

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00619/2015

Tuesday, this the 13th day of November, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

K.Nazim,
S/o.Kochahammed Pillai,
Station Master, Varkala Railway Station.
Residing at 'Ninas', Tagore Nazar 23,
Medayil Mukku, Thirumullavaram P.O., Kollam. ...Applicant

(By Advocate – M/s.Varkey & Martin)

v e r s u s

1. Union of India represented by the General Manager,
South Railway, Chennai – 600 003.
2. Chief Passenger Transportation Manager,
Southern Railway, Chennai – 600 003.
3. Additional Divisional Railway Manager,
Southern Railway, Trivandrum – 692 014.
4. Senior Divisional Operations Manager,
Southern Railway, Trivandrum – 692 014. ...Respondents

(By Advocate – Mrs.K.Girija)

This application having been heard on 2nd November 2018, the Tribunal on 13th November 2018 delivered the following :

O R D E R

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/619/2015 is filed by Shri.K.Nazim, Station Master, Varkala Railway Station, aggrieved by the impugned orders at Annexure A-3, Annexure A-5 and Annexure A-7 withholding his annual increments for 36 months with effect from 1.7.2013. The reliefs sought in the O.A are as follows :

.2.

1. Declare that the penalty imposed on the applicant vide Annexure A-3, A-5 and A-7 are unjust, illegal and violative of principles of natural justice and quash the same.
2. Direct the respondents to restore the increment withheld from the applicant with consequential arrears.
3. Award costs of and incidental to this application.
4. Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant while working at Paravur and Mayyanad Railway Stations had been issued with a Charge Memorandum dated 30.4.2013 alleging serious dereliction of duty in having handed over duty before time and in making entries for two trains in the relevant registers, while on 10-20 hours duty at Mayyanad on 26.2.2013. Copy of the Charge Memo is at Annexure A-1. The gist of the charges stated that he had handed over duty without completing his 10-20 duty as Station Master and had also made entries for two trains in the PN Exchange Register. The action of the applicant and his reliever, Shri.S.Prakasan, had resulted in UP and DN trains being dealt with part by part by the incoming/outgoing Station Masters thereby jeopardizing train safety. It was proposed to initiate action under the relevant provisions of the Railway Services (Conduct) Rules, 1966. The applicant submitted an explanation on 20.5.2013 with reference to the minor penalty Charge Memorandum. But it was not found acceptable and punishment of stoppage of one increment due on 1.7.2013 was ordered for a period of 36 months which would not have the effect of postponing future increments.

3. The applicant filed an appeal against the punishment order (Annexure A-3) through an appeal memorandum at Annexure A-4 dated 16.9.2013 which was rejected by the Additional Divisional Railway Manager by its order at Annexure A-5 dated 7.7.2014. Thereupon the applicant filed a revision petition through his representation at Annexure A-6 dated 4.9.2014 which also met with the same fate through a speaking order, a copy of which is at Annexure A-7 dated 7.4.2015. The Revision Authority after considering the points raised by the applicant in his representation came to the conclusion that the applicant had violated extant regulations by filling up the timings of Train Signal Register (TSR) by one person and PN Exchange Register by another. It is maintained in the Revision Authority's order that there is no ambiguity in the provisions in the rules that the person initiating the process of receiving the train shall complete all transactions related to its safe dispatch and should also undertake to close the Block Section himself. The misconduct of the applicant had resulted in multiple persons handling the passage of the train thereby impairing operational safety.

4. As grounds, the applicant maintains that the charges at Annexure A-1 are ambiguous and indefinite. The charge that the applicant had left his duty "mid way" does not indicate a definite timeline. He had made entries in the TSR at 19:45 hours and according to him no rule in the regulations lays down that the Station Master is responsible for making entries for every train till the end of his shift. He admits that the charge was handed over to the incoming Station Master a few minutes before the end of his shift which according to him is not an irregularity.

5. Respondents have filed a reply statement where the magnitude of the misconduct has been explained as under :

“4. The applicant was issued with a charge sheet for safety violation in train passing duties. While on duty at Mayyanad Station from 10 A.M to 8 P.M he handed over duty at 07:45 P.M to the incoming SM during the crossing of two trains ie, (up Pongala Special and Down ITD Goods train). In the register for intimation/exchange of Private No with the level crossing gates entries for both the trains on Paravur side and Quilon side, were made by the applicant. But in Primary document regarding train running, in the Train Signal Register for both trains the outgoing entries were made by Sri.Prakasan, the incoming Station Master. In train passing duties part delegation of duties is strictly not allowed. ITD goods was not a booked to stop train (but a run through train) at Mayyanad Station. The running time between Mayyanad-Paravur is hardly 3' for a Goods train. But in the middle of crossing of two trains the applicant handed over charge to another SM, and part dealing of trains by two S.Ms is having potential safety hazards for travelling public and Railway staff. For this both the involved Station Masters were given charge sheets.”

