

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.526/12

Wednesday, this the 24<sup>th</sup> day of July 2013

**C O R A M :**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

**HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Chandran T.K, S/o.Krishnan  
Senior Section Engineer (P.Way)  
Southern Railway, Thrissur,  
Trivandrum Division  
Residing at High Life Season Apartment  
Civil Lane, Ayyonthole  
Thrissur.

...Applicant

(By Advocate Mr.Martin G Thottan)

**Versus**

1. The General Manager  
Southern Railway  
Headquarters Office  
Chennai – 3
2. The Chief Track Engineer  
Southern Railway  
Chennai – 3
3. The Additional Divisional Railway Manager  
Southern Railway  
Trivandrum Division  
Trivandrum – 14.

...Respondents

(By Advocate Mrs.P.K Radhika)

This application having been heard on 24.07.2013 this Tribunal on the same day delivered the following :-

**ORDER**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

1. The applicant was proceeded against by Annexure A-1 charge sheet for a minor penalty proceeding under the Railway Servants(Discipline and Appeal)Rules,1968.The applicant has given his version. The



Disciplinary Authority passed a speaking order holding that the measurement book which was filled by the applicant did not contain recording of the acceptance/rejection of the supply of the first 100 Cum ballast in accordance with the terms and conditions of the agreement, consequent to which and coupled with the fact that there is a collective responsibility including that of the applicant in respect of acceptance of the ballast, imposed upon the applicant a penalty of withholding of increment for a period of 12 months with non-recurring effect (Annexure A-3 refers). The applicant filed his appeal vide Annexure A-4 and the Appellate Authority has comprehensively dealt with the case and rendered his view as hereunder:-

" I have gone through the complete case file including the charges, penalty advice, the appeal submitted by you and the remarks submitted by Sr.DEN/N/TVC on your appeal.

The agreement was finalized based on a risk tender which was called as per condition in the original agreement as per which the testing of ballast is to be done in 38 local laboratories as given in Annexure B. The instruction for testing the ballast only at HQ laboratory issued on 28.04.2004 was not applicable in this agreement as the provision available in the agreement was for testing the ballast in local laboratories. The ballast was accepted based on the tests conducted at the local laboratories as per the provisions in the agreement and hence the employee has not violated the instructions issued by PCE as mentioned in the charge sheet as the instructions are not applicable as far as this agreement is concerned. As per para 1271 of Engg.Code, it is the duty of all officials concerned with the execution of contracts to see that the terms of such contracts are strictly enforced and nothing is done by them that would tend to nullify or vitiate the contract. Hence the decision of the division to execute the agreement as per the conditions provided in the agreement is found to be in the interest of the administration and as per extant instructions. Ballast being a natural product, when tested will have different impact value for different samples and when tested at different laboratories. Though the ballast tested by vigilance department at HQ laboratory had impact value more than



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the permissible limits, the same cannot be taken as a violation of instructions since the ballast was accepted by the officials after testing the same as per the provisions available in the agreement.

As mentioned by you, no instructions exist for recording the measurements before taking the sample for testing after supply of first 100 cum. Hence, you have not violated any instructions in this regard. However, you could have taken extra care by testing the samples in any other approved laboratories instead of blindly accepting the report submitted by the contractor to ensure that the testing of the samples are done properly so that quality of ballast supplied is ensured.

Your appeal stating that you did not make any willful mistake or violated any agreement provision or any circular is found to be genuine and hence your appeal is considered favourably and the penalty is revised as follows. Your annual increment from Rs.19370+GP Rs.4800 in Pay Band Rs.9300-34800 due on 01.07.2011 is withheld for a period of six months, and this will not have the effect of postponing your future increments. "

2. The applicant has challenged Annexure A-3 and Annexure A-5 order and sought for the following reliefs:-

"8.. 1. to call for the records leading to the issue of Annexure A-3 and A-5 and quash the same.

2. Award costs of and incidental to this application. "

3. Notice was issued for reply and despite sufficient time was granted, the respondents could not file reply, consequent to which their right to file reply was forfeited. The relevant records have been called for, which have been produced. The records reflect that the first stage advice of CVC was requested for by the Railways and the CVC has recommended minor penalty other than censure and withholding of pass in respect of the applicant. It is thereafter that the charge sheet was issued and further



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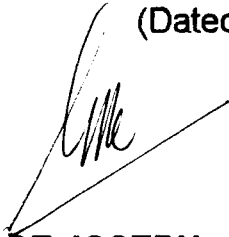
action as narrated above taken. The only lapse on the part of the applicant reflected in the Disciplinary Authority's order is that the applicant has not recorded the acceptance/rejection of supply of first 100 cubic meter ballast in accordance with the terms and conditions of the agreement. Of course, the collective responsibility has been saddled upon the applicant. The Appellate Authority while dealing with the matter has extracted above absolved the applicant from all the allegations and in so far as non-recording of the acceptance/rejection of the supply of first 100 cubic meter ballast the Appellate Authority has clearly held that no instructions exists for recording of the measurement before taking the sample for testing of aforesaid first 100 cubic metre. The applicant has not violated any instructions. With the above, finding, there is no omission or commission on the part of the applicant subsists, which can be considered as a mis-conduct punishable under the Railway Servants (Discipline and Appeal) Rules 1968. The Appellate Authority has clearly stated that the appeal is found to be genuine and has been considered favourably. Yet he has not dropped the proceedings, but reduced the penalty of withholding of annual increment from a period of 12 months to 6 months. Apparently, this is on account of the advice of CVC for imposition of minor penalty other than censure/with holding of pass. It is not always necessary that the penalty suggested by the CVC should be imposed. The advice could be taken only as the maximum penalty that can be imposed in case there is any misconduct proved. In the instant case, since no misconduct has been proved, imposition of penalty by the Disciplinary Authority as modified by the Appellate Authority is totally unjustified . As such, the Original Application is allowed. The impugned Annexure A-3 and Annexure A-5



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orders have been quashed and set aside. The respondents are directed to restore the withheld increment of the applicant and effect the payment of arrears arising out of the same, as if, no penalty has been imposed upon the applicant. This order shall be complied with, within two months from the date of receipt of a copy of this order. No costs.

(Dated this the 24<sup>th</sup> day of July, 2013)



**K.GEORGE JOSEPH**  
**ADMINISTRATIVE MEMBER**



**Dr.K.B.S.RAJAN**  
**JUDICIAL MEMBER**

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