

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00139/2015

Monday, this the 8th day of April 2019

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

P.Kannan, aged 59 years
S/o.K.Paidal
(Ex.Loco Pilot (Mail)/Southern Railway/Calicut)
Residing at: Kappala House, Ponnachal P.O
Pandalur Taluk, The Nilgiris District
Pin 643 239

..... **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 Mechanical Engineer
Southern Railway, Palghat Division
Palghat – 678 002
3. The Divisional Railway Manager
Southern Railway, Palghat Division
Palghat – 678 002
4. The Chief Operations Manager
Southern Railway, Headquarters Office
Park Town P.O, Chennai – 600 003

..... **Respondents**

(By Advocate – Mrs.K.Girija)

This Original Application having been heard on 4.4.2019, the Tribunal on 8.4.2019 delivered the following:

OR D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member

Original Application No.180/00139/2015 is filed by Shri.P.Kannan, Ex.Loco Pilot (Mail) against the order of penalty of removal from service, modified as compulsory retirement in appeal and confirmed in revision. He seeks the following reliefs:

“(i) Call for the records leading to the issue of Annexures A1, A2 and A12 and quash the same and direct the respondents to grant the applicant all the consequential benefits as if A1, A2 and A12 had not been issued at all;

(ii) Award costs of and incidental to this application;

(iii) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. The applicant while working as Loco Pilot (Mail), Southern Railway, Palakkad Division was proceeded against as per orders at Annexures A-1 and A-2 dated 11.11.2010 and 30.6.2011 respectively. The punishment of compulsory retirement was subsequently imposed upon him by order at Annexure A-12 dated 23.1.2015. The reason for the said action was that the applicant, while working as Loco Pilot (Mail), was issued with a Memorandum of Charges dated 5.4.2010 by the 2nd respondent which is produced as Annexure A-3 alleging that the applicant while working, Train No.6108 Express “had passed PTB home signal at danger” at 1310 hrs on 27.2.2010. He was put on notice for action against him for violation of GR 3.78 (1)(a), GR 3.80(1) and for failing to maintain devotion to duty, thereby violating Rule 3.1(ii) and (iii) of Railway Services (Conduct) Rules, 1966. The applicant replied by way of a statement dated 27.2.2010 (Annexure A-3(a)) and filed a detailed representation seeking copies of certain vital documents (Annexure A-4). While the applicant was provided with copies of certain documents enlisted in the charge memorandum, he was denied the others despite another application that he filed on 28.4.2010.

3. An Inquiry Officer was appointed and an inquiry was conducted. A copy of the proceedings of inquiry is at Annexure A-6. The Inquiry Officer subsequently submitted his report and a copy of the same was communicated to the applicant as per Annexure A-7. The enquiry report concluded that the applicant was guilty of charges as framed. The applicant disputes that the findings are perverse, biased

and were not based on the evidence on record. A detailed statement of objections to the finding of the enquiry was addressed to the 2nd respondent as per Annexure A-8. As per the said statement, the applicant had pointed out that some of the vital documents requested by the applicant had not been provided to him and there was no evidence on record to prove that he was guilty as charged.

4. The applicant maintains that ignoring his objections, the Disciplinary Authority proceeded to impose upon him punishment as per Annexure A-1. The applicant states that the penalty imposed upon him was too severe for a person who has 33 years of unblemished service. A copy of the appeal filed on 20.11.2010 addressed to the 3rd respondent is at Annexure A-9. But the appeal also came to be rejected through orders at Annexure A-2, although the penalty was modified to one of compulsory retirement.

5. The applicant approached this Tribunal by filing O.A 371/2012 and this was disposed of by order dated 9.6.2014 directing the applicant to prefer a revision petition to the Chief Operations Manager who had been impleaded as 4th respondent. A copy of the said order is at Annexure A-10. The applicant filed the revision petition, copy of which is at Annexure A-11. However, the 4th respondent also rejected the revision by order dated 23.1.2015 (Annexure A-12) confirming the punishment imposed by the appellate authority.

