

~~NEW DELHI~~
HYDERABAD

O.A. No. 524 of 1987 198
~~Tax No.~~

DATE OF DECISION _____

Mr. P. B. Dasan

Party-in-person
~~MxxPxVxxSxxSxxRmxxRmxx~~ Advocate for the Petitioner(s)

Versus

General Manager, S.C. Railway, and 2 other Respondents

Mr.N.R.Devaraj Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.N. JAYASIMHA :: VICE CHAIRMAN

The Hon'ble Mr. D. SURYA RAO :: MEMBER (JUDICIAL)

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. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

[Signature]
(HVC)

D. S. Rao
(HM-J)

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ORIGINAL APPLICATION NO. 524 of 1987.

(Judgment prepared by Sri D.Surya Rao, M(J))

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1. The applicant herein was working as Assistant Station Master, Rechni Road Station which lies between Kazipet and Ballarsha stations. He was on duty on 13-3-86 between 16-00 hours to 00-00 hours. During this time Train No. 128 passed through Rechni Road Station from Ballarsha towards Kazipet. It is the case of the applicant that the line between Ballarsha and Rechni Road Station was a single line whereas the line between Rechni Road to Kazipet was a double line. It is the applicant's case that on 13-3-1986 at 19-45 hours Train No. 128 Down passed Rechni road station without tail lamp and proceeded to Bellampalli i.e. on the Kazipet side. When a train pass^{es} without a tail lamp the Station Master on duty has to observe General Rule 4.17 and other allied rules. This rule states that till such time the defect is remedied, the train has to be treated as an incomplete vehicle and that the Station Master should not allow any train to

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enter the section between Rechni Road Station and Repalliwada on the Ballarsha line (Single Line).

The applicant states that he intimated the next station viz., Bellampalli that Train No.128 is not having tail lamp. Train No.128 passed through

Bellampalli, Mandamarri, Mancheri, Peddampet

and finally ^{reached} Ramagundam which takes about 33 minutes to

run. After this lapse of 33 minutes this train was

detained at Ramagundam and the lapse relating tail

lamp not being lit was rectified at about 20-18 hours.

In the meanwhile, train No. 907 express approached

Rechni Road Station i.e., the station of which the

applicant was Station Master on the double line from

Kazipet and Ballarsha. Since Train No.128 had passed

through without a tail lamp the applicant did not

clear the block between Rechni Road Station and the

next station Repalliwada (Single Line) to enable train

No. 907 Express to pass through till he got confirmation

about the defect in train No. 128 having been rectified.

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This resulted in a delay of 25 minutes in giving clearance to train no. 907. After the incidence, the applicant received a charge memo issued by the third respondent who is not having any jurisdiction to issue such charge sheet\$ on 17-3-1986. Three charges were contained in the said charge sheet. The first being that the applicant deliberately detained Train No.907 for 5minutes at the home signal of ^{and for 20 minutes at Rechni Road Station} Rechni Road Station by not clearing the section between Rechni Road Station and Repalliwada. The second charge is that the applicant had not informed/ advised ASM, Bellampalli regarding 128 express having passed through without tail lamp and thus he had violated Block Manual Rule No. 5.9 and General Rule 4.17. The third charge is that the applicant had violated rule No. 3(1)(i)(ii) and (iii) of Railway Servants (Discipline and Appeal) Rules 1968. The applicant contends that he sought inspection on 21-3-86 of certain documents relied upon for proving the

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charges framed against him and also sought two more additional documents for giving explanation to the charge sheet. He also gave the names of witnesses to be examined on his behalf. He was not given inspection by the third respondent. The applicant again submitted a letter dated 3-4-1986 calling upon the third respondent to make available the documents. The third respondent without giving an opportunity for submission of explanation appointed Asst. Operating Superintendant of works as Enquiry Officer on 16-4-1986. The applicant states that non-furnishing of the documents precluded him from filing his explanation to the memorandum of charges and that commencing an enquiry without obtaining his explanation violates the Railway Servants (Discipline and Appeal) Rules 1968. The Enquiry Officer after enquiry held that the first charge namely relating to detention of train no. 907 at Rechni Road Station was proved. Consequently he also held that charge No.3 is violative of Conduct Rules is proved. The second

