

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA 310/00855/2013

Dated the 18th day of September Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P. Madhavan, Member (J)
&
Hon'ble Mr. T. Jacob, Member (A)**

A.Arumugam,
Old No. 249 (New No. 148),
III Block, 8th Main Road, Ram Nagar-1,
Tirur, Tiruvallur District 602050.

... Applicant

By Advocate **M/s. L. Chandrakumar**

1.Union of India, rep by,
The Senior Divisional Commercial Manager,
Southern Railway, Chennai Division,
Park Town, Chennai 600003.

2.The Additional Divisional Railway Manager/II,
Southern Railway, Chennai Division,
Park Town, Chennai 600003.

3.The Chief Commercial Manager,
(Catering & Passenger Services),
Southern Railway HQ, Park Town,
Chennai 600003.

4.Additional General Manager,
Southern Railway HQ, Park Town,
Chennai 600003.

... Respondents

By Advocate **Mr. D. Hariprasad**

ORDER

Pronounced by Hon'ble Mr. P. Madhavan, Member (J)

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the relevant records pertaining to the Charge Memo No. M/Con/C/1535 dated 03.02.2011 issued by the 1st respondent/Senior Divisional Commercial Manager, Southern Railway, Chennai Division, Penalty Advice No. M/Con/C/1535 dated 02.03.2012 of the 2nd respondent/Additional Divisional Railway Manager (II), Southern Railway, Chennai Division; the letter no. P(A)86/2012/536 dated 19.11.2012 of the 3rd respondent/Chief Commercial Manager (Catering & Passenger Services), Southern Railway HQ and the letter No. P(A)86/2012/536 dated 17.05.2013 of the 4th respondent/Additional General Manager, Southern Railway; to quash the same and to consequently direct the respondents to reinstate the applicant into Railway Service with all consequential benefits both service and monetary and to pass any other order(s) or direction(s) as deemed fit and proper in the circumstances of this case and thus render justice.”

2. According to the applicant he was appointed as Ticket Collector on 17.10.1979 and thereafter he was posted as Chief Ticketing Inspector at Arakkonam Junction. While he was so working, a major penalty charge memo dated 03.02.2011 was issued to him by the first respondent. The main allegation against him was while working as Ticket Inspector in Train No. 6327 on 10/11.01.2010 he had failed to maintain absolute integrity and devotion to duty and demanded and collected Rs. 500/- from Trap witness

C. Vijay, R. Suresh etc and permitted 4 passengers to occupy berth nos. 5,7,13 and berth no. 3 in A-1 coach without collecting the necessary amount. After conducting the enquiry the disciplinary authority had imposed the penalty of removal from service. The applicant filed an appeal under Rule 18 to the Chief Commercial Manager, Southern Railway (R3) and R3 had disposed of the appeal without applying the mind and without taking into consideration the various factors alleged in the appeal. He had also filed Review Petition but it was also dismissed by the 4th respondent.

3. According to the applicant the charge memo against him was not prepared by the Disciplinary Authority who had issued it. According to him, it was prepared by Vigilance Organisation and the same was issued without applying mind. It was also contended that the Enquiry Officer has worked under the Vigilance Office of the Railways and he cannot be considered as impartial and the entire enquiry has become a farce. He also would contend that as per Rule 9 (21) of Railway Servants (D&A) Rules 1968, the Enquiry Officer has to put all the relevant materials relied upon by him for giving an opportunity to the charged officer to explain which is mandatory. The Enquiry Officer has not complied with Rule 9 (21) and the Enquiry is vitiated. The Enquiry Officer has found charge no.2 partially proved. But Respondent No. 2, the Disciplinary Authority has taken the charge as proved without recording any disagreement on the findings of the Enquiry Officer. The

Disciplinary Authority is expected to give reasons for such disagreement and he is also expected to issue communication to the charged officer along with the copy of the Enquiry Report. This is in violation of natural justice. The Appellate Authority has taken previous incidents and past history of the applicant before imposing penalty. According to him as per OM No. 134/20/68-AVD dated 28.08.1968 that such a procedure is illegal and should not be adopted. It was also contended that the Revisional Authority also failed to consider the above objections raised by the applicant.

4. The respondents entered appearance and admitted the material facts stated by the applicant, but denied all the allegations made against R1 to R4. According to the respondents they have received a source of information that some Ticket Travelling Examiners working in the AC coaches in Train No. 6327, Korba Trivandrum Express were either collecting amount more than penal fare or not issuing receipt for penal fare and pocketing the amounts collected. Therefore the respondents decided to conduct surprise check in Train No.6327 with the aid and assistance of Trap Witnesses. Accordingly the coaches manned by the applicant was examined and irregularities were detected. They had issued a charge memo to the applicant and conducted a very detailed enquiry and the Disciplinary Authority had found the applicant liable for various misconducts and the Disciplinary Authority had ordered the removal of the applicant from service. The applicant had filed appeal against

the penalty order of the Disciplinary Authority to the Appellate Authority that is Chief Commercial Manager on 13.04.2012. The Appellate Authority considering the various circumstances of the case found the findings of the Disciplinary Authority correct. He ordered to pay compassionate allowance of 2/3rd pension and gratuity under Rule 65 of the Railway Services (Pension) Rules 1993. The applicant had also filed Revision Petition and it was also disposed of on 30.12.2012 confirming the order the Disciplinary Authority.

