

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

D. A. No. 377/91
XXXXXX

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DATE OF DECISION 19.11.92

P.Ravindranathan _____ Applicant (s)

Mr. P.Sivan Pillai _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
General Manager, Southern Railway,
Madras & 3 others.

Mr.M.C.Cherian _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

Applicant is working as a Permanent Way Inspector at Mangalore Railway Station of Palghat Division. He is aggrieved by Annexure-A9⁸⁰ penalty order and A17 appellate order confirming the penalty.

2. In 1983 when the applicant was working as Permanent Way Inspector (Gr. III) at Sholingar of Madras Division of Southern Railway there was a derailment of a train on 17.6.83 between Chittai and Mahandrawadi stations falling under the jurisdiction of the applicant. The applicant and another Permanent Way Inspector, Shri P.V.Easwaran, were proceeded against under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 for imposition of a

major penalty. When the charge memo was issued to the applicant he filed his explanation denying the charge and stating that he was not working under ^{the} administrative control of this authority. He has also sent letters seeking copies of various documents, list of witnesses, etc. These letters were responded to by the appellate authority. However, an Inquiry Officer was appointed to conduct the enquiry. He submitted Annexure-A10 report finding that both the applicant and Shri Easwaran were not guilty of the charge. The relevant portion of the finding against the applicant reads as follows:-

"(2) The charge framed against Sri.P.Ravindranathan, PWI/Gr.III/SHU vide Memorandum No.M/T5/B3/3/83 dated 1.12.1983 by Sr.DEN/Central/MAS that -

'the said Sri P.Ravindranathan, while working as PWI/Gr.III at SHU Sub-section failed to maintain his length of track to the requisite standard which resulted in the derailment of 9 coaches of No.23 Express between Chittai and Mahendrawadi on 17.6.83 due to the buckling of the short of stratch of track at the meeting place of 90 R on CST/9 sleepers with 52 kg. rail on ST sleepers provided on a 1 1/4 curve. He has thus violated Gr. 15.01 and 15.02 (a) & (b)'

ARE NOT PROVED CONCLUSIVELY beyond reasonable doubt from evidences on record."

But the disciplinary authority disagreed with the finding and conclusion of the Inquiry Officer and imposed a penalty of reduction of pay in the time scale by two stages for a period of two years as per Annexure-A9 order dated 9/10.4.84. The applicant ^{has} taken-up the matter ⁱⁿ appeal before the appellate authority who initially issued notice for an enhancement of the punishment but later dropped the proceedings and confirmed the penalty of reduction of pay from Rs.545/- to Rs.515/- in the scale of Rs.425-700 for a period of two years (non-recurring) with effect from 16.4.1984.

3. The learned counsel, Shri Shivan Pillai, relying on the decision of this Tribunal in Anagur Bhaskar vs. General

Manager, Southern Railway & Ors., 1990 (7) SLR 336 submitted that the penalty order issued in this case is violative of the principles of natural justice and hence the same should be quashed.

4. The learned counsel for the respondents, Shri M.C. Cherian, submitted that even though the Inquiry Officer found that the charges against the applicant are not proved conclusively beyond reasonable doubt, the disciplinary authority, after a careful consideration of the entire evidence disagreed with the finding and conclusion of the Inquiry Officer and imposed the penalty and the said order is not violative of the principles of natural justice as contended by the applicant. There is no obligation under Rule 10 (3) of the Railway Servants (Discipline & Appeal) Rules, 1968 to send the enquiry report before the penalty to the applicant. Under Rule 12 along with the penalty order. He has also relied on the decision in P.Rangachary vs. State Bank of Hyderabad & Ors. reported in SLJ 1991 (3) page 76.

5. The finding of the disciplinary authority in Annexure-A9 reads as follows:-

"On a careful consideration of the aforesaid enquiry report the undersigned disagrees with the findings of the enquiry officer and holds that the charge framed against you is proved for the reasons mentioned in the enclosed note of dissent. However taking into consideration your record of service and also taking into consideration every mitigating circumstances such as you have carried out your schedule of inspection diligently, the undersigned has decided to impose on you the penalty of reduction of pay in the same time scale by two stages for a period of two years without having the effect of postponing your future increment or restoration."

