

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 303/2004

THURSDAY, THIS THE 7th DAY OF DECEMBER, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR KBS RAJAN, JUDICIAL MEMBER**

K.Dorai Raj S/o M. Kandasamy
Travelling Ticket Examiner/Sleeper
Southern Railway, Erode
Residing at No. 59, North Vinayakapuram
Sarvanampatti PO
Coimbatore-35

.. Applicant

By Advocate Mr. TC Govindaswamy

Vs.

1 Union of India represented by the
General Manager
Southern Railway, Headquarters Office
ParkTown PO
Chennai-3

2 The Chief Commercial Manager
Southern Railway
Headquarters Office,
Park Town PO
Chennai-3

3 The Additional Divisional Railway Manager
Southern Railway
Palghat Division
Palghat.

4 The Senior Divisional Commercial Manager
Southern Railway Palghat Division
Palghat.

.. Respondents

By Advocate Smt. Sumathi Dandapani

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this OA challenges the penalty order passed by the Disciplinary Authority at Annexure A-1 and the Annexure A-2 and A-3 orders of the Appellate and the Revisional Authorities affirming the same.

2 The facts of the case as narrated by the applicant are as under:- The applicant is presently working as a Travelling Ticket Examiner (Sleeper Coach) in the scale of pay of Rs. 4000-6000. He is aggrieved by the penalty advice No. Con/JN/475 dated 9/10.5.2002 issued by the fourth respondent by which his pay in the timescale of Rs. 4000-6000 was reduced by two stages from Rs. 5100/- to Rs. 4900/- for a period of two years with the effect of postponing future increments. He is further aggrieved by the affirmation of the said penalty in appeal and revision. On 24.07.2001 the applicant was on duty as Travelling Ticket Examiner in Train No. 1013 Kurla Express. He was manning three sleeper coaches namely S-6, S-7 and S-8. The coaches being vestibuled, nothing prevented the passengers from moving from one coach to another, while the train was on the run. When the train reached Salem, there was a so called Preventive Check by the Vigilance of Southern Railway and in that process S-8 coach manned by the applicant was checked at 4.15 hours. Though there was no discrepancy in the private cash and

Railway cash held by the applicant the Vigilance team concocted a case against the applicant that he carried two passengers holding II Mail/Express tickets without collecting Sleeper Charges. In that regard a proceeding was drawn by the Vigilance team based on which the applicant was served with a major penalty charge memorandum dated 26.11.2001 issued by the 4th respondent. Annexure A-4 contained the following allegations:

(i) He had collected Rs. 70/- from a passenger and did not issue receipt till the time of check

(ii) He had collected Rs. 50/- from a passenger and did not issue receipt till the time of check.

(iii) He carried two passengers holding II Mail/Express tickets without collecting conversion charges till the time of check.

(iv) He had a shortage of Rs. 150/- in Railway cash.

3 Twenty two documents and four witnesses were listed to sustain the charges. The documents included statement of two passengers, of one Balaji dated 24.7.2001 and that of one Hanumantha Rao dated 24.7.2001. Out of four witnesses two are Vigilance officials. Thereafter a preliminary hearing was conducted on 3.1.2002 at Madras which was followed by regular enquiry with three sittings on 16.1.2002, 17.1.2002 and 8.2.2002. None of the documents listed in the memorandum of charges has been produced in the enquiry and proved in the manner in which they are required to

be produced and proved. The statements of Shri Bajaj dated 24.7.2001 and that of Shri Hanumantha Rao dated 24.7.2001 which were taken on record at the commencement of the enquiry, contrary to rules and very much relied on by the Enquiry Officer to arrive at a finding of guilt against the applicant, were not at all proved in the enquiry by summoning these persons as witnesses. However, the applicant could not make any representation against the report due to some unforeseen calamities which had taken place in his family. Thereafter, the applicant received Annexure A-1 penalty advice by which his pay in the time scale of pay of Rs 4000-6000 was reduced by two stages from Rs. 5100/- to Rs. 4900/- for a period of two years with recurring effect. Against Annexure A-1 the applicant submitted his appeal dated 18.2.2003 to the third respondent which was rejected by Annexure A 2 affirming the penalty imposed by Annexure A-1. Aggrieved by that the applicant submitted a revision petition dated 9.5.2003 addressed to the second respondent, which was rejected by Annexure A-3 confirming the penalty.

