

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 346 of 2002

Monday, this the 30th day of September, 2002.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. P.K. Ajith Prasad,
S/o late P.U. Narayanan,
Station Master-III, Cannanoor South,
Post Chovva, Kannoor District,
Residing at Sree Vihar,
Vadiyil Peedika, PO Perunthattil,
Tellichery, Kannoor - 670 107 ...Applicant

[By Advocate Mr. James Kurian]

Versus

1. Union of India rep. by the
General Manager, Southern Railway,
Chennai-3

2. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.

3. The Addl. Divisional Railway Manager,
Southern Railway, Palakkad.

4. The Senior Divisional Operations Manager,
Southern Railway, Palakkad.

5. G.V.L. Sathyakumar,
Divisional Operations Manager,
Southern Railway, Palakkad. ...Respondents

[By Advocate Mr. P. Haridas (R1 to R4)]

The application having been heard on 30-9-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, Station Master Grade-III, Cannanoor South of Southern Railway, has filed this Original Application challenging the memorandum dated 7-3-2001 (Annexure A-6) by which he has been proceeded against under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968, the order dated 14-6-2001 (Annexure A-10) issued by the 4th respondent

imposing on him a penalty of withholding of his next increment for a period of 36 months and the order dated 27-5-2001 (Annexure A-12) by which he has been reduced to 'B' category on pendency of the disciplinary proceedings.

2. It is alleged in the Original Application that the 5th respondent who is the present incumbent in the office of the 4th respondent was against the applicant and that he was looking for an opportunity to harass the applicant. It is further alleged that the proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rules was earlier initiated against the applicant by issuance of a memorandum of charges dated 8-12-2000 (Annexure A2), that after perusing his explanation the then incumbent in the office of the 4th respondent by order dated 7-2-2001 (Annexure A4) dropped the proceedings without any reservation, and that therefore, the issuance of Annexure A6 memorandum of charges on the very same set of allegations is unjustified and unsustainable. The impugned orders Annexure A-10 and A-12 are also, therefore, liable to be set aside, states the applicant.

3. Respondents 1 to 4, however, seek to justify the impugned orders on the ground that on consideration of the explanation submitted by the applicant to the memorandum of charges for imposition of major penalty, the same was dropped and proceedings for imposition of a minor penalty was initiated in which the impugned penalty order (Annexure A-10) was issued, which is perfectly in order.

4. On a careful scrutiny of the materials placed on record and on hearing the learned counsel on either side, we are of the considered view that Annexure A6 memorandum of charges for the very same set of allegations for which a memorandum of

charges under Rule 9 was issued and was dropped cannot be sustained. It is necessary to extract the article of charges contained in Annexure A2 as also in Annexure A6 to see whether there is any substantial change in the second memorandum of charges from what is stated in the first one. The charge against the applicant contained in Annexure A2 memorandum of charges dated 8-12-2000 is as follows:-

"Sri. P.K. Ajith Prasad, SM/III/CS, working at CS has disobeyed the legitimate orders given from Control office to work at KMQ against casualty on 30.09.2000 vide letter No. J/T.20/301 dt. 30.09.2000. He has refused to go to KMQ and failed to carryout the orders issued through control by DOM/PGT.

He has therefore not shown devotion to duty and thereby violated rule 3(i) (ii) & (iii) of Rly Services (Conduct) rules, 1966."

5. The charge mentioned in Annexure A6 memorandum of charges issued under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 on 7-3-2001 reads as follows:-

"That the said Sri. P.K. Ajith Prasad while working as SM-III at CS has failed to carry out the legitimate orders given from Control office to work at KMQ against casualty on 30.9.2000.

He has therefore not shown devotion to duty and behaved in a manner unbecoming of a Rly Servant and thus violated Rule 3.I (ii) & (iii) of Rly Services (Conduct) Rules 1966."

