

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 365/2000

FRIDAY THIS THE 5th DAY OF JULY 2002

C O R A M ,

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

K.R. Easwardas
First Class Corridor Coach Attendant
Southern Railway
Palakkad.

Applicant

By Advocate M/s Santhosh & Rajan

Vs.

1. Union of India
represented by the General Manager
Southern Railway
Chennai-3
2. The Divisional Commercial Manager
Southern Railway
Palakkad Division
3. Assistant Commercial Manager
Southern Railway,
Palakkad Division
4. The Chief Commercial Inspector
Headquarters
Southern Railway,
Palakkad.

Respondents

By Advocate Smt. Rajeswari Krishnan

The Application having been heard on 14.6.2002 this Tribunal delivered the following on 5.7.2002

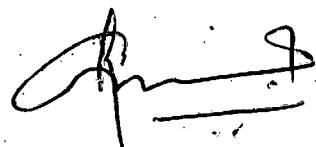
O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by A6 penalty advice dated 26.11.98 issued by the third respondent and A-9 Appellate Authority's order dated 17.3.99 issued by the second respondent filed this Original Application seeking the following reliefs:

(i) Call for the records leading to the issue of Annexure A6 and A9 and quash the same

(ii) Grant such other further reliefs as this Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case.



2. According to the applicant's averment in the Original Application he entered service of the respondents on 15.12.77 as Substitute Porter. He was given temporary status and later was absorbed in regular service on 12.9.79. He was promoted on 30.12.85 as Corridor Coach Attendant. While working as Corridor Coach Attendant he was suspended with effect from 10.3.1997 based on an incident which happened on 4/5-3-97. He was issued with the charge memorandum dated 19.5.97 containing A1 Articles of Charges, statement of imputation of misconduct, list of documents and list of witnesses. He submitted his explanation to the charge memorandum denying the charges. As the explanation was not accepted, Enquiry Officer to conduct an enquiry was appointed by the third respondent. The third respondent later cancelled the charge memorandum and accordingly the enquiry was also cancelled in support of which the applicant produced A-2 letter dated 1.7.97 issued by the enquiry officer. He was again issued with A-3 charge memorandum dated 23.9.97. The applicant denied the charges by his explanation dated 14.10.97 and an enquiry was conducted by the 4th respondent. Copy of A-5 enquiry report was forwarded to the applicant by A-4 memorandum dated 30.9.98. In A-5 enquiry report charges 2 and 4 were proved and charge No. 1 was partially proved. Based on A5 the third respondent imposed the penalty of reverting the applicant as Traffic Porter in the scale of Rs. 2610-3540 fixing his pay at Rs. 3150/- for a period of two years with effect of seniority on restoration of the reversion by A6 penalty advice dated 26.11.98. Against A6 order applicant preferred A-7 and A-8 appeals. The applicant received A9 order dated 17.3.99 by which the Appellate Authority reduced the pay of the applicant in the scale of Rs. 2650-4000 fixing the pay as Rs. 2650/as First Class Corridor Coach Attendant for a period of two years with



effect of postponing the future increments of the pay. Alleging that A5 and A-9 orders were arbitrary and illegal the applicant filed this O.A. seeking the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant. According to them there are no merits in the grounds raised in the Application.

4. Heard learned counsel for the parties.

5. The learned counsel for the applicant referred to A9 appellate authority's order and submitted that as the appellate authority had accepted the health condition and the stomach trouble of the applicant on the day of the incident, he ought to have exonerated the applicant from the charges and the imposition of the punishment. According to the learned counsel for the respondents the applicant could not challenge and seek to set aside and quash A-9 order and at the same time seek for accepting a part of the appellate order and then seek a relief on the basis of that part alone. The learned counsel for the applicant submitted that the applicant was issued with A1 charge sheet which was cancelled by A2 order unconditionally. Therefore issue of second charge memorandum on identical charges and all further proceedings pursuant to the same were arbitrary and illegal. It was further submitted by the learned counsel for the applicant that there were no complaints either from the passengers or the supervisory officials of the applicant regarding the alleged incident on 4.5.97 in respect of which the applicant had been issued with the memorandum of charges. He submitted that the applicant was suspended first after interrogating him and thereafter statements were obtained from supervisory officials. He submitted that there was no

