

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 22 JUL 1988

APPLICATION NO.

830

/87(F)

W.P. NO.

Applicant(s)

Shri C. Selvaraj

To

1. Shri C. Selvaraj
Driver - 'B'
Southern Railway
Mysore Division
Mysore
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
3. The Divisional Mechanical Engineer
Southern Railway
Mysore Division
Mysore

Respondent(s)

V/s

The Divisional Mechanical Engineer, Southern
Railway, Mysore & 2 Ors

4. The Divisional Railway Manager
Southern Railway
Mysore Division
Mysore
5. The Chief Operating Personnel Superintendent
Southern Railway
Park Town
Madras - 600 003
6. Shri K.V. Lakshmanachar
Railway Advocate
No. 4, 5th Block
Briand Square Police Quarters
Mysore Road
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~ / ~~INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 15-7-88.

Encl : As above

for DEPUTY REGISTRAR
(JUDICIAL)

o/c

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE.

Coram: Hon'ble Mr. Justice K.S. PUTTASWAMY, Vice Chairman,
and

Hon'ble Mr. L.H.A. REGO, Member (A).

DATED THIS THE FIFTEENTH DAY OF JULY, 1988.

Application No. 830 of 1987.

Between:

C. Selvaraj,
Driver-B, SR,
Mysore Divn.
Mysore. (SHRI M.R.ACHAR, ADVOCATE). Applicant.

vs.

1. Divl. Mechl. Engr.,
SR, Mysore Divn.,
Mysore.

2. Divl. Rly. Manager,
SR, Mysore Divn.,
Mysore.

3. Chief Operating Personnel Supdt.,
SR, Masras-3.

(SHRI K.V. LAXMANACHAR, ADVOCATE) ... Respondents



This case having come up for hearing on 18-7-1988, and having stood for consideration till this day, Hon'ble Member (A) made the following:

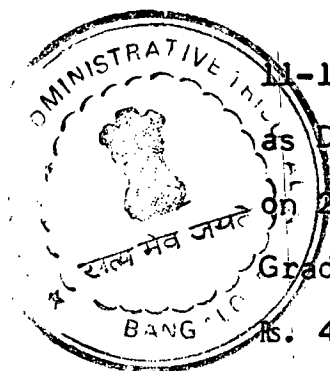
ORDER

The applicant has assailed herein, the Order dated 5-12-1985 (Annexure-A) passed by Respondent (R)-1,

as Disciplinary Authority (DA, for short), by reducing him to the lower post of Shunter, on pay of Rs. 342/- p.m. in the scale of Rs. 290-400, for a period of two years w.e.f. 16.12.1985 and also the Order dated 5-2-1987 (Annexure-B), passed by the Appellate Authority (AA, for short), affirming the punishment awarded by the DA. The applicant has referred to Annexure-C in the relief sought, but has not furnished a copy thereof indicating the designation of the authority, who passed that order and the date thereof. Presumably, he is referring to the order passed by R-2, on 17-7-1986 as ~~the~~ AA, upholding the punishment imposed by R-1. He prays, that the orders at Annexures A, B and C be quashed, with such other directions as deemed appropriate in the circumstances of the case.

2. The facts leading to this application are briefly as follows:

The applicant entered service as khalasi, on 11-12-1958 in the Southern Railway. He was promoted as Driver Grade 'C', in the pay scale of Rs. 330-560 on 29-3-1980. He was further promoted as Driver Grade 'B', w.e.f. 16.10.1982, in the pay scale of Rs. 425-640. He was transferred in this capacity, from Mysore to Shimoga Shed in 1982, on administrative grounds, as he is said to have misbehaved with the Loco Foreman, Mysore.