6. A comparison of these two imputations would clearly show that there is absolutely no change in the basis on which both the articles of charges were framed. In Annexure A4 order, dropping Annexure A2 memorandum of charges, no reservation was made. It was not stated that the charge was being dropped without prejudice to issue another memorandum of charges either under Rule 11 or under Rule 9. The Railway

Board has on this aspect given specific instructions in the letter No. E(D&A) 93 RG-6-83 dated 1-12-1993, which reads as follows:-

"(17) Fresh Charge sheet on the same Charge:- Sometimes memorandum of charges issued to an employee is withdrawn by the Disciplinary Authority with the intention of issuing fresh detailed charge memorandum but while withdrawing the charge sheet, no reasons are given and it is only stated that the charge sheet was being withdrawn. Such a situation having been challenged, Bombay Bench of C.A.T., has quashed the fresh charge sheet holding that unless there is a power in the Disciplinary Authority by virtue of the rules or administrative instructions to give another charge sheet on the same facts, after withdrawing the first one, the second charge sheet will be entirely without authority.

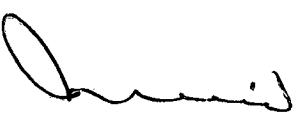
After examining the aforesaid judgement, the Railway Board clarified that once the proceedings initiated under rule 9 or rule 11 of Railway Servants (Discipline & Appeal) Rules, 1968 are dropped, the Disciplinary Authority would be debarred from initiating the fresh proceedings against the delinquent official unless the reasons for cancellation of the original charge sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action, which may be considered in the circumstances of the case.

It is, therefore, necessary that when the intention is to issue a fresh charge sheet subsequently, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action indicating the intention of issuing chargesheet appropriate to the nature of the charges."

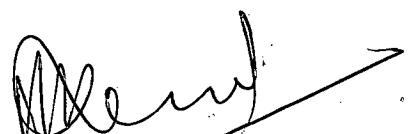
7. It appears that while issuing Annexure A6 memorandum, the above instructions have not been kept in view. Since the competent authority has on a consideration of the explanation submitted by the applicant against A2 memo dropped the proceedings initiated against him by issuing Annexure A4 order without any reservation, we are of the considered view that the issuance of another charge even though for a minor penalty on the same set of allegations is illegal, unjustified and prevented by Railway Board's circular cited above.

8. In the light of what is stated above, we allow the Original Application setting aside the impugned orders Annexure A6, Annexure A-10 and Annexure A-12. No order as to costs.

Monday, this the 30th day of September, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1: Copy of the letter No.J/T/694/20/CB/SRMU dated 18.8.2000 issued by the 2nd respondent.
2. A-2: Copy of the Standard Form of Charge Sheet with articles of charges dated 8.12.2000 issued by the 4th respondent.
3. A-3: Copy of the Explanation submitted by the applicant dated 23.1.2001.
4. A-4: Copy of the letter No.J/T/misc/2K/CS/PAK dated 7.2.2001 issued by the 4th respondent.
5. A-5: Copy of the letter dated 5.3.2001 praying to regularise the period of suspension sent by the applicant.
6. A-6: Memorandum of charge under Rule 11 dated 7.3.2001 issued by the 4th respondent.
7. A-7: Copy of the letter submitted by the applicant to the 4th respondent dated 28.3.2001.
8. A-8: Copy of the letter No.J/T.misc/2K/CS/PAK dated 3.5.2001 issued by the 4th respondent.
9. A-9: Copy of the explanation submitted by the applicant dated 14.5.2001.
10. A-10: Copy of the penalty advice No.J/T/misc/2000/CS/PAK dated 14.6.2001 passed by the 4th respondent.
11. A-11: Copy of the appeal submitted by the applicant against Anxx.A-10 order to the 3rd respondent dated 23.7.2001.
12. A-12: Copy of the letter based on the inspection Note No.J/T.195/2/DOM/36/2001 dated 27.5.2001 issued by the 4th respondent.
13. A-13: Copy of the letters submitted by the applicant seeking clarification regarding the directions to go to Cannanoor North and KMQ.

Respondents Annexures:

1. R-1: True copy of the order NO.J/P Misc./ZK/CS/PAK dated 22.01.02.

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7.10.02