

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00313/2014

Tuesday, this the 14th day of August, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

1. R. Velu Asari,
Aged 62 years, S/o. B. Ramasamy Asari,
(Retd. Chief Commercial Clerk Gr. II/ Southern Railway/
Palakkad Division) Presently residing at: No. 28,
Subbu Street, L.B. Road, Thiruvanmiyur P.O.,
Chennai – 600 041.

..... **Applicant**

(By Advocate – Mr. T.C.G. Swamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters office,
Park Town P.O., Chennai – 600 003.
2. The Sr. Divisional commercial Manager,
Southern Railway, Palghat Division, Palghat – 678 002.
3. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division, Palghat – 678 002.
4. The Chief Commercial Manager (Passenger Service),
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.

..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This Original Application having been heard on 07.08.2018, the Tribunal on the 14.08.2018 .day delivered the following:

ORDER**Per: Ashish Kalia, Judicial Member**

The applicant who is an ex-Chief Commercial Clerk Gr.II of Palghat Division of Southern Railway is aggrieved by Annexure A.1 to A3 impugned orders of penalty of removal from service, order of the appellate authority and also the revisionary authority. He seeks the following reliefs in this O.A.

- i. Call for the records leading to the issue of Annexure A1 A3 and quash the same.
- ii. Direct the respondents to grant all the consequential benefits as if A1 to A3 had not been issued at all, including the promotional and retirement benefits due;
- iii. Award costs of and incidental to this application;
- iv. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. Applicant has filed M.A. 180/00436/2014 seeking condonation of delay in filing this O.A. For the reasons stated by the applicant in the M.A. the delay of 115 days is condoned . M.A. is allowed.

3. The facts in brief are that the applicant was initially appointed as a Commercial Clerk with effect from 15.10.1980 and later transferred to the Trivandrum Division on request and was promoted from time to time and was working as a Chief Commercial Clerk Gr.II in P.B. 2 + GP of Rs.4200/-. There was a Vigilance check conducted and the applicant was suspended and later transferred to Palakkad Division of Southern Railway during the year 2007. After joining the Palakkad Division, the applicant was issued with a major Penalty Charge Memorandum dated 22.6.2009 vide Annexure A.4 . The charges framed against the applicant are as under :

(i) He did not cancel the II M/E tickets No. 228392292, 228392293 (Ex-TCR-ERS and II M/E ticket No. 228392294 (Ex-TCR-AWY) tendered by Shri A.S.Kannan, CON/84/NGO-A/MAS for cancellation, either manually or in the system, with the intention of re-selling them.

(ii) He re-sold the II M/E ticket No. 228392292 (Ex-TCR-ERS) to Shri R.K. Raina, a passenger from Delhi and retained the clerkage charge for his personal gains.

(iii) He did not co-operate with the Vigilance during the check.

Thus, Shri R. Velu Asari, CCC/II/OTP (then CCC/II/TCR) had violated the provisions of Para No. 263- 264 of IRCM (Co.-I) and contravened Rule No. 3.1 (I) (ii) & (iii) of Railway Services (Conduct) Rules 1966.

4. The applicant denied the allegations and an inquiry was conducted vide Annexure A5 proceedings. The Presenting Officer submitted its brief vide Annexure A6 and applicant submitted Annexure A.7 detailed defence statement pointing out his innocence stating that the whole case was cooked up by the vigilance team that there was no evidence on record and that the absence of valid evidence and irregularities in the process of conducting the Inquiry resulted in substantial prejudice in defending the case. The applicant's case is that though there was no evidence on record, the applicant was found guilty by the Inquiry Officer. Applicant also filed Annexure A.8 objections. It is argued by the applicant that despite the absence of any valid or legal evidence the applicant was imposed with Annexure A.1 penalty of

OA180/00313/2014

removal from service. Aggrieved by Annexure A.1 penalty order applicant has filed Annexure A9 appeal under Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 to the 3rd Respondents, Additional Divisional Railway Manager, Palghat Division of Southern Railway. However, vide Annexure A2 order his appeal was rejected and confirmed the penalty of removal from service. He preferred Annexure A.10 revision petition under Rule 25 of the RS (D&A) Rules 1968. Since the Revision Petition was not disposed of within the stipulated time frame despite several reminders, the applicant approached this Tribunal in O.A.989/2012 and the said O.A. was disposed of vide Annexure A.12 order directing the 4th respondent to consider and dispose of the pending revision petition. Accordingly vide Annexure A.3 order the penalty of removal was modified to compulsory retirement but with only 80% pension and gratuity. It is the case of the applicant that the applicant's normal date of superannuation was 31.01.2012 and the applicant was imposed with the penalty of removal from service with effect from 26.08.2011 i.e. hardly five months before the date of superannuation that too on an allegation that the applicant had misappropriated an amount of Rs.10/- (Rupees ten only) during the year 2007. It is submitted by the applicant that his only son, daughter-in-law and grandchild met with an accident and passed away. Due to this the only succor to the family also vanished.

