

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Friday, the nineteenth day of August
One Thousand Nine Hundred and Eighty Eight

PRESENT

The Hon'ble Shri C. Venkataraman, Administrative
Member
and

The Hon'ble Shri G. Sreedharan Nair, Judicial
Member

Original Application No. 299 of 1987

P.J.Gervadis .. Applicant
-Vs.-

1. The General Manager,
Southern Railway, Madras-3
2. The Chief Personnel Officer, .. Respondents
Southern Railway, Madras-3

M/s M.P.Krishnan Nair & .. Advocate for the
Smt.M.Rajeswari applicant

Smt.Sumathi Dhandapani .. Advocate for the
respondents

Order pronounced by
The Hon'ble Shri C. Venkataraman, Administrative
Member

This application has been filed

by P.J.Gervadis, senior clerk, in the office

of the Chief Personnel Officer, Southern

Railway, Madras, on his being compulsorily

retired from service, by an order dt. 16.12.1985

(Ex.P 6), issued by the Addl.Chief Personnel

Officer. His appeal, filed against that order

to the Chief Personnel Officer was also rejected

after giving him a personal hearing.

According to the applicant, he had a very good record of service for more than 29 years and had never been punished. He was issued the memorandum of charges on 23.7.1985 under the Railway Servants' (Discipline and Appeal) Rules, charging him with failure to maintain devotion to duty, violating the provisions of Rule 3(1)(ii) of the Railway Servants (Conduct) Rules. The allegation on which the charge was based was that 54 letters ~~which~~ were entrusted to him during the period from 23.3.1985 to 21.6.1985 for taking action. But no action was actually taken by him on any of the letters till 10.7.1985. After conducting an inquiry on 6.11.1985, in which the applicant participated, the disciplinary authority imposed the penalty of compulsory retirement on him. His appeal as also subsequent revision petition to the Chief Personnel Officer and the General Manager respectively had been rejected. In the present application

before this Tribunal, the applicant has prayed that the penalty order of the disciplinary authority and the order dt. 17.1.1986 of the appellate authority and the order of the General Manager, as the revision authority, be set aside and the respondents directed to reinstate the applicant in service, with back wages.

The learned counsel for the applicant stated that the chargesheet itself was defective because it was vague and did not contain specific details of the letters which were alleged to have been pending with the applicant. Besides, the respondents had not established the charge against the applicant. In the inquiry held on 6.11.1985, did not conform to the prescribed disciplinary rules. There was denial of principles of natural justice during the inquiry because inspite of the applicant stating that he had disposed of all the letters and that no letters were pending with him as earlier stated in a letter

sent by him on 6.11.1985, no steps were taken by the presenting officer to prove the charge against him that all or some of the letters entrusted to him still remain^{ed} undisposed. On the contrary, the inquiry officer had asked the applicant to prove that he had disposed of all the papers entrusted to him. The applicant had already stated in his letter on 6.11.1985 and again reiterated it during the inquiry that he was not in a position to remember the files and give the disposal of each of the papers entrusted to him. Yet, a conclusion had been reached by the inquiring authority that the charge ^{He stated} and that the was proved. ~~as the~~ conclusion was not based on evidence which was let in during the inquiry. He also stated with reference to the judgement of the Supreme Court in Associated Cements Co., -vs.- Their Workmen and another (1963 (II)-LLJ-396), that care must be

taken to see that domestic enquiries do not become empty formalities. The Supreme Court had also held that in a domestic enquiry, the employer should take steps first to lead evidence against the workman charged and that it is not fair that they should be at the very commencement of the inquiry, closely cross-examined ~~examining~~ even before any evidence is led against them. In the case of the applicant this is what exactly has happened because the inquiring authority had asked the applicant on 25.10.1985 to attend the inquiry on 6.11.1985, with a statement in duplicate, showing the action taken on each letter, duly quoting the letter number and date, under which reply was sent. In case any of the letters was still pending disposal, the reasons for same were also asked to be indicated against such items. Such a procedure of asking the applicant to comply with ^a certain requirement was in violation of the

statutory rules for conducting the disciplinary proceedings. Further, by asking the applicant to come up with his defence before the charge is sought to be established in an inquiry, the right of the applicant to defend himself is violated. He accordingly prayed that the impugned orders be set aside and the respondents ordered to reinstate the applicant in service.

The learned counsel for the respondents, at the outset, brought to our notice that the averment of the applicant that his service has been an unblemished one is far from truth in as much as the applicant had been charge sheeted on 14 occasions and had been imposed several penalties like, censure - 4 times, withholding of increments - 3 times, withholding of passes - 5 times, reduction of pay in the time scale - once. He then stated

that there was nothing vague in

the charge ^{sheet} because a list of 54

letters received by him and which

had not been disposed of by 10.7.1985

had been annexed to the charge sheet.