3. He was booked to work as Driver, on Passenger Train No. 926 Ex-Shimoga Town to Sagar, on 23.10.1984. The respondents state, that he reported for duty that day, in a state of intoxication and started disputing about the tender balance of coal consumed by the incoming driver of that train, who drove from Birur Junction to Shimoga Town. Even though the Fuel Maistry pointed out, the correct tender-balance of coal to him, the applicant did not accept the same and failed to start the train ^{as} per schedule. Thereon, he was asked by the Power Controller, to speak on the control telephone and get the matter resolved. As it was noticed that the applicant was incoherent in his speech, while talking on the control telephone, due to influence of alcohol, the Fitter Chargeman was called, who requested the Assistant Divisional Medical Officer (ADMO, for short), Shimoga Town, to medically examine the applicant. The ADMO who arrived soon after, examined the applicant and confirmed that he was under the influence of alcohol. A substitute driver was, therefore, summoned to operate the passenger train and in the process, the train was detained for nearly 20 minutes.



4. A charge sheet was served by R1, on the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1960 ("1968 Rules" for short) for this misdemeanour, on 6-5-1985, along with statements of (i) articles of charges framed against him, and (ii) imputation of misconduct in

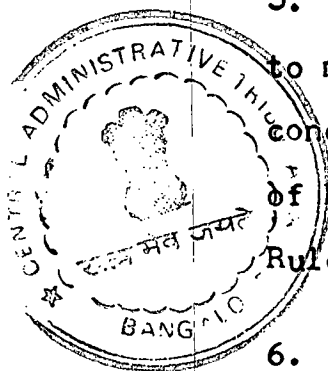
support of those charges. The articles of charges are reproduced below:

"That the said Sri C. Selvaraj committed misconduct and violated GR.2.09(2) in that, he was booked to work Train No.926 on 23-10-1984 Ex.SMET-SRF,he reported to duty in intoxicated condition after consuming liquor and started disputing with the tender balance of the coal consumed by the incoming driver of Sri Abdul Samad, who worked the said Train Ex-RRB-SMET. Sri Selvaraj,Driver 'B' did not adhere to the advice of FC/IC SMET to start the train and his physical condition was so bad that he was not able to speak properly. ADMO/SMET who examined him (C.Selvaraj) certified that he had consumed alcohol. Subsequently, another Driver had to be arranged to work the said train Ex-SMET-SRF which caused a detention of 120 mts on 23-10-1984 at SMET.

Thus the said Sri C. Selvaraj failed to maintain devotion to duty and has acted in a manner unbecoming of a railway servant and thereby contravened rule 3(1)(ii) and (iii) of Railway Service (Conduct) Rules, 1966, and he also appeared in public place in state of intoxication consuming intoxicating drink or drugs in excess and consumed intoxicating drinks within 8 hours with commencement of duty or during the course of the duty in contravention of Rule 22(2) of Railway Service (Conduct) Rules, 1966."

5. The applicant was held liable for failure to maintain devotion to duty and for unbecoming conduct of as a railway servant, in contravention of Rules (i) to (iii) of Railway Service (Conduct) Rules, 1966.

6. The applicant denied the charges on 16-9-1985. A regular departmental enquiry (DE, for short) was, thereafter, held against him.



7. Shri Balasubramanyam, SFI Mysore, was appointed as the Inquiring authority ('IA' for short). After completion of the DE, he submitted his report on 20.11.1985 to R-1, who was the DA, stating that he found him guilty of the charges. By his Order dated 5-12-1985 (Annexure-A), R-1 in his capacity as DA, held the applicant guilty of ^{the} charges, but taking a lenient view, reduced him to the lower post of Shunter, on pay of Rs. 342/- p.m. in the pay scale of Rs. 290-400, for a period of two years, with effect from 16-12-1985, on condition, that his seniority on restoration to the grade of Rs. 425-640, would be fixed, by giving him credit for the period of service rendered by him in the post of Driver Grade 'B', prior to his reduction. The period of his suspension from 23-10-1984 to 25-10-1985 was treated as "period not spent on duty". The applicant was advised, that if he so desired, he could prefer an appeal to the AA, through proper channel, within 45 days from the date of receipt of the order of DA.



