

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 391/1990
ExxxxNo. 199

DATE OF DECISION 30.7.1991

P.S. Johnson _____ Applicant (s)

M/s.P.Sivan Pillai & R.Sreekumar _____ Advocate for the Applicant (s)

Versus

Union of India through _____ Respondent (s)
The General Manager,
Southern Railway, Madras-3 and 3 others

M/s.M.C.Cherian,Saramma Cherian & _____ Advocate for the Respondent (s)
T.A.Rajan

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, 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

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 14th May, 1990 the applicant who had been working as a Commission Bearer in the Southern Railway has prayed that he should be declared as a Railway servant within the meaning of Rule 2(1)(e) of the Railway Servants Discipline and Appeal Rules and that the impugned orders dated 12.12.85 (Annexure-A4), the ex parte order dated 16.4.86(Annexure-A5) terminating the contract of his appointment and the order dated 15/17 May 1989 rejecting his appeal should be set aside and the respondents directed to reinstate him into service with all attendant benefits. The brief facts of the case are as follows.

2. The applicant was appointed as a Commission Bearer in the catering wing of the Commercial Department of the Southern Railway in May 1977. A specimen copy of the offer of appointment is at Annexure-A1. Having worked in the

Departmental Vegetarian Refreshment Room at Coimbatore he was transferred in 1979 to the Mobile Departmental unit in the Kerala Express with his headquarters at Trivandrum and then to Ernakulam and in 1982 he was transferred to Bangalore under the Chief Catering Inspector, Karnataka Express, Bangalore city. In 1977, according to the applicant, his services were terminated on an allegation of short remittance of cash but on appeal he was reinstated. Again in 1985 a fine was imposed on him on the allegation of unauthorised absence during May/June 1985. While working as a Commission Bearer with headquarters at Bangalore in the Karnataka Express on 15.11.85 one of the passengers Col.R.K.Shukla recorded a complaint in the Complaint Book (Annexure-A2) as follows:-

"Bill are not supplied to passengers for edibles consumed. Sri Johnson was the waiter for coach (O) (AC Sleeper). And I saw him collecting money from all passengers without furnishing any bill. Evidently this leads to the nefarious swindling of government money since no proper check can be carried out. I was provided a bill after great insistence. The practice doubtless needs to be curbed."

According to the applicant he could not give any bill as the Catering Manager who was to issue the bills did not issue the bills because the bill books were exhausted and only a few folios were left which were issued only on demand. This was the instruction given to the applicant by the Catering Manager. The applicant's contention is that it was never the complaint that the applicant was collecting money in excess of the prescribed rates. However, without holding any enquiry, the Chief Commercial Superintendent, Madras, imposed a fine of Rs.20/- for not issuing the bills to the passengers vide the impugned order dated 11.12.85 dated Annexure A3. Immediately the following day a show-cause notice was issued to him at his address at Bangalore why

his services should not be terminated, for the same offence for which the fine had been imposed. The show-cause notice was exhibited on the notice board of Ernakulam, though the applicant at that time was working at Bangalore. Actually the applicant did not receive the show-cause notice. According to the applicant it was on 23.5.1986 while he was at Ernakulam he was served both with the show-cause notice dated 12.12.84 at Annexure-A4 and the ex parte punishment order dated 16.4.86 at Annexure-A5. He filed an appeal which was rejected vide the impugned order dated 15/17.5.1989 at Annexure-A8. Along with his appeal at Annexure A6 the applicant had enclosed a copy of the communication sent by the Catering Manager stating that since only 13 folios were available on the cash bill book at the time of complaint of Col. Shukla they were kept for issuing to VIPs and passengers on demand. It was stated therein that the applicant was innocent. After receiving the impugned order at Annexure A8 rejecting his appeal the applicant received another communication dated 14.6.89 (Annexure-A9) from the Chief Catering Inspector, Karnataka Express, Bangalore directing him to report to the Chief Personnel Officer, Southern Railway, Madras with original certificates showing his date of birth, educational qualifications etc. along with his photograph and two good conduct certificates from the Gazetted Officers. The applicant reported to the office of the CPO ^{with necessary documents} but he was not engaged and he has not received any offer of appointment so far.

The applicant's contention is that he is a Railway servant as defined in Rule 2(1)(d) of the Railway Servants (Discipline and Appeal) Rules read with Rule 3 thereof. In the alternative his argument is that he is a 'workman' within the meaning of Section 2 (s) of the Industrial Disputes Act and the termination of his services without following either the provisions of the Discipline and Appeal Rules or the Industrial Employment Standing Orders Act, is illegal. He has argued that the catering service provided by the Railway administration in long distance fast trains is a part of operational obligation of the Railways in running a public service and in the Indian Airlines etc. catering service is being done by the management itself. He has referred to the notification of Department of Personnel dated 11.12.79 (Annexure-A10) in which all posts in the canteens and tiffin rooms run departmentally by the Govt. of India have been declared to be posts in connection with the affairs of the Union. The applicant is under the supervision and control of the Catering Supervisor and Manager and other officials of the Railways and is liable for punishment for any irregularity or misconduct and the respondents have the right to suspend and terminate his services and leave and hours of employment are determined by the respondents. Therefore, the applicant is as much a Railway servant as any other regular employees of the Railway. The Supreme Court also by its interim order dated 5.3.86 directed the Railway Administration to pay the bearers salary at the same rate with effect from 1.12.83 as salaried