6. As grounds, the applicant submits that orders at Annexures A-1, A-2 and A-12 are arbitrary, discriminatory and without application of mind. He maintains that he is not guilty of any misconduct as alleged. He challenges the conclusions arrived at by the authorities on several grounds. He submits that

Shri.M.Sreedharan, witness no.1, during the inquiry had categorically deposed that the train had not crossed the signal at danger. He was not declared hostile by the Inquiry Officer. None of the other three witnesses had seen the incident themselves and have only presumed that the incident could have taken place. He was denied “the Speedometer Chart” and also the “Data Logger Card” which would have allowed him to mount a valid challenge to the charges. The disciplinary authority as well as other authorities have been anxious to dismiss the various objections of the applicant and they are guilty of violation of Rules 10 and 22 of RS(D&A) Rules , 1968. The applicant submits that he has 33 years of unblemished service and had been promoted as Goods Driver and later as a Passenger Driver after rigorous process of selection and as approved by the Divisional Railway Manager.

7. The respondents have filed a reply statement where the arguments raised in the Original Application have been disputed. It is maintained that the enquiry and further proceedings have been in strict compliance with the rules under Railway Services (D&A) Rules, 1968 and all necessary procedures have been adhered to after giving every opportunity available to the applicant to defend himself. Citing the judgments of the Hon'ble Supreme Court in *Balkishan v. Municipal Corporation, Faridabad* 2002(2) SLJ 28 as well as *IOCL v. Ashok Kumar Arora* 1997(3) SCC 72 and *Lalit Popli v. Canara Bank* 2003(2) SLJ 409 (SC), the respondents maintain that the power of punishment to be imposed on an employee is within the discretion of the employer and ordinarily the courts are not expected to interfere, unless it is found that either the enquiry proceedings or punishment is vitiated because of non-observance of relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defend himself or that

punishment is totally disproportionate to the proven misconduct of an employee. In this case there has been no denial of reasonable opportunity afforded to the applicant to defend himself nor is the punishment disproportionate to the proven misconduct of the employee. In ***State of Meghalaya and others v. Mecken Singh***, the Hon'ble Supreme Court has maintained this stand and also in ***Goparaju Sri Prabhakara Hari Babu*** 2008(3) SLJ 424 (SC), the Hon'ble Supreme Court has held that the courts cannot set aside a well reasoned order only on sympathy or sentiment and once the procedural requirements have been complied with, courts would not ordinarily interfere with quantum of punishment.

8. The applicant has been found guilty of a very serious act by which he endangered train 6108 Express from Calicut to Shornur by passing signal at danger. An inquiry had been initiated and the Inquiry Officer was appointed to enquire into the charges levelled against him. The applicant had requested for certain documents and he was supplied with all relevant ones as stated in Annexure A-3 of the charge memo. During the course of the enquiry, the applicant did not opt for self examination but stated that he would submit his defence statement and objections within ten days, which he did on 4.6.2010, a copy of which is available at Annexure R-1. It is relevant to note that as per this statement, the applicant did not raise any objection regarding the conduct of enquiry as perverse or biased. The contention of the applicant that the speedometer chart and the data logger card were not part of the evidence is denied strongly by the respondents. Accordingly, after due process, the charges framed against the applicant were declared proven beyond doubt.

9. In the case of serious lapses such as passing the home signal at danger, a

severe degree of punishment is prescribed by the Railway Board and as the charges were being proven beyond doubt in this case, one of the penalties specified in clauses (viii) and (ix) is ordinarily imposed and if they are not imposed, reasons for the light punishment is to be recorded in writing. A copy of the relevant portion of Rule 6 is at Annexure R-2. The contention of the applicant that the disciplinary authority did not consider valid points raised by him, is denied by the respondents as completely contrary to facts. The penalty imposed on the applicant is commensurate with the gravity of the offense. When the appeal was filed against the disciplinary authority's order, same was considered in detail and only considering his past service and also the fact that the distance of infringement is only 51 meters, a lenient view was taken and the penalty of removal from service was modified to compulsory retirement with full pension and gratuity. The subsequent revision petition filed was also considered by the Revisionary Authority and a detailed reasoned speaking order was passed concluding that there is no need for any change in the quantum of reduced punishment of compulsory retirement from service.

10. The Revisionary Authority after going through the DAR case file, enquiry report and facts available, came to the conclusion that the objections raised by the applicant have been satisfactorily answered and were based on evidence on record. The data logger, which electronically monitors track occupation and data logger's logs which are time stamped clearly show that the train had overshot the signal and was subsequently backed, which are indeed very serious offences.

11. Heard Mr.T.C.G Swamy, learned counsel for the applicant and Mrs.K.Girija, learned counsel for the respondents. Perused the records.