8. The applicant thereon submitted an appeal to R-2, the AA, through R-1, which was, however, rejected by him on 17-7-1986, upholding the punishment meted by the DA. Thereafter, the applicant submitted a review petition to R-3, which too was rejected on 5-2-1987, in the following words:

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"There is telling evidence that, he was under influence of liquor, when he came for duty, which made him adopt a non-cooperative attitude. He has accepted that he has been given fair opportunity to defend himself. No revision of the order is called for."

9. The applicant states, that out of frustration at the blatant injustice caused to him, he tendered an application for voluntary retirement, but this was not accepted. He has, however, not furnished the particulars, regarding the dates of this application and its rejection by the authority concerned.

10. Aggrieved, the applicant has come before us, for redress.

11. Sri M. Raghavendrchar, learned counsel for the applicant, contended, that the DE held against his client, suffered from the following glaring infirmities:

(i) R-1, who initiated the DE against the applicant, was not competent to do so, as he was not the appointing authority, particularly when a major penalty was imposed. To support this contention, he relied upon the ratio of the decision of the Hyderabad Bench of this Tribunal rendered on 4-12-1987 in GAFOOR MIA & ORS. v. CHIEF COMMERCIAL SUPERINTENDENT, S.C.R., SECUNDERABAD (T.A.Nos. 470/86 and other connected applications), presided over, by the Chairman of the Tribunal.



(ii) No Presenting Officer was appointed for this DE and in his absence, the IA acted both as the Presenting Officer, as well as Prosecuting Officer, arrogating to himself the role of both the judge as well as the prosecutor.

(iii) The applicant was denied legitimate opportunity to substantiate his case, through his defence witnesses, even though he expressly asked for this opportunity, as was evident from the proceedings of the DE.

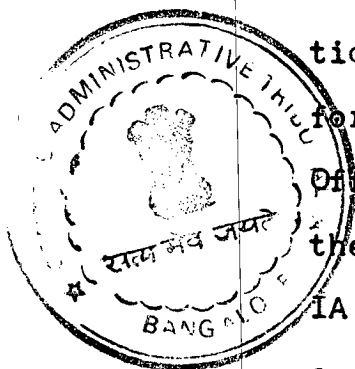
12. Shri Achar contended, that the breathalyser test of the applicant, carried out by ^{de}ADMO on 23-10-1984, as also the report of the Forensic Laboratory on the blood and urine analysis of the applicant, at the crucial time, revealed, that the alcohol percentage therein was infinitesimally small, being barely 0.073 per cent. Inviting our attention to the guidelines drawn up by the Southern Railways ('guidelines' for short), Sri Achar pointed out, that according to the limits of toxicity shown therein, with reference to different levels of intoxication, his client fell in an innocuous category, which by no means could be termed as toxic, so as to disable him from performing his duties as desired, as a railway driver. Further, these guidelines, he said, did not prohibit a railway employee from consuming liquor, 8 hours prior to his coming on duty.



13. It was clear from the foregoing, Sri Achar asserted, that his client was held guilty on perverse findings and on "no evidence", whatever, and therefore, deserved to be exonerated of the charges framed against him. Sri Achar alleged, that one of the main reasons, for his client being maliciously implicated in these charges was, the malpractice that was rife in the railways at Shimoga in regard to pilferage of railway coal, to which his client did not want to be a party and in fact, wanted to expose it, by questioning the tender balance of coal, whenever it was found short, at the time he was requested to operate the train. This was not palatable, he said, to his colleagues, who out of spite, got the above charges trumped up against him.

