CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 299/97

Thursday, this the 2nd day of December, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P. Sankaran,
S/o. S. Kunjan,
Goods Driver,
Southern Railway,
Ernakulam Junction,
Residing at: Pulickaparambil House,
Parthipra, Shoranur.

...Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India represented by
The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras - 3.

2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum - 14.

3. The Senior Divisional Mechanical Engineer,
Southern Railway, Trivandrum - 14.

...Respondents

By Advocate Mrs. Sumathi Dandapani

The application having been heard on 2.12.99, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-12, A-14 and A-17 and to direct the respondents to grant all consequential benefits including arrears of pay.

2. The applicant was employed as a Goods Driver at Ernakulam Junction. On 26.2.93, he was the Driver of the Goods Train

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namely Irumpanam-Kochuveli Diesel Goods. The train was proceeding from Irumpanam to Kochuveli. By the time the train was approaching the reception signals of Sastamkottai Railway Station, the applicant noticed that the `Distant' signal showing "Caution" aspect and the `Home' signal showing "Danger" aspect which indicate that he should stop short of Home Signal. He started applying the brakes to bring the train to a smooth stop. The train ought to have come to a stop at the desired place. However, since the train was still moving slowly he applied the emergency brake and managed to bring the train to a stop, with its engine just passing the `Home Signal'. By that time,the vacuum Gauge in the engine was showing zero indication but the vacuum could not be recreated. He was relieved of his duties and kept under suspension from the same day. The train was taken over charge by another Driver who after noticing the inadequacy of brake-power gave message to the next station. Later on, a charge memo dated 7.4.93 was served on him. Thereafter, he sought for perusal of records inorder to enable him to submit his defence statement. His request contained for perusal of documents other than referred to in the charge memo. He was permitted to peruse only the document referred to in the charge memo and his request for perusal of other documents was turned down on the ground that those are not relevant. He was once for all denied the opportunity to submit his defence statement. On 21.8.93, he attended the enquiry and requested again that documents sought for are supplied atleast during the enquiry so as to enable him to defend his case. He also indicated a list of defence witnesses who should be summoned. The relevancy was also stated. No order was passed on this request. The only document

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listed on the prosecution side was not proved. On completion of prosecution evidence, the enquiry was abruptly stopped without affording an opportunity to him to defend his case. The findings of the Enquiry Officer are not based on any evidence on record. The Disciplinary Authority , as per A-12, finding guilty, awarded the punishment of reverting to the next lower grade of Shunter in scale of Rs.1200-2040 and fixed the pay at Rs.1410 for a period of one year without cumulative effect from 3.1.94. Appeal filed against the same was dismissed by the Appellate Authority as per A-14. Against A-14, a revision was filed and the Revisional Authority dismissed the revision as per A-17.

3. Respondents resist the O.A. contending that the contention raised by the applicant that he was not provided with certain additional documents cannot be accepted as the Disciplinary Authority is supposed to give all facilities for the delinquent employee to defend his case, he is also not supposed to extend his case indefinitely for threadbare analysis of the case to decide the case without a shadow of doubt. The applicant was provided with the list witnesses and documents mentioned in the charge memo. The denial of additional documents was only because they were found irrelevant by the Disciplinary Authority who is vested with the choice of either allowing or denying it. The question to be looked into is whether non-supply of the documents sought has caused prejudice to the applicant. There were 19 inoperative cylinders on that train in a formation 78 unit wagons indicating brake-power of about 75%. Normally, brake power of 70% for a train already on run is considered adequate because the procedure is that a goods train while being started

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from originating yard must have brake-power of 85%. In normal operating work, a train having 70% or more brake-power, is generally considered to be a train fully with control. After examination of witnesses, the applicant did not submit himself for examination on the plea that additional documents and witnesses requested by him were not allowed. Though, there is no specific charge of overshooting, in fact, the train has overshot the signal and that is the cause of the case.

4. The charges against the applicant are that he, a Goods Driver/ERM while functioning as the Driver of the IKD Goods with Loco No.WDM2 17475 on 26.2.93 had failed to apply the brakes in time while approaching the Down Home signal of STKT at "ON" which resulted in the train passed Down Home signal of STKT at "ON"thus violated GR.3.80(1).

