

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 496  
T. A. No.

1990

DATE OF DECISION 31.5.1991

K. J. Francis Applicant (s)

Mr. M. Ramachandran Advocate for the Applicant (s)

Versus

The Sr. Divisional Railway  
Manager, Southern Railway, Nilambur and others Respondent (s)

Mr. M. C. Cherian Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? LO
3. Whether their Lordships wish to see the fair copy of the Judgement? LO
4. To be circulated to all Benches of the Tribunal? LO

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure-IV, appellate order, passed in a disciplinary proceedings initiated against him based on the charge of having received both pay and pensionary benefits after his reinstatement in service for the period from 29.6.76 to 30.6.82.

2. The applicant while working as SIMM/DSPT in the Southern Railway was compulsorily retired from service w.e.f. 28.6.76 under Rule 2046(k) of the Railway Establishment Code Vol. II. He challenged this order before the High Court. Pending the original petition he was

reinstated in service w.e.f. 7.9.77. It was directed in the order by which he was reinstated that the intervening period from 29.6.76 to 6.9.77 would be treated as leave due.

Pursuant to the earlier compulsory retirement, the applicant was sanctioned pension and other benefits by letter dated 21.12.76. Since there was no direction from the respondents after 7.9.77 for the refund of pension and other benefits already drawn by him, he did not remit the amount back to the Treasury, but informed the Sub Treasury Officer, Nilambur who was the Pension Disbursing Officer, that he had been reinstated in service w.e.f. 7.9.77. This fact was recorded in the Pension Payment Order Book. Nevertheless the applicant was allowed to draw the minimum pension by the Treasury Officer. The applicant had availed of leave many times for receiving pension indicating the reason in the leave application. In spite of the above fact, the Railway Administration never informed him that he was not legally eligible to receive the pension even after reinstatement. The applicant was issued with a charge memo on 18.9.82 alleging that he had violated Rule 3 1(i)(ii) and (iii) of Service <sup>5</sup> the Railway (Conduct) Rules 1966 for having received both pay and pension during the period mentioned therein. He submitted reply to the charge but the Disciplinary Authority conducted enquiry which according to the applicant was ex parte. In the enquiry the applicant was found guilty of

the charge and Annexure-I order was passed imposing the penalty of dismissal of the applicant from service w.e.f 31.8.83. He filed Annexure-II appeal memorandum which was disposed of by the Appellate Authority rejecting the appeal. The said order was challenged before the High Court in O.P. 158/84, which was later transferred to this Tribunal and numbered as TAK 352/87. After hearing the arguments this Tribunal disposed of the application after adverting to the fact that the Administration was also partly responsible in allowing the applicant to draw the pensionary benefits and commit the offence in this case. This Tribunal observed "Indeed the Enquiry Officer has pointed out in his report that while the applicant was reinstated by the order dated 26.9.77, no mention was made in that order regarding cancellation of the monthly pension that was already granted. Nor was the applicant directed to refund the amount of death cum retirement gratuity or to return the Pension Pay Order Book. The Enquiry Officer has found that the responsibility of payment of monthly salary and monthly pension-simultaneously partly rests with the Administration." This Tribunal quashed the order of the Appellate Authority dated 1.10.83 and remitted the matter for fresh disposal in accordance with law but in the light of the observation made in the judgment. According to the applicant the Appellate Authority did not consider the contentions of the applicant and examined the question

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of responsibility of the Administration in allowing the applicant to draw the pension so as to reduce the quantum of punishment imposed on the applicant taking into account the direction of this Tribunal in Annexure-III judgment.

The relevant portion of the order of the Appellate Authority, Annexure-IV challenged in this case reads as follows:

"The ex-employee's contention in his appeal, therefore that he had "acted correctly and informed both the STD/Nilambur as well as the Department regarding the continuance of pension even after reinstatement" is not correct. On the other hand, it may be reiterated that the party has given the impression to the STD that he had been only re-employed. The party has contended that he was not a highly educated person and hence could not appreciate the technicalities in differentiating the two terms re-employment and reinstatement. This plea cannot be accepted.