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charge that the applicant failed to advise ASM, Bellam-
pally relating ^{to} train No.128 passing through without
a tail lamp is not held proved. Basing upon the
Enquiry Officer's report, the third respondent passed
the impugned orders of removal i.e. proceedings No.
T.P.6/RECH/3/86 dt. 1/6-1-1987. The applicant pre-
ferred an appeal to the second respondent on 3-2-1987.
The second respondent confirmed the orders of removal
passed by the third respondent by an order dated
10-4-1987. Various Grounds are raised in the appli-
cation. The first being that the Chief Personnel Officer,
South Central Railway, Secunderabad, was the appointing
authority and that he ^{also} should have initiated action
and passed the impugned order. The second ground raised
is that no reasonable opportunity for perusing the
documents relied upon by the authorities for proving
all the charges was given, and, therefore, the orders
of removal are bad. The third ground raised is that
the applicant was not furnished inspection of the
records in support of the charges and ^{that} he did not receive

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any reply either from third respondent or from the Enquiry Officer for perusing all the documents required and, therefore, the enquiry is bad. It is further stated that punishment is disproportionate to the charges framed. It is stated that the appellate order is not a speaking order and that the same was passed without giving an opportunity for personal hearing, and, therefore, the appellate order is liable to be set-aside. The applicant further states that since train No.128 had passed through without a tail lamp it was incumbent upon him under General Rule 4.17 and other instructions issued from time to time to detain train no. 907 till he received confirmation that the defect in train no. 128 has been rectified. The applicant states that because he has strictly followed the rules he is being victimised and was sought to be removed from service. He further stated that the third respondent tampered ^{with} all the records to show that the defect in Train No. 128 was cleared at 20-02 hours and ^{states} that the clearance could have only been at 20-22. For these reasons the impugned orders are sought to be set-aside.

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2. A counter has been filed on behalf of the respondents stating that the applicant was appointed by the Assistant Personnel Officer (MG) by proceedings dated 25-6-1981 and as such the appointing authority of the applicant is not the Chief Personnel Officer but the Assistant Personnel Officer. It is stated that on 13-3-1986 the applicant while on duty found that Train No. 128 Super Express proceeding to Bangalore without a tail lamp. He thereby had not cleared the section between Rechni Road-Repallewada which is a single line and detained train No. 907 at Rechni Road Station. He has orally informed the next station viz., ASM, Bellampalli 'A' Cabin about Train No. 128 passing without tail lamp. It is stated in the counter that the applicant only acted partly according to provision of GR 4.17. It is stated that even after getting advise from the station in advance that the ^{Train No. 128} ~~Train~~ (128) is complete from the Assistant Station Master, Bellampalli 'A' Cabin at 20-02 hours, ^{he} failed to clear the section between

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Rechni Road Station-Repallewada. He proceeded to detain train No. 907 till 128 Express was stopped at Ramagundam. It is stated that once the Station Master i.e. ASM, Bellam-
has
pally/closed the block section, it means he is accepting the total responsibility of ensuring about the intactness of the train. Under Rule 56 of W.T.T., if the next station or some other station gives confirmation about the completeness of the train it was the duty of the applicant to clear the block section. In the instant case, since the next station viz., 'A' Cabin, Bellampally had given confirmation to the applicant at 20-02 hours, there was no necessity for the applicant to get such confirmation and he ought to have cleared Train No. 907 at 20-02 hours itself. It is further stated that the Controller on duty Sri V.K.Murthy, advised the applicant that the subsequent stations of Rechni Road viz., Mancheri/ Bellampally had cleared the sections after passage of Train No. 128 after ensuring that it was intact, but the applicant insisted upon the train No. 128 being stopped and verified. Therefore, it is stated that the applicant

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did not close the section between Rechni Road-Repallewada, but deliberately detained Train No. 907 and that he thereby violated General Rule 4.17 2(C). The Second charge is dropped since the applicant had given oral advise about Brain No. 128 passing without a tail lamp. The third charge is the consequence to the first charge. It is stated that the applicant was given an opportunity to scrutinise the records on 5-5-1986 and again on 27-5-1986 and that the enquiry ~~or~~ was ordered on 11-6-1986. It is stated that on the dates mentioned above, the applicant did not attend office to scrutinise the records. It is stated that he had examined all records/witnesses and further requested to make available some more witnesses by his applications dt. 19-9-86 and 22-10-1986 and that the enquiry was commenced only on 14-10-1986. After completion of the enquiry, the third respondent imposed the penalty of removal from service while informing the applicant that he could prefer an appeal to the competent authority. The Second respondent, appellate authority, considered the appeal and the entire case including the