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base for issuing the charge memorandum to the applicant. The statement of supervisory officials contained a number of contradictions but the Disciplinary Authority and the Appellate Authority did not consider them. It was also submitted that the evidences of the witnesses in the enquiry were different from the earlier statements and such evidences were not acceptable. The enquiry report was perverse and illegal and without properly appreciating the explanation given by the applicant the Disciplinary Authority accepted the enquiry report. The Appellate Authority did not consider the appeal of the applicant properly. It was also submitted that the Appellate Authority's order was not a speaking order.

6. The learned counsel for the respondents submitted that the applicant was entrusted with the job of assisting travelling public. Due to lacuna being found in A1 charge memorandum it had to be cancelled and a fresh memorandum had to be issued. There was nothing wrong in the course of action resorted to. It was not necessary that a report from the supervisory official or complaint from the passengers were necessary to initiate disciplinary proceedings. The authorities considered all the aspects while issuing the impugned orders. The applicant had not given any reasons as to how the enquiry report was perverse and illegal.

7. We have considered the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

8. The learned counsel for the respondents made available the disciplinary proceedings' file of the applicant for our perusal. From page 24 of the said file which is a

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copy of the letter No. J/C/23/4/97 dated 1.7.97 addressed to the applicant we find that the charge memorandum dated 19.5.97 issued to the applicant was cancelled without prejudice to further action against the applicant. This letter had been received by E.K. Krishnankutty, Defence Helper on 1.7.97. In the face of it we find the ground advanced by the applicant that the earlier A1 Charge Memorandum was cancelled unconditionally by A2 order and hence the second charge memorandum on identical charges and all further proceedings pursuant to the same were arbitrary and illegal, has no legs to stand. Accordingly we reject this ground.

9. The next ground advanced by the applicant is that the disciplinary authority had accepted the enquiry report which was perverse and illegal, without properly appreciating the explanation of the applicant.

10. We find from A3 that the article of charges levelled against the applicant are as follows:

Shri K.R. Easwaradas, FCCA/PGT while rostered to work the FC by train NO. 2618 Ex. Ru-PGT on 4/5-3-97 failed to maintain devotion to duty and acted in a manner unbecoming of a Railway servant in that:

1) he made 'D' cabin of the first Class coach vacant, occupied the Cabin, consumed liquor and became unconscious and did not do this legitimate duties.

(ii) he created nuisance to the first class passengers and made the coach dirty by passing motion and urine in it.

(iii) he did not report his disability to his BIC to arrange alternative arrangements.

(iv) he did not sign the ON and OFF register maintained at PGT or SRR.

Thus he contravened the provisions under rule 3(1), (ii) and (iii) of Railway Service (Conduct Rules) 1966.



11. The statement of imputations in support of charges framed against the applicant were given in Annexure-II to A-3 as follows:

Statement of imputations in support of charges framed against Shri K.R. Easwaradas, FCCA.

Shri K.R. Easwaradas, FCCA was rostered to man the I class coach by train No. 2618 Ex. RU-PGT on 4/5/3/97. Many berths in different Cabins and 'C' coupe were vacant when the train left RU. Having taken over the chart, he did not accommodate any other passenger in the I class coach. He did not exercise any check and indicate the same in the chart. He did not make out the position at the time or there after his taking over charge at RU and indicate in the charts. As per the amended chart of BPL/JHS TTEs, Cabin 'C' was vacant and 2 passengers were there in 'D' cabin. He managed to get 'D' cabin vacant and occupied the cabin for which he is not eligible. This was done with some motive only. There were passengers in 'H' cabin to alight at LSA. They had liquor bottles with them and were consuming the same. Shri Easwardas joined them, got drunk and became unconscious. Later while leaving the 'H' cabin he stole one bottle of liquor kept by the passengers in 'H' cabin and concealed the same in 'D' Cabin. The passengers searched for the bottle and found it with the FCCA. The passengers jointly beat the FCCA for the crime he committed and this led to the FCCA passing motion and urine. Consequent to this Shri K.R. Easwardas became unconscious and was laid up in 'D' Cabin. His alcoholic and criminal character lead to the above happenings. The motion and urine passed by him emanated bad smell and his walking by carrying the remnants of his dresses, body and legs and chappals made the coach dirty and created nuisance to the passengers as well.