It is conceded that the Administration has been partly responsible in enabling the appellant to draw pension even after the order of compulsory retirement was revoked and the appellant was reinstated in service. However, this does not, in any way, contribute to the reduction of the gravity of the offence committed by the party in not advising the Administration, on his own, the basic fact that he was being given benefits much more than what should normally accrue to him by way of his reinstatement.

Under these circumstances, I consider that there is no validity in the arguments put forth by the party in his appeal dated 9.9.83. The punishment of dismissal from service imposed on him will stand."

3. The learned counsel for the applicant contended that the Appellate Authority has not discharged statutory duty of disposing the appeal taking into consideration the observation in Annexure-III judgment; He admitted that his client has drawn pension in addition to pay but contended that it was due to a bona fide mistake on his part. It is submitted that the applicant believed that he was only re-employed and not reinstated because he was given only oral order which he understood to mean after 6 to draw 6 re-employment and as such/his reemployment he is entitled/

minimum pension. Accordingly he was receiving the same thinking that the payment was really due to him and the same was subject to final adjustment. According to him he has availed of leave for receiving pension on many occasion specifically indicating the reason in the application. Even then since the Railway Administration failed to inform him that he is not eligible to receive the amount he did not refund the pensionary benefits received by him between the intervening period from 29.6.76 to 6.9.77. According to the applicant he is innocent and he has retired from service on 31.10.83. He is prepared to refund the pensionary benefits received by him. The Appellate Authority ought to and b have taken into consideration ~~xxx~~ all these aspects/ found him innocent. He submitted that at least the Appellate Authority should have reduced the penalty of ~~xxx~~ been b compulsory retirement so that he would not have/deprived ~~xxx~~ permanently of the benefit of getting pension.

4. The respondents in the counter affidavit stated that the applicant had been drawing monthly pension side by side with the monthly salary even after his reinstatement. It came to the notice of the DPO, Southern Railway, Palakkad only in June, 1982. The Signal Officer, Calicut sent a message dated 29.6.82 Annexure R-1(b) to the applicant directing him to attend the office of the DPO along with the pension book which was perused along with the service records by the DPO on 2.7.82. The applicant was also

interviewed by the officer and he was satisfied that the applicant has received both the pension and the salary with the full knowledge that he is not eligible for both. He instructed him to remit back the pension amount received by him. But, the applicant did not agree to it. Hence, he has written Annexure R-1(c) to the Sr. DAO/PGT to take necessary action against the applicant. Thereafter, Annexure R-1(a) charge memo was issued and enquiry proceedings were conducted; but the applicant did not cooperate with the Railway for conducting the enquiry. He was repeatedly seeking adjournment so that the enquiry can be delayed till his retirement on 31.10.83.

5. It has been indirectly admitted in the counter affidavit that there is some lapse on the part of the Railway Administration in the matter of allowing the applicant to receive the pensionary benefits. It is clear from the following statement of the counter affidavit:

"The mere fact that the Railway Administration or some of the authorities concerned were not vigilant regarding the matter, is not an excuse for resorting to such an action by a Railway employee who have put in long years of service. If a domestic servant in a house commits a theft of the articles kept in a shelf in the house, the fact that the house owner has left the shelf unlocked, cannot be a justification for the act of theft committed by the servant."

6. After careful perusal of the documents in this case and a consideration of the arguments of the learned counsel on both sides we are of the view that the Administration is partially responsible for the offence charged against the applicant. This was clearly indicated in the

earlier judgment Annexure A-III. But the Appellate Authority did not apply its mind and enter a finding as to the lapse or failure on the part of the Administration and whether it really enabled the applicant to commit the offence alleged against him and if so to what extent it can be relied on for imposing the penalty. In other words, he has not examined the effect of administrative contribution in fixing the quantum of punishment particularly when the applicant is a retired employee having long and unblemished service. The Appellate Authority also failed to examine whether the punishment imposed in this case is not unduly harsh xxx considering the nature of the misconduct committed and having regard to the facts and circumstances of this case.

