

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01776/2018

DATED THIS THE 01ST DAY OF NOVEMBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

E. Thammegowda
aged about 62 years
S/o Eregowda,
Retd. Trackman of B'lore Division of
South-Western Railway
R/o Nodhe Koppu Village
Kothathi Hobli
Mandya Taluk, Mysore

..... Applicant

(By Advocate Shri C.C. Thomas)

Vs.

1. The General Manager,
South Western Railway,
Gadag Road,
P.O: Hubli 580 023

2. The Chief Personnel Officer,
O/o The General Manager,
South Western Railway,
Gadag Road,
P.O: Hubli 580 023

3. Senior Divisional Personnel Officer,
O/o The Divisional Railway Manager,
Bangalore Division, S.W. Railways
P.O: Bangalore 560 023

4. The Additional Railway Manager & Revising Authority
O/o The Divisional Railway Manager,
Bangalore Division, S.W. Railways
P.O: Bangalore 560 023

....Respondents

(By Shri N. Amaresh, Counsel for the Respondents)

ORDER (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

The crux of the issue is available in Annexure-A3 which we quote:

"SOUTH WESTERN RAILWAY

*Divisional Office,
General Branch,
Bangalore 560 023,
Date: 16.05.2016*

No. B/W.135/DAR/SBC-MYS

**Shri E. Thamme Gowda,
Ex. Gateman
SSE/P.Way/O/MYA Section**

ORDERS OF THE REVISING AUTHORITY

**Sub: Consideration of Revision petition in terms of Rule 25 of
RS (D&A) Rule 1968**

**Ref: 1. ADEN/CENTRAL/SBC & DA penalty no.
9/DAR/ETG/MYA dt 20.07.2004
2. Sr.DEN/CENTRAL/SBC & AA advice no.
B/W.135/DAR/SBC-MYS dt 13.10.2004
3. Your Revision petition dated 30.11.2004**

* * * * *

In terms of Rule 25 of Railway Servants (D&A) Rules, 1968, the undersigned has passed the speaking order as below.

"I examined revision petition dated 30.11.2004 submitted by Shri E. Thamme Gowda, ex CPC Gangman in PWI/MYA since been removed from service on 20.07.2004, in the light of the DAR proceedings already held and connected judgments and my observations are as under:-

- 1. After going through the inquiry proceedings it is mainly observed that the inquiry proceedings had taken too long a time. Inquiry initiated in the year 1996 was completed only in the year 2003 and it is seen that there was total impasse for the period from 1997 to 2000 and again from the year 2000 to 2003; I feel that inordinate delay diluted the actual process of inquiry as it can be seen from the fact that whereas in the charge sheet issued total nine (09) staff were included the list of**

witnesses by whom the articles of charges was proposed to be sustained, depositions of only three administrative witnesses were recorded in the inquiry report.

2. In his representation against the IO's report the CE contended about not considering the depositions of the eye witnesses but DA while passing speaking orders and issuing penalty advise had not considered/commented on these contentions; Also in the inquiry report it was shown that CE or his defence helper not participated in the enquiry and the decision was taken exparte. After seeing that there was no progress in the inquiry for almost 3 years from 1997 to 2000 and only one sitting held in the year 2000 for which the CE appeared for the inquiry and that further hearing happened only in the year 2003, the contention of the IO that CE had not attended the inquiry does not merit consideration.
3. In the orders of the Appellate Authority also it is seen that penalty imposed on the CE was upheld merely relying upon the fact that crime committed by the CE had been proved in the court of law but the orders appealed against were issued by the DA based on departmental inquiry proceedings; The contentions in the appeal of the CE regarding non examination of the eye witnesses and physical custodians of the missing property during the departmental inquiry proceedings were not looked into/commented upon by the AA;
4. Though the petitioner was convicted in the criminal case, the court confirming the conviction i.e. Hon'ble High Court Karnataka Hon'ble High Court, reduced the penalty imposed by the lower court, kept aside sentence of imprisonment and limited the penalty to that of payment of fine. Also while reducing the punishment, the Hon'ble High Court considered the fact that the matter is of the year 1995 and already 16 years have been lapsed (by 20.09.2011) since the date of offence as mitigating the circumstances to reduce the sentence and also factors such as the nature of offence value of the missed properties and the fact that the employee was a class IV worker.

It was categorically mentioned by the same court that this (reduced) penalty should not come on the way of the service of the employee.