5. According to Respondents, the enquiry was conducted in a proper manner giving all facilities for defending the case of the charged officer. There is no merit in the allegations raised by the applicant in this case. There was no disagreement between the Enquiry Officer and the Disciplinary Authority and there is no question of any reasons to be recorded for disagreement. According to them the respondents have full time “Enquiry Officers” under the control of the Personnel Department and now it is functioning under Senior Deputy General Manager who is also the Chief Vigilance Officer of the Zonal Railway. The applicant had filed detailed written submissions to the Enquiry Officer regarding this case and there is no merit in the contention of the applicant that he was not given an opportunity to explain the various circumstances which came out in the Enquiry under Rule 9 (21). According to the respondents the Disciplinary Authority has taken into consideration any of the past services or incidents in coming to the quantum

of punishment and there is no reason to say that the past service history of the applicant is taken into consideration for awarding the penalty. According to them, there is no infirmity in the Vigilance Organisation preparing a draft memorandum as it is an important function to be undertaken. The draft memorandum so prepared has to be approved by the Disciplinary Authority and there is no prejudice occurred to the applicant due to the same. It was also submitted that the Chief Vigilance Officer of the Zonal Office is the Senior Deputy General Manager and he holds many portfolios under his Administration control (eg) Law Department, Vigilance Department, Enquiry Department, Publicity Department, Protocol Department, Planning Department, and other sundry Departments. There is no reason for finding that the Enquiry Officer is influenced by the Chief Vigilance Officer.

6. We have gone through the various aspects of the case and perused the pleadings from both sides. We had also anxiously heard the counsel on both sides.

7. The counsel for the applicant mainly rely upon the decision of the Hon'ble Supreme Court in Raja Ram Verma Vs UOI and Others reported in 2003 (3) SLJ (CAT) 365 and contend that the enquiry officer is not independent in this case. The main contention of the applicant herein is the Enquiry Officer was directly working under the Chief Vigilance Office and he will not act impartially. If we go through the pleadings it can be seen that the

Vigilance Officer in this case is the Senior Deputy General Manager who is holding various other Departments and there is absolutely no material to show that he is interested against the applicant in any way. There is also no supporting material to show that the Enquiry Officer is also benefited by holding the applicant guilty for misconduct. The Chief Vigilance Officer is holding other offices also and there is no merit in the contention put forward that he is directly interested in the enquiry initiated against the applicant. In view of the above we are of the opinion that there is no merit in the contention of the applicant that the Enquiry Officer is not an independent officer and he cannot conduct the Enquiry in an impartial manner. Another argument put forward by the counsel for the applicant is that after conducting the enquiry, the Enquiry Officer has not questioned the charged officer under Rule 9 (21) of the Railway Servants (D&A) Rules 1968. As per the direction in *Moni Shankar Vs UOI* reported in 2008(3) SCC 484 the Enquiry Officer has to put all the relevant material evidence to the applicant, the charged officer and give him an opportunity to explain the various evidence adduced against him. But this is not done in this case. He also relies upon the decision of the Principal Bench of this Tribunal in OA 531/2011 in *V.S. Radhakrishnan Vs UOI* represented by the General Manager/Southern Railway in support of his case. On going through the Enquiry report it can be seen that the applicant while answering the mandatory questions under Rule 9 (21) has stated that he does not have any

defence documents or witnesses and he did not offer himself to examine as witness in the enquiry. He sought permission to file written submission by way of defence and the charged officer was given an opportunity to explain the circumstances appearing against him. He had filed written submissions and it can be seen that the enquiry officer has complied Rule 9(21). From the above it can be seen that this contention of the applicant has no merit in this case. In *Moni Shankar Vs UOI and others* the mandatory provision under Rule 9 (21) was not complied with and because of that enquiry in that case has become vitiated. In *V.S. Radha Vs UOI* reported in OA 531/2011 of the CAT, Ernakulam Bench it can be seen that there also the Enquiry Officer has completely failed to follow the provision under Rule 9 (21) of Railway Servants (D&A) Rules 1968 and because of that the Enquiry in that case was set aside. These two decisions have no bearing on the facts and circumstances of the case. Another argument put forward by the learned counsel for the applicant is that the charge memorandum was prepared by the Vigilance, and the Enquiry Officer was also appointed in accordance with the discretion of the Vigilance Authorities and so the enquiry is vitiated and it was not independent. They mainly rely upon the decision of the *Raja Ram Verma Vs UOI* in this regard. In that particular case, the Enquiry Officer was selected and the Vigilance Department and the Presenting Officer was also selected by the Vigilance Authorities and it was in such a circumstances the Enquiry in

