

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A.409/2006**

*Wednesday* this the *2nd* day of January 2008.

**CORAM:**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

E.Hilaludheen, S/o Ibrahim Kutty,  
Working as Ticket Collector,  
Southern Railway, Nagarcoil.  
Residing at Jumai Bhavan,  
Near Federal College,  
Kottiyam, Kollam.

Applicant

(By Advocate Shri M.P.Varkey)

Vs.

1. Union of India, represented  
by General manager,  
Southern Railway,  
Chennai – 600 003.
  2. Divisional Railway Manager,  
Southern Railway,  
Trivandrum-695 014.
  3. Senior Divisional Commercial Manager,  
Southern Railway,  
Trivandrum-695 014
- Respondents

(By Advocate Shri Thomas Mathew Nellilmoottil)

**ORDER**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant while functioning as Chief Travelling Ticket Inspector was  
proceeded against and the charges are as under:

*"Sri. E.Hilaludeen, TT/SL/QLN, while manning coach No.95079  
of Train No.2624 of 15.6.04 ex TVC-PGT, committed serious misconduct  
in that he behaved in an indecent and unruly manner and molested the*

*younger daughter of a passenger who travelled along with his wife and two daughters under PNR No.4130680971, in the corridor of First AC Coach of train No.2624 of 15/6/04, and thereby tarnishing the image of Railways before the public. He acted in a discourteous manner and in a manner which is unbecoming of a Railway Servant and thus violated Rule No.3(A)(a) and 3(1)(iii) of the Railway Service (Conduct) Rules, 1966."*

2. The applicant had denied the charges, consequent to which, an inquiry was conducted. The following are the list of documents and list of witnesses to be relied upon.

**LIST OF DOCUMENTS:**

1. *Rough journal & movement diary of Shri E.Hilaludeen. TT/SL/QLN*
2. *Reservation chart of First AC Coach of Train No.2624 dt. 15.6.2004*
3. *Ticket under PNR No.4130680971*
4. *Statement of Shri S.Vasudevan recorded in the presence of (independent) witness.*
5. *Letter dated 17/6/04 from Sr.DPO/TVC to Sr.DCM/TVC.*

**LIST OF WITNESSES:**

1. **Shri V.Rajeevan, Sr.SPO/TVC.**

The Enquiry Officer gave his report and his discussion of the evidence and conclusion are as under :

**DISCUSSION OF EVIDENCES ON RECORD**

*"There is no conclusive evidence to pin point the offense squarely on the offender given the complexities of circumstances but strong circumstantial evidence to suggest that he is indeed guilty of such offense. The trauma of an aggrieved family is also countered by a diluting factor that they would like to forget this incident as an unpleasant dream but the facts, circumstances, administrative representative's accounts, etc. pointedly stress upon*

the preponderance of probability factor weighing strongly against the charged employee. In other words there is a strong probability that an alleged act or attempt at outraging the modesty of a minor has occurred leading to trauma for the child, grief and embarrassment for the parents and family.

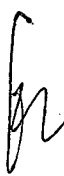
## 5. CONCLUSION

5. The charge that Shri E.Hilaludeen, TTI/SL/QLN while manning Coach No.95079 by Train No.2624 of 15.6.2004 Ex TVC to PGT committed serious misconduct in that he behaved in indecent and unruly manner and molested the younger daughter of a passenger who travelled alongwith his wife and two daughters under PNR No.4130680971 in the corridor of First AC coach of Train No.2624 of 15.6.2004 and thereby tarnishing the image of the Railways before the public and acted in a discourteous manner and in a manner which is unbecoming of a Railway Servant and thus he has violated Rule No.3(A)(a) and 3(I)(iii) of Railway Services (Conduct) Rules 1966 cannot be conclusively proved but strong circumstantial probability of perpetration of such an offense exists and his subsequent interaction with the affected family in the midst of ADRM and Sr.DPO betrays an unrepentant attitude after the offense. "

3. After following the procedure, the disciplinary authority passed a penalty order of compulsory retirement from service with effect from 10.6.05 vide order dated 3.6.05 (Annexure A-8). The applicant filed an appeal and the the Appellate Authority has modified the penalty order as reduction to the lowest post of Ticket Collector in the grade of 3040-4590 fixing the pay at Rs.4590/- for a period of 5 years with effect from 9.12.05 with loss of seniority and further that the intervening period from the date of compulsory retirement to the date of reinstatement is treated as non-duty and shall not count as qualifying service.

