

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
OA 42/2005**

WEDNESDAY, THIS THE 14th DAY OF JUNE, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

K.K. Thangaraj S/o Karuppanna Gounder
Retd. Technician Grade I/Carriage Wagon
Southern Railway/Erode
Residing at No. 112-C
Jeevanandam Veedhi
Bye Pass Road, Erode-2

Applicant

By Advocate Mr. TCG Swamy

Vs

- 1 Union of India represented by
the General Manager, Southern Railway,
Headquarters Office,
Park Town PO
Chennai-3
- 2 The Senior Divisional Mechanical Engineer
Southern Railway,
Palghat Division
Palghat.
- 3 The Additional Divisional Railway Manager
Southern Railway,
Palghat Division
Palghat.
- 4 The Chief Passenger Transportation Manager
Southern Railway
Headquarters Office
Park Town PO
Chennai-3
- 5 The Chief Mechanical Engineer
Southern Railway
Headquarters Office
Park Town PO
Chennai.-3

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

ORDER

HON'BLE MRS. SASTHI NAIR, VICE CHAIRMAN

The applicant, a retired Technician Grade-I(Carriage & Wagon) of Southern Railway, Palghat division is aggrieved by an arbitrary and illegal penalty of reduction of his pay by six stages by Annexure A-10 for a period of six months, resulting in substantial prejudice and recurring loss to the applicant. The applicant submitted an application for voluntary retirement, Annexure A-1 dated 13.6.2001, requesting for acceptance of the same, by duly waiving the notice period, on medical grounds. There was no action by the respondents either to accept or reject the applicant's request for voluntary retirement. Since there was no response even after the statutory notice period of three months, the applicant submitted Annexure A-2 representation dated 19.9.2001 requesting that he be allowed to retire from service on and with effect from 30.9.2001. The Applicant was informed that his request for voluntary retirement could not be considered as there was an alleged vigilance investigation against him in progress. Later applicant was imposed a minor penalty of withholding 3 years of Privilege Ticket Orders (PTOs) due to him,. The applicant submitted his appeal to the appellate authority. The appeal was not considered. However the penalty was reviewed and by Annexure A-10, applicant was imposed with a punishment of reduction of pay by six stages for a period of six months. The applicant has further submitted that Annexure A-6 is without any

authority of law/rules, and Annexures A-8 and A-10 are totally without application of mind and opposed to the principles of natural justice and also ultra vires the Rule.

2 The respondents have denied the averments in their reply statement. The disciplinary authority had after considering his representation and grant of personal hearing found that the applicant is guilty of the charges framed against him, taken a lenient view and imposed a lesser punishment of withholding 12 sets of Privilege Passes. The 3rd respondent on finding that the penalty was not commensurate with the gravity of the offence issued the show cause notice vide A-8 and after considering his representation imposed the punishment of reduction of pay from Rs. 5625 by six stages to Rs 4875 for a period of six months. There is nothing unusual in the action of the appellate authority and an inadvertent error was corrected by not mentioning the correct rule in the corrigendum. The punishment was awarded for a serious misconduct like claiming of false TA which would have normally resulted in removal from service. Based on his request for voluntary retirement, the service of the applicant was terminated with effect from 24.9.2002.

3 The applicant has contended in the rejoinder that the order of the Disciplinary authority itself states that the the action of the applicant was not willful but negligence and due to his lack of education and shows that the allegations depicted in the charge were not serious. There was no provision to withhold his

application for voluntary retirement by virtue of Rule 66 of the Railway Services(Pension) Rules. There is no material for the authority to come to the conclusion that the penalty is inadequate. Further the show cause notice is for withholding of increments whereas the punishment imposed is for reduction of pay by six stages. The applicant also contends that the disciplinary authority took a lenient view due to the pendency of his voluntary retirement and the Appellate authority also relies on the same argument to enhance his punishment which itself confirms that the respondents were only interested in punishing him and have not applied their mind at all. It is also urged that the applicant was not guilty of any misconduct and a verification of records would have shown that his TA claims were duly certified by the superior authority. Therefore the very foundation of the case is nonexistent.

4 The respondents have filed an additional reply statement reiterating that the charges against the applicant were serious in nature and that he had travelled without a travel authority. They also submitted that in terms of Railway Board Letter at R-1, acceptance of the request for voluntary retirement is subject to the condition that no vigilance/DAR case is pending. Having gone on voluntary retirement accepting settlement benefits to be computed based on reduced rate of pay on his own volition, he cannot turn around and claim settlement benefits on higher rates.

5 I have heard the learned counsel on both sides. It was

urged by the Learned counsel for the applicant that the appellate authority can act as revision authority only if the appeal is not preferred and hence the respondents had corrected the notice under Rule 25 to rule 22(2). Besides, the A-10 order does not speak of the appeal submitted by him and also the fact that the punishment imposed was not as per the show cause notice. Rule 66 of the Railway Pension Rules has also been violated and for that reliance was placed on the judgment reported in UOI & others Vs Syed Muzaffar Mir (AIR 1995 SC 176). The counsel for the respondents reiterated the contentions in the reply.