14. The respondents have filed their reply resisting the application.

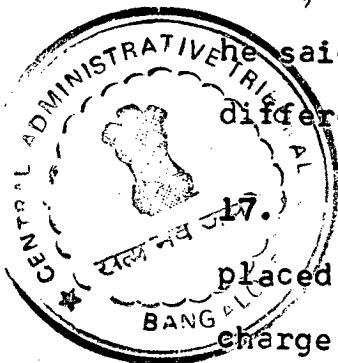
15. Sri K.V. Laxmanachar, learned counsel for the respondents, sought to rebut the various contentions urged by Sri Achar. He explained, that though for certain administrative reasons, a Presenting Officer was not appointed in the DE held against the applicant, the allegation of Sri Achar that the IA arrogated to himself the role of both the judge as well as the prosecutor, thereby vitiating the DE was ill-founded. The proceedings of the DE, he said, would reveal that the applicant was given reasonable



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opportunity to substantiate his defence and in fact, he himself had stated on the completion of the DE, that he was satisfied with its procedure. Sri Laxmanachar asserted, that at no time, during the course of the DE, did the applicant complain, that he was denied reasonable opportunity to defend himself or that the DE was not ~~in~~^{be} being conducted in accordance with the Rules and Regulations. This contention now urged by Sri Achar, he said, was clearly an after-thought.

16. As regards the contention of Sri Achar, that R-1 was not competent to initiate DE against the applicant, Sri Laxmanachar sought to counter the same, by referring to Schedule II to the 1968 Rules (Schedule II, for short) relating to disciplinary powers & powers of suspension of different grades of railway officers, according to which, he said, R-1 was competent to reduce railway staff in Groups 'C' & 'D' to a lower post or a lower time-scale of pay and therefore, to initiate the DE in respect of such punishment. The applicant, he said, belonged to Group 'D'. The ruling of this Tribunal in GAFOOR MIA's case, relied upon by Shri Achar, (vide para 11(i) above), he said, was not relevant to the facts of this case, being different.



17. As regards the "Guidelines", on which Shri Achar placed strong reliance, to exculpate his client of the charge of intoxication, Shri Laxmanachar stated, these guidelines had no sanctity, as they were not issued with

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the approval of the Railway Board. The crux of the matter, he emphasised, was, whether there was evidence to show, that the applicant was in a state of intoxication while on duty. If so, the level of intoxication on which Sri Achar laid undue emphasis, he said, had no relevance, considering specially, ~~the~~^{the} highly responsible duty, the applicant had to perform as a railway driver, with the safety of hundreds of passengers entrusted to his care. The fact that he was under a state of inebriation, while on duty, was noticed by more than one railway official, ^{which} clearly proved, Shri Laxmanachar asserted, that the applicant was not implicated in the charges, out of spite or malice, as alleged by Sri Achar.

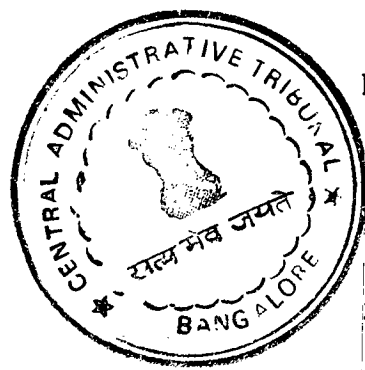
18. As regards the contention of Shri Achar, that his client was not given legitimate opportunity to produce his defence witnesses, Sri Laxmanachar clarified^{that} in reply to the memorandum of charges served on him on 16-4-1985, wherein this opportunity was extended to him by R-1, the applicant failed to avail of the same, and therefore, on account of this default, he could not now make a grievance. Even in the course of the DE, Sri Laxmanachar pointed out, that the applicant had not furnished the details of the defence witnesses he wished to be examined, as was evident from the DE proceedings. In these circumstances, he averred, that it could not be said, that the applicant was denied reasonable opportunity to defend himself.



19. Sri Achar stated, that his client had out of desperation, against gross injustice caused to him, ~~had~~ applied for voluntary retirement, which in itself revealed his bona fides, in that he did not want to taint his hands with the corrupt practice, indulged in by some of the railway employees, in the pilferage of railway coal. Yet, he said, he was not allowed to retire voluntarily.

20. Countering the above submission, Sri Laxmanachar clarified, that the applicant had requested for voluntary retirement, only after he was reverted as Shunter, by way of punishment meted out to him in the DE, as affirmed by the AA. The applicant, he stated, sought voluntary retirement not in the post of Shunter to which he was reverted, but as Driver Grade 'B', which was the post he held prior to his reversion. For obvious reasons, Sri Laxmanachar said, ~~that~~ ^{that} this request was not tenable.