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enquiry report and the detailed remarks of the disciplinary authority and thereafter confirmed the penalty of removal from service imposed by the third respondent. The allegations ~~for~~^{of} bias etc., are denied. The counter reiterates once again that the applicant ought not to have detained Train No. 907 super express when he had been informed by the ASM, Bellampally, preceding station, that Train No. 907 had been cleared from Kazipet - Balharshah, that by all the intermediary stations viz., Mancherial and Mandhamari, that he was also informed of the same by the Controller who controls and supervise the movements of the trains and that the applicant ought not to have insisted on stopping of Train No. 128 at Ramagundam. The applicant, thus, flouted the rules and unnecessary^{il} stopped the two super fast trains causing dislocation to the running of the trains. As this whimsical attitude of the applicant is~~the~~^a serious irregularity, the authorities felt it necessary to impose the severe punishment of removal from service. It is denied that there was any tampering of the records as alleged in the applicant. It is contended finally by the respondents that the

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applicant had only complied with SR 4.17 2(a) & (b) and that he had failed to comply with SR 4.17 2(c) of the General Rules.

3. We have heard the arguments of the applicant's party - in person, Sri N.R.Devaraj, Standing counsel for the Department. Before proceeding to discuss the contentions, it would be necessary to show the chart comprising the relevant stations and the approximate timings of arrival and departure. The said chart is extracted as follows:

128 EXPRESS →						
Hrs. 19.45	Hrs. 19.52	Hrs. 20.00	Hrs. 20.05	Hrs. 20.10	20.15	Hrs-
Rechniroad	Beelam- pally	Mandamary	Mancherial	Peddam- pet	20.18	Ramagundam
X	X	X	X	X	X	X
← 907 EXPRESS						
Regally- 20.05(Arr) 2030(Dept.)						

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Express
128/had passed through Rechni Road at 19-45hours on
13-3-1986 without a tail lamp. According to the
applicant he has to intimate the next station viz.,

The reason for this being done is ^{that there is} a possibility of ^{some of} the
Wagons of ^{happening for - detached} Train No. 128 ~~Daily Wagon~~ have got itself detached some

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got ~~itself~~ detached and that the defect regarding the tail lamp is rectified and the applicant informed that it would be open to him to have allowed 907 to proceed beyond Rechni Road towards Repalliwada. The applicant states that by detaining Train No. 907 he had strictly complied with General Rule 4.17. It is the case of the respondent however that once Train No. 907 had been cleared by the ASM, Bellampally 'B' Cabin, which he actually did so at 20-02 hours, it was the duty of the applicant to have allowed Train No. 907 to go through to Repalliwada. It is the case of the respondents that the Controller had also confirmed that Train No. 907 had been cleared by the various stations between Ramagundam and Bellampally. In view thereof, the applicant also should have cleared Train No. 907. Before considering these rival contentions, it would be necessary to consider General Rule 4.17 which reads as follows:--

"4.17 Responsibility of Station Master regarding tail board or tail lamp of passing trains--

(1)The Station Master shall see that the last vehicle of every train passing through his station is provided with a tail board or tail lamp or such other device in accordance with the provisions of R Rule 4.16.

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(2) If a train passes the station without such indication to show that it is complete, the Station Master shall --

(a) immediately advise the station in advance to stop the train to see that the defect is remedied and to advise whether or not the train is is complete.

(b) meanwhile withhold the closing of the block section to ensure that no train is allowed to enter the block section from the station in rear, and

(c) unless the station in advance has advised that the train is complete, neither consider the block section in rear as clear nor close it."

4. ~~The learned counsel for the applicant~~ ^{who appeared in person} had contended ^{in his application} initially that the competent authority had not passed the order of removal in that he had been appointed by the Chief Personnel Officer. He did not, however, seek to press the question of competency of the disciplinary authority but sought a decision only on the merits. In regard to the merits of the case the main contentions are (1) That the applicant had strictly followed Rule 417(2)(a)(b) and (c) and hence no action could be taken against him for detaining Train No. 907.

(2) That the enquiry is vitiated in that even prior to appointment of the Enquiry Officer and during the course

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of the enquiry he was not given a reasonable opportunity in that he was not given inspection of relevant documents and relevant witnesses were not examined. (3) That the order of the appellate authority is not a speaking order. In regard to the plea that the applicant had followed General Rule 417, it is the case of the respondents that he has only followed clause (a) & (b) thereof and not clause (c) in that he was advised by the preceding station to clear Train No. 907 but he failed to do so. The finding of the Enquiry Officer is that it was not necessary to advise the applicant by way of a written message. The finding of the enquiry officer in this regard is in the following terms:

"The contention of the accused is that CASM 'A' BPA did not 'advise'. This advise can be oral or through stipulated bell code also. The very fact that the block section was cleared by CASM 'A' Cabin/BPA itself is nothing but one of the accepted ways of advising."

