

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHOA 361/03.....MONDAY...THIS THE 10th DAY OF APRIL, 2006

CORAM

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

T.K.Loganathan, aged 48 years
S/o Kolandasmi Gounder,
Station Master Grade III/Southern Railway,
Injur Railway Station
Permanent Address: Dasanaickan Palayam,
Kavundichi Palayam PO
Via. Vada Mugham Vellodu
Erode District.638112.Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by the General Manager, Southern Raiway, Headquarters Office, ParkTown PO, Chennai.3.
- 2 The Divisional Operations Manager, Southern Railway, Palghat Division, Palghat.
- 3 The Additional Divisional Railway Manager, Southern Railway, Palghat Division, Palghat.Respondents

(By Advocate Mr.Varghese John proxy for Advocate Mr.Thomas Mathew Nellimootil)

The application having been heard on 29.3.2006 the Tribunal on 10.4.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A3 penalty advice

dated 12.11.01 by which his next annual increment was withheld for a period of 36 months. He is also aggrieved by Annexure A5 appellate order dated 26.2.02 by which his appeal has been disallowed stating that there was no case made out by the applicant for withholding the penalty already imposed upon him.

2 The relevant facts of the case are that the applicant was served with the Annexure A.1 Memorandum dated 23.8.01 under Section 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 proposing to take action against him for the following irregularities alleged to have been committed by him.:

Charges: That the said Sri T.K.Loganathan, SM/PY has committed the following irregularities:

1 Smt.L.Eswari,W/o T.K.Loganathan purchased a land measuring 0.50 cent with electric connection and a small room for a sum of Rs. 1,45,000/- covered by asbestos sheet from Sri P.K.Harappa Gounder and 3 others on 29.2.2000. This transaction was registered at Gobichettypalayam under document No.446/2000.

2 Smt.L.Eswari W/o T.K.Loganathan purchased a joint property measuring 0.50 cents for a total value of the property being Rs. 2,03,000/- from Sri P.K.Harappa Gounder and K.S.Veluswamy on 14.6.2000. this transaction was registered on 14.6.2000 at Thukkanayakampalayam vide Document No.571/2000.

3 Smt.L.Eswari W/o T.K.Loganathan purchased a joint property measuring 1.64 cents for a total value of Rs. 2,22,000/- from Sri P.K.Harappa Gounder and K.S.Veluswamy on 14.6.2000. This transaction was registered on 14.6.2000 at Thukkanayakkampalayam vide Document No.572/2000.

4 Smt.L.Eswari W/o T.K.Loganathan also purchased a TVS Suzuki Motor Cycle bearing RegisterNo.TN.33-B-4050 and the vehicle was registered at Assistant Registering Authority/Erode.

He has therefore failed to maintain integrity and behaved in a manner unbecoming of a Railway Servant and

thus violated Rule 3.1(i) and (iii) of Railway Services (Conduct) Rules, 1966 and also violated Rule 19 of Railway Services (Conduct) Rules, 1966."

The applicant denied the charge that he violated Rule 3.1(i) & (iii) and Rule 18 of Railway Services (Conduct) Rules, 1966. As regards the statement of imputations of misconduct or misbehavior alleged against him, he submitted that his father-in-law and brother-in-law have been jointly running a dying factory at Tirupur and they are capable of sparing considerable amount of money out of their profit. His wife Smt.L.Eswari is the only daughter of her parents and she had been playing a vital role for developing the factory without any financial investment or any remuneration. The applicant married her on 12.9.84 and even after marriage her association with the factory continued. His father-in-law acquired a land at Gopichettipalayam under document No.446/00 on 29.2.2000 and the same was got registered in his wife's name and the applicant himself had nothing to do with the transaction. He had intimated the same to the respondents in the prescribed proforma on 15.4.2000. Similar is the case of other two properties mentioned in the charge memo and the details of these transactions were also duly intimated to the respondents department. As regards the purchase of TVS Suzuki Two Wheeler, he submitted that it belongs to the factory and it was registered in his wife's name for the purpose of establishing ownership to the vehicle and the same is being utilized by the office boy of the factory. This transaction was also intimated to the respondent department on 15.2.93.