21. Sri Laxmanachar further clarified, that at no time, did the applicant represent either orally or in writing, to the concerned authorities, about the alleged malpractice of pilferage of railway coal. He was propping up this excuse only now, he said, as a vain attempt to shield himself from guilt, in the DE.



22. Taking all the above facts into account, Sri Laxmanachar submitted, that there was no justification whatsoever, to annul the punishment meted out to the applicant, as prayed by him and in fact, he stated, that the punishment was more than lenient, as compared to the gravity of misconduct of the applicant and therefore, urged that the application be dismissed.

23. We have given our utmost thought to the rival pleadings and to the documentary evidence and other relevant material placed before us. Shri Achar at the threshold contended, that R-1 was not competent to initiate the DE against his client, for which he relied upon the ratio of the decision of the Full Bench of the Hyderabad Bench, of the Central Administrative Tribunal in GAFOOR MIA's case [vide para 11(i) above], which is extracted below, in so far as it is relevant to the case before us:

"The position in regard to the Railway Servants(Discipline and Appeal)Rules, 1968, is as below:

- (i) As an appointing authority only the highest among the appointing authorities, is competent to impose any of the penalties including the penalties specified in Article 311.
- (ii) Any appointing authority, if constituted specifically as a disciplinary authority, may impose any penalty as authorised under the rules governing disciplinary proceedings, but, such disciplinary authority cannot impose penalties specified in Art.311, unless that authority is also the authority which had appointed the particular Government servant or is an authority equivalent or superior in rank to such authority.
- (iii) A delegate of an appointing authority, by virtue of mere delegation of the power to appoint, is not competent to initiate disciplinary proceedings or impose any penalty.

(iv)



- (iv) A delegate of an appointing authority can initiate disciplinary action and impose penalties against a Government servant only if he is constituted as a disciplinary authority under the rules."

"In regard to initiation of disciplinary proceedings under these Rules:-

- (i) The President or any other authority empowered by the President by a general or special order and any disciplinary authority directed under Rule 8(1)(b) of the Railway Servants(Discipline and Appeal) Rules to institute disciplinary proceedings against any Railway servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule 6 may initiate disciplinary proceedings for imposing any penalty.
- (ii) in so far as a non-gazetted Railway servant is concerned, only an authority competent to impose a major penalty may initiate disciplinary proceedings for imposing a major penalty. "

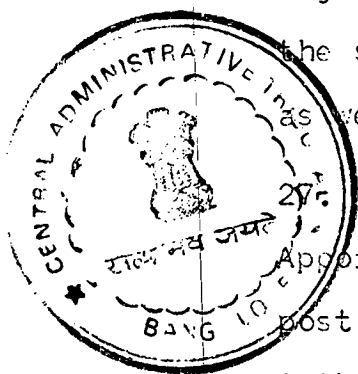


According to the above ratio, Shri Achar asserted, that only the General Manager of the Southern Railway, being the highest among the appointing authorities, was competent to initiate the DE against the applicant and impose the penalty against him.

25. Shri Laxmanachar rebutted this contention on the score, that the applicant had not urged this point in his application. Nevertheless he submitted, that according to the powers vested in Schedule II, R-1, ~~he~~ was competent, both to initiate the DE against the applicant, as also impose on him the penalty in question.

26. The applicant did not urge this ground before the disciplinary authorities constituted under the Rules. In his application too, before this Tribunal, the applicant has failed to do so. This ground however came to be urged for the first time, at the time of the hearing of the application before us. We are of the view, that this ground urged for the first time at the hearing, is not a case of "inherent want of jurisdiction" or "a pure question of law", which is normally permitted to be urged at the hearing. This ground now urged by the applicant, falls within the concept of 'mixed question of law and fact' and cannot, therefore, be permitted to be urged for the first time at the hearing. On this short premise, we must reject this ground, urged belatedly by Shri Achar. But, notwithstanding the same, we propose to examine the contention of merits, well.

