

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.353/2000

Tuesday this, the 2nd day of July, 2002.

CORAM:

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

HON'BLE SHRI T.N.T.NAYAR,ADMINISTRATIVE MEMBER

N.Chandralingam,
Station Master Grade-II,
Southern Railway,
Aravankadu,
Residing at:No.4C-Railway Quarters,
Hubba Thalai P.O.,
Nilgiris District.

.. Applicant

(By Advocate Sri T.C.G.Swamy)

vs.

1. Union of India represented by
The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Chennai-3.
2. The Chief Operations Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Chennai-3.
3. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.
4. The Divisional Operating Manager,
Southern Railway,
Palghat Division,
Palghat.

.. Respondents

(By Advocate Sri Thomas Mathew Nellimootttil)

The Application having been heard on 6.6.2002, the
Tribunal on 2.7.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

Annexure A10 order dated 17.09.97 of the 4th
respondent imposing on the applicant a penalty of reversion
from the grade Rs.1600-2660 to that of Rs.1400-2300 and
reduction of his pay from Rs.1800/- to Rs.1400/- for a
period of 3 years with effect from 11.10.97 , Annexure A12

order of the third respondent, the appellate authority confirming the finding of guilt, but modifying the penalty to that of reduction of pay by 4 stages in the grade Rs.1600-2660 for a period of 3 years fixing his pay at Rs.1650/- and the revisional order of the second respondent dated 29.11.99 (Annexure A14) confirming the appellate order are challenged by the applicant, a Station Master Grade II in this application filed under Section 19 of the Administrative Tribunals Act.

2. The facts of the case can be briefly stated as follows. The applicant while working as a Station Master, Mahadanapuram Railway Station of Palghat Division was served with a memorandum of charges dated 23.3.97/23.4.97. The Articles of Charges and Statement of Imputations read as follows:-

"Statement of articles of charges framed against Shri N.Chandralingam S.No.J/T.2412,SM/II/MMH.

The aforesaid Shri N.Chandralingam while working as SM/III/MMH on the night of 13/14.02.97 was careless and negligent in that he failed to:

1. Report the failure of the signal as soon as he become aware of it.

2. Ensure that the signal maintainer in charge has recorded all relevant particulars of signal failure including his signature in the relay room key register and obtained the signature of the SM on duty in token of his concurrence before parting with the key of the relay room thus provided opportunity for unauthorised tampering with signalling arrangement by the ESM/MMH.

3. Prevent unauthorised interference with signalling installations at the stations.

4. Ensure that every exertion is made for ensuring the safety of the public.

5. Take immediate steps to prevent accident when he observed that the signal was defective and also certain unusual circumstances likely to interfere with the safe running of trains or the safety of the public.

He has thus violated Rules GR.3.51(3) GR.3.68(1)(d) GR 2.11(1)(a) & 2(a) & (d) and the relevant paras of joint circular issued by Sr.DSO and Sr.DSTE No.J/T.157/I/III dated 8.1.93.

This has resulted in an averted collision between train No.582 passenger and a stabled stock at MMH on 14.2.97.

He has not shown devotion to duty and behaved in a manner quite unbecoming of a Railway Servant and thereby violated Rules 3(i)(ii) & (iii) of Railway Services (Conduct) Rules,1966."

Statement of imputations of misconduct/misbehaviour in support of the articles of charges framed against Shri N.Chandralingam, S.No.J/T.2412,SM/III/MMH.

While working as SM/III/MMH on 13/14.2.97 the aforesaid Shri N.Chandralingam should have reported the signal failure when he became aware of it. He should have prevented the unauthorised interference with the signalling installations at MMH. He should have ensured that every exertion was made for ensuring the safety of the public. He should have taken immediate steps to prevent accident, when he observed that the signals were defective and also certain unusual circumstances likely to interfere with the safe running of trains or safety of the public existed.