4 The following grounds have been advanced by the applicant.

- (1) that Annexures A1, A2 and A3 are the products of certain vague and ambiguous charges levelled against the applicant
- (2) No evidence was led in the enquiry from any of the passengers to sustain either the charges of collecting

money without issuing receipt or carrying passengers without collecting conversion charges improper ticket. The veracity of the statements alleged to have been collected from two passengers and marked in the proceedings of the enquiry as Ext. 14 and Ext. 15 has not been testified by the persons who were alleged to have given those statements.

(3) The disciplinary authority ought to have seen that the applicant has not committed any misconduct which attracts the provisions of conduct rules.

(4) Annexure A2 and A3 are also without application of mind. The appellate and revisional authorities ought to have seen whether the charges levelled against the applicant have been proved by evidence on record and whether the enquiry has been conducted in accordance with law. They also ought to have seen that the penalty imposed on the applicant is grossly disproportionate to the gravity of offence alleged.

5 The respondents have denied the averments of the applicant. They have submitted that it is a fact that the three coaches S-6, S-7 and S-8 were on that day ~~to be~~ manned by the applicant and that the coaches were vestibuled enabling the passengers and the TTE to move through between the coaches. The Vigilance team had checked the coaches and detected certain regularities. The

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documents listed in Annexure A-II to the charge memo were marked as documents with the knowledge of the applicant. The applicant was asked whether he would like to present any defence witness/documents and whether he would offer himself for oral examination. An enquiry was conducted as per the procedure laid down and in conformity with the principle of natural justice, copies of the documents have been given to the applicant and the witnesses have identified the documents, the applicant and his Defence Assistant have affixed their signature on all the pages of the enquiry proceedings. Hence the allegation that the documents have not been proved as they are required to be proved, does not hold good. The argument of the applicant that passengers Shri Balaji and Shri Hanumantha Rao were not called for the enquiry cannot be accepted as a document which is either identified by persons or by witnesses in whose presence the document was recorded can be relied upon. The documents were identified by SW-1 and SW-2 in whose presence the documents were recorded. After the checking of the coaches cash statements were prepared in which there was shortage of Rs. 150/- in the railway cash which was admitted by the applicant and he had also admitted having collected Rs. 70/- and Rs. 50/- from two passengers without issuing receipts. He could not produce the amount during the checking which indicated the malafide intention of the applicant and attributed the absence of the amount to notes having flown away while counting. The respondents have also denied the allegation that the penalty imposed was not in

consonance with the gravity of the offence committed.

6 We have heard Shri TC Govindaswamy, the learned counsel for the applicant and Smt. Sumathi Dandapani learned counsel appearing for the respondents.. The learned counsel for the applicant elaborately argued contending that apart from the fact that the orders of the appellate and revisional authorities have been passed without reference to the reasons submitted by the applicant and showed lack of application of mind, the original order of the disciplinary authority itself is illegal. The counsel relied on various judgments of the Apex Court. He has advanced the argument that the whole proceeding against the applicant was a case of no evidence and that there was no nexus between the alleged misconduct brought out during the evidence and the charged officer and that the whole episode was a concocted one. The main plank of the argument of the learned counsel was that the two passengers Shri Balaji and Shri Hanumantha Rao were not examined during the enquiry and the absence of examination of the crucial witnesses, the charges could not be sustained. The evidence in the proceedings of the enquiry particularly with reference to the question NO. 27 in the statement of SW-1 Shri S. Manoharan, the other TTE who was on duty along with the applicant would be sufficient to arrive at the conclusion that the charges were actually disproved by the answer given to the said question. The following judgments were relied upon by the learned counsel for the applicant:

