

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/01100/2016**

**Friday, this the 10<sup>th</sup> day of January, 2020**

**CORAM:**

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

B.Gopinath, aged 57 years, S/o. Balakrishna Panicker,  
 Catering Inspector, Southern Railway, Trivandrum,  
 Residing at Chennampallil House, Moolavattom PO,  
 Kottayam – 686 005. ....

**Applicant**

**(By Advocate : M/s. Varkey & Martin)**

**V e r s u s**

1. Union of India, represented by the General Manager,  
 South Railway, Park Town, Chennai – 600 003.
2. The Additional General Manager, Southern Railway,  
 Park Town, Chennai – 600 003.
3. Chief Commercial Manager (PS), Southern Railway,  
 Park Town, Chennai – 600 003.
4. Additional Divisional Railway Manager, Southern Railway,  
 Trivandrum Division, Thiruvananthapuram-  
 695 014. ....

**Respondents**

**(By Advocate : Mrs. Girija K. Gopal)**

This application having been heard on 06.01.2020 the Tribunal on  
 10.01.2020 delivered the following:

**O R D E R**

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicant are as under:

“I) Declare that the Annexure A10, A12 and A14 orders are unjust,  
 illegal and beyond the mandates of A4 judgment and the direction in A7  
 order, and quash the same.

II) Declare that the applicant is entitled to have the period from date of compulsory retirement (10.3.2004) to the date of reinstatement (28.5.2010) treated as duty with all attendant benefits.

III) Direct the respondents to fix the pay, increments and grades of the applicant from time to time on par with his juniors like Gopalakrishnan, A.M. Pradeep, C.J. Joby. Duly restoring original seniority and granting annual increments in accordance with law.

IV) Award costs of and incidental to this application.

V) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.”

2. The brief facts of the case are that on 11.5.2000 while the applicant working as a Catering Supervisor in train No. 2626 – New Delhi – Trivandrum Kerala Express there was a preventive check in Pantry Car by Vigilance Department. They found discrepancies in store items and cash. The two Assistant Managers put the blame on the applicant and Rs. 20,000/- was recovered from the suit case of the applicant which was seized by the Vigilance Department. He was issued with a major penalty charge memo on 29.8.2000. Reply to the charge sheet was filed by the applicant. A regular enquiry was conducted and punishment of compulsory retirement was imposed on the applicant with effect from 10.3.2004. An appeal was preferred by the applicant but the same was rejected by the appellate authority. Aggrieved the applicant filed OA No. 903 of 2004. After hearing the matter the OA was allowed and the penalty order of compulsory retirement was set aside. The respondents as well as the applicant challenged the order before the Hon'ble High Court of Kerala in WP(C) Nos. 21183/2006 and 29559/2006. In a common order passed by the Hon'ble High Court on 4.2.2009, agreeing with the Tribunal order of setting aside the impugned order, remanded the matter to the disciplinary authority.

The disciplinary authority reduced the punishment to that of reduction to the lower grade of Catering Inspector Grade-III with Grade Pay of Rs. 2,000/- with recurring effect till such time he is found suitable for further promotion by the competent authority. This will have the effect of affecting his seniority position in the original grade. The applicant filed an appeal before the appellate authority which was considered by the appellate authority and the appellate authority modified Annexure A10 penalty advice and restored the applicant to the post of Catering Inspector in PB Rs. 9,300-34,800/- plus GP of Rs. 4,200/- and fixed the pay at Rs. 10,420/- plus Grade Pay of Rs. 4,200/- with the effect of postponing of future increments, losing seniority and treating the period from the date of compulsory retirement to the date of rejoining as dies non. Further the applicant filed a revision petition which was rejected by the revisional authority vide Annexure A14 order. Aggrieved the applicant has approached this Tribunal with the above reliefs.

3. Notices were issued to the respondents. They entered appearance through Smt. Girija K. Gopal who filed a reply statement contending that in compliance with the order of the Hon'ble High Court the disciplinary authority considered the case again and imposed the penalty order of reduction to a lower Grade Pay for a period of 10 years with recurring effect and loss of seniority and the intervening period was treated as non-duty in his wisdom as the applicant was having lack of integrity, devotion to duty with malafide intentions. The excess, shortage in various store items consumables and excess in Railway cash and shortage/excess in private cash well as detection of huge amount of unaccounted and undeclared cash

cogently prove that there was private sale of articles to passengers in train and thereby pocketing money in a mala fide and illegal manner. It was in view of the gravity of charges which are very serious requiring stringent and exemplary punishment, that the applicant was imposed the penalty. There has been total dereliction of duty on the part of the applicant and that the impugned orders does not suffer from any infirmity. Thus, they pray for dismissing the OA.

