CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 420 of 2010

Tuesday, this the 9th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

P. Mohanan, aged 58 years, S/o. Padmanabha Panicker,
Technician Gr. III/Diesel, Southern Railway/Diesel Loco Shed/
Ernakulam Junction, Cochin-682016, Residing at :
Rupasree, Aythil P.O., Kollam District. ..... **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

Versus

1. Union of India, represented by the Secretary,
to the Government of India, Ministry of Railways,
Rail Bhavan, New Delhi.

2. The Sr. Divisional Mechanical Engineer,
Southern Railway, Trivandrum Division,
Trivandrum-14.

3. The Chief Operations Manager, Southern Railway,
Trivandrum Division, Trivandrum-14.

4. The Sr. Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14. ..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose)

This application having been heard on 09.08.2011, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant who was originally recruited as a Steam Loco Khalasi

was proceeded in a disciplinary action which ended in a penalty order of removing him from service. Though he preferred an appeal the same was rejected. Thereafter he preferred a revision petition before the prescribed authority who by Annexure A-1 order dated 20.12.2002 partly allowing the revision modified the penalty of removal from service to that of reduction to the post of Diesel Khalasi in the grade of Rs. 2550-3200/- with grade pay of Rs. 3,000/- purely on humanitarian ground subject to the condition that he should not be booked on running duty. It was also observed in the order that from the file of papers it is seen that the applicant had failed to stop the train at the starter signal of road-3 at ERS which was in ON aspect. That none of his contention brought about by him in the revision as also in the appeal negate the said fact. He also find that there is no merit or in his revision and appeal petitions which warrant any modification of the penalty imposed by the disciplinary authority and confirmed by the appellate authority. Thus the order Annexure A-1 was passed substituting the punishment purely on compassionate ground and not on the basis that the order imposing penalty as confirmed in the appeal suffers from any illegality. However, the applicant submitted representations to the General Manager, his next higher authority raising grievances against the order Annexure A-1. Some replies were also received by him and finally he resorted to the remedy of filing a petition before the President of India. The prescribed authority instead of forwarding the said petition rejected the same on the sole ground that the time taken for submission of the petition is more than six months and that no reasons for delay has been given. A copy of this order is produced as Annexures A-6/2 dated 28.9.2007. Impugning Annexures A-1 and A-6

orders the applicant has filed this OA.

2. The prayers made in the OA are as follows:

> "(i) Call for the records leading to the issue of A6 and quash the same;
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> (ii) Direct the respondents to forward the applicant's A5 mercy appeal dated 10.7.2007 to His Excellency the President of India with a specific direction to consider and take a final decision on the same within a time frame as might be found just and proper by this Hon'ble Tribunal; or in the alternative,
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> (iii) call for the records leading to the issue of A1 and quash the same to the extent it reduces the applicant in rank and scale by six stages and direct the respondents to suitably modify the same to the extent of reduction to the post/scale from which the applicant was promoted as Shunting Driver; or in the alternative,
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> (iv) Direct the respondents to restore the applicant as a Shunting Driver and grant him the benefit of such restoration at least with effect from the date of A8 order with all consequential benefits emanating there from;
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> (v) Award costs of and incidental to this Application;
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> (vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

3. It is the contention of the applicant that punishment imposed on the applicant by Annexure A-6 order suffers from illegality in so far as he had been down graded six stages below the post which he was holding at the time when he was inflicted with the punishment. According to the learned counsel for the applicant the authority can only down grade him to the next lower post to the one he held at the time of inflicting of the punishment. He places reliance on the decision of the Apex Court in Ram Prakash Agnihotri Vs. District Judge U.P. & Ors. - 1991 SCC (L&S) 838, P.V. Srinivasa Sastry & Ors. Vs. Comptroller & Auditor General & Ors. - 1993 SCC

(L&S) 206, Nyadar Singh Vs. Union of India & Ors. - AIR 1988 SC 1979 and also the decision of the Kerala High Court in the case of Sreekantan Nair Vs. Hundustan Latex Ltd., - 2001 (1) KLT 447.