5. It is contended on behalf of the applicant that Annexure A1 to A3 are totally arbitrary, discriminatory contrary to law, opposed to the principles of natural justice and hence violative of the Constitutional guarantee enshrined

OA180/00313/2014

in Articles 14, 16 and 311. Annexures A1 to A3 are not based on relevant considerations, but based on irrelevant considerations. The same are without application of mind and hence, arbitrary and unconstitutional for this reason as well. It is argued that there was no evidence on record to substantiate the allegation against the applicant.

6. Notices were issued and the respondents filed the detailed written statement in reply denying the contentions of the applicant.

7. Applicant has filed rejoinder and reiterated the contentions raised in the O.A.

8. Heard the learned counsel for the applicant Shri T.C.Govindaswamy and Mr. Thomas Mathew Nellimoottil, Sr.PCGC appearing for the respondents and perused the record and considered the rival submissions and the case law cited by them.

9. The applicant has assailed the penalty order as well as the revision order on the ground that there was no evidence on record to substantiate the allegation against the applicant. It is also pleaded that in the trap there should have been an independent witness which is absent in the present case. The penalty order is also disproportionate to the gravity of charge and also alleged that reasonable opportunity of defending himself has been denied at every stage. Even material witnesses was not produced. Even material witnesses were not produced.

10. As per the contentions of the respondents applicant has violated provisions of para 263 and 264 of Indian Railway Commercial Manual Vol. I applicant has failed to maintain absolute integrity to show devotion to duty

OA180/00313/2014

and acted in a manner unbecoming of a Railway Servant and contravened the Rule 3 (I) (i) (ii) and (iii) of Railway Servants Disciplinary and Conduct Rules 1966. A charge Memo was issued to him thereafter and proper Departmental Inquiry was held. He was allowed to participate in the inquiry and defence assistant was given opportunity to cross examine him to the witnesses. Thereafter on completion of inquiry he was awarded punishment of removal from service and revisionary authority has taken lenient view and converted the order of removal from service into compulsory retirement with 80% of the compensation pension and gratuity from the date of termination.

Prima facie it seems to us the inquiry is done in a proper manner, the applicant was given a fair opportunity to defend his case and Mr. R.K. Raina was summoned by the Inquiry Officer. He did not turn up in the inquiry. It was alleged by the Department a person whose ticket got cancelled by the applicant. But it is not fatal to the case of the applicant as he could have also produced him as a defence witness which he did not do it. During the vigilance proceedings the applicant has signed the proceedings, it was found during the surprise vigilance check on 21.8.2007 three tickets were got cancelled by the applicant nor clerkage money was deposited with the Railways and thereafter running away from the counter by pushing the vigilance team. When Vigilance asked Shri R.Velu Asari to produce his personal cash, he stated that his personal cash was inside his purse which was in the adjacent record room. He was asked to come to the record room for the production of the personal cash. The Vigilance team along with the applicant went into the record room. In the record room Applicant took out a bundle

OA180/00313/2014

of currency from his left shirt pocket and rolled it into the dhoti he was wearing. The Vigilance asked him to reveal the currency he was concealing in the dhoti. But he said that he urgently wanted to go to the toilet. The vigilance requested him to produce the concealed currency and then to go. But he pushed aside Mr. P. Thangamohan, CVI/T who was standing beside him and rushed into the toilet and bolted the door inside. After some time he came back and declared he was not having any personal cash with him. She he did not fill up the personal cash produced column of the cash statement. This act of the applicant clearly shows that he has something to hide or he has done something wrong. If the applicant has not done any mistake he should have faced the Vigilance Team boldly by his side of version but in this case he has not done so. There is hardly any truth in the submission made by the applicant. He has never presented in the list of the witnesses by showing Mr. R.K.Raina as Defence Witness to prove his case. This also goes against the applicant. Therefore the applicant fails to convince the Tribunal on this count.