The applicant's further plea is that there has been tampering of documents by P.W.1. In regard to non-furnishing of documents for inspection, it is contended by Sri Devaraj that since at the close of the enquiry the applicant had expressed satisfaction as to the

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manner of conducting the enquiry, it is not open to him to now say that no reasonable opportunity has been given.

5. We will take up the 3rd contention raised on behalf of the applicant first viz., that the appellate order is not a speaking order. The appellate authorities order dt.10-4-1987 reads as follows:

" I have gone through the case in detail including the enquiry report and the detailed remarks of Disciplinary authority on the appeal made by Shri P.B.Dasan. After careful consideration I have come to the conclusion that the penalty imposed by disciplinary authority should stand good".

It is obvious that the appellate authority has not given any reasons for rejecting the appeal of the applicant.

The Supreme Court in Ram Chander Vs. Union of India and others reported in A.T.R. 1986 (2) SC 252 held as follows:

"4. The duty to give reasons is an incident of the judicial process. So, in R.P.Bhatt Vs. Union of India (AIR 1986 SC 143) this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed (SCC p.654, para 4)

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It is clear upon the term of Rule 27(2) that the appellate authority is required to consider that (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc., the penalty or remit back the case to the authority which imposed the same.

It was held that the word 'consider' in Rule 27(2) of the Rules implied 'due application of mind'. The court emphasized that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director-General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record." In the present case, the impugned order of the Railway Board is in these terms:

(1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under:

- (a) by the evidence on record, the findings of the disciplinary authority are warranted; and
- (b) the penalty of removal from service imposed on you is merited.

(2) The Railway Board have therefore rejected the appeal preferred by you.

5. To say the least, this is just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway servants without any attempt on

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the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary could be sustained or not."

Following the above decision of the Supreme Court, it follows that this application has to be allowed and the matter remanded to the appellate authority for reconsideration and passing of an order in accordance with the Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968.

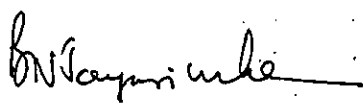
6. Apart from the fact that this case warrants a remand to the appellate authority on the basis of the decision of Ramachander Vs. Union of India, the technical nature of the questions involved ^{also} requires application of mind by a competent departmental authority. As already indicated at para 4 above the Enquiry Officer has given a finding that clearing of the Block Section by the ASM 'A' Cabin/ Bellampally is one way of advising the next station and amounts to compliance of General Rule 4.17(2)(c) and that there is no need to send a written advise or message. Thus ^{while} the stand of the Department ~~seems to~~ proceed

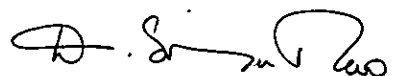
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on the basis that this is the practise adopted in complying
the case of the applicant is that written advice is necessary.
with General Rule 4.17(2)(c) Whether such a practise
exists and is accepted by the Railways is a matter for the
appellate authority to go into and give his specific
finding thereon. It is open to the applicant to agitate
this matter and all other matters raised by him in his
grounds of appeal and in the present application before
us before the appellate authority. The appellate authority
will also give the applicant a personal hearing if he
so desires. The matter is accordingly remanded to the
appellate authority for fresh disposal of the appeal in
the light of the directions given above. The application
is allowed to this extent. In the circumstances of the
case there will be no order as to costs.

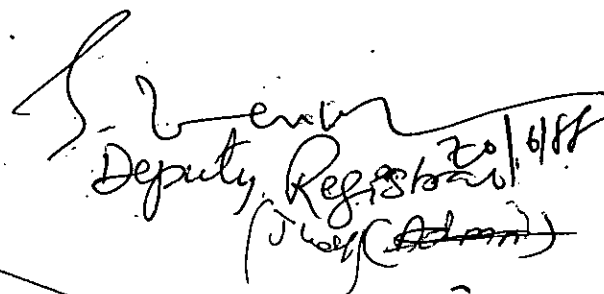

(B.N. JAYASIMHA)
VICE CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDL)

DT. ¹⁰10 June, 1988.

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Deputy Registrar
(J. S. Rao)
20/6/88