bearers of the Railway catering. He has argued that denial of procedural protections in the matter of disciplinary matters to him, is discriminatory and unconstitutional. He has also referred to clauses 13 and 14 of the model standing order appended to the Industrial Employment (Standing Orders) Act, 1946 to say that the impugned order being violative of the same are illegal. Terminating his service without a show-cause notice or reasonable opportunity to state his case being violative of the principles of natural justice is also otherwise illegal and void. He has also argued that the same authority having imposed a fine of Rs.20/- vide Annexure A3 cannot punish him again by the punishment order at Annexure A5 and the appellate order at Annexure-A8 both passed by the same authority. Since the Manager of the catering service was to issue bills and since he was not supplying the bills because of paucity of vouchers, the applicant cannot be punished for non-supply of the bills.

3. The respondents have opposed the application as time barred and have stated that the applicant sent a representation in April 1989 three years after the order of punishment was passed on 16.4.1986. They have also argued that the applicant is not an employee of the Railways but as a Commission Vendor there exists only a contractual relationship by the agreement dated 13.9.1982 at Ext.R1. They have also questioned the authority of the Manager to issue the letter of innocence to the applicant as the Manager was himself proceeded against. They have denied

that Railway Servants Discipline and Appeal Rules ~~are~~ ^{is} applicable to the applicant because he is not a Railway servant. They have stated that no rules have been framed for Commission Vendors like the applicant who are not holders of any post. They have also denied that the applicant falls within the definition of 'workman' under the Industrial Disputes Act. The impugned order of termination was passed after giving him a notice. They have also denied the existence of double jeopardy or punishment and have explained the passing of the appellate order by the same authority who ~~had~~ passed the order of punishment by saying that it was done because the appeal was addressed to the same authority.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. A more or less identical case came up before this Tribunal and decided by its judgment dated 28.2.1990, to which one of us was a party ^{viz.,} M.Sivaraman & Ors. vs. Union of India and anr., 1990(2) SLJ (CAT) 259. In that case also the applicants were Commission Vendors in the K.K Express and their duties "were vending food to the passengers on board the train supplied by the train catering service and the remuneration was on commission basis." The Railways terminated the engagement of the applicants therein and similarly placed Commission Vendors on 28.1.1982 as they had staged a protest on 24.1.1982 as sufficient number of berths were not allotted to them for rest. By this protest the

vending of food articles to the passengers was jeopardised. When their services were terminated that ^{action} was challenged before the High Court of Kerala on the ground that they were workmen entitled to the benefits of the provisions of the Industrial Disputes Act and that the termination of their services without conducting an enquiry and giving them an opportunity to prove their innocence is violative of the provisions of the Industrial Disputes Act. That petition was transferred to the Tribunal and disposed of by the aforesaid judgment. In that case also the Railways took the stand that the petitioners are only independent contractors, that the petition was barred by limitation and they were not workmen as contemplated under the Industrial Disputes Act. This Tribunal in that case found that the petitioners therein "are workmen as defined in the Industrial Disputes Act" and removing them from service without holding an enquiry prior to the order of punishment for misconduct is illegal. The following observations made in that judgment will be pertinent:-

" Though the petitioners were paid remuneration in the form of commission, depending on the quantum of sales, nevertheless since the Railway Administration had the control and supervision not only over the work, but also on the mode of execution of the work of the petitioners, the relationship between the petitioners and the Railway Administration is clearly one of master and servant. Therefore the case of the respondents that the petitioners are only independent contractors has only to be rejected. We therefore hold that the petitioners are 'workmen' as defined in the Industrial Disputes Act. That the services of the petitioners were terminated on 28.1.1982 before conducting any inquiry and without giving them any opportunity to show cause against such termination is a fact admitted. The termination is justified on the ground that the petitioners suddenly without any notice struck work, causing grave inconvenience to the passengers on board the K.K.Express. Challenging the termination