11. With regard to the submission made by the applicant that he was not given personal hearing during the course of passing the Annexure A.3 revisionary order by the revisionary authority and relied upon the judgement of Hon'ble Supreme Court in the case of *Ram Chander v. . UOI 1986 SCC (L&S) 383* and also the judgment in the case of *M. Gopalkrishna Naidu v. The state of M.P. 1968 (1) SCR 355* are not also sound very good. The revisionary authority has passed detailed order have taken a lenient view keeping in view of the personal and mitigating circumstance of the applicant

OA180/00313/2014

as his son had expired due to a road accident etc by converting his penalty of removal from service into compulsory retirement while observing the conduct of the applicant during the vigilance and other circumstances. In our view the revisionary authority passed a just and proper order in the facts and circumstances of the case. Even if the applicant would have been present present before the Revisionary Authority nothing best could have been done then what is done by the revisionary authority in the present case. Lastly Mr. T.C. Govinda swamy learned counsel for the applicant submitted during the course of hearing that the the Revisionary Authority has no power to withhold the compensation pension on compulsory retirement. Rule 64 of Railway Service (Pension) Rules, 1993 reads as under:

“ **64.Compulsory retirement pension:** (1) A railway servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement.

(2) Whenever, in the case of a railway servant the President passes an order (whether original, appellate or in the exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

65. Compassionate Allowance. (1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

OA180/00313/2014

If we go through the Rule 64(1) and 64(2) it is very clearly that penalty can be granted upto 2/3 for both pension and gratuity whereas in the present case the pensions or pensionary benefits withheld to the extent of 20% is well within the powers of the revisionary authority. Thus this ground also does not convince the Tribunal. The case law cited by the learned counsel for the applicant is not relevant to the present case as it is distinguishable.

12. We have also gone through the judgement cited by the learned Sr. PCGC for the respondents in the case of *Regional Manager, U.P.S.R.T.C v. Hoti Lal & Anr.* In Civil (Appeal) 5984 of 2000 dated 11.2.2003 in which it was observed that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. We are fully guided by the principles laid down by the Hon'ble Apex Court.

13. In view of this, we find no merit which warrants the interference of this Tribunal and the impugned orders passed by the authorities are just and proper.

14. Accordingly, the O.A. is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER
sj*

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures of the applicant

- Annexure A-1 - A true copy of Penalty Advice bearing No. CON/ J/ V/522/VA dated 26/08/2011 issued by 2nd respondent.
- Annexure A-2 - A true copy of Appellate Order bearing No. CON/ J/ V/522/VA dated 17.02.2012 issued by 3rd respondent.
- Annexure A-3 - A true copy of Revision Order bearing No. P(A)86/2012/542 dated 24.01.2013 issued by the 4th respondent and communicated by the Divisional Railway Manager/ Confidential/ Palakkad.
- Annexure A-4 - A true copy of Charge Memorandum under No. CON/ J/ V/522/VA dated 22.06.2009, a true copy of which, issued from the office of the 2nd respondent.
- Annexure A-5 - A true copy of the proceedings of the Inquiry conducted on different days.
- Annexure A-6 - A true copy of the written brief submitted by the Presenting Officer dated 06.12.2010.
- Annexure A-7 - A true copy of the defence brief submitted by the applicant, dated 16.12.2010 addressed to the Inquiry Authority.
- Annexure A-8 - A true copy of the objections dated 07.06.2011 submitted by the applicant to findings of the I.O.
- Annexure A-9 - A true copy of the appeal dated 26.09.2011 submitted by the applicant.
- Annexure A-10 - A true copy of the revision dated 17.03.2012 addressed to the 4th respondent.
- Annexure A-11 - A true copy of reminder dated 18.09.2012, addressed to the 4th respondent.
- Annexure A-12 - A true copy of the order in OA No. 989 of 2012 rendered by this Hon'ble Tribunal.

List of Annexures of the Respondents

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| Annexure R-1 | - | A true copy of the joint proceedings of the vigilance team drawn at 16.45 hours on 21.08.2007. |
| Annexure R-2 | - | A true copy of the tickets purchased by the vigilance team. |
| Annexure R-3 | - | A true copy of the second joint proceedings drawn by the vigilance team at 17.30 hours on 21.08.2007. |
| Annexure R-4 | - | A true copy of the purchased ticket captured from the passenger and the free EFT issued to him. |
| Annexure R-5 | - | A true copy of the written statement of the passenger Shri. R.K. Raina. |
| Annexure R-6 | - | A true copy of the third joint proceedings drawn by the vigilance team at 20.45 hours on 21.08.2007. |
| Annexure R-7 | - | A true copy of system printout taken on 21.08.2007. |
| Annexure R-8 | - | A true copy of the system print of Daily statement of cancelled tickets. |