3 The disciplinary authority considered the aforesaid explanations of the applicant dated 25.9.01 but not being satisfied with it, imposed the minor penalty of withholding his increment from Rs. 6050/- to Rs 6200/- in

the scale of pay of Rs. 5000-8000 which is normally due on 1.3.02 for a period of 36 months without the effect of postponement of his future increments. The reason given by the disciplinary authority to impose the aforesaid punishment was that the applicant had not obtained prior permission or ex-post facto permission from the competent authority as per Rule 18 of the Railway Services (Conduct) Rules, 1966. The disciplinary authority has also stated that the explanation given by the applicant was not acceptable to him and out of the four transactions, the applicant had intimated only in two cases thereby admitted that he had not reported the the other two cases. Further, the disciplinary authority held that the intimation cannot be construed as permission of the Railway Administration regularizing the transactions and in the instant cases, the applicant had obtained neither the prior approvals nor the ex-post facto approvals and he acted on his own.

4 The applicant in his Annexure A.4 appeal dated 4.1.02 stated that his explanation was not taken into consideration by the disciplinary authority fully while observing that out of the four transactions, he had intimated only two cases and in the other two cases, he had admitted that he had not reported those transactions. The applicant has stated that these reasoning of the disciplinary authority is against the facts as he had infact intimated the transactions in all the four cases as stated in his explanation dated 25.9.01. The first transaction was intimated on 15.3.2000; the second and third transactions were intimated on 28.6.2000 and the 4th transaction was intimated on 15.2.93. The disciplinary authority rejected the appeal stating that there was no case for altering the penalty already imposed in the case.

5 The applicant challenged the aforesaid impugned orders of the disciplinary authority and the appellate authority on the ground that the said orders were arbitrary, discriminatory and contrary to law and hence violative of Articles 14 and 16 of the Constitution of India. The other contention is that even if the allegations in Annexure A.1 are accepted in its entirety, the same still cannot be construed as a misconduct/offence of failing to maintain integrity or doing an act unbecoming of a Railway Servant. The impugned penalty advice proceeded on the basis of the charge of acquiring moveable as well as immovable properties in the name of the applicant's wife. There is no allegation that the properties were purchased by the applicant or that he did it in his wife's name. The other reason for imposition of the penalty is that the applicant had neither obtained the prior or ex-post facto approval from the department and he acted on his own. He has submitted that there is no rule that warrants prior/expost facto approval, in the given context, that too when the wife of the Railway Servant purchased the property, that being a right guaranteed to her under Article 21 of the Constitution of India. Further, the Appellate Authority passed orders without application of mind and the same was a non-speaking order which is contrary to Rule 22 of the Railway Services (Discipline and Appeal) Rules, 1968.

6 The respondents in their reply has refuted the contentions of the applicant in the OA. They have justified the disciplinary authority's order and maintained that the applicant had committed misconduct and violated Rule 18 of the Railway Service (Conduct) Rules, 1968. They have also maintained that the Annexure A.5 order of the appellate authority was issued after due application of mind and the allegation made by the

applicant are not true.

7 We have heard Shri TC Govindaswamy, for the applicant and Shri Varghese John proxy counsel appearing for Advocate Thomas Mathew Nellimootil, counsel for the respondents. It has been observed from Annexure A.I memorandum dated 23.8.01 that the only charge against the applicant was that he failed to maintain integrity and behaved in a manner unbecoming of a Railway Servant and thus violated Rule 3.1(i) &(iii) of Railway Services (Conduct) Rules, 1966 and also violated Rule 18 of Railway Services (Conduct) Rules, 1966, as his wife purchased 3 landed properties and one TVS Suzuki Motor Cycle. There is no mention in the charge as to how those transactions amounted to violation of Rule 3.1(i) and (iii) and Rule 18 of the Railway Services (Conduct) Rules, 1966. For the sake of convenience the said Rules are extracted below :

"3.(1) Every railway servant shall at all times:

(i) Maintain absolute integrity

(iii)do nothing which is unbecoming of a railway or Government servant.