Shri Laxmanachar informed us, that the Appointing Authority, who appointed the applicant to the post of Driver Grade-'B', was the very Disciplinary Authority himself and therefore in his capacity, as the Appointing Authority of the applicant, it was undoubtedly open to him to initiate disciplinary proceedings against him and impose penalty under the Rules. Shri Achar



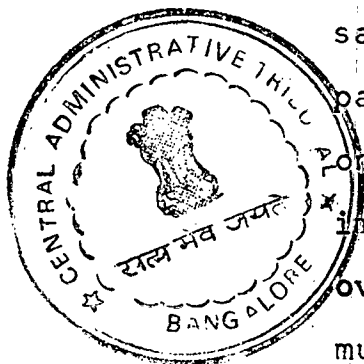
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did not dispute the factual assertion of Shri Laxmanachar.

28. The Appointing Authority of a Government servant and any authority superior to him, is undoubtedly competent to initiate disciplinary proceedings and inflict, any one of the penalties or more, as specified in the Rules. On this conclusion, it was doubtless open to the DA, to initiate the DE against the applicant and impose the penalty of reduction in rank, on him. We are of the view that GAFOOR MIA's case, which does not deal with this aspect, is not in point.

29. In more than one case, the Supreme Court has ruled, that any one of the disciplinary authorities specified in the Rules, can initiate disciplinary proceedings against a Government servant. The initiation of disciplinary proceedings and imposition of penalty are two separate and distinct acts. Under the Rules, the DA was competent to initiate the DE against the applicant and impose the penalty of reduction in rank, on him. On this view also, the contention urged for the applicant, is without any merit.

30. We have perused the above decision of the CAT in GAFOOR MIA's case, as well as Schedule II. We are satisfied, that according to this Schedule, which is a part of the statutory 1968 Rules, R-1 was competent not only to initiate the DE against the applicant but also to impose on him the punishment in question. We, therefore, overrule this contention of Shri Achar, not attaching much importance to the preliminary objection raised by Shri Laxmanachar, that this question is not urged in the application.



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31. We have looked into the next contention urged by Shri Achar, that the IA acted both as a judge as well as a prosecutor and that the DE was not conducted in a proper manner, as prescribed in the 1968 Rules, in that, the deposition of the applicant was not recorded in a narrative form, as examination-in-chief, but in the form of questions and answers, to lend it the character of cross-examination, which he said, was violative of natural justice and vitiated the DE.

32. We have examined carefully the deposition of applicant, in the course of the DE. Though at first sight, it gives a semblance, of the format of cross-examination, closer scrutiny however reveals, that the applicant was not denied reasonable opportunity to substantiate his defence. It shows that the applicant not only did not demur to his statement being recorded in the above manner but even acknowledged that "I am satisfied, with the facilities extended to me and the conduct of the enquiry".

33. It is an axiomatic rule of principle, that in disciplinary proceedings, technicalities of criminal law are not invoked and strict proof as enjoined by the Indian Evidence Act, is not applied with equal rigour. In this context, it is apposite to refer to the following observation of the Supreme Court in AIR 1957 SC 882 (UNION OF INDIA v. T.R. VARMA^{IA}):

"The Evidence Act has no application to enquiries conducted by Tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of



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the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed".

34. We are convinced, that in view of the above facts and in the light of the above dicta of the Supreme Court on the subject, there is no travesty of justice caused to the applicant, as alleged by Shri Achar. We, therefore, negative this contention.

35. The other contention of Shri Achar, that his client was not given the opportunity to produce his defence witnesses, as also certain documents in support of his defence, falls to the ground, by his own categorical admission as above, that he was satisfied with the conduct of the DE (vide para 32 ⁴² supra). Besides, Shri Laxmanachar pointed out, that even though opportunity was given to the applicant, at the time the chargesheet was served on him, on 6.5.1985, to furnish the details of witnesses if any, whom he wanted to call in support of his defence, he failed to avail of



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36. In the course of the DE, he said, the applicant neither produced his defence witnesses nor relevant documents in support of his defence, which fact he stressed, was recorded by the IA, at the end of the deposition of the applicant, on 6-9-1985. In this background, we find there is no merit in the contention of Shri Achar, that his client was denied reasonable opportunity to defend himself, and therefore, we reject the same.