The applicant had not stated that he

had not received the charge sheet with

the enclosure stated therein. On the

contrary, the learned counsel pointed

out that in his reply dt.14.10.1985

to the charge sheet he had admitted

the charge and had pleaded that the

reason for the omission in taking

action on the letters entrusted to

that him was not intentional and it was caused

by his illness for which he had been

taking medicines continuously for the

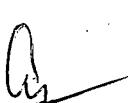
last 15 years. When the applicant was

asked to attend the inquiry on 6.11.1985,

with the statement of disposals of the

letters done by him, the applicant

attended the inquiry on that day and he





had submitted a letter on the same day in which he had claimed that all the letters had been disposed of and that no letter was still pending disposal with him. In the said letter he had also stated that unless the subject of each letter is mentioned separately, it will not be possible for him to prepare the statement showing the action taken on each of the letters. During the inquiry, he was not able to indicate the manner in which any of 54 letters had been disposed of, even though as a dealing hand he ought to have known the files in which those letters would have been taken up for disposal and that it was possible for him to get ^{at} the files and advice disposal of the papers. The inquiry officer thereafter rendered a finding that the charge was proved because inspite of the applicant's claim on 6.11.1985 that all letters having been disposed of, in a specific reply to the charge sheet the applicant had

admitted on 14.10.1985 that there was omission on his part to take action on the letters entrusted to him and that it was not intentional, but due to his ill-health. On actual verification also it was noticed that there were some letters which had not been disposed of and certain other letters which were not traceable at all. The disciplinary authority agreed with the findings of the inquiry officer and passed the order of penalty retiring the applicant compulsorily from service.

^{for the respondents}
The learned counsel ~~has~~ further pointed out that in the appeal preferred by the applicant to the Chief Personnel Officer, he had only urged ~~the~~ points like his having joined the section only two years earlier and that nobody in the section was willing to give him assistance or extend co-operation to him in discharging his duties. He had also pleaded that he was suffering from mental disorder and was taking

highly intoxicating medicines for that purpose for the previous 15 years. Yet another plea ^{put} forth by him in the appeal was that he had a large family to support. The learned counsel ^{also} pointed out that there was no mention at all either about the inquiry being defective or about any wrong finding that letters which were actually disposed of had been taken as not having been disposed of. The revision petition also is more or less on the same lines. These were considered by the concerned authorities, with the ^{also} appellate authority giving a chance to the applicant to make his submission orally before him. Thereafter, the appeal as also the revision petition were rejected. The learned counsel for the respondents concluded stating that the applicant had not made out ^{any} ~~a proper~~ case ^{in support of the application} and as prayed that the application be dismissed.

The learned counsel for the
respondents also made available the
departmental file for our perusal.

It is seen that the applicant
had sent a reply to the charge sheet
on 14.10.1985 admitting the charge.

Accordingly, there was no necessity even
to have had an inquiry. Yet, the inquiring
authority had evidently considered it
necessary to ascertain as to whether there
was any extenuating circumstance in favour
of the applicant, especially when health
ground had been mentioned in the reply
dt.14.10.1985 by the applicant. Accordingly
he was asked to appear on 6.11.1985 for a
preliminary inquiry with ^{the} statement of
disposals in respect of the letters entrusted
to him, as per the chargesheet. The
applicant appeared before the inquiring
authority, but stated that he had actually
all
disposed of the letters entrusted to him.

~~though~~ The learned counsel for the applicant
invited our attention to Associated Cements

Co. - Vs. - Their Workmen and another,
and stated that the employer should
not take up the examination of the
charged official in the first instance
in an inquiry, ^{any} In this case the respondents
did not bring ~~in~~ witness to establish the
charge framed against the applicant. The
charge had already been admitted by the
applicant on 14.10.1985 and it was open
so to the applicant if he ~~choose~~, to either file
a written statement even later as to when
disposals were made if they had actually
been made or to intimate them orally during
the inquiry. The applicant however did not
avail of that opportunity, but merely stated
that he had disposed of all the letters.
Each domestic inquiry will have its own
peculiarities and the facts and circumstances
of each case have to be taken into consideration
while adjudging whether there has been
any denial of principles of natural justice.

In this case, certain letters were entrusted to the applicant for disposal and at one stage, in reply to the chargesheet the applicant had admitted that those letters had not been disposed.

Later if he comes forward with a plea that all those letters had already been disposed of, it was open to him to state as to when those letters were disposed of and in what manner, because he was still working in the section and had complete access to the files which were in his custody. As the applicant did not avail of the opportunity given to him, the disciplinary authority had come to the conclusion that the charge against him was established on the basis of the applicant's earlier admission on 14.10.1985. It was also noted that on further checking, there were some letters which had ~~been~~ indeed remained undisposed of. Accordingly, we feel that

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there has not been any denial of ~~the~~
opportunity to the applicant to defend
himself in the disciplinary proceedings
initiated against him. The grounds which
had been urged by him in his appeal as also
in the revision petition relate only to
his ill-health ~~and~~ his large family and
personal hardship by allowing the penalty
to stand. These were taken into consideration
by the authorities concerned before rejecting
the appeal as also the revision petition.

As the conclusion reached by the inquiring
authority in the disciplinary proceedings
is not based either on irrelevant considera-
tions or on the basis of caprice, whim or
arbitrariness, we hold that there is no
justification for us to interfere with the
impugned orders of the respondents.

Accordingly, we dismiss the application.

C Venkataraman
19/8/88

Recd
19-8-88

(C. Venkataraman)
Administrative Member

19.8.1988

(G. Sreedharan Nair)
Judicial Member

Index ~~yes~~ / no
nks:18.8.