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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 332 / 2007

Wednesday, this the 17th day of September, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

P.Moideenkutty,
Chief Travelling Inspector Gr.II,
Southern Railway,
Palakkad.

....Applicant

(By Advocate Mr TC Govindaswamy)

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
 2. The Divisional Commercial Manager,
Southern Railway,
Palghat Division, Palghat.
 3. The Senior Divisional Commercial Manager,
Southern Railway,
Palghat Division, Palghat.
 4. The Additional Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.
-Respondents

(By Advocate Mr Sunil Jose)

This application having been finally heard on 17.9.2008, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant in this O.A is a Chief Travelling Ticket Inspector Gr.II in Palghat Division of Southern Railway. His grievance is against the order of

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Palghat Division of Southern Railway. His grievance is against the order of penalty of withholding of his annual increments from the stage Rs.6550/- to Rs.6725/- in the scale Rs.5500-9000 which was due on 1.4.2006 for a period of 24 months without the effect of postponing his future increments made vide Annexure A-1 penalty advise dated 17.1.2006, the Annexure A-2 appellate order dated 18.4.2008 rejecting his appeal against the Annexure A-1 order and the Annexure A-3 order in revision dated 5.10.2006 confirming the aforesaid penalty advise.

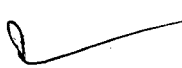
2. The imputations and misconduct/misbehaviour issued to the applicant vide Annexure A-4 letter dated 5.9.2005 is as under:

"Sri P Moideen Kutty, while working as CTTI/II/G/PGT has detected only 5 cases and shown an earnings of Rs.1190/- during the month of August '05, against the target amount of Rs.20,000/- even though he has worked for 18 days in spite of his being counselled and warned on earlier occasions to improve his performance.

Sri P Moideen Kutty, CTTI/II/G/PGT has thus failed to maintain devotion to duty and behaved in a manner quite unbecoming of a Railway servant and thereby contravened Rule 3.1(ii) & (iii) of the Railway servants Conduct Rules 1966."

3. The applicant has challenged the aforesaid impugned orders on the grounds that they lack jurisdiction, they are issued without application of mind and they are arbitrary, discriminatory and contrary to law and therefore, in violation of the constitutional guarantees enshrined in Articles 14 and 16 of the Constitution. He has also challenged the Annexure A-1 penalty advice stating that the 2nd respondent who issued the same is neither a senior scale officer holding independent charge nor a person holding the charge of any Department or Division. According to him, in terms of Rule 7 of the Discipline & Appeal Rules, 1968, a penalty specified in Rule 6 can be imposed only by the President or the

authority mentioned in Schedules I, II or III, as the case may be. In terms of Schedule II, third column, Sl.No.3(a), a penalty of withholding of an increment can be imposed by an authority of the status of the 2nd respondent only upon a Group D or C Railway servants working in scales of pay lower than Rs.5000-8000. As the applicant was in the higher grade of pay of Rs.5500-9000, the Annexure A-1 penalty imposed upon him by the second respondent is without jurisdiction, and, therefore, ultra vires of Rule 11, 7 and Schedule II of the Railway Servants (D&A) Rules, 1968 and hence, it is ab initio void, non-est and inoperative. On merits, he has submitted that amounts of penalty collected on account of unlawful travel/carriage of excess luggage etc. would depend upon varying factors and circumstances and no misconduct in this regard can be attributed against any innocent ticket checking staff. Similarly, no recovery from their salary be made in the form of punishment to compensate the shortage in collection of penalties with reference to the target fixed for them every month. He has also stated that as evident from the impugned penalty advice, the punishment imposed upon him was not with reference to the alleged misconduct but with reference to the fresh allegation that he "has attempted to misinform others that he is not expected to perform any assigned function, and remain stubborn in his attitude of not performing his duties." He has also relied upon an order of this Tribunal in O.A.1135/1995 dated 11.6.1997 passed in the case of T.O.Sebastian v. Union of India and others in similar circumstances. The applicant therein was a Travelling Ticket Inspector in Southern Railway who was imposed with a penalty of withholding his increment for a period of three months for the reason that he has shown nil earnings despite having worked for 26 days. The said O.A was allowed on the submission made by the respondents' counsel that the impugned orders cannot be sustained. Even though the respondent-Railways carried the said order before the Hon'ble High Court of Kerala on the ground that the



aforesaid order was unjust and prejudicial to the interest of the Railways the same was dismissed noting that it was not a case that the standing counsel of the Railways was not entitled to advance such a representation in the interest of his client.

4. We have heard the learned counsel for the parties. The basic question to be considered is whether the aforesaid statement of imputations made against the applicant by the respondents would amount to 'misconduct' or 'misbehaviour' at all. The allegation against the applicant is that he was given a target for collecting Rs.20,000/- and against the same he had only shown an earning of Rs.1190/- for the month of August, 2005 after detecting only 5 cases. First of all it is a very vague statement. Respondents have not stated for what purposes the target has been fixed. It is only in the reply statement of this O.A that the respondents have stated that the target was to collect Rs.20,000/- from "*passengers travelling without tickets, with tickets out of date or otherwise irregular, over riding or travelling in higher classes/carriages than for which they hold tickets or travelling by train by which their tickets are not valid, to check and prosecute or to report against persons who cheat or attempt to cheat the Railways of its legitimate dues and to recover such dues*". It is not understood as to how the failure of the applicant to meet target would come within the meaning of 'misconduct'. The Apex Court in its judgment in *State of Punjab and others V. Ram Singh Ex. Constable* [AIR1992.SC 2188], considered the question as to what constitute a 'misconduct'. As the word 'misconduct' was not capable of being definite interpretation, the Apex Court has taken the support of the Black's Law Dictionary and P.Ramanatha Aiyar's Law Lexicon and held as under:

"4. Misconduct has been defined in Black's Law Dictionary, Sixth

Edition at page 999 thus:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, office, but not negligence or carelessness."

'Misconduct in office' has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P.Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p.921 'misconduct' defines thus:

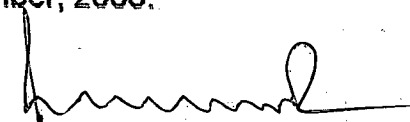
"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law, carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

In our considered view, the failure on the part of the applicant to collect the target amount of Rs.20,000/- from the ticketless travellers etc. cannot be treated as a misconduct. There can be various reasons why a Ticket Collector could not detect so many cases of ticketless travellers etc. The first reason may be that there may not have been many actual cases of tickless travelling or any such abuses. It is in these circumstances that the counsel for the Railways in

O.A.1135/1995 (supra) submitted before this Tribunal that a shortage of earnings cannot be held as a misconduct and such orders imposing penalty on that ground cannot be sustained and it is quite correct. Therefore, the impugned penalty order cannot be sustained as the allegation made against the applicant therein cannot be construed as a misconduct. In these circumstances it is not necessary to go into the other grounds raised by the applicant's counsel to set aside the impugned orders. O.A is, accordingly, allowed. There shall be no order as to costs.

Dated, the 17th September, 2008.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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