

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.320/08

Tuesday this the 2nd day of June 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

A.V.Vasudevan Potti,
S/o.Vasudevan Potti,
Dy.CTI, Palghat, S.Railway.
Residing at "Souparnika",
Kavilpadu P.O., Palghat – 678 017.

...Applicant

(By Advocate Mr.M.P.Varkey)

Versus

1. Union of India represented by General Manager,
Southern Railway, Chennai – 600 003.
2. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division, Palakkad.
3. The Senior Divisional Commercial Manager,
Southern Railway, Palghat Division, Palakkad.
4. The Divisional Commercial Manager,
Southern Rail, Palghat Division, Palakkad.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 2nd June 2009 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by (i) the Annexure A-3 penalty advice dated 10.10.2007 by which he was imposed with a minor penalty of withholding his increment from Rs.7250/- to Rs.7425/- in the grade of Rs.5500-9000 which was normally due on 1.11.2007 for a period of 24

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Rs.2500-2000 which was normally due on 1.11.2007 for a period of 24 months and withholding his increment from Rs.2520/- to Rs.2425/- in the grade of dated 10.10.2007 by which he was imposed with a minor penalty of (i) the applicant is aggrieved by (i) the Annexure A-3 penalty advice

HON.BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

ORDER

on the same day delivered the following :-

This application having been heard on 5th June 2008 the Tribunal

(By Advocate Mr. Thomas Mathew Melimoottil)

1. Southern Rail, Palghat Division, Palakkad. Respondents
The Divisional Commercial Manager.
2. Southern Railway, Palghat Division, Palakkad.
The Senior Divisional Commercial Manager.
3. Southern Railway, Palghat Division, Palakkad.
The Additional Divisional Railway Manager.
4. Southern Railway, Chennai - 600 003.
Union of India represented by General Manager.

Versus

(By Advocate Mr. M.P. Varkey)

Kavilpattu P.O., Palghat - 678 017. Applicant
Residing at "Soubarnika",
Dy. CTI, Palghat, S. Railway.
S/o. Vasudevan Potti,
A.V. Vasudevan Potti.

HON.BLE MR. K. MOORJENAN, ADMINISTRATIVE MEMBER

HON.BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

C O R A M :

Tuesday this the 5th day of June 2008


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**EKNAYAGAM BENCH
CENTRAL ADMINISTRATIVE TRIBUNAL**

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months, (ii) Annexure A-5 Appellate Order dated 19.1.2008 by which his appeal against the aforesaid minor penalty was rejected and (iii) the Annexure A-7 Revisional Order dated 17.3.2008 by which the duration of his penalty was reduced from 24 months to 12 months.

2. The facts of this case in brief are that the applicant was on duty in Train No.6526 on 15/16.5.2007. The Railway Vigilance Inspectors, on inspection, found that there was only Rs.220/- as personal cash with him as against the amount of Rs.900/- declared by him at the commencement of the duty. His explanation was that he misplaced the balance amount and could not produce it immediately for verification but it was found out later at Palghat. The Disciplinary Authority, after affording him an opportunity of being heard but not satisfied with his explanation, imposed the minor penalty of withholding his increment from Rs.7250/- to Rs.7425/- in the grade of Rs.5500-9000 for a period of 24 months. The applicant submitted Annexure A-4 appeal dated 27.11.2007 against the aforesaid penalty advice dated 10.10.2007 wherein he has stated that the Train No.6526 started from ED Platform at the very early hours on 16.5.2007 and while closing the door of B1 Coach he saw three people running from the front side of the train and he helped them to get in. They informed him that they were Vigilance Inspectors. They checked his possession such as R/J, Chart, EFT etc. As regards his personal cash was concerned, he searched for it in his purse, suit case etc. but he could produce only Rs.220/- as against the declared amount of Rs.900/- and told the Vigilance Inspectors that the amount declared by him was only approximate. The Appellate Authority also did not find his explanation convincing and



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rejected his appeal vide impugned Annexure A-5 order dated 19.1.2008. On similar lines, he has made the Annexure A-6 Revision Petition dated 6.2.2008. The Revisionary Authority vide its order dated 17.3.2008 held the applicant responsible for the irregularity committed by him and observed that he was rightly punished for the charges framed against him. However, he found that the quantum of punishment was not commensurate with the offence committed and reduced the duration of the punishment from 24 months to 12 months only.