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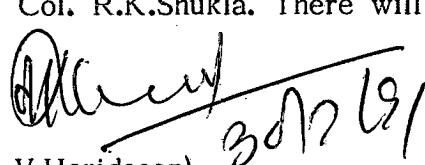
" an O.P. was filed by some of the Commission Vendors and the Hon'ble High Court disposed of the O.P. directing the respondents to dispose of the representations made by the Commission Vendors looking into all aspects of the matter, factual and legal. Even after this direction what the Railway Administration has done was to record the statement of the petitioners and the similarly placed Commission Vendors and also to offer the Dining Car Manager and the Train Superintendent for cross examination. The learned counsel for the respondents submitted that by recording the statement of the petitioners and by offering the Dining Car Manager and Train Superintendent for cross examination, the petitioners have been given a very fair and reasonable opportunity to establish their innocence, and that on the basis of this inquiry, the Chief Commercial Superintendent held that it was not necessary to interfere with the orders of termination. We are of the view that by recording the statements of the petitioners and offering Train Superintendent and the Dining Car Manager, it cannot be said that a reasonable opportunity has been given to the petitioners. If an inquiry is to be held, it should be held in a proper way. The delinquent will have to be given charge sheet, an opportunity to explain their stand in respect of the allegations in the charge sheet and then the evidence in support of the charge should be recorded. It is only thereafter the question of cross examination of the prosecution and witnesses recording the statement of the delinquent arise. This procedure has not been followed. Further, the inquiry is to precede the termination and not vice versa. Having terminated the services of a workman, it cannot be thereafter justified by holding an enquiry. Further, the inquiry held is also not a proper one. It is admitted in the pleadings and is also evident from the Ext.R5 order of the Chief Commercial Superintendent that the engagement of the petitioners were terminated as a punishment for misconduct. Termination of services as a punishment for misconduct can be made legitimately only after framing a charge holding a proper enquiry and establishing the guilt of the delinquent at the inquiry. In this case, we are of the view that none of these legal requirements have been complied with, and therefore we hold that the termination of the services of the petitioners abruptly by the respondents on 28.1.1982 is illegal and unsustainable in law."

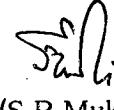
Agreeing with the aforesaid finding to which, as stated earlier, one of us was a party, we have to allow this application also on similar grounds. The impugned orders in this case suffers from two more flaws. Firstly having imposed a fine of Rs.20/-, the respondents by imposing a further penalty of termination of the applicant's service for the same misconduct, have imposed two punishments for the same misconduct. Secondly, the same authority, i.e., the Chief Commercial Superintendent who passed the order of punishment(Annexure-A5) by

passing the appellate order (Annexure-A8) has transgressed his jurisdiction and deprived the applicant from getting his case decided by an authority other than and superior to the punishing authority.

5. Having found the impugned orders to be bad in law on the basis of an earlier judgment of this very Tribunal, we do not find it necessary to go into the question whether the applicant is a Railway servant as contemplated in the Railway Servants Discipline and Appeal Rules. This is also not necessary because this is an alternative ground taken by the applicant, alternative to the ground of violation of the provisions of Industrial Disputes Act.

6. In the facts and circumstances of the case we allow this application, set aside the impugned orders at Annexures-A3, A4, A5 and A8 and direct the respondents to reinstate the petitioner into service forthwith with continuity of service. With regard to back wages, following the relief given in the aforesaid case of M.Sivaraman & Ors. we direct the respondents to refund to the applicant the fine of Rs.20/- and pay him a lumpsum amount of Rs.1,000/- in lieu of back wages. Considering the background of the case we give the liberty to the respondents to initiate fresh proceedings against the applicant if so advised and in accordance with law on the complaint of Col. R.K.Shukla. There will be no order as to costs.


(A.V.Haridasan)
Judicial Member


S.P. Mukerji / 30.7.91
(S.P.Mukerji)
Vice Chairman

CCP-6/92 in
CA-391/90

13.1.92
(16)

8pm 8 AV/1

Mr. Sivam Pillai for petitioner
Mr. M. Cherasan for respondent

The learned Counsel for
the respondent seeks 2 weeks time
to reply to the C.P.
List for further directions

on 29.1.92

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13.1.92

~~29.1.92
(6)~~

8pm 8 AV/1

Mr. Rama Krishnan
Mr. M. Cherasan

The learned Counsel for the
applicant undertakes to file rejoinder
within 2 weeks with a copy to the
respondent.

List for final hearing on 19.2.92

29.1.92

29-1-92
(13)

-2-

SPM & AVH

Mr Sivan Pillai
Mr MC Cherian

The learned counsel for the respondents states that the order of this Tribunal dated 4.11.91 in MP-1345/91 in OA-391/90 has been complied with.

At the request of the learned counsel for the petitioner, list for further directions on 7.2.92

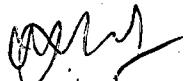
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7.2.92

SPM & AVH

Mr. Sivan Pillai through proxy Mr. Swamy
Mr. GARajan-forrespondents.

The learned counsel for the respondents indicated that the order of this Tribunal dated 4.11.91 in M.P.1345/91 in O.A.391/90 has been substantially complied with. The learned counsel for the petitioner states that the applicant has been taken back in service and our order has been substantially complied with. He does not wish to press the CCP any further. Hence the CCP is closed and notice discharged.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

7.2.92

P
P.M.
7.2.92
For review
File cases
P.M.