- 4.1. Also Hon'ble CAT/Bangalore while giving directions in OA No. 6-11/2014 filed by the petitioner seeking reinstatement into service subsequent to Hon'ble High Court's orders mentioned *ibid*, to dispose the review

application observed in para No. 3 of their orders dated 07.04.2015 that "proceeding of a Hook alone may not be considered to be worthwhile infraction unless the applicant had been a known offender in the past also";

- 4.2. *The connected Service Register of the employee is reviewed and it is found that there were no adverse entries in the Service Register prior to the subject charge sheet in his 19 years of service rendered.*

Under these circumstances I feel that the penalty of removal from service imposed on the employee is not warranted in this case and his case for reinstatement merits consideration;

5. *Considering the facts that lot of time lapsed in the processing of the case, the employee already underwent trials for considerable amount of time in addition to the factors already brought out by the Hon'ble High Court in relaxing the sentence imposed by JMFC/MYA besides the hardships put forth by the Charged Employee in his revision petitions regarding his family condition I am of the opinion that to render justice the penalty of removal from service is to be modified and he is reinstated into service with the modified penalty of "reduction to lowest (minimum) stage of pay in the same time scale of pay for a period of three months with cumulative effect".*

In view of the above, the penalty imposed by the D.A of Removal from service and confirmed by the AA is now modified to that of re-instatement into Railway Service as CPC Gangman in pay band of Rs. 4440-7440+GP 1300 with reduction to pay Rs. 5740/- for a period of three months with cumulative effect.

This disposes the revision petition dated 30.11.2004.

Note and acknowledge the receipt.

*Sd/-
(Aparna Garg)
ADRM/SBC & RA"*

2. But here a divergence has occurred. Annexure-A4 is quoted herewith for easy elucidation:

"SOUTH WESTERN RAILWAY

*Divisional Office,
General Branch,
Bangalore 560 023,
Date: 16.05.2016*

No. B/W.135/DAR/SBC-MYS

MEMORANDUM

- 1. The Revising Authority & ADRM vide order of even number dated 16.05.2017 has set aside the penalty of Removal from Service imposed on Shri E. Thamme Gowda, Ex. Gateman/SSE/P.Way/O/MYA and re-instated him into Railway service as CPC Gangman in pay band of Rs. 4440-7440+GP1300 with modified penalty of reduction to pay Rs. 5740/- for a period of three months with cumulative effect.*
- 2. And whereas in terms of Rule 1343 of Indian Railway Establishment Code Volume II, the authority competent to order re-instatement has to also pass a specific order regarding pay and allowance to be paid to Shri E. Thamme Gowda for the period of his absence from duty on account of imposition of removal from service on 20.07.2004 to 07.06.2016 i.e. last day before date of re-instatement.*
- 3. Now, therefore, the Revising Authority having carefully considered the facts and circumstances of the case of Shri E. Thamme Gowda, and has provisionally passed her speaking order under Rule 1343 aforesaid, which is reproduced as under;- I propose to grant him pay and allowance for the intervening period at the minimum rate (50%) stipulated in the codal provisions mentioned and that period shall not qualify for any purpose i.e. increments, pension, etc. Accordingly, Shri E. Thamme Gowda may be paid 50% of pay and allowance had he not been removed from service, as his pay and allowance for the period from 20.07.2004 to 07.06.2016. The said period may be treated as "Not spent on duty" and "Not qualified for increments, pension & other purposes".*
- 4. Shri E. Thamme Gowda is hereby given an opportunity to submit, if he so desires, his representation against the provisional decision of the Revising Authority mentioned in para 3 above, within 60 days of receipt of this memorandum.*
- 5. The Revising authority shall take final decision in this regard after considering his representation, if any. If no representation*

is received within the prescribed time limit, it shall be presumed that he has no representation to make, and the final decision will be taken exparte.

Sd/-
(Somasekhar Rao S.)
APO/E/SBC
For Sr. DPO/SBC”

3. Rightfully the punishment can be given but then the future increments cannot be withheld at all. That is not within the power of the concerned authority. So this portion of Annexure-A4 is hereby quashed. Applicant is held to be entitled to receive the future increment from the date of Annexure-A3 as law permits and all the benefits should be made available to him within the next two months. It is also made clear that the increment will be decided on the basis of actual period worked. The period he was outside service will not be counted for increment.

4. With this clarification the OA is allowed to this extent. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01776/2018

Annexure A1: Copy of the penalty advice dated 20.07.2004

Annexure A2: Copy of the appellate order dated 13.10.2014

Annexure A3: Copy of the revision order dated 16.05.2016

Annexure A4: Copy of the memorandum and show cause notice dated 14.07.2016

Annexure A5: Copy of the applicant's representation dated 08.08.2016

Annexure A6: Copy of the Hon'ble Karnataka High Court order dated 20.09.2011

Annexure A7: Copy of the Hon'ble Central Administrative Tribunal order dated 19.09.2018 in OA No. 437/2017

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