4. Heard Shri Martin G. Thottan learned counsel appearing for the applicant and Mrs. Girija K. Gopal, learned counsel appearing for the respondents and perused the records and appreciated the legal position.

5. Hon'ble High Court has passed the following judgment in WP(C) Nos. 21183 & 29559 of 2006 on 4<sup>th</sup> February, 2009:

"4. Since we have already stated the facts of the case, while dealing with W.P(C) No: 21183/2006, it is unnecessary to refer to them again. The grievance of the writ petitioner who was the applicant before the CAT was that the disciplinary authority did not take into account Rule 2429 of the Indian Railways Commercial Manual Volume II, the relevant portion reads as follows:-

"Private cash should not be kept in the railway cash chest, drawers, ticket tubes, cash sales etc. If any such amount or extra cash, whether stated to be private or otherwise, is found by the supervisory staff or inspecting officials, it should be remitted to the cash office."

The writ petitioner herein, who was the applicant, would submit that the above provision does not prevent the applicant from keeping his private cash in his suit case in his cabin. Keeping of private cash in cash chest etc alone is prohibited. The disciplinary authority as well as the appellate authority failed to advert to the above aspect. The Tribunal also missed the said point. Further two bags of atta found in excess, belonged to two workmen who were employed as servers in the pantry car. In their deposition before the enquiring authority, they have stated the correct facts. But the disciplinary authority did not advert to the said satisfactory explanation offered by the applicant for the presence of two bags of excess atta in the store. The appellate authority also did not consider the said

point. The Tribunal proceeded on the footing that the said aspect has not been taken into account while imposing the penalty. The said assumption was incorrect. For the above reasons, he attacks the impugned order.

5. Having regard to the facts of the case, we agree with the finding of the Tribunal that the impugned orders of the disciplinary authority and the appellate authority Annexures A6 and A8 should be set aside. We uphold the order of the Central Administrative Tribunal to the extent it quashes those orders. But we feel that the disciplinary authority should be given a free hand to consider the matter afresh. Therefore we make the remand an open remand. The applicant shall be given a chance to represent against relying on the previous punishments for imposing penalty on him. The disciplinary authority, needless to say, will consider the same. It shall also consider the impact of Rule 2429 of Indian Railways Commercial Manual Volume II while taking a decision regarding the possession of the petitioner of excess cash to the tune of Rs.20,060/- . The disciplinary authority shall also take into account the explanation of the applicant regarding the presence of two bags of atta found in the store. The disciplinary authority shall pass a fresh speaking order dealing with the above aspects. This the disciplinary authority shall do within two months from the date of production of a copy of this order. In case it is not done within the said time limit, the respondent in W.P(C) 21183/2006 and the writ petitioner in W.P(C) 29559/2006 shall be reinstated in service with all consequential benefits.”

6. The appellate authority had passed the order as under:

“The Inquiry Officer found all the four charges proved. The evidences in your defence which were produced by you during the Enquiry proceedings as stated by you are said to be already available during the check conducted by the Vigilance. You did not produce them during the check. Hence, their evidential value is lost. You were appointed in 1983 and you have worked in various supervisory grades in the Departmental catering units over the years. You are well aware of the procedures to be followed in maintaining cash and records in a Departmental Catering unit. From the check by the Vigilance it easily seen that you have not followed these procedures, resulting in the irregularities for which you were charge sheeted. On perusal of the orders issued in the above WP(C)/OAs, it seen that the charge No. 2 of unaccounted cash of Rs. 20,000/- has not been vitiated completely (WP 21183/2006). You are also aware that the presence of unaccounted cash in a Departmental catering unit along with the shortages in stock has serious implications which may not be easily visible to those unfamiliar with the working of the Departmental Catering Unit. However, the orders issued in the above WPs/OA, direct that your appeal is to be considered. You have appealed against the penalty imposed on him by the Disciplinary Authority stating that it is not in accordance with the judgments issued in the Oas.

You have not submitted anything against the charges. I have also gone through the Service record and there has been 18 instances of irregularities being found in your working between 1984 and 2000. However, it is seen that after joining duty on 28.5.2010 till date there are not adverse remarks against you and perhaps indicative that you are now working diligently. Taking this into consideration, the various orders in the WPs/OAs, the check was preventive in nature and the fact that you are undergoing penalty from 10.3.2004 (compulsory retirement from 10.3.2004 to

27.5.2010 and reduction in scale and grade from 28.5.2010 till date) for a period of 11 years without any finality, I am modifying the penalty imposed by the Appellate Authority (ADRM/TVC) imposed vide Penalty advice No. V/VO/T/FR/65/2000 dated 20.4.2009 as

1. You will be restored to your earlier scale of Catering Inspector in PB Rs. 9300-34800 with GP Rs. 4200/- and pay fixed at Rs. 10,420/- with Grade pay Rs. 4200/- with the effect of postponing future increments.
2. The restoration will come in to effect immediately.
3. You will not regain your original seniority.
4. You will not be given duty in any Catering units and posted in non cash areas only.
5. The period from date of compulsory retirement to the date of rejoining is to be treated as “dies-non”.