12. Mr.T.C.G Swamy, learned counsel for the applicant laid emphasis on alleged denial of natural justice. He maintains that the proceedings had been vitiated on several grounds which have been enumerated in the O.A. He alleged that documents sought by the applicant were denied to him and that PW-1, the only witness, to the alleged misconduct had testified in the applicant's favour. He had sought copies of speedometer and data logger which were necessary to defend his case and both were denied to him. Thus the highest punishment had been imposed on the applicant despite the entire lack of evidence.

13. Smt.K.Girija, learned counsel for the respondents responded to these arguments by saying that the applicant had been afforded every opportunity for defending himself and he did defend himself in the manner that he wanted. As regards the documents sought for as per Annexure A-4, she maintained that 5 documents referred in A-3 of the charge memorandum were supplied to the applicant. ACC 7 prepared after the incident was not supplied to him because it was not necessary and the evidence borne out in the said record was considered at length in his presence. Again, all depositions of witnesses were made in his presence and the records at Annexure A-6 indicate verbatim reproduction of the same. He chose to file a defence statement rather than subject himself to self examination and in the said defence statement, he makes no allegation regarding any lack of opportunity or any alleged miscarriage of justice.

14. We have examined the case in detail. In the matter relating to a disciplinary proceeding, it has been held in a catena of judgements that the Tribunal cannot go into the basic decision i.e, the nature of penalty imposed. It can only interfere in a case to ascertain whether –

“(i) statutory provisions or rules prescribing the mode of enquiry were disregarded;

(ii) rules of natural justice were violated; there was no evidence, that is, punishment has been imposed in the absence of supporting evidence;

(iii) If there are some legal evidences on which the findings can be based, the Tribunal cannot go into the adequacy or reliability of that evidence, even if it be of the view that on the same evidence, its conclusion may have been different.

(iv) Consideration extraneous to the evidence or the merits of the case, taken into account; and

(v) the conclusion was so wholly arbitrary and capricious that no reasonable person could have easily arrived at the conclusion. “

15. The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the purview of the competent authority. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

16. In the instant case, the applicant had been found to be guilty of a very serious misconduct endangering human lives. After going through the records and after lending due consideration to the pleadings made by the contending counsel, we are of the view that adequate opportunity was afforded to the applicant to defend himself. As already stated, it is important to ensure that this Tribunal does not put itself in the shoes of the employer agencies and our role is limited to see whether there has been any miscarriage of justice in the form of denial of natural justice. We see no such ground established in this matter. The punishment imposed upon

the applicant is not disproportionate given the very serious nature of the act which he had been found guilty of. Based on the facts before us, we conclude that the Original Application lacks merit and is dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sv

List of Annexures

Annexure A1 - A true copy of Penalty Advice bearing No.J/M226/DAR/H1/6108/PTB dated 11.11.2010, issued by the 2nd respondent.

Annexure A2 - A true copy of Appellate order bearing No. J/M/226/DAR/Hq/6108Exp/PTB dated 30.06.2011 issued by the 3rd respondent.

Annexure A3 - A true copy of Memorandum of charges bearing No. J/M 226/DAR/HI/6108Exp/PTB dated 05.04.2010, issued by the 2nd respondent.

Annexure A4 - A true copy of representation dated 14.04.2010, addressed to the 2nd respondent.

Annexure A5 - A true copy of representation dated 28.04.2010, addressed to the 2nd respondent.

Annexure A6 - A true copy of the proceedings of the inquiry conducted by the Inquiry Officer dated 25.05.2010.

Annexure A7 - A true copy of letter bearing No.J/M 226/DAR/H-1/6108 Exp/PTB dated 25.06.2010, issued by the 2nd respondent.

Annexure A8 - A true copy of detailed objection to the findings of the inquiry, submitted to the 2nd respondent dated 09.07.2010.

Annexure A9 - A true copy of appeal dated 20.11.2010, submitted to the 3rd respondent.

Annexure A10 - A true copy of order in OA No.371/2010 dated 09 Jun 2014 rendered by this Hon'ble Tribunal.

Annexure A11 - A true copy of revision petition dated 23 Oct 2014, addressed to the 4th respondent.

Annexure A 12 - A true copy of Revisional Order bearing No. P(A)94/2014/1069 dated 23.01.2015, issued by the 4th respondent.

Annexure R1 - Copy of Defence statement dated 04.06.2010.

Annexure R2 - Rule 6 of Railway Servants (Discipline & Appeal) Rule 1968.

Annexure R3 - A copy of order dated 22.07.2008.

. . .