

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 33/2004

TUESDAY, THIS THE 8th DAY OF AUGUST, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K. Rathinam S/o M. Krishnan
Senior Ticket Collector
Coimbatore Junction Railway Station
Southern Railway
Coimbatore
residing at No. 54, Maruthi Illam
Bharath Nagar, Poddanur
Coimbatore District.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1 Union of India represented by
the General Manager
Southern Railway, Park Town P.O.
Chennai-3

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

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

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

5 The Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

ORDER**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

This application is filed by the applicant who is working as a Senior Ticket Collector, aggrieved by the proposal of the fifth respondent to revert him to the lower scale of Rs 3050-4590. by the Annexure A-1 order which is stated to be totally without jurisdiction, apart from being arbitrary, discriminatory contrary to law and un-constitutional.

2 The facts are that while working as a ticket collector, he was promoted to the post of Travelling Ticket Examiner/Senior Ticket Collector in the scale of Rs. 4000-6000, by the order dated 7.6.2001 at Annex A2. He was also confirmed in the post in June 2003 on completion of two years. On a direction from the vigilance organisation, the applicant was meanwhile transferred to Tiruchirapally division which order was challenged by the applicant in OA274/03 and OA469/03 which were allowed. During the pendency of the said OAs, it was directed that the applicant shall be utilized only for stationary duties which was also challenged in OA 575/03 and it was dismissed. In all these OAs, the respondents had never taken the contention that the promotion given to the applicant in 2001 was erroneous, but such a contention is being taken in the Annex A1 order now for the first time. The applicant has assailed the impugned order on the grounds that it has been issued by a n incompetent authority in that it has been issued by the Divisional personnel Officer whereas it should have been issued by the an authority higher than the appointing authority. Secondly, it is issued without application of mind and not on consideration of relevant materials.

3 The respondents have submitted that the applicant was promoted from Gr. D to the Gr. C post of Ticket Collector with effect from 19.4.89

and was working at Coimbatore, when on 4/5.3.96, during a vigilance check, irregularities were noticed and he was issued a charge sheet for major penalty for the following charges:

1. He had not declared his personal cash in the rough journal for his working by Train No 6005 EXP on 4/5.3.96
- 2 He collected Rs 150 from Sri M. Krishnamoorthy for allotment of vacant berth No. 8 and 16 in S1 coach against the actual conversion charges of Rs 82 and did not issue receipt till the date of check
- 3 He allowed six passengers in sleeper class with IIM/E tickets
- 4 He was in possession of an excess of Rs 149/- in his railway cash which could not be accounted for.

4 An enquiry was conducted and the Disciplinary authority imposed a punishment of reduction to the lowest stage for a period of three years as per penalty advice dated 24.12.97 which was acknowledged by the applicant on 1.1.98- Annexure R-2. He did not submit an appeal and the punishment became final. Subsequently, on 21/22.8.96 on a vigilance check, the same kind of irregularities were noticed and an enquiry was conducted and he was imposed a penalty of reduction to the lowest stage of Rs 950 for a period of 4 years with recurring effect and the penalty advice was received by the applicant on 1.1.98-Annexure R-4. He did not file an appeal and the punishment became final. Later, while working on Train NO. 2625, irregularities were detected in a vigilance check and he was imposed a punishment of withholding of increment due on 1.4.2001 for a period of 12 months as per order dated 16.11.2000-Annex R-5, and he did not prefer an appeal against this order also.

5 As per extant orders, when penalty of reduction or withholding of increment is imposed on an employee, he should be promoted only after the expiry of penalties. It had so happened that the entries had not been

entered in his SR and as a result of this omission his name was wrongly included in the list for promotion to the post of TTE/Senior TC and he was posted inadvertently vide Annexure A-2. It can be seen from Para IV Item 2 of Annex A2 that the said promotion was given to him subject to the condition that he is not placed under suspension or no departmental proceedings have been initiated/proposed at a later date and not undergoing any penalty debarring him from further promotion. When the matter came to light that punishments imposed on him were not implemented, the show cause notice was given to him in order to rectify the anomaly. Therefore it is contended that the impugned order has been passed with full application of mind and is in order. Further the applicant has been charge-sheeted for the same kind of charges and indisciplined behaviour again in 2002. The matter is also under investigation to fix the responsibility for the lapse in implementation on the concerned officials.

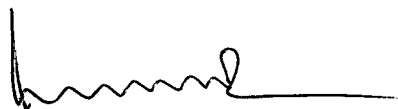
6 On the question of competency, it has been submitted that Annexure A1 was issued by the fifth respondent, the Senior Divisional Commercial Manager and the correction sought to be done is perfectly in order. They have also submitted that Para 228 of the IREM is not applicable in the facts and circumstances of the case.

7. We heard Learned counsel Sri TCG Swamy for the applicants and Sri Thomas Nellimoottil for the respondents. It was stated by the counsel for the applicant that considering the facts brought out by the respondents he was not contesting the reversion orders but would be satisfied if the salary so far drawn by the applicant in the promoted post is not recovered as he had defacto discharged the duties of the post and it was not his mistake that the penalty advices were not implemented. Since the applicant has relinquished his challenge to the A1 order on the

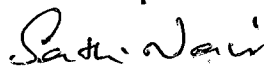
ground of competency and non application of mind there is no need to go into the provisions of Rule 228 and its applicability etc and adjudicate the same. However we would like to express our shock and surprise at the revelations in the reply statement. That three consecutive penalty orders remained unimplemented, is a serious lapse in itself and could not have been possible without the collusion of all concerned and the lapse on the part of the concerned officials is compounded by the fact that the charges against the applicant related to corruption and collection of illegal gratification from the passengers in the Railway. It is no wonder that the applicant continued with his nefarious activities taking advantage of the lapses on the part of the authorities. The respondents would do well to probe into the matter and deal with such erring officials with an iron hand.

8 Regarding the request made by the counsel for a direction not to recover the pay already drawn by the applicant, such a prayer was not made in the OA and it is an offshoot of the pleadings and an afterthought.. Nor have the respondents issued any order for recovery. Hence we do not think it is proper for us to give any directions at this stage. However we would only observe that the penalty orders have to be implemented now in accordance with the provisions of Railway Service D&A Rules read with Para 228 of the IREM. OA is dismissed.

Dated 8.8.2006



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN