsequently after the imposition of penalty. As such the Appellate Authority or the Revisional Authority, as the case may be, ought to have considered this aspect of the matter and reduced or modified the punishment accordingly.

6. We have heard Mr.TCG Swamy, the learned counsel for applicant and Mr.Thomas Mathew Nellimoottil along with Mr.Varghese John, the learned counsel for respondents. In this case, the charge sheet was served on 08.03.2008. Though the respondents had a case that the charge sheet was attempted to be served on him earlier and he had refused to accept the same and it was pasted on the Notice Board, except to record a statement on that fact by the Inquiry Officer, there is no other material produced either in the inquiry or before this Tribunal nor even made the files available to prove the same. But that it may, it is not very relevant. Admittedly, the applicant had been served with the charge sheet on 08.03.2008. He did not submit any explanation. On the first sitting of the inquiry on 10.03.2008, he sought an adjournment and accordingly it was adjourned to 19.03.2008. Then also he did not submit his explanation before the Disciplinary Authority or before Inquiry Officer . But he denied his charges Annexures A-6 and A-7. True, whether there is any explanation offered by the applicant or not, it is incumbent on the authority to hold the inquiry in cases where the punishment to be imposed is a major punishment. Unlike the case where the disciplinary proceedings are governed by natural justice only and not based on any statutory rules, there is no option for the authority in the matter of holding an inquiry as it is mandated by virtue of statutory provisions under Article 311 of the Constitution of India. As per Article 311 (2) of the Constitution of India, " No person who is a member of a Civil Service of the Union or an All India Service or a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed. No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been

informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges." Following the above Constitutional provision, the Railway Rules itself provides under Rule 9 (1) that no order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 6 shall be made except after an inquiry held as far as may be, in the manner provided in this Rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 where such inquiry is held under that Act. As per Rule 9 (b) in a case where no written statement of defence is submitted by the Railway servant, the disciplinary Authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiry authority for the purpose and also inform the Railway servant of such appointment.

7. In the light of the above clear provisions, it becomes mandatory for the authority to hold an inquiry in cases they propose to impose a major punishment and rightly in this case an inquiry was held after an Inquiry Officer was appointed for the same. But then the purpose of holding the inquiry is to prove the charges by placing materials before the inquiry and then considering such materials etc. to give a conclusion that the charges has been proved or not. In this case the inquiry proceedings clearly reveals that there was no witness examined even to formally prove the charges. No documents were also exhibited to prove the charges. We are surprised to find that in a case of this nature, where the allegations are very serious, the respondents ought to have taken the matter seriously and at least examined one witness formally to prove the sustenance of charge levelled against the applicant. The delinquent denied the charges before the Inquiry Officer. The fact that he is guilty is required to be proved by

the employer and cannot cast the burden on the delinquent to prove the negative. First of all, the allegation that he had reported for duty late causing inconvenience to the public is required to be brought on record by examining somebody, in which case, there would not have arisen the slightest doubt that nothing further remains to be proved unless the delinquent has got valid explanations against his non reporting for work at the proper time and the delay in reporting for work as the case may be. In the absence of any formal evidence is lacking to support the charges, this is a case of no evidence. Therefore, the purpose of holding an inquiry is completely lost. In a departmental inquiry, the rigour of the Evidence Act will not apply, and the quality and the degree of proof required could not be equated with criminal law. If there is some evidence, it may be sufficient and Court will not interfere but if there is a total lack of evidence in the inquiry, then the finding of guilt becomes a perverse finding which in a given situation will empower the Court of law to interfere. Though sufficiency or otherwise of evidence may not be a matter for the Court to look into, but where there is total want of evidence or when the findings are arrived at contrary to the evidence and thereby perverse the Court can have judicial review of administrative action.

8. We are fortified in our conclusion by the decision of the Apex court in **AIR 1969 SC 983, Central Bank of India Limited v. Prakash Chand Jain ,** Para 9 & 10 extracted as under :-

> 9. In the case of Khardah Co. Ltd. v. Their Workmen(1), this aspect was noted by this Court as follows :-
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> "Normally, evidence on which the charges are sought to be proved must be led at such an enquiry in the presence of the workman himself. It is true that in the case of departmental enquiries held against public servants, this Court has observed in the State of Mysore

v.S.S. Makapur(2) that if the deposition of a witness has been recorded by the enquiry officer in the absence of the public servant and a copy thereof is given to him, an an opportunity is given to him to cross-examine the witness after he affirms in a general way the truth of his statement already recorded, that would conforms the requirements of natural justice; but as has been emphasised by this Court in M/s. Kesoram Cotton Mills Ltd. v.Gangadhar(3) these observations must be applied with caution to enquiries held by domestic tribunals against the industrial employees. In such enquiries, it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence. Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he giving evidence against a particular individual who is present before him, and therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses ex parte and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements, even though the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represent what they stated."

10. In the case of M/s. Kesoram Cotton Mills Ltd. v. Gangadhar and Others(1) referred to in the quotation above, it was held :–

"Even so, the purpose of rules of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore, the nature of the inquiry and the status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held is represented by a lawyer, it may be possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient see New Prakash Transport Co. v. New Suwarna Transport Co. (2)] but where in a domestic inquiry in an industrial matter lawyers are not permitted,something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial

> worker. Further, we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case, to read over a prepared statement in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us, therefore, that when one is dealing with domestic inquiries in industrial matters,the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the enquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and bring home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking, therefore,we should expect a domestic inquiry by the management to be of this kind."

9. It was held by the Apex Court that domestic Tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Evidence Act, but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the inquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic Tribunals are not bound by the technical rules of procedure contained in the Evidence Act.

10. In the light of the discussions we have made as above and after going through the inquiry proceedings, we are satisfied that in the absence of any evidence to support the charges, finding of guilt against the applicant cannot be sustained in the eye of law. Hence we set aside Annexure A-1 order of punishment as confirmed by the appeal in

Annexure A-2. It is, however, open to the respondents to proceed to hold the inquiry in accordance with law and take such action as may be warranted. However, the same shall be done within a reasonable time within a period of six months from the receipt of a copy of this order. In case of default, the applicant be restored with all the benefits as though no punishment is inflicted on him.

11. OA is disposed of as above. No costs.

Dated, the 29th July, 2011.

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

vs