The gist of the charge against the applicant is that while working as PWI Gr.III he failed to main his length of track to the requisite standard which resulted in the derailment

of nine coaches of No.23 Express on 17.6.83. The inquiring authority after detailed examination of the entire evidence found that the charges are not proved conclusively. Even though the disciplinary authority disagreed with the finding of the inquiring authority, he has made an observation in his finding that the applicant has "carried out" the schedule of inspection diligently. This shows that there is an apparent contradiction in the findings of the disciplinary authority. While holding that the charges are proved, which is only a failure to maintain the length of track, in the concluding portion of the order the disciplinary authority observed that the applicant has diligently carried out his inspection schedule, which indicates that there was no failure on his part. Even then a penalty of reduction of pay was imposed on him. The appellate authority, though issued notice for enhancement of the punishment, ultimately decided to confirm the imposed ⁶ penalty ~~by~~ the disciplinary authority and dismissed the appeal.

6. It is in this background that the learned counsel for the applicant submitted that there is a violation of principles of natural justice on account of the failure of the disciplinary authority to issue notice to the applicant before imposing the penalty, when there was a disagreement.

7. Rule 10 (3) and Rule 12 of the Railway Servants (Discipline & Appeal) Rules, 1968 are extracted below:-

"Rule 10(3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."

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"Rule 12. Communication of orders:

Orders made by the disciplinary authority shall be communicated to the Railway servant who shall also be supplied with a copy of the report of the enquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority (unless they have already been supplied to him) and also a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance."

The learned counsel, Shri Cherian, argued that the disciplinary authority has fully complied with the procedure envisaged in Rules 10(3) and 12. They do not contemplate issue of any notice before imposing penalty even if there is a disagreement. Rule 10(3) says that if there is disagreement with the findings and conclusions of the inquiring authority, the disciplinary authority should record its reasons for such disagreement and also give its own findings in writing about the charges, in case the evidence on record is sufficient for coming to such a conclusion. Though the said rule does not provide for any such opportunity to the delinquent employee before according its reasons and findings, it does not in any manner debar or prevent the application of the principles of natural justice and issue of a notice and giving an opportunity of being heard in the interest of fair play and satisfaction that no injustice was done to anybody. In cases of disciplinary proceedings leading to punishment on the delinquent employee, due to the disagreement by the disciplinary authority with the findings and conclusions of the inquiring authority, civil consequences as well as adverse effect on such government employee will follow. Before the effect of such adverse consequences operates on him it is only fair and proper to give him some time to state his views on the reasons when the disciplinary authority, while evaluating the evidence on record and coming to a different conclusion (to) penalise such delinquent employee. Under such circumstances it becomes obligatory on the part of the disciplinary authority to give notice even if it is not provided in the rules. So long as the rule does not prevent to adopt such a course in the interest of justice on the facts and circumstances indicated above, it is fair to issue a notice with copy of the enquiry report, before punishment, calling upon the delinquent to give his reply. The Supreme Court in Narayan Misra vs.

(State of Orissa (1969 SLR 657) has also considered the issue and observed that if the Inquiry Officer exonerates the charged officer but the disciplinary authority disagrees, the charged officer must be given a notice before the disciplinary authority comes to a conclusion against him. Following the Supreme Court we have held as follows in Anagur Bhaskar vs. General Manager, Southern Railway, 1990 (7) SLR 336:-

"16. From the above conclusion of the disciplinary authority it can be seen that there is disagreement (adverse to the applicant) by the disciplinary authority with the finding of the enquiring authority in respect of one of the charges covered by article-III. Under these circumstances the disciplinary authority cannot proceed with the further steps without notifying the decision to disagree with the enquiring authority to the applicant. It is incumbent upon him to give the applicant an opportunity to explain his views before actually imposing the punishment on him. It has been admitted that no such notice has been issued or opportunity was given to the applicant. We have recently considered this issue in detail in T.K.Gopinathan v. Union of India and 4 others, O.A.K. 259/88, the same Bench held as follows:-

'... By a unilateral decision behind the back of the applicant who was found to be not guilty on the first and third elements of the charge, the disciplinary authority has violated the elementary principles of natural justice and the principle of reasonable opportunity enshrined under Article 311(2) of the Constitution of India.'"