5.B.S.R.14.07(1) (a) states that “the Station Masters at either end of block section making an entry for a train in the Train Signal Register shall not break off duty till all entries relating to that train have been entered.”

6. The document at Annexure A-8 which is an extract of General Rules of Indian Railways with Subsidiary Rules of Southern Railways submitted by the applicant himself, the above provision is clearly spelt out. The applicant does not deny that he left his charge before the closure of his duty at 20:00 hours. The respondents have produced Annexure R-1 true copy of panel 1.06[x] Block Working Manual and Annexure R-2 which is a true copy of S.R 14.07 along with reply.

7. The applicant has filed a rejoinder to the reply statement further affirming that his conduct cannot be classified as a misconduct. Shri.M.P.Varkey appeared on behalf of the applicant and Smt.K.Girija appeared on behalf of the respondents. Shri.M.P.Varkey maintained that no rule of railway administration had been violated by the

applicant. He had successfully overseen the passage of both trains through the area of his charge and it was only due to the fact that the date was a special day that the incoming Station Master had arrived early. It was under this circumstance that the charge was handed over a few minutes before time.

8. The Supreme Court in the case of State Bank of India v. Samarendra Kishore Endow (1994) 1 SLR 516 has held that a High Court or Tribunal has no power to substitute its own discretion for that of the competent authority in a disciplinary case. In its judgment, the Supreme Court has observed as under :

“On the question of punishment, learned Counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of that Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It “is not an appeal from a decision, but a review of the manner in which the decision was made”. In other words, the power of judicial review is meant “to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court.”

9. It would perhaps be appropriate to mention at this stage that there are certain observations in Union Bank of India v. Tulsiram Patel [AIR 1985 SC 1416], which, at first do appear to say that the Court can interfere where the penalty imposed is “arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service.” It must, however, be remembered

that Tulsiram Patel dealt with cases arising under proviso (a) to Article 311 (2) of the Constitution. Tulsiram Patel overruled the earlier decision of this Court in **Challappan [AIR 1975 SC 221 (6)]**. While holding that no notice need be given before imposing the penalty in a case dealt with under the said proviso, the Court held that if a disproportionate or harsh punishment is imposed by the disciplinary authority, it can be corrected either by the Appellate Court or by High Court. These observations are not relevant to cases of penalty imposed after regular inquiry.

10. The role of this Tribunal is a limited one in a proceeding of this nature. It is to see that necessary procedure in keeping with the statute are followed before the conclusion of the disciplinary case. In this case it is seen that all stages of the process mandated under the Railway Servants (Conduct) Rules, 1966 have been strictly followed. The applicant has been given adequate opportunity to present his defence and the points he has raised have been carefully gone through as is seen in the speaking order issued by the concerned authorities.

11. It has been stated that this Tribunal is not expected to put itself in the role of the disciplinary authority. Its task is to ensure that all procedures have been met and also to ensure that the quantum of punishment imposed is not “shocking to the conscience”. In this case we cannot come to the conclusion that the statutory authorities have acted unmindful of their mandate nor can we conclude that the punishment is disproportionate to the

misconduct alleged. For these reasons we are of the view that the O.A is devoid of merit and is liable to be dismissed. We proceed to do so. No costs.

(Dated this the 13th day of November 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00619/2015

1. **Annexure A1** – True copy of the Charge Memorandum No.V/T.GL/SF11/MYY/45/2013 dated 30.4.2013.
2. **Annexure A2** – True copy of the representation dated 20.5.2013.
3. **Annexure A3** – True copy of the order No.V/T.GL/SF-11/MYY/45/2013 dated 26.6.2013 issued by the 4th respondent.
4. **Annexure A4** – True copy of the appeal dated 16.9.2013 submitted by the applicant.
5. **Annexure A5** – True copy of the order No.V/P.227/A/2014/31/Optg. Dated 7.7.2014 issued by the 3rd respondent.
6. **Annexure A6** – True copy of the revision petition dated 4.9.2014 submitted by the applicant.
7. **Annexure A7** – True copy of the Order No.P(A)94/2014/1068 dated 7.4.2015 issued by the 2nd respondent.
8. **Annexure A8** – True extract of the S.R.14.07(1)(a) of Indian Railways.
9. **Annexure A9** – True extract of GR2.11(1)(a) of Indian Railways.
10. **Annexure A10** – True extract of Rules 3.1(ii) & (iii) of RS (Conduct) Rules, 1966.
11. **Annexure A11** – True extract of S.R.16.03(iii)(a)(ii)(1) of Indian Railways.
12. **Annexure A12** – True extract of the SM's Diary Book of 26.2.2013 pertaining to Mayyanad.
13. **Annexure A13** – True extract of TSR of PVU-MYY up Block Section in respect of Pongala Special on 26.2.2013.
14. **Annexure A14** – True extract of TSR of QLN-MYY Down Block Section in respect of ITD Goods on 26.2.2013.
15. **Annexure R1** – True copy of Panel 1.06[x] Block working manual.
16. **Annexure R2** – True copy of S.R.14.07.
