

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 338/98

Thursday this the 14th day of December, 2000.

CORAM

HON'BLE MR.A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

S.Sambasivan
S/o Subbayyapillai
Gangman, Gang No.5
Unjalur Railway Station
Residing at
Vanikar Street
Unjalur, Erode.

..Applicant

By advocate Mr.T.C.Govindaswamy

Versus

1. Union of India represented by
The General Manager
Southern Railway
Headquarters Office
Park Town P.O.
Chennai-3
2. The Divisional Railway Manager
Southern Railway
Palghat Division
Palghat.
3. The Additional Divisional Railway Manager
Southern Railway
Palghat Division
Palghat.
4. The Divisional Engineer (East)
Southern Railway
Palghat Division
Palghat.
5. The Senior Divisional Engineer
(Co-ordination), Southern Railway
Palghat Division
Palghat.

Respondents.

By advocate Mrs.Sumathi Dandapani

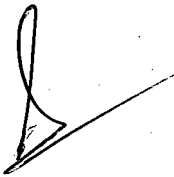
Application having been heard on 14th December, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A1 and A2 and to direct the
respondents too grant him consequential benefits with 18%
interest on the arrears due to him.

2. Applicant is a Gangman working under the Senior Section Engineer, Southern Railway, Karur. On 18.9.94 at about 21 hours there was a derailment of Goods Train at Pugalur station yard involving about 12 vehicles. The work of salvaging and restoration started from the early hours of 19.9.94 with men and materials moved from different places. Applicant also attended the salvaging and restoration work. At about 13 hours, the applicant and others were informed that the food packets were being distributed. The food consisted of one packet of curd bath and one packet of sambhar bath. It was found on opening of the packet that the food was stale and stinking with a pungent smell. All the 500 labourers including the applicant felt very much agitated. Applicant and others approached the 4th respondent and highlighted this aspect. The 4th respondent informed the applicant and others that the matter could be presented before the Divisional Railway Manager and the DRM was convinced of the bad quality of the food. The Inspector of Works was called by the Divisional Railway Manager (DRM) and the DRM found fault with the Inspector of Works. Seeing that several persons were throwing away the food supplied and as the applicant and others returned after talking to the DRM and finding himself offended in the presence of the officers of the Pugalur Paper Mills, the DRM directed the authorities below to place the applicant and one Gokuldas under suspension immediately. On second thought and suspecting that the work might be affected, the suspension order was not immediately issued. Subsequently the applicant was served with an order of suspension. After revoking the suspension, the applicant was served with a charge memorandum dated 24.10.94. An enquiry was conducted. The enquiry officer submitted the enquiry report and the 4th respondent found the applicant guilty and awarded the penalty of withholding increment for a




period of 3 years with effect of postponing future increments. Aggrieved by the same the applicant preferred an appeal before the 3rd respondent. 3rd respondent as per A2 confirmed the order A1.

3. Respondents have filed a detailed reply statement.

One of the grounds specifically raised by the applicant is that the 4th respondent who has issued the charge memo and passed the A1 order lacks jurisdiction to initiate the disciplinary proceedings against him for two reasons. First reason is that the 4th respondent was not having any administrative control over the applicant and the second reason is that Shri Gupta who was the then Divisional Engineer was himself a witness to the incident. In the reply statement, respondents say that the 4th respondent, the Divisional Engineer (East), is the authority and is independently in charge of track maintenance between Erode-Trichy Port and Karur-Dindigal section, that the Senior Divisional Engineer/Coordination is overall in-charge of the Engineering branch of the division, that the Divisional Engineer (East) who is the controlling officer of the jurisdiction was present at the accident spot and supervised the restoration work and that the disciplinary proceedings initiated by the 4th respondent in the capacity of controlling officer of the East jurisdiction is well within the powers conferred on him.


4. The specific case of the applicant is that the 4th respondent lacks administrative control over the applicant. There is no specific denial of the same in the reply statement. What is stated is that the 4th respondent is the overall in-charge of the Engineering Branch of the Division and that is to be understood by a reading of para 8 of the reply statement as in respect of track maintenance. So the position is that



the specific stand of the applicant that the 4th respondent lacks jurisdiction to initiate disciplinary proceedings stands uncontroverted.

5. Applicant has also got a case that Shri Gupta who was holding the post of Divisional Engineer at that particular point of time and who has issued the charge memo A5 was a witness to the incident and in that context he should not have acted as the disciplinary authority. Respondents admit the presence of the Divisional Engineer (East) at the time of the incident.