4. Per contra the learned counsel appearing on behalf of the respondents reiterating the stand has stated in paragraph 4 of the reply as also in paragraph 3 of the additional reply statement that the misconduct proved in the inquiry is a serious one and the punishment of removal is imposed by the disciplinary authority and confirmed by the appellate authority was modified only on compassionate ground by the revisional authority. It is further pointed out that the revisional authority has himself found that there is no merit in the revision filed against the order of penalty as confirmed in the appeal but only exercising his discretionary power on compassionate ground for the reasons as stated in Annexure A-1 order he has modified the punishment passed by the disciplinary authority. It is also contended that the petition filed by the applicant was beyond six months period and in terms of the relevant rule in Appendix II of the Indian Railway Establishment Code, Volume I, the petition having filed beyond six months period is liable to be rejected and therefore Annexure A-6 order passed rejecting the petition is also fully justified. It was also contended that in the absence of any restriction in the rule regarding the stage to which an employee could be down graded by way of a punishment, the order imposing the punishment down grading him to six grades below the one he held at the relevant time of imposing the punishment cannot be said to be wrong or contrary to any statutory provisions. Admittedly the applicant was recruited as Khalasi and

he has not been reverted to the post down grading lower than the one he held initially/previously.

5. We have heard both sides.

6. We may at first consider the legal contention as to whether the order of penalty of down grading an employee to six grades below the one he held at the time of inflicting the punishment is in any way contrary to the provisions contained in the rule and as to whether such contention is supported by the cited decisions.

7. As per Rule 6(vi) of the Railway Servants (Discipline & Appeal) Rules, 1968 a railway servant could be imposed the punishment of reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the railway servant was reduced and his seniority and pay on such restoration to that grade, post or service. These rules clearly provides that for good and sufficient reason a railway servant can be imposed a penalty for reduction to a lower time scale of pay, grade, post or service. There is no inhibition or restriction that such reduction should however can be to an immediate lower post or to a lower time scale of pay. In Nyadar Singh's case (supra) the question considered was as to the scope of Rule 11 (vi) of the CCS (CCA) Rules providing the penalty of reduction in rank. It was held that a person initially recruited to a higher time scale, grade or service or post cannot be reduced by way of punishment to a post in a lower

time scale, grade, service or post which he never held before. (emphasis given by us). The statutory language of Rule 11(vi) authorising the imposition of penalty of reduction in rank does not, it is true, by itself impose any limitations. The question is whether the interpretative factors, relevant to the provision, import any such limitation. On a consideration of the relevant factors it must be said that they do. Though the idea of reduction may not be fully equivalent with "reversion", there are certain assumptions basic to service law which bring in the limitations of the latter on the former. The penalty of reduction in rank of a government servant initially recruited to higher time scale, grade, service or post to a lower time scale, grade, service or post virtually amounts to his removal from the higher post and the substitution of his recruitment to such lower post, affects the policy of recruitment itself. It was held that the government servant may not have the qualifications requisite for the post which may require and involve different, though not necessarily higher skills and attainments. The rule must be read in consonance with the general principles and so construed the expression "reduction" in it would not admit of a wider connotation. The plea that the rule enables a reduction in rank to a post lower than the one to which the civil servant was initially recruited for a specified period and also enables restoration of the Government servant to the original post, with the restoration of seniority as well, and that, therefore, there is nothing anomalous about the matter, does not wholly answer the problem. On an overall view of the balance of the relevant criteria indicates that it is reasonable to assume that the rule making authority did not intend to clothe the disciplinary authority with the power

which would produce such anomalous and unreasonable situations. The anomalous situation as pointed out by the Apex Court is that a person recruited to a higher grade or class of post being asked to work in a lower grade which in certain conceivable cases might require different qualifications. The principle as held in the above decision has been followed in the subsequent decisions cited by the applicant in the cases of Ram Prakash Agnihotri (supra) and P.V. Srinivasa Sastry (supra). The same principle is also held by the Hon'ble Kerala High Court in Sreekantan Nair's case (supra). As we can see the above decisions make it abundantly clear that while a government servant could be imposed a punishment to a lower time scale, grade or to a lower post it cannot be to a post or time scale lower than the one which he held earlier. In other words when he was recruited to a particular post, the punishment shall not be to reduce him to a post lower than the one to which he was appointed earlier. The decision does not go beyond that to say that the punishment of reduction in time scale, grade or post could only be to an immediately lower post than the one he held at the point when the disciplinary proceedings were initiated. On the other hand the dictum as laid down by the Hon'ble Apex Court suggestive of the principle that while imposing the punishment it shall not be to a post or to a time scale below the one which he held earlier or appointed. So there is a discretion as to whether the employee should be imposed by way of a punishment to an immediately lower time scale, post or grade to two grades or three grades etc. as the cases may be but the discretion does not go beyond that to impose a punishment to bring him down to a time scale, post or grade to which he was not holding initially. In this case admittedly the

applicant was appointed initially as a Khalasi and he has been down graded or reverted to the same post which he was holding and not to a post lower than the one which he held earlier. Therefore, we are unable to accept the said contention raised by the applicant and for the forgoing reasons it is rejected.

8. However, we find that the applicant has filed a petition before the President of India through proper channel. There are two provisions for any of the aggrieved party to seek redressal of the grievances by approaching the President of India. One is under Rule 25-A of the Railway Servants (D&A) Rules, 1968 which confines a power of review under the President either suo-motu or otherwise. However, the grounds for reviewing the order is confined to cases where any new material or evidence which could not be produced or was not available at the time of passing the order under review and which will have an effect of changing the nature of the case has come or has been brought to his notice. Hence, only on the limited ground of any material un-earthed subsequently, the power of review under 25-A could be invoked and exercised. But Rule 31 of the Railway Servants (D&A) Rules, 1968 provides that nothing in these rules shall operate to deprive a Railway servant from exercising his right of submitting a petition to the President in accordance with the instructions contained in Appendix 'II' to the Indian Railway Establishment Code, Volume I. This is a saving provision akin to Section 151 of the Code of Civil Procedure. The process for submitting the petition is also prescribed in Appendix II of the Indian Railway Establishment Code. As per the rules contained in Appendix II such petition

has to be given to the prescribed authority through proper channel and the prescribed authority has to forward the same to the President of India. However, if the petition is filed beyond six months period and there is no sufficient explanation for the delay such petition need not be forwarded to the President. As per Part III of Rule 6 of Appendix II it clearly provides that the prescribed authority may, in its discretion, withhold the petition when a petition or representation is made against an order communicated to the petitioner more than six months before the submission of the petition, and no satisfactory explanation of the delay is given. Therefore, it is not an invariable rule that in the moment the petition is found to have been filed beyond six month period challenging any order passed that the petition is liable to be dismissed on that score. There is a discretion vested with the authority to consider in an appropriate case whether the delay is explained to forward the same to the President when he is satisfied that the delay has been explained. But in Annexure A-6 the prescribed authority has rejected the petition filed by the applicant on the ground that the time taken for submitting the petition was more than six months and no reason for delay has been given. The copy of the petition is submitted as Annexure A-5 and a careful consideration of the averments made therein it can be seen that some explanation has been offered by the applicant as to why he did not prefer the petition earlier and he had referred to certain circumstances namely of having made representations to the authorities and the replies received and it is only thereafter that the said petition which culminated in Annexure A-6 order was submitted. But the prescribed authority was misconceived to say that no explanation was offered explaining the delay.

9. In this case the question as to whether punishment imposed in the given circumstances is appropriate or not or whether any reduction in the penalty should still be given is not a matter for this Court to say since only in exceptional cases when the punishment is shockingly disproportionate that this Court could consider the grant of any relief. On the other hand the executive authority is not inhibited by any such consideration and that they can exercise their power in the given circumstances to reduce the penalty even if it is not shockingly disproportionate. Therefore, at this belated stage we do not think it would be appropriate in the larger interest of justice to send it for reconsideration by the prescribed authority in the matter of forwarding the petition rather we are of the opinion that the prescribed authority ought to have forwarded the petition to the President of India for consideration.

10. In the circumstances Annexure A-6 order is set aside and we direct the prescribed authority i.e. the Chief Operations Manager to forward the petition Annexure A-5 to the President of India within a period of three months from the date of receipt of a copy of this order. In view of the fact that the penalty itself is imposed long back we consider it appropriate to have an earlier disposal of the same.

11. Original Application is disposed of accordingly. No costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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