6 I have gone through the Rules and judgments referred to and find that the two issues of the applicant's retirement and disciplinary proceedings have been mixed up in the averments of the applicant and the defence of the respondents. No doubt the applicant applied for voluntary retirement much before the vigilance action was contemplated. The charge memo was initiated only after the notice period was over. The rejection of his request was also after the notice period. The right of retirement conferred by Rule 66 can be denied only in the event of suspension and the rejection was clearly in violation of Rules. In the case relied upon by the applicant, though the applicant therein was a Railway employee under suspension, the Apex court held that retirement comes into effect on completion of notice period and the order removing the employee from service after notice period has expired is non est in law. But the applicant

here had not challenged the rejection of his request at the appropriate time, moreover he had later renewed his request and voluntarily retired later after suffering the punishment. Therefore he cannot raise this issue now as the doctrine of acquiescence would apply.

7 In this OA therefore, I am concerned with only the propriety of the orders of the Disciplinary and appellate authorities. A charge memo for minor penalty was issued to the applicant in AnnexureA4 and the Articles of charge related to claim of false TA without performing duty at outstation and not taking permission for acquiring properties in his and his wife's names. The applicant denied the allegations stating that there was no misconduct on his part. No enquiry was conducted . The second respondent imposed a penalty of withholding the applicant's Privilege Ticket Orders for three years taking a lenient view, the relevant portion of the order of the Disciplinary authority is extracted below.

'In view of the representation offered, I have interviewed the CE. After careful consideration of the case and reply of the CE, I find that the misdemeanour contained in the chargesheet have been committed by the CE, though it may not be indicating a willful attempt, but negligence and his lack of education'

'In view of the circumstances and also the fact that the CE has applied for VR, a lenient view is taken. I impose upon him the punishment of withholding 3 years of PTO due to him (12 sets in all)'

8 The applicant submitted an appeal. Later he received annexureA8 in purported exercise of power under Rule 25 that the punishment is proposed to be reviewed as the penalty

awarded was not commensurate with the gravity of the offence. Annexure A-8 was issued under Rule 25 of the Railways Service (Discipline and Appeal) Rules as if the power of suo moto revision was being exercised, which Rule could not be invoked as an appeal had already been submitted. Thereafter a corrigendum was issued that the proceedings are taken up under Rule 22 and annexure A-10 order has been passed imposing a penalty of reduction of pay by six stages for six months, when the showcause issued in Annexure A-8 was for withholding the increment for 36 months. It is the contention of the applicant that it is therefore illegal and against the principles of natural justice. The respondents have submitted that the relevant rule was inadvertently mentioned as rule 25 which was later corrected through a corrigendum and that the punishment was imposed after complying with the provisions of the rules and after giving an ample opportunity to the applicant. Rule 22 is extracted under:

Rule 22.Consideration of appeal

(1)In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2)in the case of an appeal against an order imposing any of the penalties specified in Rule6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non compliance has resulted in the violation of any provisions of the constitution of India or in the failure of justice.

(b)whether the findings of the disciplinary authority are warranted by the evidence on record; and

(c)whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any authority with such directions as it may deem fit in the circumstances of the case:

Provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 6 and an enquiry under Rule 9 has not already been held in the case, and the appellate authority shall, subject to the provisions of Rule 14, itself hold such enquiry or direct that such inquiry be held in accordance with the provisions of rule 9 and thereafter on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such order as it may deem fit;

(iv) subject to the provisions of Rule 14, the appellate authority shall-

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9 has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may

be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

9 As submitted by the respondents there is nothing unusual in considering a case by an appellate authority as per the above Rule 22 if it was of the view that the disciplinary authority had not imposed a penalty commensurate with the gravity of the offence. But in doing so the Appellate authority is bound to follow the procedure prescribed in the above rule. On reading of the above rule in totality ,two things are clear that where the penalty to be enhanced is one of the major penalties specified in rule 9 or that of withholding of increment, the authority has to satisfy itself that an enquiry has been conducted and a reasonable opportunity has to be given to the appellant to make a representation against the proposed enhanced penalty. Both these conditions have not been complied with by the respondents. It is obvious from the Annexure A-6 order that no enquiry in the manner laid down in Rule 9 had been conducted. Therefore the appellate authority in terms of the proviso (ii) or (iv) (b) of Rule 22 depending on the penalty to be awarded, should have held an enquiry or directed that such an enquiry be held. Proviso (v) has also been violated as the wordings in this proviso are clear that the opportunity to be given to the appellant should be against the penalty actually

imposed. One cannot issue a showcause for enhancement to a specific penalty and impose a totally different penalty in the final order. such an action defeats the very purpose of giving a n opportunity and is against all principles of natural justice. The respondents are silent on this aspect. Hence I have no hesitation to conclude that the impugned order s at Annexures A-8 and Annexurea10 are violative of the provisions of the Rule 22 (2) and are liable to be set aside. As the applicant has already retired voluntarily and a lenient view had been taken by the disciplinary authority I do not consider it a fit case to be remitted back to the Appellate authority for reconsideration.

10 In the result, the OA is allowed:

(1)Annexures A-8 and A-10 are quashed

(2)the respondents are directed to grant consequential benefits of arrears of pay and allowances to the applicant and revise his pensionary benefits also accordingly and pay arrears of retirement benefits from the date from which they become due as if the orders at A-8 and A-10 had not been issued at all.

Dated the 14th June, 2006

Sath Nair
SATHI NAIR
VICE CHAIRMAN

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