5. After passing the Down Home signal at "ON", the Driver had backed the train for about 170 meters and brought it in the rear of the Home signal to destroy the evidence. He has thus violated SR.3.80(i) and article 3(1)(i), (ii) and (iii) of Railway Service Conduct Rules, 1966.

6. A-12 is the order passed by the Disciplinary Authority. The finding of the Disciplinary Authority is that " the charge of overshooting signal at danger has also been proved". When it is stated that the charge of overshooting signal at danger signal has also been proved, some other charge apart from this has also been proved is to be inferred. What is the other charge proved is not seen in A-12. That apart, the charge is not that the

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applicant overshot the signal at danger. The charge against him is that he has failed to apply the brakes and thereby crossed the danger signal. There is no finding by the Disciplinary Authority that the charge as such framed against the applicant has been proved. The question of finding the delinquent guilty arises when the charge is proved against him and not otherwise. The question of awarding punishment arises only when the charge is proved.

7. The Appellate Authority in A-14, the appellate order has stated that he is satisfied that the conclusions reached by the Enquiry Officer as regards charges against the appellant have been fair. The question really is whether the finding of the Disciplinary Authority as per A-12 is right or not.

8. The Revisional Authority in A-17, the revisional order has stated that the applicant has accepted the overshooting at the danger signal in the Enquiry and this is a grave offence which warrants imposition of major penalty.

9. As already stated, the charge is not that the applicant did overshoot the danger signal but he failed to apply the brakes at the proper time.

10. According to the applicant, inadequacy of break-power resulted in crossing the danger signal.

11. The learned counsel appearing for the applicant vehemently argued that the the enquiry was not fair and the

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principles of natural justice have been flouted since a reasonable opportunity was not given to the applicant to defend his case and that is due to the reason that the documents sought for preparing his defence were not made available for no valid reason. The applicant sought for certain documents apart from the documents referred to in the charge memo as well as copies of statements of the witnesses examined in the preliminary enquiry. The authority concerned refused to supply the copies of documents sought for on the ground that those are not relevant for the purpose of submission of written statement of defence. The applicant, admittedly, did not file any written statement of defence to the charge memo. The enquiry was proceeded. During the course of the enquiry, the applicant put forward the request for furnishing certain documents. That request was also turned down by the authority concerned as not relevant.

12. From A-9, the proceedings of the DAR enquiry against the applicant conducted on 4.9.93, it is seen that the applicant submitted a request for supply of documents and also for examination of witnesses. It is seen that no order was passed on this request. If the authority concerned was convinced that there is no ground to allow this request or there is no provision to allow the request, on that ground, it could have been turned down. But here it is a case where no order has been passed. There is no explanation for non-passing of any order.

13. In State of Madhya Pradesh Vs.Chintaman Sadashiva Waishampayan (AIR 1961, SC 1623), it has been held that rules of natural justice require that a party should have the opportunity

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of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them and if it appears that effective exercise of this right has been prevented by the Enquiry Officer by not giving to the officer relevant documents to which he is entitled, that inevitably would lead to violation of natural justice.

14. In State Bank of Patiala and others Vs. S.K. Sharma (1996 SCC (L&S) 717), it has been held that:

> "It is trite to remember that, as a rule, all such procedural rules are designed to afford a full and proper opportunity to the delinquent officer/employee to defend himself and are, therefore, conceived in his interest. Hence, whether mandatory or directory, they would normally be conceived in his interest only."

15. In State of Uttar Pradesh Vs. Mohd. Sharif (1982 SCC(L&S) 253), it has been held that:

> "Even the request of the plaintiff to inspect the file pertaining to preliminary enquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary enquiry;it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence".

16. In this case, there was a preliminary enquiry which preceded the disciplinary enquiry. The applicant sought copies of statements of the witnesses examined in the

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preliminary enquiry which preceded the disciplinary enquiry and those copies of the statements were not furnished to the applicant at any stage of the enquiry. That being so, prejudice has been caused to the applicant in the matter of defence.

