

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 391 of 2002

Friday, this the 13th day of August, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. P.K. Unnikrishnan,
S/o Raman Nair,
Goods Driver, Southern Railway, Erode,
Residing at: No.41, Parvathy Krishnan Street,
Kollampalayam, Rail Colony Post,
Kollampalayam, Erode-2Applicant

[By Advocate Shri T.C. Govindaswamy]

Versus

1. The General Manager,
Southern Railway,
Head Quarters Office, Park Town PO,
Chennai-3
2. Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat.
3. The Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat.

[By Advocate Smt. Rajeswari Krishnan]

The application having been heard on 13-8-2004, the Tribunal on the same day delivered the following:

ORDER

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

The sole question that calls for answer in this application filed under Section 19 of the Administrative Tribunals Act, 1985 is whether the appellate authority in exercise of powers under Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 is competent to drop a charge without prejudice to further DAR action to be taken and to issue a fresh charge sheet for a major penalty. The facts are as follows.

2. The applicant, a Goods Driver, was served with Annexure A1 SF-11 memorandum for imposing a minor penalty. The allegation forming the basis of the charge was that he allowed fluctuation in the speed that resulted in derailing of Empty Water Tank Special and had thus exhibited lack of devotion to duty. The applicant submitted his explanation. The 3rd respondent after considering the explanation submitted by the applicant held the applicant guilty and imposed on him a minor penalty of withholding of twelve sets of privilege passes by Annexure A3 order indicating that the appeal against the order was to be submitted to the Sr.DME, the 2nd respondent. The applicant submitted a representation to the 2nd respondent, who issued Annexure A5 order which reads as follows:-

"It is advised that, since the charges for which SF.11. No.J/T.5/1/D5/Misc/32/2001 dated 12.10.2001 issued to you are quite serious in nature requiring imposition of major penalty, the said SF.11 and penalty Advice No. J/T.5/1/D5/32/2001 dated 05.12.2001 are hereby cancelled without prejudice to taking further DAR action. ..."

After this, the 2nd respondent issued on 17-4-2002 Annexure A6 memorandum of charges for a major penalty. Aggrieved by this, the applicant has filed this application impugning the orders Annexure A3, A5 and A6. He has raised several grounds against Annexure A3 order and as regards Annexure A5 order of the appellate authority is concerned, he has assailed it mainly on the ground that the appellate authority in exercise of the appellate powers vested in it under Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 had no authority to drop a proceedings without prejudice to issue a fresh charge sheet and that he has to decide the issue on the basis of the evidence and can set aside or modify the penalty either by enhancing or reducing it but has no power to cancel the charge



and issue a fresh memorandum of charges. Annexure A6 memorandum of charges is challenged on the ground that this is an off shoot of Annexure A5 order, which is illegal.

3. Respondents have filed a reply statement resisting the claims of the applicant.

4. We have carefully gone through the pleadings and have heard Shri T.C.Govindaswamy, learned counsel of the applicant and Smt.Rajeswari Krishnan, learned counsel of the respondents.

5. Shri T.C.Govindaswamy, learned counsel of the applicant, taking us through the provisions of Rule 22 of Railway Servants (Discipline and Appeal) Rules, 1968 stated that nowhere in the rules a power is given to the appellate authority to cancel the charge sheet without prejudice to further DAR action. He argued that the appellate authority is to see whether the enquiry has been held in accordance with the rules, whether the findings are supported by evidences and whether the penalty imposed is adequate or unduly harsh and on the basis of the findings to set aside, modify or enhance the penalty and in case of enhancing the penalty he has to give a notice to the appellant. Dropping the charge without prejudice to further DAR action and issuance of fresh memorandum of charges by the appellate authority not having been provided in the rules, such action is null and void for want of jurisdiction, argued Shri Govindaswamy. We are not in a position to agree to the argument of Shri Govindaswamy. If on consideration of an appeal against an order imposing a minor penalty the appellate authority considers that the misconduct is so serious that if proved it would warrant imposing a major penalty, obviously without following the procedure prescribed for enquiry for imposing a major penalty. Such a penalty cannot be validly issued. The provision for enhancement of penalty can

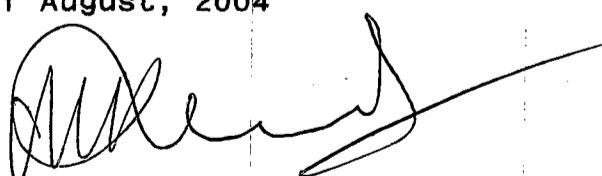
be invoked to award a major penalty only following the procedure prescribed for imposing a major penalty. Under such circumstances, the appellate authority can only drop the charge without prejudice to further DAR proceedings. However, if on the basis of the allegations which formed the charge the appellate authority finds that adequate penalty cannot be imposed in a proceedings initiated under SF-11 and therefore a major penalty proceedings had to be initiated, we are of the considered view that the appellate authority has got the competence and capacity to do so. No legal right of the railway servant would be affected by doing so because the order of the appellate authority does not prejudice the defence of the applicant because no finding has been arrived at whether the applicant is guilty or not. A mere reading of the allegations in the memorandum of charges made the appellate authority decide that the matter requires a more serious action and therefore the appellate authority has rightly cancelled the memorandum of charges and issued Annexure A5 order reserving liberty of the authority to take appropriate action in accordance with law. Annexure A6 memorandum of charges has been, therefore, rightly issued.

6. In the light of what is stated above, we do not find any infirmity with the impugned orders Annexure A5 and A6 and, therefore, we dismiss the Original Application. We are not going into the merits of Annexure A3 because the penalty also has been set aside by Annexure A5 order. No order as to costs.

Friday, this the 13th day of August, 2004

H.P. Das

H.P. DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

Ak.