He should have ensured that the signal maintainer in charge had recorded all relevant particulars of signal failure including his signature in the relay room key register and obtained the signature of the duty SM, in token of his concurrence before parting with key of the relay room,which provided an opportunity for the ESM/MMH to tamper with the signalling arrangements unauthorisedly.

As mentioned above he should not have violated GR.3.51(3) GR 3.68(1)(d) GR.2.11(1)(a) and 2(a) and (d) and the relevant paras of the joint circular No.J/T 157/I/III dated 8.1.93 issued by Sr.DSO and Sr.DSTE/PGT.

He should have shown devotion to duty and should not have behaved in a manner quite unbecoming of a Railway servant and thereby violated Rule 3(i)(ii) and (iii) of Railway Services (Conduct)Rules,1966.

The applicant submitted his explanation to the memorandum of charge on 23.6.97 denying the charges. He stated in the

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explanation that when the signal failure was noticed, he immediately informed the S&T officials as well as the Section Controller, that his duty was over at 6'o clock and he was waiting for the arrival of his reliever, that when the ESM came he handed over the relay room key to him without waiting for making entries in the relay room register with a view to avoid detention of train and immediate clearing of signals, that he has not violated any of the rules and that the responsibility of making entry in the register was that of his successor who came only late. As the charge was denied by the applicant, an enquiry was held. The applicant requested for a copy of the joint enquiry report of the departmental officers who conducted the enquiry on 17.2.97 and station diary and station signal register. But these documents were not given to him. Regarding the request for furnishing the joint enquiry report, the Enquiry Officer did not furnish the same on the ground that the same if brought into enquiry would force him to peruse the same, which might make him take a biased view on the applicant. However the enquiry was held and the Enquiry Officer submitted Annexure A8 report holding that the charges levelled against the applicant were proved. The applicant on receipt of a copy of the enquiry report made a detailed representation Annexure A9 stating that the enquiry was not held in conformity with the rules and that the finding was not warranted by the evidence adduced at the enquiry. The disciplinary authority, the 4th respondent, agreeing with the finding of the enquiry officer held the applicant guilty of the charges and imposed on him the

penalty of reversion to the scale of Rs.1400-2300 with a reduction in pay to Rs.1400/- for 3 years. Aggrieved by this the applicant filed an appeal to the third respondent Annexure A11 raising various grounds. The appellate authority issued Annexure A12 order reducing the penalty. The applicant filed Annexure A13 revision petition which was turned down by Annexure A14 order. Aggrieved by these orders, the applicant has filed this application seeking to set aside the impugned orders with consequential benefits. It has been alleged in the application that the enquiry was vitiated because the witnesses were threatened with disciplinary action if they gave any statement different from the statement made by them before the joint enquiry committee, that therefore the depositions of the witnesses were not made freely and voluntarily, that the denial of a copy of the joint enquiry report to the applicant has prejudiced his defence, that the Enquiry Officer has violated the provisions contained in Rule 9(21) of the Railway Servants (Discipline and Appeal)Rules,1968 by not questioning the applicant after the evidence was closed, that the enquiry officer relied on heavily on the station diary which was neither listed as a document in the charge memorandum nor produced in the enquiry, that the finding of the Enquiry Officer was not warranted by evidence, but were based on conjectures and presumptions, that the appellate and revisional orders are bad for non-application of mind and that the second respondent, the revisional authority, has gone wrong in heavily relying on the joint enquiry

report which was neither produced or marked in the enquiry proceedings nor was furnished to the applicant despite specific demand by him.

3. The respondents have filed a reply statement contending that the enquiry was held in conformity with the rules giving ample opportunity to the applicant to defend himself and that the impugned orders have been properly passed after due application of mind.

4. We have very carefully gone through the pleadings and all the materials brought on record and have heard the arguments of Sri T.C.G.Swamy, the learned counsel of the applicant and Sri Thomas Mathew Nellimoottil, the learned counsel of the respondents.