37. We shall now deal with the contention held on to, as the last straw, by Shri Achar, canvassing with some passion, that his client was a helpless victim of punishment, in a DE based on "no evidence" or perverse evidence. Shri Achar alleged, that his client was maliciously implicated in the DE, solely because, he was not privy to the malpractice of pilferage of railway coal, which his colleagues were indulging in and which was said to be rife. The charge of intoxication against him therefore, was concocted he said, even though the breathalyser test carried out in the Forensic Laboratory, showed infinitesimally small trace of alcohol in his blood and urine, far below the toxic limits, as defined in the guidelines. It was evident therefrom he argued, that his client was never in a state of intoxication, but on the contrary, was in a sound state of mind and body, so as to be able to operate efficiently, Passenger Train No.926 Ex SMET-SRF, for which he was booked, on 23-10-1984.



Nil

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38. The first limb of Shri Achar's contention, that his client was maliciously implicated in the DE, primarily because he did not collude with his colleagues, in pilferring railway coal, a malpractice that was rife, does not seem to ring true, as Shri Achar did not bring to our notice, any evidence prior to the DE, held against his client, to show, that his client either orally or in writing, had brought this malpractice, promptly to the notice of the concerned-railway authorities for appropriate action. Ostensibly, this is an after-thought.

39. Let us next examine, the alleged incident of the applicant having imbibed liquor on 23-10-1984 and not being in a sound state of mind and body, to drive the passenger train entrusted to his care. As many as three different railway officials, namely the Fuel Maistry, the Fitter Chargeman and the incoming driver of the above passenger train, have unanimously corroborated in their statements, that on 28-10-1984, at the relevant time, the applicant who was on duty, was in a state of inebriation and was incoherent in his speech. It was noticed, that he could not even converse on the telephone, to explain the difficulty if any, he had, about the tender balance of coal. The ADMO who was called to examine him medically, certified by breathalyser test, that he was under the influence of alcohol and consequently, he was replaced as driver for the above train, in the interest of safety of the passengers and in the process, the train was avoidably detailed for as long as nearly two hours.

40. Certainly, all these four officials could not

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have conspired, out of malice to implicate the applicant, in the incident, as alleged by Shri Achar. Even the Forensic Laboratory analysis of his blood and urine sample, carried out later, revealed traces of alcohol in his system, whatever its percentage.

41. Shri Achar was at pains to convince us, that the quantity of alcohol imbibed by his client, at the material time, was according to the guidelines innocuous, as it was far below the toxic limit. We are indeed bemused by this line of argument, which seems to us, as a last-ditch effort by the counsel, to somehow, extricate his client from the tangle. In fact, we notice that his argument has trailed off into absurdity.

42. Certainly, we do not need to be enlightened on the metaphysics of inebriation, specially in a case of the like, we are now dealing with, where lives of hundreds of passengers were entrusted to the care of a railway driver. Would anyone in his senses, entrust this onerous responsibility to a driver, who was under the influence of alcohol, while on duty, on the premise, that he had drunk "thus far and no farther", in accordance with those ludicrous guidelines, to which our pointed attention was drawn, by the learned counsel for the applicant? One would shudder to imagine the consequences. If with railway drivers, remaining sober while on duty, the incidence of railway accidents cannot be said to be few and far between, one need not stretch one's imagination to realise, what the disastrous result would be, if indulgence is shown

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according to those "allowed" guidelines, to errant drivers, merrily imbibing liquor, whatever the quantity, at their post of duty, as suggested by the learned counsel for the applicant. We would earnestly exhort the Railway Board, to look into these guidelines with all seriousness, at the earliest, to ensure the safety of the Indian Railways and their passengers.