The above penalty is imposed by the undersigned and the revisional authority is additional General Manager. Revision petition, if any may be submitted to AGM within a period of 45 days from the date of receipt of this advice.”

7. The applicant's contention is that the appellate authority had not passed the order in its true spirit as directed by the Hon'ble High Court and bent upon to punish him without application of mind and without discussing the points raised in the appeal. We are in agreement with this contention of the applicant that respondent should have discussed the legal/rule position as per direction of the Hon'ble High Court instead of has relied upon the enquiry report. The another point raised is that multiple punishments were awarded to the applicant by way of effect in postponing of future increments without any time period, will not regain original seniority, will not be given duty in any Catering units and posted in non-cash areas only and that the period from the date of compulsory retirement to that of rejoining is to be treated as dies-non is unheard, rather it is too harsh. This Tribunal is aware of the legal position regarding interference in departmental proceedings

case which has a very limited scope. Moreover, as on the date of filing of the OA on 28.12.2016 the applicant has shown his age as 57 years which means that he has retired from service during the pendency of the OA. Therefore, since the punishment being harsh and as the applicant has retired from service during the pendency of the OA, we feel that ends of justice would be met if we remit the case back to the appellate authority in order to consider the quantum of the punishment imposed on the applicant on the basis of the observations made above. Ordered accordingly. The impugned orders at Annexures A10, A12 and A14 are quashed and set aside. The order of this Tribunal may be implemented by the respondents within a period of 60 days from the date of receipt of a copy of this order.

8. The Original Application is partly allowed. No order as to costs.

**(ASHISH KALIA)  
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)  
ADMINISTRATIVE MEMBER**

“SA”

**Original Application No. 180/01100/2016****APPLICANT'S ANNEXURES**

**Annexure A1** - True extract of the articles of charges & statement of imputations in the charge memorandum No. V/Vo/7/FR/65/2000 dated 29.8.2000.

**Annexure A2** - True copy of the penalty advice No. V/Vo/T/FR/65/2000 dated 3.3.2004.

**Annexure A3** - True copy of the order dated 13.4.2006 in OA No. 903/2004 delivered by this Hon'ble Tribunal.

**Annexure A4** - True copy of the common judgment dated 4.2.2009 in WP(C) No. 29559 & 21183 of 2006.

**Annexure A5** - True copy of the order No. V/VO/T/FR/65/2000 dated 20.4.2009.

**Annexure A6** - True copy of the letter No. V/VO/T/FR/05/2000 dated 4.11.2011.

**Annexure A7** - True copy of order dated 29.10.13 in OA No. 1027/2012 delivered by this Hon'ble Tribunal.

**Annexure A8** - True copy of the letter No. V/VO/T/FR/65/2000 dated 23.12.2013.

**Annexure A9** - True representation dated 1.1.2014 submitted by the applicant.

**Annexure A10** - True copy of the penalty advice No. V/VO/T/FR/65/2000 dated 27.1.2014 issued by the 4<sup>th</sup> respondent.

**Annexure A11** - True copy of appeal dated 4.3.2014 submitted by the applicant.

**Annexure A12** - True copy of the appellate order No. P(A) 86/2014/598 dated 15.5.2015 issued by the 3<sup>rd</sup> respondent.

**Annexure A13** - True copy of the revision petition dated 3.7.2015 submitted by the applicant.

**Annexure A14** - True copy of the revisional order No. P(A)86/2014/598 dated 12.8.2016 issued by the 2<sup>nd</sup> respondent.

**Annexure A15** - True copy of the letter dated 22.5.2000.

**Annexure A16(a)**- True extracts of depositions of sever U. Balakrishnan during the enquiry on 19.12.2002.

**Annexure A16(b)**- True extracts of depositions of sever R. Raja Shenoy during the enquiry on 19.12.2002.

**Annexure A17** - True extracts of Rule 1344(FR 54A) of the Indian Railway Establishment Code.

**Annexure A18** - True copy of the order dated 30.8.2011 in OA No. 26/2010 by this Hon'ble Tribunal.

**RESPONDENTS' ANNEXURES**

Nil

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