In this condition he could not get down at PGT, as required and he was over carried to SRR. The TTEs who manned the other coaches could not get him out of train due to his semiconscious and dirty condition. The TTEs called the Safaiwalas at SRR and cleaned the coach which they could not do before.

Shri N. Manivannan, LTTI/KM/PGT, M. Haridasan, TTE/KM/PGT C. Haridas, TTE/KM/PGT and Shri K. Sreedharan, TTE/KM/PGT in their statements dated 12.3.97 have narrated the entire incidents and corroborated the above facts. The I class chart also shows that he did not perform his duties.

Shri K. R. Easwardas in his statement dated 10.3.97 has tried to plead that he was unwell and the action of passing motion and urine was involuntary. If such was the case, he could have very well reported the matter to his superiors in the train since the train was vestibuled. He went to SRR to conceal the facts from others at PGT. Even then he did not sign the ON and OFF register maintained at PGT or SRR in confirmation of his having reached his headquarters as per rules in force.



He has therefore failed to maintain devotion to duty and acted in a manner quite unbecoming of a Rly servant and has violated the Rule NO. 3(1), (ii), (iii) of Railway Services (Conduct)LRules,

12. On a reading of the Articles of charges and the statement of imputations we find that the gravamen of charges was that the applicant consumed Liquor with some passengers and as a consequence did not show devotion to duty and acted in a manner unbecoming of a Railway servant. To consider the ground advanced by the applicant of the findings being perverse let us examine enquiry report.

13. The reasons for the findings and the Findings of the Enquiry Officer had been given in A-5 as follows:

7. REASONS FOR FINDINGS.

As explained in para 3.1 above, the primary document in this case is ex. P-11, the interrogatory statement of the CE, recorded on 10.3.97. In answer to the questions, the CE stated that he had stomach problem when the train left JTU, he sat in 'D' Cabin and he involuntarily passed motion and he could not do anything and the matter was reported to SW-1 after the train leaving LED. There is no supplementary document or source of information to record such a statement. No offence has been stated in Ex. P-11 other than the sudden sickness of the CE but ACM/PGT has passed an order on this suspending the CE. The reason for such order has not been recorded in it. Ex. P-1 to Ex. P-4 were recorded on 12.3.97 by recording some other version for the questions appearing on ext. P-11. Therefore, there is no basic record for this case or the basic record Ext. P-11 shows no offence to make a charge. Ext. P-1 to Ex. P-4 were built up on ex. P-11 and there is no foundation for the charges.

7.1 As per charts there were 2 passengers in D coupe bound for OTP/CAN. Ex. P.1 to Ex. P-4 and the depositions of the witnesses evidenced that the CE was alone in D Cabin. SW-1 did not verify Ex P-7 to ex P-10 or the cabins to ascertain what happened to the passengers travelled in D coupe, as to whether they were changed or they themselves vacated to other vacant cabins. Cabins B and C were vacant throughout and H fell vacant at SA as per entries in ex. P-7 to ex. P-10. There is no documentary or oral evidence on record to prove that the CE consumed liquor and became unconscious. There is no eye witness for the consumption. There is no certificate



from competent authority (doctor) for the alleged intoxication. According to depositions of witnesses the CE was lying pitifully in the cabin. SW-1 deposed that the CE found unconscious after CBE. Others deposed that they could not approach the CE due to the dirty condition in the cabin. There is no mention either in the charts or in depositions to show that passengers boarded or demanded berth till the train reach PGT. There is no evidence as to occupation of berths by unauthorised passengers. This shows that there was nothing for the CE to do so. Therefore, the occupation of 'D' Cabin only proved among the first charge. Here also his sickness is the reason recorded by the CE.

7.2 The second charge that the CE passed motion and urine in D coupe and caused nuisance to the passengers hold good. The exhibits and depositions have proved it.