43. We notice, that the applicant had not volunteered to retire before the punishment was meted out to him in the DE, as stated by his counsel, wherein he was reduced to the post of Shunter, from the post of Driver 'B' Grade, as spelt out, in the final order, in that DE. He is seen to have offered to retire voluntarily as Driver 'B' Grade, after the punishment (emphasis added) was meted out to him as above. This request of the applicant ex facie, does not seem tenable, considering, that in the light of the above analysis of facts and circumstances, he was guilty of the charges framed against him, in the DE and the punishment awarded to him could by no means be regarded as severe, as compared to the gravity of those charges.

44. Incidentally we took a peep, into the past service record of the applicant to verify his antecedents. The following account is revealing:

- (i) The annual increment raising his pay from Rs 330/- to Rs 340/- per mensem was withheld by R-1 for three months without cumulative effect, by his Order dated 25-9-1980 for the irregularity of fusing lead plugs.

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- (ii) He was censured by R-1, by his Order dated 19-4-1984 for exceeding the speed limit of the train;
- (iii) He was found to be in a heavy state of intoxication on 8-11-1984, when he attended the viva voce for selection to the post of Driver-A, which was witnessed by the Selection Committee comprising the DME, DSO and APO II, for which he was severely warned by R-1 by his Order dated 9-11-1984;
- (iv) He had attempted to physically assault Fitter Chargeman/IC/SMET, in an intoxicated state on 27-4-1985, when R-1 and SER Mysore were camping at Shimoga, for which his annual increment was withheld for a period of 12 months, without cumulative effect.
- (v) His annual increment raising his pay from Rs.450/- to Rs.470/- per mensem, was withheld by R-1 for 12 months, with cumulative effect, by his Order dated 17-7-1985, for unauthorised occupation of the railway quarters.
- (vi) His annual increment was further withheld by R-1, for 12 months by his Order dated 25-7-1985, for physically assaulting the Fitter Chargeman, Shimoga, on the railway platform on 17-4-1985.



It is apparent from the above, that the applicant has had a proverbial cat's life and that he believed in the "delicious art, of living dangerously". His

service

service record, betrays addiction to drink and contumacious, uncivil and indisciplined behaviour. With such a lurid record, the applicant forfeits sympathy.

46. Before parting with this case, it is necessary to notice another averment of the respondents and the submissions made thereon, though they do not bear much on the questions we have dealt with.

47. As noticed earlier, the Disciplinary Authority made his Order on 5-12-1985 and that order had not been stayed either by the Appellate Authority and the Reviewing Authority or by this Tribunal. In that view, the applicant was bound to report for duty, in the lower post, namely that of Shunter and work in that capacity. But, the applicant unauthorisedly remained absent from duty inordinately long from 12-12-1985 continuously, to date, insisting that he should be allowed to retire voluntarily only as Driver Grade-B. The applicant did not also report for duty as Driver Grade 'B', even after expiry of punishment of the DE in question, though he had been advised, to resume duty, to help consider his case for voluntary retirement. We are indeed dismayed at this nonchalant and intransigent attitude and conduct of the applicant, which does not at all conduce to maintenance of discipline and efficient discharge of duty in public interest. Whether the applicant should even now report for duty or not, in compliance with the Order in question and as to in what manner the intervening period of his absence from duty should be decided, are matters to be decided



CC

by the applicant and the authorities concerned,
in accordance with law.

48. In the light of what we have analysed
and discussed above (apart from his adverse past
service record), we are convinced, that the
contention of Shri Achar, that the applicant was
punished in the DE in question, on "no evidence"
or on "perverse evidence", is wholly unfounded and
we therefore reject the same.

49. In the result, the application fails
and we dismiss the same with no orders however,
as to costs.



Sd/-
R. S. PUTTASWAMY)
VICE CHAIRMAN

Sd/-
(L.H.A. REGO) 15.7.1985
MEMBER(A)

TRUE COPY

22/7/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE