

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.447/96

Monday this, the 2nd day of September, 1996.

CORAM:

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.P.V.VENKATAKRISHNAN,ADMINISTRATIVE MEMBER

The Divisional Railway Manager,  
Southern Railway,  
Thiruvananthapuram.

..Applicant

(Advocate Mrs.Preethy for Mrs.Sumathi Dandapani)

vs.

1. T.Churian, Ex.Guard,  
Railway Quarters No.194/F,  
Southern Railway, Kollam-691 001.

2. Industrial Tribunal,  
Kollam.

..Respondents

(By Advocate Mr.T.C.G.Swamy (for R.1)

The Application having been heard on 2nd September,1996, the  
Tribunal on the same day delivered the following:

ORDER

CHETTUR SANKARAN NAIR(J),VICE CHAIRMAN:

An order of the Industrial Tribunal directing reinstatement with back wages(except for two years) of respondent-workman who had been compulsorily retired on a charge that he delayed shunting, is under challenge. Applicant-Railways submit that the order of the Tribunal would sabotage discipline, and that it would impose on the Railways the unmerited burden of paying seven years wages to a derelict employee. Learned counsel for Railways who argued her case with great thoroughness, highlighted different aspects to sustain her contentions.

2. The disciplinary authority compulsorily retired the workman, an appeal was filed but to no avail, and then an

industrial dispute was raised. In A-3 award, the Tribunal found:

"... the enquiry is proper, valid and supported by legal evidence."

After upholding the findings of the authority on facts and law, the Industrial Tribunal felt:

"The workman has been out of employment since 1987 and the mental agony suffered by him during this period cannot be ignored... it will be an adequate punishment to deprive the workman of the wages for 2 years and subject to that he should be directed to be reinstated.."

We have our own doubts whether the workman could be legally said to have suffered mental agony. The consequences of an unlawful act committed by one, cannot be said to cause mental agony to him, in a legal sense, though in a purely emotional sense, it could. Likewise, there is no question of depriving the workman of his wages. It is really a question of granting the workman wages for the period during which he did not work, after affirming the findings of the disciplinary authority.

3. After the introduction of Section 11-A of the Industrial Disputes Act, the question of punishment, which was thereto a managerial preserve, became a justiciable area. The Court or Tribunal is invested with the authority of considering the adequacy or propriety of the quantum of punishment. If the Court/Tribunal considers the same to be unduly harsh, interference is justified. This is the law laid down by the Supreme Court in a catena of decisions from The Workmen of M/s. Firestone Tyre & Rubber Co. of India P.Ltd. vs. The Management and others, AIR 1973 SC 1227, East India Hotels vs. Their Workmen and others, AIR 1974 SC 696, Rama Kant Misra vs. State of Uttar Pradesh and others, (1982)3

SCC 346, Workmen of Bharat Fritz Werner (P) Ltd. vs. Bharat Fritz Werner, AIR 1990 SC 1054 and B.C.Chaturvedi vs. Union of India and others, AIR 1966 SC 484.

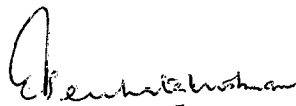
4. Yet the Court or Tribunal must exercise its discretion judicially, bearing in mind the relevant and diverse considerations. As pointed out by the Supreme Court in Kerala Solvent Extractions Ltd. vs. A.Unnikrishnan and another, 1994(1) KLJ 595(SC), misplaced sympathy could denude the judicial process of its true merit.

5. Relevant aspects like the financial impact, concerns of discipline in the organisation and so on, must enter consideration. The issue cannot be decided, only with reference to the concern of the employee. In the case on hand, after finding the workman guilty of a very serious charge of delaying a train by 40 minutes the Labour Court ordered payment of back wages for seven years. It must be remembered that the tax payers money, out of which such payments will be made, cannot be dissipated lightly. The tax payer who bears not an inconsiderable burden already, cannot be mulcted with heavier burdens. The sympathy for one, should not turn out to be indifference to others. Likewise, a public utility service like the Railways, - or for that matter any other public utility undertaking, is basically intended to serve the public interest. Exaggerated notions of sympathy cannot go to the aid of a derelict workman, at the cost of efficiency. The Supreme Court has on several occasions counselled the need for prudent management of public funds. In Secretary to Government of India vs. Shivram Mahadu Gaikwad, 1995 SCC(L&S) 1148 and State of Maharashtra vs. Digambar, AIR 1995 SC 1991, the Apex Court deprecated the practice of ordering back wages without due consideration of its impact on the administration. Viewing the

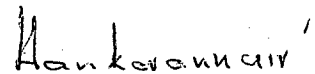
diverse concerns in that perspective, we feel that the Industrial Tribunal misdirected itself in law in awarding seven years back wages after finding the workman guilty of a very serious charge like delay in shunting and disobedience of orders of his superiors. We would therefore modify the order and direct reinstatement of the workman from the date of the order of the Tribunal without back wages. However, the entire period will count for purposes of seniority, increments and pension. The amount of pension paid after the order of compulsory retirement and before the date of reinstatement (date of order of Industrial Tribunal) will not be recovered from the workman.

6. Application is allowed to the extent indicated hereinbefore. Parties will suffer their costs.

Dated the 2nd September, 1996.



P.V. VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)  
VICE CHAIRMAN

List of Annexure

Annexure A3: True copy of the Order dated 31.8.95  
No.I.D. 3/94 of the Industrial Tribunal,  
Kollam (2nd Respondent)