5. Sri Govinda Swamy, the learned counsel of the applicant argued that the charges are very vague because it has not been made clear either in the articles of charges or in the statement of imputations as to what tampering with the signalling arrangement was made by the ESM, or what failure was there on the applicant's part in the matter of ensuring safety of the public and what omission was there on the applicant's part when he observed the failure of signal. He argued that while the applicant had in his explanation to the memorandum of charge(Annexure A4) clearly stated that he had informed the S&T officials as also the Section Controller when he noticed the signal failure and that the ESM immediately came and he allowed the ESM to take

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over without waiting for making any entry in the register with a view to enable him to act promptly, the 4th respondent should have dropped the proceedings finding that the applicant was not negligent and had not committed any action or omission. The learned counsel further argued that the Enquiry Officer by threatening the witnesses with disciplinary action in case they gave a different statement from what had been given by them during the fact finding enquiry has reduced the enquiry into a farce not allowing the witnesses to speak freely. He invited our attention to the warning given by the Enquiry Officer to each of the witnesses at the commencement of the examination and the question put to them. The warning was as follows:-

"You are hereby informed that in terms of Board's letter No.E (D&A) 71/RG 6-57 dated 7.2.97 you are liable to be taken up under Disciplinary action in case you give false evidence or different statement during preliminary/DAR enquiry and in court of law."

The question put immediately thereafter was:-

"Do you wish to add or delete or change anything from the statement/deposition you already given to the accident enquiry committee?"

The joint enquiry or the fact finding enquiry was held behind the back of the applicant in the sense that he had no occasion to test the veracity of the statement made by the witnesses at that time. The learned counsel argued that the statement extracted from the witnesses at the fact finding enquiry were not free or voluntary statements and that by warning them if they differ from the statements given by them earlier they would be subjected to disciplinary action, the witnesses were under compulsion to give the selfsame

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statements and that this has vitiated the proceedings. We find considerable force in this argument. It cannot be disputed that the statement recorded during the joint enquiry cannot be made use of unless the witness affirms the same at the regular departmental enquiry. By warning them that disciplinary action would be taken against them if they gave a different statements during the regular enquiry they would not have the courage to speak the truth if the truth was different from what was contained in the statement recorded behind the back of the applicant. We are of the considered view that the Enquiry Officer has gone wrong in holding out a threat that the witnesses would be liable to be taken up under disciplinary action in case they gave a different statement than what was made during the preliminary enquiry, although it would have been proper if they were warned that they should speak the truth.

6. Learned counsel further argued that by not questioning the applicant who did not submit himself for self-examination broadly on the evidence appearing against him in the depositions of the witnesses and other evidence adduced in support of the charge, the provisions of sub-rule 21 of Rule 9 of the Railway Servants Discipline and Appeal Rules, have been violated and that this violation has resulted in prejudice to the applicant. A mere omission to follow a procedural rule may not vitiate the proceedings unless it is shown that by such omission a prejudice has been caused to the officer facing the charge. The applicant had in his explanation to the memorandum of charge stated

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that immediately on observing the signal failure he had informed the S&T officials and the section power controller and that the ESM had promptly attended to the signals. He has also stated that there was no omission on his part. The charges related to violation of certain rules and instructions. The Enquiry Officer should have on the closure of the evidence in support of the charge, given an opportunity to the applicant to explain the inculpatory evidence, if any, especially regarding the violation of the rules in the testimonies of the witnesses or in the document adduced in support of the charge. Failure to do so on the part of the Enquiry Officer has resulted in deprival of an opportunity to the applicant to offer such explanation. It cannot therefore be held that the failure on the part of the Enquiry Officer to comply with the provisions of Rule 9(21) is non-consequential and had not resulted in a prejudice to the applicant in this case.

7. Sri T.C.G.Swamy, the learned counsel of the applicant further argued that the denial of a copy of the joint enquiry report to the applicant despite repeated requests by him in that regard by the Enquiry Officer on the ground that if the said report was brought in that would force him to look into the same and might prejudice him against the applicant, is arbitrary and has caused great prejudice to the applicant. We find that the reason stated by the Enquiry Officer for not supplying the joint enquiry report to the applicant was not relevant and sufficient to deny him the benefit of looking into the document for the

purpose of his defence, especially for cross-examination of the witnesses etc. It is worthwhile to note that this joint enquiry report was freely relied on by the second respondent, the revisional authority, to come to a finding that the applicant was guilty. In Annexure A14 order, the second respondent has observed as follows:-

"The fact finding enquiry done by the JA grade officers have clearly brought out the fact that you have failed to report the signal failure that took place during your night duty on 13/14.2.97 and handed over the key of the relay room without obtaining the ESM's signature in the relay room key register. It was proved by the deposition of Shri M. Sheik Abdulla, the relieving SM on 14.2.97, that he came 45 mts. late for duty. In the joint enquiry proceedings the time of occurrence was recorded as 7 Hrs. on 14.2.97. This proves that the incident had occurred when you were physically available on duty for reception of 582 Passenger...."

The gravamen of the charge against the applicant was that he did not report the failure of signal as soon as he became aware of it, that he failed to ensure that the signal maintainer in charge has recorded all relevant particulars of signal failure including his signature in the relay room key register and obtained the signature of the SM on duty in token of his concurrence before parting with the key of the relay room and did not prevent unauthorised interference with the signalling installations. What time signal failure occurred has not been alleged either in the articles of charge or in the statement of imputations of misconduct. The first witness Shri K. Selvakumar, SCP/MMH has given the following answer to Q10.

" There was no problem at all till PGR Special Goods was blocked from Lalapet side. After getting Out Report for this train the Down

Home signal pertaining to Road 3 could not be cleared. Hence duty SM Shri N.Chandralingam asked me to call ESM Shri Balraj for attending the signal failure. ESM was called at 0600 hrs. Meanwhile 6866 Exp. passed through via Road 1 and cleared the Section. The starter signal for PGR Spl. could not be cleared and ESM went to Relay Room and tried to clear the Starter for Road 3. Initially the Down Starter for Roads 1 and 2 only responded and on the third attempt only Down Starter for Road 3 could be cleared.

Then ED coupled LE was blocked and arrived at 0652 Hours on Road 3.

No.582 Pass. was blocked from MYU and within 3" of the blocking the out report was received. The train did not arrive into the station but stopped near the top end. SM on duty Shri M.Shek Abdulla asked me to verify the reason for stoppage. On my personal verification at site I found the one end of Points 4, viz., 4A set for loop line(Road 1) and the other end 4B was set to Road 2. I have given other details in my statement."

Shri P.Janardhanan,Passenger Driver examined as second witness also has not implicated the applicant with any action or omission against the rules. Shri Sheik Abdulla, the witness No.3 who should have reported for duty at 6'o clock on the relevant date has stated that he reported at 6.45 a.m. and the ESM had taken over without making entry in the relay register. This statement of the witness also does not show that the applicant was guilty of any misconduct.

8. Sri Balram, ESM was examined as the 4th witness. He has stated that Sri Selvakumar, SCP went to his quarters at 5.55 hrs. and informed him orally that PGR Spl.Down goods was detained at the Down Home due to signal failure and that he should rush to the station immediately. This testimony of Sri Balraj clearly establishes that the applicant had sent witness No.1 Selvakumar to call the ESM. No accident has been taken place owing to the signal failure. The

accident has been averted. The applicant promptly sent Sri Selvakumar, witness No.1 to call ESM, witness No.4 who attended to the clearing of the signal. The only omission on the part of the applicant was not ensuring that the ESM made entry in the relay room register under signature before parting with the relay room key. The applicant has explained the reason for the omission by saying that he permitted the ESM to proceed with his work without waiting for the formalities of making the entry so that detention of the train owing to signal failure could be avoided to the extent possible. We are of the considered view that on the basis of the evidence on record, no reasonable person can come to a conclusion that the applicant was guilty of any negligence or misconduct, as alleged. The finding of the Enquiry Officer which has been accepted by the disciplinary authority that the applicant is guilty of the charges, according to us, is totally perverse. We also find that the Enquiry Officer has relied on the station diary to come to a finding that the applicant did not report the signal failure while the station diary was not shown as a document in support of the charge listed in the list of documents appended to the memorandum of charges. It is also seen that the station diary was not brought on record in the enquiry. Further the applicant had even at the first instance in his explanation to the memorandum of charges stated that he

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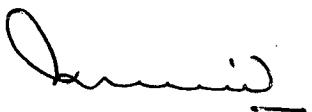
informed the S&T officials as also the section controller of the signal failure. In the evidence adduced at the enquiry we find sufficient corroboration to this case of the applicant.

9. The appellate authority, in his order Annexure A12 has stated:

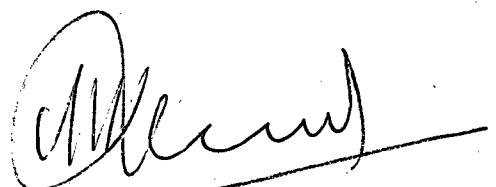
" During his shift duty itself manipulation of signals occurred as revealed in the enquiry report as well as confirmation given by the employee during his personal hearing..."

Going through the enquiry report and the evidence recorded at the enquiry, we could not find any indication that any manipulation of signals occurred. The order of the appellate authority is therefore bereft of application of mind and is based on materials other than what is available in the enquiry proceedings. The revisional Authority's order is bad for being based on extraneous materials, namely the fact-finding enquiry report which did not form part of the enquiry proceedings. We are therefore of the considered view that the impugned orders are unsustainable in law.

10. In the light of the above discussion, we are of the considered view that the impugned orders are not sustainable and the applicant should succeed. In the result, the application is allowed. The impugned orders are set aside with all consequential benefits to the applicant. There is no order as to costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V. HARIDASAN)
VICE CHAIRMAN

APENDIX

Applicant's Annexures:

1. Annexure A1 True copy of the charge memorandum bearing No.J/T5/C2/26/97 dated 23.3.97/23.4.97 issued by the 4th respondent.
2. Annexure A2 True copy of the letter bearing No.J/T5/1/C2/26/DAR/M.S/NC dated 29.5.97 issued by the 4th respondent.
3. Annexure A3 True copy of the letter bearing No.J/T5/1/CS/26/97/DAR/M.S/NC dated 1.6.97 issued by the 4th respondent.
4. Annexure A4 True copy of the representation dated 23.6.97 submitted by the applicant to the 4th respondent.
5. Annexure A5 True copy of the representation dated 8.7.97 submitted by the applicant to the Enquiry Officer.
6. Annexure A6 True copy of the proceedings of enquiry.
7. Annexure A7 True copy of the Defence Statement dated 2.8.1997 submitted by the applicant to the Enquiry officer.
8. Annexure A8 True copy of the Enquiry Report under NO.J/T/5/1/02/26/97 DAR/NC dated 7.8.97.
9. Annexure A9 True copy of the representation dt. 15.10.97 submitted by the applicant to the 3rd respondent.
10. Annexure A10 True copy of the penalty advice bearing No.J/T5/1/C2/26/97/DAR/NC dated 17.9.97 issued by the 4th respondent.
11. Annexure A11 True copy of the appeal dated 15.10.97 submitted by the applicant to the 3rd respondent.
12. Annexure A12 True copy of the appellate order bearing No.J/TS/1/C2/26/97/DAR/NC dated 5.1.98 issued by the 3rd respondent.
13. Annexure A13 True copy of the Revision Petition dated 11.2.98 submitted by the applicant to the 2nd respondent.
14. Annexure A14 True copy of the order bearing No. P(A)94/Misc/240 dt. 29.11.99 issued by the 2nd respondent.