7. In this connection it is pertinent to read the Enquiry Report. In Annexure R-1(v) Enquiry Report there is some indication regarding the lapse on the part of the Administration in this behalf and it has been highlighted by this Tribunal in Annexure-III judgment:

"Administration was partly responsible in enabling the applicant to draw his pension even after the order of compulsory retirement was revoked, and the applicant was reinstated in service."

This Tribunal while passing the judgment has adverted to these aspects and directed the Appellate Authority to go into the matter in accordance with law. But the Appellate Authority does not seem to have understood the scope of the

judgment and passed the impugned order. It cannot be sustained. We are of the view that the Appellate Authority should go into the matter afresh taking into account the facts that the applicant had a long and unblemished service before he was involved in the present incident and he is willing to pay back the pensionary benefits already received by him from the Railway. The Appellate Authority is also obliged to consider whether the punishment imposed by the Disciplinary Authority is a reasonable and proper punishment to be imposed on the applicant on the facts and circumstances of this case particularly when serious lapses committed by the respondents contributed to the drawing of pension by the applicant. The Appellate Authority should give special attention to the following aspects which alone would be proper compliance of the Annexure-III judgment:

- i) Whether the applicant was re-employed or reinstated in service from 7.9.77. The applicant submitted to Sub Treasury Officer Nilambur that he had been re-employed from 7.9.77 (and not that he was reinstated) and therefore the Sub Treasury Officer, Nilambur restricted the payment to basic pension of Rs. 145 $\frac{1}{2}$  per month only and stopped paying the relief on pension of Rs. 36.30 per month which the applicant was receiving before the date, see Ext. R-1(x). Annexure-R-1(a) letter dated 26.9.77 was issued by the Divisional Officer, Personal Branch, Olavakkod does not indicate that a copy of the order was endorsed to the applicant. It was not addressed to him.

Therefore, the appellate authority should find out whether a separate order was served on the applicant after passing of Annexure R-1(a) order.

If the applicant was not informed by a separate written order that he was reinstated, the Appellate Authority should consider and decide as to whether the applicant was justified in assuming / that he was re-employed in the light of the facts and circumstances of the case.

ii) It would be appropriate for the Appellate Authority to call for the personal files of the applicant and verify the fact whether he used to proceed on leave to draw pension from Nilambur after stating this purpose in the leave applications. If this is true, the Appellate Authority should further consider whether the applicant's bonafides is to be doubted in spite of the fact that he suppressed this fact from the authorities and whether he was under the genuine impression that he had been re-employed and that he was entitled to draw pension in addition to his pay. The Appellate Authority should have verified the original letter dated 26.8.77 of the CPO, Madras, referred to in Annexure R-1(a), to see whether there was anything in that letter which required the authorities concerned to issue an order to the applicant cancelling his pension

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while reinstating him and directing him to refund the amount already drawn less what he is entitled as leave salary for the period from 28.6.76 to 26.9.77 and the Appellate Authority should have assessed how far the failure if any, was responsible for this incident.

8. In the result we are satisfied that the Appellate Authority has not considered the main aspect directed to be considered by him as per our earlier judgment. Accordingly we set aside Annexure-IV order and direct the Appellate Authority to examine the following aspects and dispose of the appeal in accordance with law in the light of the above observations:

- i) Whether the Administration is responsible partly or fully for the situation which resulted in the drawing of the pension by the applicant even after he was taken in service on 7.9.1977.
- ii) Whether the applicant was guilty of a deliberate misconduct or was he led to believe that he had been re-employed.
- iii) If the applicant is found guilty, what should be the proper punishment on the facts of this case and whether considering the facts and circumstances including the blame, if any, to be shouldered by the respondents for their

acts or omission, the penalty should not be reduced to compulsory retirement with effect from 31.8.83 or any other suitable punishment so that he is not deprived of his pension considering the earlier service rendered by him.

9. The application is allowed to the extent indicated above. There will be no order as to costs.

*N. Dharmadan*  
31.6.91

(N. DHARMADAN)  
JUDICIAL MEMBER

*V. Krishnan*  
31.5.91

(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

KMN