4. The applicant has challenged the aforesaid two penalty orders on various grounds.

5. Respondents have contested the O.A. According to them, there is no illegality either in the finding by the Inquiry Authority or the penalty imposed



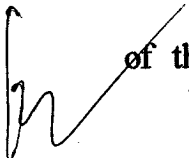
upon the applicant as per the impugned orders.

6. The applicant has filed his rejoinder reiterating his stand.

7. Counsel for the applicant argued that the alleged incident was not witnessed by anyone. The complainant was the father of the girl who, though initially gave complaint/statement which was relied upon by the Inquiry Authority, had subsequently, vide letter dated 26.7.04, informed the ADRM, Southern Railway, Trivandrum, that in his opinion, the applicant would have been a victim of circumstances and his action on that date might have been accidental.

8. Counsel argued that in the absence of the complainant, either his statement should not have been relied upon at all or his subsequent letter cited above should have also been taken into account. The Inquiry Officer took into account only the complaint and ignored the subsequent communication. This has prejudiced the Disciplinary Authority to pass the penalty order. Counsel further argued that when the prosecution itself did not choose to include the complainant as one of the witnesses, relying upon his statement which has not been admitted by the applicant is illegal. It is also argued that when the *only* witness listed in the charge sheet viz. Sr.Divisional Personnel Officer did not turn up, his presence was not secured by the presenting officer or by the Inquiry Authority.

9. The Inquiry Authority has, no doubt, indicated that, there is no conclusive evidence to pin point the offence and that only strong circumstantial evidence suggested that the applicant has committed such misconduct. According to the counsel for applicant the above finding was based on no evidence. In the absence of the author of the documents relied upon being made available for cross



examination, relying upon such statement would mean violation of the principles of natural justice. Thus, according to the counsel, the proceedings have been thoroughly vitiated. Counsel for the applicant has relied upon a number of judgments and the same are as under:

10. The Counsel for the applicant has referred to the following decisions:

- A. *Central Bank of India Ltd., Vs. Prakash Chand Jain* (AIR 1969 SC 983) (Para -- 8-11)
- B. *Kuldeep Singh Vs. Commissioner of Police and others*, (1999 SCC (L&S) 429)
- C. *Hardwari Lal Vs. State of U.P. and others* (2000 SCC (L&S) 85)
- D. *Ministry of Finance and another Vs. S.B. Ramesh*, (1998 SCC (L&S) 865)
- E. *Sher Bahadur Vs. Union of India and others* (2002 SCC (L&S) 1028)
- F. *Latoor Singh Vs. Union of India and Ors.* (2003(1) ATJ 105 (O.51/96 of Lucknow Bench)

11. Counsel for the respondents submitted that, no prejudice has been caused to the applicant by non-examination of the listed witness. He relies upon the case of

**Bibhuti Bhusan Das Gupta and another V. State of West Bengal** AIR 1969

SC 381 (Para 12):

*" (B) Criminal P.C. (1898), Ss.537 and 342 ----- Mere non-examination or defective examination of accused is not a ground for interference unless prejudice is established -- (Examination of pleaer). (AIR 1956 SX 241 and AIR 1962 SC 139) Rel.on (Para 12)."*