7.3. As per ex. P-11 the CE stated that his sickness developed after JTU and he informed the master to the SW-1 at ED. The witnesses seen the CE after SA only. SW-1 deposed that the CE was alright when they boarded the train at RU. The sickness of the CE is a sudden development after mid night and he was unable to report the matter to SW-1 before ED. The SW-1 was the BIC in charge of I class too. He did not supervise the work of the CE till the passengers inform him at ISA. Had he gone to I class early he could have seen what happened. Therefore, the third charge is not proved.

7.4 Ex P-5 and ex P-6 proved that the CE did not sign the ON and OFF register. SW-3 deposed that the CE did not sign the register. SW-1 deposed that the CE did not alight at PGT. SW-2 and SW-4 deposed that the CE alighted at SRR only. Therefore the charge hold good.

7.5 Based on the above evidences the charge non-devotion to duty fails.

8. FINDINGS

THE CHARGES

FINDINGS

1. He made 'D' cabin of the I class vacant, occupied the cabin, consumed liquor and become unconscious and did not do his legitimate duties.

He made 'D' Cabin of the I Class vacant, consumed liquor and become unconscious and did not do his legitimate duties- NOT PROVED.

Occupied the 'D' cabin is proved.

2. He created nuisance to the I class passengers and made the coach dirty by passing motion and urine in it.

He passed motion and urine in the coach made it dirty and caused nuisance to passengers PROVED.

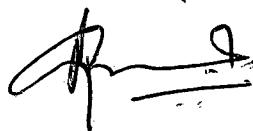


3. He did not mention his disability to his BIC to arrange alternative arrangements. NOT PROVED.

4. He did not sign ON and OFF Register maintained at PGT or SRR. NOT PROVED

5. He contravened the provisions under Rule 3(1), (ii) and (iii) of Railway Service (Conduct) Rules 1966. He contravened the provisions under Rule 3(1), (iii) of Railway Service (Conduct) Rules, 1966 -PROVED
Contravened Rule 3(1)(ii)
NOT PROVED

14. We note from the above that the Enquiry Officer had himself come to the conclusion that the charge of non-devotion to duty has failed; i.e. The applicant contravened Rule 3(1)(ii) has not been proved. He has held that the other charge- behaviour unbecoming of a Railway Servant i.e. contravening of Rule 3(1)(iii) as proved. From para 7.1 of the enquiry report reproduced above we find that the Enquiry Officer has recorded that there was no documentary or oral evidence on record to prove that the applicant had consumed liquor and become unconscious and when "the basic record Ex. P-11 shows no offence to make a charge" the findings against articles 2 and 4 and the consequential findings against article 3 have to held as only perverse i.e. a finding which a reasonable man acting reasonably would not have come to. We also find that the disciplinary authority had, even though accepted the explanation of the applicant of being sick, he had rejected the same on the ground that he should not have occupied the D cabin and committed nuisance. In our view the disciplinary authority failed to evaluate as to whether the applicant could be charged with the offence of a "behaviour unbecoming of a Railway Servant," when his statement that he was not well could not be disproved. In this view of the matter we find substance in the plea of the applicant that the

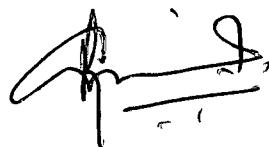


disciplinary authority failed to properly consider the explanation of the applicant. Hence we hold that A-6 disciplinary authority's order is liable to be set aside and quashed.

15. We note from the pleadings and the documents that the entire episode seem to have originated on the basis of certain complaints made by some passengers at Salem and the said passengers were travelling upto Calicut but no written statement had been taken from them by any Supervisors. Further the Supervisory official had not made any report on his reaching Palghat. The whole episode had come in the open only after the statement of the applicant was recorded on 10.3.97.

16. When we have held that A5 order was liable to be set aside and quashed the question of appeal and the Appellate Authority's A-9 order surviving does not arise. Further, as pointed out by the applicant the Appellate Authority had accepted the applicant's version that he was sick. Once the applicant's version of he being sick had been accepted by that authority, naturally the subsequent events/behaviour of the applicant on that day had to be viewed from that angle. Under these circumstances A-9 order cannot be sustained.

17. In the light of the detailed analysis given above, this Original application succeeds. Accordingly we allow

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