- 1 1986 SCC L&S 383
- 2 Kuldeep Singh Vs. Commissioner of Police and Others (1999 SCC L&S 429)
- 3 Sher Bahadur Vs. UOI and Ors. (20002 (2) SCC L&S 1028)
- 4 M. Narayanan Nair Vs. The General Manager, Southern Railway and Ors. (2001 (III) SLJ 372)
- 5 Ministry of Finance and Another Vs. S.B. Ramesh (1998 SCC (L&S) 865)

7 Smt. Sumathi Dandapani the learned counsel for the respondents has very diligently put forth the arguments with reference to the points raised by the applicant's side with the support of following judgments of the Apex Court. We shall deal with the judgements later.

- 1 1997 (5) LLJ 457
- 2 State Bank of India and Ors. Vs. Ramesh Dinkar Punde (2006 (7) SCC 558)
- 3 1982 (1) LLJ 46
- 4 Pandurang Kashunath Vs. Divisional Controller MSRTC, Dhules & Others (1996(1)LLJ
- 5 1998 (3) LLJ 440
- 6 State Bank of India and Ors. Vs. Ramesh Dinkar Punde (2006 (7) SCC 212)

8 The respondents have produced the file relating to the disciplinary proceedings for our perusal and we have carefully perused the same and the judgments referred to on either side.

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9 The applicant is challenging the disciplinary action against him mainly on the following grounds (i) the charges against him are inconsistent with the evidence adduced in the enquiry and no valid evidence is adduced in the enquiry and that (ii) the appellate and revisional authorities have passed the impugned orders without any application of mind.

10 First of all we take up the plea that the charges are inconsistent. The statement of imputations and the article of charges framed against the applicant are as follows:

- (1) he had collected Rs. 70/- from a passenger and did not issue receipt till the time of check.
- (2) he had collected Rs. 50/- from a passenger and did not issue a receipt till the time of check.
- (3) he carried two passengers holding II M/E tickets without collecting conversion charges till the time of check.

Thus he had failed to maintain absolute integrity, show devotion to duty and acted in a manner unbecoming of a Railway servant and thereby violated Rule No.3(1)(i)(ii) and (iii) of Railway Services Conduct Rules, 1966.

11 The first and second charges related to the collection of money from the passengers and the third is that he allowed two passengers to travel without collecting conversion charges and the 4th charge is there is a shortage of Rs. 150/- in the Railway cash. The charges have been proved through the statements of SW1 and SW-2 and the applicant was given sufficient opportunity for cross examination. The argument of the applicant is that the names and addresses of the

passengers were not furnished in the charge sheet and therefore he was unable to defend himself properly. It is however seen from the statement of imputations of misconduct and the list of documents which are enclosed with the article of charges that the details of the passengers including their names/ticket numbers have been given. Therefore, this contention of the applicant is not correct. Further according to the latest decision of the Hon'ble Supreme Court in Om Prakash Mann Vs. Director of Education (2006 7 SCC 558) referred to by the respondents in which a similar plea regarding vagueness of the charge sheet had been taken, and the Apex Court held that the appellant having participated in the disciplinary proceedings without demur he is now estopped from taking such contention when no ground was taken at the time of replying to the charges that the charge sheet was vague and he was unable to effectively give reply to the charges. Therefore this plea of the applicant cannot be upheld at this stage of argument as he has not taken this ground either in the pleas or in the appeal before the Appellate authority and has also participated in the proceedings.

12 The next point raised is that S-14 and S-15 statements have not been testified by the persons who are stated to have given these statements and no evidence was made in the enquiry by these passengers to sustain the charge of collecting money without issuing receipt or carrying the passengers without collecting the conversion charges. This is the main plank of the applicant's defence in that he