6. From the materials made available, it is seen that the enquiry was conducted by the enquiry officer and A1 was issued by the 4th respondent accepting the report of the enquiry officer, A10. So the basis of A1 is A10. A10 report was submitted by the Assistant Engineer after stating the history of the case and regarding the charge what was stated is that the DAR enquiry was conducted by him, that the evidence was recorded and that two documents were marked and 2 witnesses on the side of the prosecution and 2 witnesses on the side the delinquent were examined. It further says that one witness was not examined as agreed by both sides. Then the finding is given thus : "The charges framed against him in the charge memorandum No.J/W.349/6/S.S dated 24.10.94 stands proved". On a meticulous examination of A10, we are unable to find out on what reasoning the finding has been arrived at by the enquiry officer. It is a basic factor that cannot be forgotten that the evidence is to be discussed and reasons are given for the finding arrived at. It cannot be a case of simply having a finding without any reason. It is absolutely necessary that any order which is subject to judicial review should necessarily contain the reasons. When we have to exercise



judicial review, we have to know on what reasons the conclusion has been arrived at and in the absence of it, we are prevented from discharging our duty. Such a situation cannot be appreciated or accepted. By way of Annexure to A10 under the heading 'Reasons for Findings' is shown, it is pertinent to note that it does not contain the date. There is also absolutely nothing to show that that is part and parcel of A10 - the report of the enquiry officer for the obvious reason that there is absolutely no reference to the same in the enquiry report. If the reasons annexed for the finding form part of A10, really there was no necessity in the normal course for reasons to be shown as annexure to the report and it should have contained the report itself. So there is every reason to believe that reasons for the finding annexed, emerged out of subsequent reasoning by somebody on whom probably better wisdom had dawned at that time.

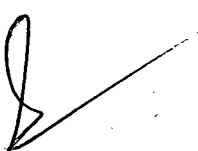
7. So the position is that A10 contains only the finding that the charges against the applicant are proved but not the reasons for arriving at that finding. Such a finding cannot be sustained as it cannot stand the scrutiny of law.

8. It is based on A10 - the enquiry report - that A1 has been issued. In A1 4th respondent says that he has gone through the enquiry report and the finding of the enquiry officer as also the reply of the delinquent to the finding of the enquiry officer, that it has been conclusively proved that the party had thrown the food packets in front of DRM during restoration work by assigning them as unconsumable, throwing all norms of discipline. He also says that the charges are proved. How the charges are proved and what is the basis for arriving that the charges are proved, one cannot decipher from A1.



9. A2 is the order of the Appellate Authority. Appellate Authority in A2 says that the punishment imposed by the Disciplinary Authority is not adequate and it does not commensurate with the gravity of the offence, and taking a lenient view, the penalty imposed by the 4th respondent is confirmed. If the Appellate Authority has felt that in the interest of maintaining discipline in the department, the punishment awarded to the applicant by the Disciplinary Authority was not adequate it cannot be said that his hands were tied up and he could not take steps to enhance the punishment. That has not been done. He was satisfied by taking a lenient view and confirming the penalty awarded by the 4th respondent. Appellate Authority says that after going through the records he was fully convinced that the charge against the applicant has been conclusively proved beyond doubt. As already stated, from A10 report of the enquiry officer, it is not possible to say that the charges are proved.

10. Learned counsel appearing for the respondents submitted that the applicant has not raised want of jurisdiction on the part of the 4th respondent to initiate disciplinary proceedings and to award punishment to the applicant. Even if the applicant has not raised such a plea in the appeal memo, the Appellate Authority cannot be said to be debarred from looking into the legal aspect whether the order appealed against is one passed by the competent authority or not. No question of fact is involved there. It is purely a question of law. When an appeal is preferred, the Appellate Authority has to consider the appeal and pass orders. Considering an appeal means not mentioning only certain words like 'fully convinced or after having meticulously gone through all the records etc.' There




- should be a proper application of mind. All the relevant aspects should be adverted to. If the order is issued by an authority who is not competent, that order is ab-initio void.

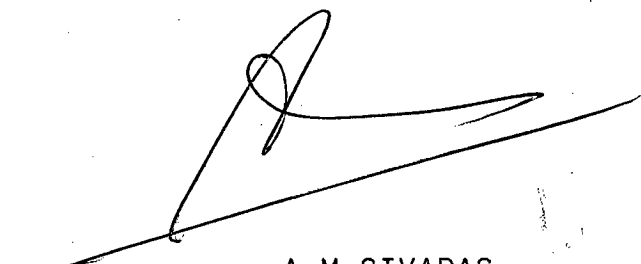
11. Since the specific case of the applicant that the 4th respondent has no administrative authority to initiate disciplinary proceedings against the applicant is not specifically denied by the respondents, that Shri Gupta who was working as Divisional Engineer (East) at that particular time was a witness to the incident and he himself has issued the charge memo, that A1 is based on A10 about which we have already made a mention of and that A2 appellate order has been passed without adverting to the fundamental aspect whether A1 has been issued by the authority competent or not, A1 and A2 cannot be sustained.

12. Accordingly, the Original Application is allowed, quashing A1 and A2 and directing the respondents to grant the applicant consequential benefits within three months from the date of receipt of the copy of this order.

Dated 14th December, 2000.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A1: True copy of the penalty advice No.J/W.349/6 dated 20.11.95 issued by the 4th respondent.
- A2: True copy of the appellate order No.J/W.349/6/S.S dated 14.2.97 issued by the 3rd respondent.

A5: True copy of the charge memo No.J/W.349/6/S.S dated 24.10.94 issued by the 4th respondent.

A10: True copy of the Report of the Enquiry Officer dated 4.2.95.