12. Arguments were heard and documents perused. The Inquiry officer has mainly relied upon the statement of the complainant (father of the girl) and that of the Senior SPO, TVM. The former was not enlisted as witness. The latter, no doubt, was the lone listed witness but he had not turned up and no steps were taken by the Presenting Officer or the Inquiry Officer to make available the said

witness so that the applicant could have an opportunity to cross examine the witness. It is the cardinal principle of disciplinary proceedings that principles of natural justice should be fully complied with. In the absence of due opportunity to the applicant to cross examine the witness or the author of a particular document which is heavily relied upon, the proceedings are to be held as vitiated. The apex court has held in this regard as under:-

**(a) On the functions and responsibilities of Inquiry Authority:**  
**M.V. Bijlani v. Union of India, (2006) 5 SCC 88**

**25. ... Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.**

**(b) Principles of natural justice as the fundamental fabric in disciplinary proceedings:**

**Ranjit Singh v. Union of India, (2006) 4 SCC 153**

**"....it is now well settled that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. "**

13. In **V.D. Joseph vs Union of India** (1990) 14 ATC 99(Ern), the Tribunal has held that when a particular letter of an employee is relied upon, non production of the said person for cross examination by the delinquent vitiates the inquiry. In the instant case, the statement of the Sr. SPO was fully relied upon but the said officer, though listed as witness, has not been examined/cross examined. This has

resulted in the greatest prejudice to the applicant and this lacuna has vitiated the inquiry. Reliance placed upon by the counsel for the respondents is distinguishable as in that case it has been held that non examination of a particular witness has not caused any prejudice to the accused. In that case,(( Bibhuti Bhusan Das Gupta and another V. State of West Bengal (AIR 1969 SC 381)) the Apex Court has held as under:

*"12. This conclusion does not dispose of Bibhuti Dasgupta's appeal. Under Section 537 the conviction and sentence are not reversible on account of any error, omission or irregularity in any proceedings during the trial unless the error, omission or irregularity has in fact occasioned a failure of justice. Mere non-examination or defective examination under Section 342 is not a ground for interference unless prejudice is established. (See Tilakeshwar Singh V. State of Bihar, 1955-2 SCR 1043= (AIR 1956 SC 238), K.C.Mathew v. State of Travancore-Cochin 1955-2 SCR 1057 at pp. 1061-62 = (AIR 1956 SC 241 at p. 244), Ram Shankar Singh v. State of West Bengal, (1962) Supp 1SCR 49 at p.64 = (AIR 1962 SC 1239 at p. 1245). Looking at the facts of this case we do not find that any prejudice was caused to Bibhuti Dasgupta by his non- examination under Section 342. The prosecution evidence was closed on September 17, 1962. Ram Adhikari appeared in Court and was examined personally. Bibhuti Dasgupta did not appear in Court on that date. After 3 months on December 21, 1962 his pleader was examined on his behalf at his express request. The Magistrate delivered judgment on April 17, 1963. On that date Bibhuti Dasgupta was present in Court. He made no complaint at any time before the Magistrate or the Sessions Judge or the High court that he had suffered any prejudice. Even in this court Mr. Chatterjee could not point out what further explanation could have been given by Bibhuti Dasgupta if he had been examined personally. We are satisfied that the omission to examine him under Section 342 did not cause him any prejudice and has not in fact occasioned a failure of justice. We are, therefore, not inclined to interfere with his conviction and sentence."*

14. The above decision of the Apex Court is of no assistance to the respondents. The inquiry proceedings having been thoroughly vitiated, the OA succeeds. Annexure A-8 and A-10 penalty orders are hereby quashed and set aside. The applicant is deemed to have been in the same post as he was at the time of compulsory retirement from service on the basis of the order of the Disciplinary

Authority and is entitled to pay and allowances drawn by him at that time with further entitlement to the grant of annual increments and retention of seniority in the post held by him before the compulsory retirement and also entitled to other benefits arising out of such retention of seniority. Respondents are directed to work out the extent of arrears of pay and allowances due to the applicant and ensure payment of the same to the applicant within a period of four months from the date of communication of this order.

15. No costs.

Dated the ....2<sup>nd</sup>.....January, 2008.

  
**Dr.K.B.S.RAJAN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**