

**Central Administrative Tribunal
Principal Bench**

OA No.3044/2015

New Delhi, this the 18th day of September, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

J. Mariapathirajan
age 65 years,
S/o Shri Jabamalai
retired Assistant Materials Manager
Southern Railway,
Chennai.
R/o H. No.31, Moorthi Nagar,
Villivakkam, Chennai. ... Applicant.

(By Advocate : Ms. Menu Mainee)

Vs.
Union of India through

1. Secretary
Railway Board
Ministry of Railways
Rail Bhawan,
New Delhi.
2. General Manager
Southern Railway
Headquarters Office,
Chennai. ... Respondents.

(By Advocate : Shri Kripa Shankar Prasad)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant was working as Assistant Material Manager in the Southern Railway. A Charge memo was issued to him on 11.10.2009 alleging that on 08.04.2009, he demanded by way of gesture, and accepted illegal

gratification of Rs.1500/- from a person, posing himself as owner of a fictitious company viz. M/s Balaji Enterprises, Chennai for the purpose of placement of purchase orders on his company. The applicant denied the same by submitting his statement of defense dated 21.10.2009. Not satisfied with that, the Disciplinary Authority appointed an Inquiry Officer (IO). The IO submitted his report on 16.11.2010 holding that the allegation as to demand by way of gesture and acceptance of Rs.1500 by a person, who was the owner of M/s Bala Ji Enterprises, is not proved, and accordingly it cannot be held that the applicant failed to maintain absolute integrity. However, he observed that the applicant accepted a sum of Rs.1500 from an unknown person.

2. This equivocal finding into account, and the report of the IO was made available to the applicant, and he submitted comments to the same. In the meanwhile, the applicant retired from service. The proceedings were treated akin those under Rule 9 of the CCS (Pension) Rules. The entire file was forwarded to the UPSC. On the basis of the advice tendered by the UPSC, the Disciplinary Authority passed an order dated 23.09.2013 imposing the penalty of withholding of 50% of monthly pension admissible to the applicant for a period of five years.

Aggrieved by that, the applicant filed an appeal and the same was rejected through order dated 09.02.2015. Hence, this OA.

3. The applicant contends that the charge leveled against him was very vague and non-existent, and in the enquiry, the so called complainant was not examined at all. It is stated that the IO recorded the finding to the effect that there was no demand and despite that the punishment was imposed. Another specific ground raised by the applicant is that the copy of the advice of the UPSC was not furnished to him.

4. The respondents filed a detailed counter affidavit. It is stated that the applicant has resorted to acts of misconduct, by demanding and accepting a sum of Rs.1500/- from an unknown person. It is stated that though the IO held that the allegation with regard to the receipt of amount from the representative of M/s Balaji Enterprises is not proved, he held that the applicant demanded the same amount from an unknown person, and, therefore, the charge stands proved. It is further stated that the prescribed procedure was followed in the enquiry and that no prejudice is caused to the applicant on account of non furnishing of the copy of the advice of the UPSC.

5. We heard Ms. Meenu Mainee, learned counsel for the applicant and Shri Kripa Shankar Prasad, learned counsel for the respondents.

6. The only charge framed against the applicant reads as under:-

“Shri J. Mariapathirajan, AMM/TBM, while working as AMM/CN/MS, during April 2009 had committed serious irregularity, gross misconduct and had acted in a manner of unbecoming of railway servant in as much as:-

On 08.04.2009, he demanded by way of gesture and accepted illegal gratification of Rs.1500/- from a person posing as owner of an unreal company viz. M/s Balaji Enterprises, Chennai for placement of purchase orders on this company.

Thus, Shri J. Mariapathirajan, AMM/TBM, had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant thereby violating Rules 3.1 (i), (ii) and (iii) of the Railway Services (Conduct) Rules, 1966.”

It is to the effect that he demanded a sum of Rs.1500/- from an unknown person through gesture. The applicant denied the same. The report of the IO provides an interesting reading. It was almost equivocal, in every sense. After discussing the evidence adduced against the applicant, the IO recorded the findings. It reads as under:-

“13. FINDINGS:

Taking into account all oral and documentary evidences and the brief of the Presenting Officer and the written defence brief in this case, and further based on my observations in the foregoing paragraphs, my findings are as under:-

Charges as made out	Charges proved
<p>Sri. J. Mariapathirajan, AMM/TBM while working as AMM/CN/MS during April 2009 had committed serious irregularity, gross misconduct and had acted in a manner unbecoming of a railway servant in as much:-</p> <p>On 08.04.2009, he demanded by way of gesture and accepted illegal gratification of Rs.1500/- from a person posing as owner of an unreal company M/s Balaji Enterprises/Chennai for placement of purchase orders on this company.</p> <p>Thus, Sr. J. Mariapathirajan, AMM/TBM had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant thereby violating Rules 3 (1), (ii) & (iii) of the Railways Services (Conduct) Rules, 1966.</p>	<p>Sri. J. Mariapathirajan, AMM/TBM while working as AMM/CN/MS committed an act unbecoming of a Railway servant in as much as-</p> <p>On 08.04.2009, he unauthorizedly accepted Rs.1500/- from a person posing as owner of an unreal company viz. M/s Balaji Enterprises.</p> <p>Thus, Sri. J. Mariapathirajan, had committed an act unbecoming of a Railway servant thereby violating Rule 3 (1), (iii) of the Railway Services (Conduct) Rules, 1966.</p>

On the one hand, the Inquiry Officer held that the allegation that the applicant demanded by way of gesture and accepted a sum of Rs.1500 is not proved, and that he cannot be said to have failed to maintain absolute integrity and devotion to duty. On the other hand, he held that the applicant has accepted a sum of Rs.1500/- from an unknown person and thereby committed an act of unbecoming of a railway servant violating Rule 3 (1), (iii) of the Railway Services (Conduct) Rules, 1966. The Disciplinary Authority could have either ordered further inquiry or issued a disagreement note. However, he has

accepted the report and forwarded it to the UPSC. On the advice tendered by it, he imposed the penalty of 50% cut in monthly pension for a period of five years.

7. In ***Union of India and Others vs. S. K. Kapoor*** 2011

(4) SCC 589 and in ***Union of India vs. R. P. Singh*** (2014)

7 SCC 340, the Hon'ble Supreme Court held that the order of penalty gets vitiated in case the copy of the advice tendered by the UPSC is not furnished to the employee. On this short ground, we allow the OA and set aside the impugned orders dated 23.09.2013 and 09.02.2015. The matter is remanded to the Disciplinary Authority for the purpose of furnishing a copy of the advice of the UPSC to the applicant and then to pass appropriate orders after receiving the explanation from him. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/