that case was held vitiated. In this case the Southern Railway has a separate group of “Enquiry Officers” and they are appointed to speed up the Enquiry of all officers coming under Group C and D. One of the “Enquiry Officer” was appointed as Enquiry Officer and the Enquiry is conducted in a satisfactory manner. It was also contended that the charge memo was prepared by the Vigilance Department and hence it cannot be accepted. The Disciplinary Authority can either prepare the charge memo himself or delegate it to be prepared by some other persons. In this case it is admitted by the respondents that the details of charge was prepared and a draft charge was drawn up and submitted to the Disciplinary Authority for approval and issue. This was done mainly because the case was detected by the Vigilance in a trap and the various details of the incidents has to be given to avoid any mistake in the charge memo. Here also it can be seen that the charge memo was issued by the Disciplinary Authority himself and there is no material to show that the preparation of charge memo is vitiated the Enquiry in any manner. In this circumstances we find that there is no merit in the contention put forward by the applicant in this regard.

8. Another argument put forward by the counsel for the applicant is that as regards charge no. 2 in the charge memorandum, the Enquiry Officer has only partly found the charge proved but the Disciplinary Authority has taken the said charge as proved and proceeded with the matter. When there is a

disagreement between the Disciplinary Authority and Enquiry Officer, the Disciplinary Authority is expected to record the reasons for the same. If we go through the Enquiry Report produced in this case it can be seen that as regards charge no 2 the Enquiry Officer has recorded that “the charge was proved to the extent that he permitted one R. Suresh to occupy berth no. 47 of B-1 coach”. The charge no.2 in the charge memo reads as follows:

The applicant had demanded Rs. 500 from one R. Suresh, Technician (Witness) and permitted him to occupy berth no. 47 of B-1 Coach.

So from the above it can be seen that the Enquiry Officer has found the charge proved and not partly proved. There is no merit in the contention that the Enquiry Officer has found that the charge no 2 was only partly proved. Actually the Enquiry Officer has recorded it as proved to that extent and we cannot read it as not proved. From the above, it can be seen that the Disciplinary Authority has also taken charge no.2 as proved and there is no contradiction in it. There is no reason to say that the Disciplinary Authority has taken a different view. In such circumstances there is also no need to record the reasons with the decision taken. So, we find that there is no merit in this argument also. The decision cited by the applicant in Punjab National Bank and others vs Kunj Behari Misra reported in 1998 SCC (L&S) 1783 has no application in this case. So we find no merit in this argument. Another argument put forward by the applicant is that the Appellate Authority has

taken the past service record in imposing the penalty on the applicant which is against circular OM No. 134/20/68-AVD. In this case if we go through the said OM it can be seen that what is prohibited in the said OM is that the Disciplinary Authority should not take into account the past service record or history of the charged officer for the purpose imposing penalty. The counsel for the respondents would submit that the Disciplinary Authority has not even mentioned any the past record of the applicant or previous penalties imposed on him when the Disciplinary Authority has imposed the punishment of removal from service. It is only the Appellate Authority who had taken into consideration the service record and that also for the purpose of ascertaining whether the penalty imposed was in excess. Infact the Appellate Authority has given consideration to his past service and had granted compassionate allowance of 2/3rd pension and gratuity as per Rule 65 of the Railway Services Pension Rules 1993 by order dated 19.11.2012. So the Appellate Authority has given a relief to the charged officer and his act has not in any way prejudiced by taking into consideration the past service records. So this argument also cannot stand in this case.

9. We have carefully perused the various documents and the Enquiry Report produced in this case. We have also carefully gone through the procedure adopted by the Enquiry Officer in conducting enquiry. We are satisfied that the Enquiry Officer has given sufficient opportunity to the charged officer for conducting his defence. He had also permitted the

applicant to file a detailed reply regarding the evidence adduced under Rule 9 (21) of the Railway Services (D & A) Rules 1968. So we find that there is no reason to hold that the enquiry conducted by the respondents is vitiated in any manner as alleged by the applicant in this case. We find that there is no reason to interfere in the finding of the Disciplinary Authority in this case. The punishment imposed is also not shocking and there is no scope for interference in that regard also.

10. Hence OA is found devoid of merit and it is liable to be dismissed.

(T. Jacob)
Member (A)
AS

.09.2019

(P. Madhavan)
Member (J)