

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.362/2001.

Monday this the 24th day of February 2003.

CORAM:

HON'BLE MR.T.N.T NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Fasuludeen Kunju, Goods Guard,
Southern Railway, Erode.
Permanent Address:
Thadathil Veedu, Ottakkal P.O.,
Thenmala, Kollam.

Applicant

(By Advocate Shri T.C.Govindaswamy)

Vs.

1. Union of India represented by the
General Manager,
Southern Railway,
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 Operations Manager,
Southern Railway, Palghat Division,
Palghat.
- Respondents

(By Advocate Shri P.Haridas)

The application having been heard on 24th February 2003, the Tribunal on the same day delivered the following:

O R D E R

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

The applicant at present working as Goods Guard in Palghat Division is aggrieved against A-1 penalty Advice dated 17.4.1998 imposing on him a penalty of withholding of increment for 24 months (non-recurring), A-2 order dated 28.12.98 whereby his Appeal (A6) was rejected and A-3 revision order dated 30.1.2001 upholding the appellate order turning down his revision petition A-7.

2

2. The charge against the applicant was that while he was working as Goods Guard at Erode and engaged in shunting operations at Somanur station on 6.9.97, the applicant was careless in as much as he failed to ensure the correct setting of point No.16 and clear the Disc No.18 before authorising any movement of vehicles over it. According to the respondents, the said carelessness resulted in derailment of Loco No.WDM2 17581 at Somanur on 6.9.97. On receiving the statement of imputation the applicant submitted a factual explanation, A-5, pointing out that the distance which the Engine Driver had to cover was only 5 meters, that the applicant never authorized the Engine Driver to move along and that on noticing that the train was moving along in spite of the shunt signal to the contrary, he and the Pointsman on duty, promptly tried to attract the attention of the Driver but before anything could be done, the Driver proceeded along and passed the signals at danger and the engine derailed. According to him, he had rushed to the cabin and asked the Switchman why he displayed the proceed hand signal and the Switchman accepted that it was by mistake. Thus the basic facts in relation to the unhappy event were brought to the notice of the higher authority by A-5 explanation. In A-5 the applicant specifically asked for a confronted enquiry for the purpose of getting at the correct facts. However, the respondents did not accept his explanation and proceeded to pass the impugned order A-1 imposing a minor penalty of withholding of increment for twenty four months without the effect of postponing future increments.

3. The applicant made A-6 Appeal which was disposed of by the

9.

Appellate Authority by A-2 order of the 3rd respondent. The applicant's request for confronted enquiry did not evoke the appellate authority's consideration. The appellate authority held that Somanur being a wayside station with no separate shunting staff available, the applicant, as Guard, was responsible for the derailment.

4. The applicant's A-7 revision petition was also turned down as per A-3 order dated 30.1.2001 passed by the 2nd respondent who held that the penalty levied were fair and reasonable. Accordingly, the penalty and the appellate orders were confirmed by the revisional authority. He also did not consider it necessary to accept the applicant's request for confronted enquiry. Being aggrieved, the applicant prays for the following main reliefs:-

- (a) Call for the records leading to the issuance of Annexures A-1, A-2 and A-3 and quash the same;
- (b) Direct the respondents to grant the consequential benefits, including arrears thereof, within a time limit, as may be found just and proper by this Hon'ble Tribunal, with 18% interest.

5. In the reply statement the respondents have resisted the claim of the applicant by stating that since the shunt signal No.18 was in 'ON' position and as shunting was therefore not permitted, it was totally the responsibility of the Guard to ensure safe shunting operation at Somanur and it was only because of his lack of alertness that the Driver was allowed to move along without ensuring clearance of shunt signal. The respondents therefore, have stated that the penalty, appellate and the revisional orders were based on facts as revealed in the fact finding enquiry.

9

6. The applicant has filed a rejoinder refuting the statements made in the reply statement highlighting the fact that he was not responsible for the derailment and that his request for a proper confronted enquiry was unfairly rejected.

7. We have heard Shri T.C.Govindaswamy, learned counsel for the applicant and Shri P.Haridas appearing for the respondents. Shri Swamy would state that the submissions made by the applicant in A-5 explanation were not considered properly by the respondents but hastened to pass A-1 penalty order in violation of the basic principles of natural justice. The applicant's request for a confronted enquiry ought not have been rejected on the alleged ground that it was not mandatory and in a case where a minor penalty was levied. According to counsel this aspect was not adverted to by the disciplinary authority. Learned counsel of the applicant would invite our attention to the Hon'ble Supreme Court's decision in O.K.Bhardwaj Vs. Union of India and others (2002 SCC(L&S) 188 to support the proposition that even in case of a minor penalty, the request of the delinquent employee for factual enquiry could not be rejected in the interest of natural justice. He would also draw our attention to the Railway Board's P.B.Circular No.49/86 referring to the DOPT's O.M.No.11012/18/85-Estt.(A) dated 28.10.85 which states that in a case where the delinquent Government Servant has asked for inspection of certain documents and cross examination of the prosecution witness, the disciplinary authority should naturally apply its mind more closely to the request and should not reject


Q.

the request solely on the ground that such an inquiry is not mandatory. He would therefore, plead that A-1, A-2 and A-3 orders are totally unsustainable and deserve to be quashed.

8. Shri P.Haridas, the learned counsel for the respondents on the other hand would rely on the evidence on record and would state that the penalty was imposed after a proper fact finding enquiry conducted and that it was not necessary to hold an enquiry since he had already been given an opportunity to explain the factual position.

9. We have considered the facts of the case and also the contentions raised by the rival parties. We find that though the penalty levied in this case is minor in nature, the applicant had totally denied the correctness of the factual enquiry and had wanted a confronted enquiry which means an enquiry in the light of his version should have been held. Having not done so, and having consistently held that no such enquiry was necessary, the respondents have failed to comply with the minimum requirement of the principles of natural justice which cannot be dispensed with. This is what has been held by the Apex Court in O.K.Bhardwaj Vs. Union of India and others (2002 SCC (L&S) 188).

10. In the light of the factual and legal position explained above, we hold that the impugned orders A1, A2 and A3 are liable to be set aside and we do so. We direct the respondents to grant all the consequential benefits to the applicant within two months from the date of receipt of copy of this order.



11. Respondents are however, at liberty to make appropriate enquiry, if they so desire, strictly in accordance with law, having regard to the principles of natural justice as we have already discussed above.

12. O.A. is allowed as above. There is no order as to cost.

Dated the 24th February, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T.NAYAR
ADMINISTRATIVE MEMBER