18 Movable, immovable and valuable property:- (1) Every railway servant shall on his first appointment to railway service and thereafter at such intervals as may be specified by the Government, submit a return of his assets and liabilities, in such form as may be prescribed by the Government giving the full particulars regarding--

(a) the immovable property inherited by him, or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(b) the shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired or held by him;

(C)other movable property inherited by him or similarly owned, acquired or held by him

(d) debts and other liabilities incurred by him directly or indirectly.

In the explanation submitted by the applicant he had admitted that the transactions mentioned in the charge had in fact taken place and he did what was expected of him to do in those circumstances, namely, to inform the details of such transactions to the respondents. However, the disciplinary authority, while imposing the penalty of withholding the applicant's next annual increment for a period of 36 months, has stated that the applicant's contentions were not acceptable to him and out of four cases the applicant had intimated only in two cases thereby he admitted that he had not reported two cases even though there were no such admissions on the part of the applicant. He has also stated that the mere intimation cannot be construed as permission of the Railway administration regularizing the transactions and the applicant has not taken neither prior approval nor ex-post facto approval from the concerned authority even though there were no such imputations in the charge. The aforesaid findings of the disciplinary authority is a disputed one as the applicant has clearly stated that he had intimated the details of the aforesaid four transactions on the specific dates of 15.3.2000, 28.6.2000, 28.6.2000 and 15.2.93. It is not understood as to how the disciplinary authority has concluded in his order that the applicant had intimated only in two cases and he admitted that he had not intimated in the other two cases without any evidence. The second point for consideration is whether the applicant was expected to obtain prior or ex-post-facto permission of the aforesaid

transactions or to simply inform the above transactions to the respondents.

Nowhere in the Memo of Charges or in the orders of the disciplinary authority, the respondents have stated that there was such a requirement on the part of the applicant in accordance with any rules. The relevant rule according to the respondents is Rule 18 of the Railway Servants (Conduct) Rules, 1966, which does not enjoins a Railway Servant to obtain prior or ex-post facto sanction of the respondents before his/her spouse enter into any such transactions. Moreover, there was no charge that the applicant was required to obtain prior or ex-post facto sanctions in such transactions and the applicant has violated the same. What is not in the ^{writ} charge can be said to have been proved.

8 We have also perused the appellate authority's order dated 26.2.2002. The appellate authority has baldly stated that all reasonable opportunities in consonance with the tenants of natural justice have been accorded to the applicant to vindicate his innocence, if any. It has also been stated that the disciplinary authority has imposed the penalty after following all prescribed procedure and the penalty imposed commensurate with the gravity of the offence. He has also stated that no new issues have been adduced in the appeal other than those which have already been considered by the disciplinary authority. We have observed that the applicant has contended before the appellate authority that the findings of the disciplinary authority was contrary to the facts inasmuch as his contention was that he had intimated the respondents about the transactions in all four cases and the findings of the disciplinary authority

was that he had intimated only in two cases and he admitted that he did not intimate in other two cases. The disciplinary authority has not stated anything about this contention. The appellate authority is also silent on the issue raised by the applicant that he was not expected to obtain any prior or ex-post facto approval in respect of those transactions from the concerned authorities.

9 In the light of the above discussions, we are of the considered view that from the stage of issuing the charges, the disciplinary authority has held the proceedings in a slipshod manner. The charge was vague. There was no mention of about any specific violation of rules/regulations or on administrative instructions. When the applicant has submitted that he had intimated about all the four transactions with the dates of such transactions the disciplinary authority has simply held that he had intimated only in two cases and admitted the other two cases that he did not intimate. The penalty order does not speak of any violation of any statutory rules or instructions except stating in a vague manner that the applicant has not taken any prior or ex-post facto approval in all the four transactions. The disciplinary authority's penalty order is also vague and factually incorrect. The disciplinary authority passed the order in a mechanical manner without application of mind. None of the contentions of the applicant in the appeal has been taken into consideration. We, therefore, hold that both the disciplinary authority's order and the appellate authority's order are arbitrary and de hors the rules. We are not inclined to remit the matter to the disciplinary authority again as the penalty imposed is only a minor one and the alleged misconduct of the applicant had not attracted any other

consequences. In the result, we have no option but to quash and set aside the impugned order of the disciplinary authority and the appellate authority. Accordingly, we allow the OA with no order as to costs.

Dated this the 10th day of April, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

S.