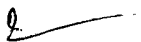
3. The applicant has challenged the aforesaid impugned orders of the Disciplinary Authority, Appellate Authority and the Revisionary Authority on the ground that the charges levelled against him were ab initio void and it did not constitute a misbehaviour under any specific rule. Shri.M.P.Varkey, the learned counsel for the applicant argued that the omnibus rule 3.1(ii) & (iii) of Railway Servants (Conduct) Rules, 1966 is not independently invocable and the alleged irregularity does not amount to misconduct as it did not involve moral turpitude or a forbidden act or the transgression of a definite rule or law as per the dictum laid down by the Apex Court in M.M.Malhotra Vs. Union of India & Ors (2005 SCC (L&S) 1139). He has also submitted that there is no rule or order empowering Vigilance Inspectors to check cash. As regards personal cash was concerned, he has stated that Para 2429 of Indian Railway Commercial Manual Vol.II provides for declaration of private cash by certain staff and mixing of private cash and railway cash occur for want of small change. In such circumstances, the excess amount found in railway cash during checks could be claimed as private cash only to the extent of private cash



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declared. Otherwise, it is a personal matter as to how much of the declared cash is available/spent. He has also stated that the private cash may be spent, lent or lost and no one can insist on production of private cash originally declared. Therefore, non production of private cash originally declared does not constitute an offence. The applicant has also alleged that the Appellate Authority did not consider and dispose of the Annexure A-4 Appeal in terms of Rule 22(2) of Disciplinary & Appeal Rules, 1968 and in accordance with the law laid down by the Apex Court in Narinder Mohan Arya Vs. United India Insurance Co. Ltd (2006 SCC (L&S) 840). He has also challenged the Revisionary Authority's order as violative of Rule 25(3) of Railway Servants (Discipline & Appeal) Rules, 1968.

4. The respondents have refuted the contention of the applicant. They have stated that the inspecting officials are authorised to check the private cash declared by the staff and they are required to cooperate with them. They have also submitted that the failure to declare private cash, mixing of private cash with railway cash and discrepancy between private cash declared and private cash found during checks as well as total cash in possession and total cash as per transaction will be treated as serious irregularities and dealt severely. They have also relied on the provisions contained in Ticket Checking Manual that the Ticket Checking Staff should produce their private cash as well as the railway cash to the official/Inspectors during their inspections.



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5. We have heard Shri.M.P.Varkey for the applicant and Shri.Thomas Mathew Nellimoottil for the respondents. The very purpose of declaring the private cash of Ticket Checking officials of the Railways is to reduce the scope of corruption in the Railways. The Ticket Checking Staff have to give complete account of the cash in their possession while on duty. If any excess amount is found, the usual explanation of the Ticket Checking Staff would be that it is his personal cash. It is for this purpose that the Railway authorities have made the rule that the Ticket Checking Officials should declare their private cash at the commencement of their journey itself. They should also be accountable for the private cash which has been spent during the journey. Therefore, at the end of the journey the private cash in possession of the Ticket Checking Staff cannot be more than what it was declared at the commencement of the journey. In order to circumvent the above position the Ticket Checking Staff declare an amount which is much higher than the amount actually they possess so that if any money is collected unauthorisedly from the passengers, the Railway Checking/Vigilance Inspectors would not be in a position to detect it. Therefore, declaration of actual amount of private cash by the Ticket Checking Staff at the commencement of the journey and the account of its expenditure during the journey are necessary and the rule to that effect has to be followed strictly and any violation of the same is to be treated as an indiscipline and, no doubt, the Railway authorities have to deal with them sternly by imposing penalty in accordance with the provisions contained in Indian Railway (Discipline and Appeal) Rules 1968.



6. In the present case undisputedly the applicant has declared his private cash as Rs.900/- at the commencement of the journey. When the Vigilance Inspectors conducted inspection, he could produce only Rs.220/- as private cash. His explanation that he lost the balance money and the amount which was declared at the commencement of the journey was only approximate cannot be accepted. When there is a rule, it has to be followed. We, therefore, do not find any merit in the contention of the applicant that he had not committed any misconduct which would attract the penalty imposed in this matter. Consequently, we find no fault with the Annexure A-3 Disciplinary Authority's order by which he was imposed with a minor penalty of withholding his increment from Rs.7250/- to Rs.7425/- in the grade of Rs.5500-9000 for a period of 24 months and the Annexure A-5 Appellate Authority order by which his appeal against the aforesaid minor penalty was rejected. Even though, we do not intend to interfere with the Annexure A-7 Revision Authority order by which the duration of his penalty was reduced from 24 months to 12 months, we notice that the Revision Authority has not given any reason why the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority was disproportionate to the gravity of the offence committed by the applicant. In an arbitrary manner, the Revisional Authority reduced the period of punishment from 24 months to 12 months. Such unjustified and unreasoned interferences in the matter of punishment given by the Disciplinary Authority and upheld by the Appellate Authority is not warranted from the side of the Revision Authority. When a punishment imposed by the Disciplinary Authority is reduced by the Appellate Authority



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or the Revision Authority, proper reasons should be given in doing so. By reducing the penalty simply saying that it was disproportionate or reducing the penalty for the sake of reduction is not the proper thing to be done by the higher authorities.

7. In the above facts and circumstances of the case, we dismiss this O.A. There shall be no order as to costs.

(Dated this the 2nd day of June 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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