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has alleged that these documents have not been proved in the manner it was required to be proved. S-15 statement of Shri N. Balaji stating that he has travelled from Bangalore to Coimbatore in Second Class ordinary took permission from the coach TTE for which he has given Rs. 70/- and no receipt was issued for the paid amount. S-15 is the statement of Shri Hanumantha Rao stated that he was travelling from Bangalore to Tirupur and he had paid Rs. 50/- to the TTE and no receipt was given to him. Both these statements bear the following endorsement "statement given in his presence, on enquiry from the passengers and found correct. issued PFT, signed by the applicant". These statements establish the fact that they were recorded at the time of vigilance check when in the presence of the applicant and he has certified them to be correct and also signed the documents. Shri S. Manoharan the colleague of the applicant and who was manning the coaches S-10 and S-11 in the same train has also signed these statements as they have been taken in his presence. During the enquiry these statements were proved by examination of Shri S. Manoharan SW-1, and N. Suryan SW-2 who had also witnessed these documents. The applicant had also cross examined SW-1 and SW-2 in detail as seen from the proceedings of the enquiry-Annexure A-5. The question NO. 27 put to SW-1 and the answer given thereto has been specifically mentioned by the applicant :

Question No. 27: Please tell me the amount collected by me during the course of vigilance check from various passengers?

Answer:Rs. 70/- from one passenger by name Shri Balaji and Rs. 50/-from a Passenger bound to TUP, these two were told by passengers to me.

It is seen that if at all, the answer given to the question No. 27 only corroborates the fact that the passengers had already made payments to the applicant. Whether the payment was made during the checking or prior to the checking, it would not have made any material difference as the amount was found to be short and no receipts were issued for the same.

13 Coming to the argument of the applicant that the passengers Shri Balaji and Hanumantha Rao were not examined and Ext. -14 and Ext. 15 has not been testified by the persons, the respondent's counsel has placed reliance on the judgment of the Hon'ble Supreme Court dealing with a similar situation in State of Haryana Vs. Rattan Singh (1982 (1) LLJ 46) . That is a case where the termination of a Conductor in the Haryana State Roadways was challenged in the Court on the ground that the enquiry was a nullity in that the complaint of the passengers who were said to have travelled were not examined to prove that the Conductor did not issue tickets to them even though they paid fares. It can be seen from the facts of the case the situation here is more or less similar except the fact that here the journey was by train. The Court held that in a domestic

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enquiry, strict and sophisticated rules of evidence under the Indian Evidence Act may not apply and hearsay evidence can be considered provided it has a reasonable nexus and credibility. It was also held that merely because the statements of the passengers were not recorded, the enquiry is not vitiated. The detailed observations of the Court are very relevant in this case:

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and creditability. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or consideration and observance of rules of natural justice. Of course, fairplay is basis and if perversity or arbitrariness bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic Tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before the valid finding could be recorded. The "residium" rule to which counsel for the respondent referred, based upon certain passages from the American Jurisprudence does not go to that extent nor does the passage from the Halsbury insist on such rigid requirement."

14 In the instant case, the statements of passengers were recorded in the presence of the applicant and were identified by him and official witness^{as} in whose presence the documents were signed have been examined in the enquiry for identifying the documents and

cross examined by the applicant. Hence we cannot uphold the contention of the applicant that the procedure adopted was not in conformity with the principle of natural justice as in such circumstances it would have been totally impracticable as observed by the Apex Court to insist that the passengers should be chased and brought before the Enquiry Officer. No prejudice has been caused to the applicant by non-examination of these passengers in the enquiry.

15 The learned counsel for the applicant also submitted that the Enquiry Officer has not complied with Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, 1968. We find from the enquiry proceedings with reference to question Nos. 75 to 77, the applicant was questioned whether in the light of evidence tendered at the enquiry he wished to admit/deny the charges. He denied the charges and to the question whether he had any defence witnesses/documents to be produced on his behalf at this stage he had answered in the negative and to the question whether he offered himself for oral examination, he replied that he does not want to offer himself for oral examination but he would submit his defence written brief on receipt of PO's written brief. Hence, we cannot agree with the contention that the Rule 9(21) was not followed.