6. The decision in P.Rangachary's case relied on by the learned counsel for the respondents was rendered by a Division Bench of the Andhra Pradesh High Court considering the scope of Regulation 68 of State Bank of Hyderabad (Officers) Service Regulations, 1979 which is similarly worded like Rule 10 of Railway Servants (Discipline & Appeal) Rules. The High Court has taken the view that recording its own findings by the disciplinary authority if it disagrees with the findings of the enquiring

authority is sufficient compliance of sub-regulation (ii) of regulation 68. The Court held as follows:-

"Therefore, having regard to the provisions of Regulation 68 Explanation 3(ii), it is evident that no fresh notice is to be given in case the Disciplinary Authority disagrees with any of the findings of the Inquiring Authority....."

The Court did not examine whether it will be fair and proper under the circumstances stated above to give a notice to the delinquent employee, who, if the disciplinary authority ~~disagrees, can be penalised on the basis of the not proved in the enquiry.~~ ~~charges/~~ It is only in cases where disagreement leads to penal consequences and adverse impact that the relevance ~~hearing and~~ of a opportunity of notice raises for consideration. The question of giving an opportunity under the above circumstances and whether the relevant regulation prevents the authority from adopting such a fair course in imposing penalty on the delinquent employee ~~were not considered by~~ the High Court. The High Court also failed to advert to the Supreme Court decision and the decisions of the ~~High Courts~~ relied on by this Bench in the aforesaid decision. Hence, in the light of the decision of this Bench in Anagur Bhaskar vs. General Manager, Southern Railway, 1990 (7) SLR 336, we are unable to go along with the view expressed by the Andhra Pradesh High Court. In this view of the matter we reject the contention of Shri M.C.Cherian, learned counsel.

7. The learned counsel for the respondents submitted that this application is to be dismissed in limine due to lack of jurisdiction since the cause of action has arisen within the jurisdiction of Madras Bench of the CAT. No such objection was raised by the learned counsel for the respondents who appeared on the date of admission of this application on 12.3.91, after receiving a copy of the application. The belated objection appears to be only an

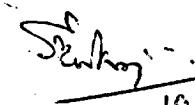
after thought and cannot be considered to be very serious particularly when the learned counsel for the applicant has stated in clear terms in the rejoinder that the statements in para 17 of the reply statements are devoid of any merit and the applicant is working in Palghat Division under the administrative control and power of the Senior Divisional Engineer, Palghat and that the appellate order Annexure-A1 was communicated to the applicant by the Senior Divisional Engineer, Palghat with a covering letter. Considering these arguments, we are satisfied that a part of the cause of action has arisen at Palghat within the jurisdiction of this Tribunal and hence we hold that there is no substance in the contention raised by the learned counsel for the respondents regarding jurisdiction.

8. In the light of the foregoing discussions, we are of the view that the impugned orders are liable to be set aside. Accordingly we quash the same and send back the case to the disciplinary authority for continuing the disciplinary enquiry, if the disciplinary authority decides to do so, from the stage of submission of enquiry report. In case the respondents do not wish to proceed further in the matter, it goes without saying that the applicant is eligible for all consequential benefits.

9. The application is allowed accordingly. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

19.11.92


(S.P.MUKERJI)
VICE CHAIRMAN

19.11.92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

C.P.(C) No.138/1993 in O.A.377/1991

DATE OF DECISION:30.9.1993

P.Ravindranathan .. Applicant/Petitioner

Mr.P.Sivan Pillai .. Advocate for the Applicant

vs.

Mahesh Kumar,
Senior Divisional Engineer(C),
Southern Railway,
Park Town, Madras-3. .. Respondent

Mr.M.C.Cherian .. Advocate for the Respondent

CORAM:

THE HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN, ADMINISTRATIVE MEMBER

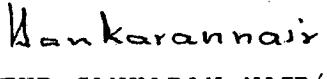
JUDGMENT

CHETTUR SANKARAN NAIR(J),VICE CHAIRMAN:

In the light of Annexure.R.1 it is unnecessary to proceed with the Contempt Petition and accordingly we dismiss the same. But this will not stand in the way of the petitioner to seek such reliefs as are available to him, under law. No costs.

Dated the 30thday of September, 1993.


R.RANGARAJAN
Administrative Member


CHETTUR SANKARAN NAIR(J)
Vice Chairman

List of Annexures.

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1. Annexure.R.1.....No.M/Pl(W)676/IV/PWIs dated 16.9.93 of
Divl.Railway Managers Office, Madras.