17. The request of the applicant for documents not referred to in the charge memo were refused to be given to him as not relevant. The relevancy has to be looked into from the interest of the defence. Nowhere, the authority concerned, while refusing has stated that from the interest of the applicant, the delinquent Government Servant, the documents sought for are not relevant. So, it is clearly seen that the authority concerned while refusing to furnish copies of the documents sought has not viewed it from the correct perspective.

18. A-10 is the report of the enquiry submitted by the Enquiry Officer. The document relied upon by the prosecution and shown in the charge memo has not been discussed at all in A-10. Nobody has proved the document referred to in the charge memo.

19. From A-10, it is seen that the Enquiry Officer has come to the finding that the applicant is guilty based on certain answers given by the witnesses examined by the prosecution in the Chief Examination. Those prosecution witnesses were to a limited extent cross-examined by the applicant. Certain answers brought out in the

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cross-examination like the reason for passing the signal at " ON" may be due to poor break-power of the train have not been considered at all. Non-consideration of what is brought out in the cross-examination of the prosecution witnesses is a grave matter and it is against fair play and is violation of the principles of natural justice.

20. According to the applicant, the enquiry was abruptly closed without affording him an opportunity to defend his case properly. As per Rule 9(19) of the Railway Servants (Disciplinary & Appeal) Rules, 1968, when the case of Disciplinary Authority is closed, the Railway servant shall be required to state his defence orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Railway servant shall be required to sign the record. From the documents made available, it is seen that this particular provision has not been complied with.

21. The learned counsel appearing for the applicant argued that Rule 9(21) of the Railway Servants (Disciplinary & Appeal) Rules, 1968 has not been complied with in this case. As per the said rule, 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. It is the admitted case of the respondents that the applicant has not got himself examined. That being the position, the

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Enquiring Authority should have necessarily complied with Rule 9(21) of the said rules. What is done in this case by the Enquiry officer is only putting to the applicant,"Have you got anything more to say?". This could hardly be said to be in compliance with the provisions contained in Rule 9(21) of the said rules. Rule 9(21) cannot be said to be an empty formality. It has got its own relevance, significance and importance for the reason that it enables an opportunity to the delinquent Government Servant to explain the circumstances appearing against him in evidence. Whether compliance of Rule 9(21) is mandatory or directory, it is suffice to say that it could normally be conceived in the interest of the delinquent Railway servant only. Noncompliance of Rule 9(21) as well as Rule 9(19) can only be said to have caused prejudice to the applicant.

22. The applicant has also got a case that it is a case of no evidence. No evidence means not only total want of evidence but also whether a reasonable person could reach that conclusion on that evidence.With regard to the aspect of non-consideration of what is brought out in the cross-examination of the prosecution witnesses , we have already stated.

23. Various grounds have been raised by the applicant in the O.A. In view of what has been already stated, it is not necessary to go into other grounds.

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24. From what we have stated already, it is clearly seen that this is a case where prejudice has been caused to the applicant and the conclusion arrived at is not based on the reading of evidence as a whole.

25. Accordingly, A-12, A-14 and A-17 orders are quashed. We make it clear that this will not prevent the respondents from proceedings afresh against the applicant from the stage of furnishing the charge memo in accordance with the rules and in conformity with the principles of natural justice.

26. O.A. is disposed of as above. No costs.

Dated this the 2nd day of December, 1999.

G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A.M. SIVADAS
JUDICIAL MEMBER

nv/261199

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-9: A true copy of the proceeding of enquiry conducted against the applicant (different dates).

2. Annexure A-10: A true copy of the Enquiry Report received from the 3rd respondent. Under his No.V/M T5/IKD/26/2/PS dated 18.10.93.

3. Annexure A-12: A true copy of the Penalty advice bearing No.V/M T5/IKD/26/2/PS dated 31.12.93 issued by the 3rd respondent.

4. Annexure A-14: A true copy of the appellate order passed by the 2nd respondent and communicated to the applicant by the Divisional Personal Officer, Trivandrum under his No.V/P 227/A/94/II/Mechl dated 12.9.94.

5. Annexure A-17: A true copy of the order bearing No.V/P.227/Gl./HQ.dated 9.5.96 issued by the 2nd respondent.