16 Next we deal with the contention of the applicant that the Appellate authority has not considered his appeal from the point of

view of the assessment made by the Disciplinary authority and the specific point raised by him in the appeal as also the correctness of the quantum of punishment. In this connection the learned counsel for the respondents pointed out that the applicant had in his appeal raised the point of reduction of the punishment only. A reading of the orders show that the Appellate authority has considered the matter on all the three counts and regarding reduction of the penalty he has observed that the employee had been punished on five earlier occasions despite that fact, he has not improved his conduct and the penalty imposed is only moderate. The respondents' counsel also drew our attention to the judgment of the Kerala High Court in Joseph Vs. State of Kerala (1994 (2) KLT 66) holding that the appellate authority if it affirms the order of the disciplinary authority, need not give separate reasons if it agrees with the reasoning of the disciplinary authority. We reject this contention of the applicant. The same argument would hold good regarding the order of the revisional authority also.

17 Then we come to the general contention taken by the applicant that the proceedings suffer from the lacuna of 'no evidence'. It is an admitted fact that there was a Vigilance checking in the train No. 1013 Kurla Express between Salem and Coimbatore on 24.7.2001 and, that the applicant was manning S-6, S-7 and S-8 coaches and Shri S. Manoharan, TTE was manning S-9 and S-10 coaches and both of them were found sleeping in Coach S-7 in berth Nos. 4 and 7.

S-II coach was checked at 4.15 a.m. The applicant has produced Rs. 100 as his personal cash and declared Rs. 535/- as railway cash. After the initial checking, checking continued for a few hours more and the coaches were checked one by one and during the check of S-8 coach the irregularities in this case were detected. The applicant was asked to give a second cash statement after checking according to which his railway transaction was Rs. 810/- m and he had a cash of Rs. 660/- and thus there was a shortage of Rs 150/-. These facts are admitted by him and he could not account for the shortage in the cash. The applicant has contended feebly that if he had actually collected the amount from the passengers he would not have any shortage and the shortage would not have arisen if the vigilance team has not issued a free EFTs. It is not in evidence that he has taken this plea before EFT was issued or refuted the statement of the passengers that he has collected the amount from them without issuing receipts. If he had really not collected the amount from the passengers nothing prevented him from challenging the statements of the passengers already made before him and signed by him to be as correct. Accepting that he has received the amount from the passengers he has issued EFTs to the passengers. He could very well have refused to issue EFTs. It is therefore obvious that this argument is an afterthought. It is seen that he has made a statement before the Vigilance team that the amount was collected, but notes have flown away while counting. There was no reason for making such a statement if he was totally innocent of the

receipt of the money in advance from the passengers. It is therefore clear that he could not make this plea before the passengers as it would have invited their ire and now since the passengers have not been summoned in person for enquiry, he has made this ^{now} and it is highly debatable whether evidence of the passengers if summoned during the enquiry would have been favourable to the applicant. We are therefore of the view that there is sufficient evidence in the enquiry to prove the misconduct of the applicant. We reject this plea of no evidence.

18 The learned counsel for the respondents then referred to the latest judgment of the Hon'ble Supreme Court in SBI and Others Vs. Ramesh Dinkar Punde (2006) 7 SCC 212 holding that it is impermissible for the Tribunal or a Court to re-appreciate the evidence considered by the Enquiry Officer/Disciplinary authority/Appellate authority holding that the scope of judicial review is very limited and the Court cannot act as a Court of appeal and the plea of leniency and sympathy on the part of judicial forums in interfering with the quantum of punishment awarded by the disciplinary authority has no place. Here we have only looked into the charges of no evidence levelled by the applicant's side and we are not venturing in to re-appreciation of the evidence and find that there is sufficient evidence to link the applicant with the alleged misconduct. In Union of India Vs. Sardar Bahadur (1972) 4 SCC 618 it is held as under:

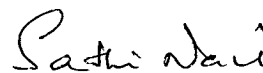
"A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealing with the respondent was one which a reasonable persons would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts. "

19 In the light of the discussions and legal position spelt out in the judgments referred to above, we do not see any merit in the prayers of the applicant and the O.A. is dismissed. No costs.

Dated 7.12.2006.



DR K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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