

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 589 of 2011

TUESDAY, this the 30th day of October, 2012

CORAM:

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

G. Gokuldas, Deputy CTI Railway,
 Kollam residing at A-90, Sree Rangan
 Lane, Sasthamangalam PO, Thiruvananthapuram
 -695 010. **Applicant**

(By Advocate – Mr. N. Radhakrishnan)

V e r s u s

1. The Divisional Manager, Southern Railway,
 Thiruvananthapuram-14.
2. The Senior Divisional Manager, Southern Railway,
 Thiruvananthapuram-14.
3. Additional Divisional Railway Manager,
 Southern Railway, Thiruvananthapuram-14.
4. Union of India, through General Manager,
 Southern Railway, Park Town, Chennai-3. **Respondents**

(By Advocate – Mr. K.M. Anthru)

This application having been heard on 11.10.2012, the Tribunal on
30-10-2012 day delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

For unauthorized absence in the year 2005 after conducting an ex-parte inquiry the applicant a Deputy CTI, Southern Railway, Kollam, was removed from service with effect from 10.1.2007. On appeal dated 20.2.2007 the

punishment of removal from service was modified as reduction of pay by two stages in the pay band of Rs. 9300-32800/- plus GP Rs. 4200/- for a period of 36 months without the effect of postponing future increments vide order dated 14.9.2010. Without considering his revision petition dated 12.10.2010, notice of proposal for enhancement of punishment under Rule 25(l)(v)(b) of Railway Servants (Discipline & Appeal) Rules, 1968 dated 5.4.2011 was issued. OA No. 472 of 2011 was disposed of with a direction to raise all the contentions of the applicant before the Revisional Authority. Subsequently, the revisional authority enhanced the punishment of reduction to lower post as TE in Pay Band Rs. 5200-20200/- with Rs. 1900/- (GP) on pay Rs. 5200/- +Rs. 1900/- (GP) with effect from 23.6.2011 until he is found fit by the competent authority for the higher post carrying GP Rs. 2400/- in Pay Band Rs. 5200-20200/- vide Annexure A8 order dated 20.6.2011. Aggrieved the applicant has filed this OA for the following reliefs:-

“A) This Honourable Tribunal may be pleased to set aside Annexure A8 forthwith.

B) This Honourable Tribunal may be pleased to direct the respondents to cancel all the penalties so far imposed to the petitioner and restore his original pay, seniority along with service benefits of 23 years of his qualifying service.

C) Any other appropriate order or direction of this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. The applicant contended that Annexure A5 notice proposing to enhance penalty passed on 5.4.2011 is not in accordance with the provisions contained in Rule 20(2) of the Railway Servants (D&A) Rules, 1968. The order of removal from service is a major punishment which is not in



accordance with the gravity of the offences. The period of absence cannot be considered as unauthorised since leave application was under consideration of the authorities. Even unauthorised absence can be treated as extra ordinary leave subject to certain conditions. The appeal filed on 9.1.2007 was decided on 14.9.2010. There is no justification for taking so much time. The revision petition filed by the applicant was not considered by the revisional authority before issuing Annexure A5 order proposing to enhance the punishment. Without considering the order of this Tribunal in OA No. 472 of 2011 the revisional authority has issued Annexure A8.

3. In the reply statement the respondents submitted that the applicant absented himself unauthorisedly from 23.12.2004 to 10.01.2007. The applicant had gone abroad during this period and was gainfully employed. He has not submitted any documentary evidence in support of his claim of sanctioned leave for the period from 4.5.2005 to 9.7.2005. He was removed from service with effect from 10.1.2007 as a disciplinary measure. His punishment was modified as reduction of pay by two stages for a period of 36 months without the effect of postponing the future increments by the appellate authority. On considering the applicant's revision petition enhanced penalty was imposed on him after giving a personal hearing and after considering the reply to the notice submitted by the applicant as per Rule 25(1)(v)(b) of the Railway Servants (D&A) Rules, 1968. The applicant's reference to Rule 20(2) is not correct. The applicant absented himself from duty without prior approval or intimation. After submitting his appeal allegedly on 20.2.2007 he remained silent till 14.9.2010. No application for

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leave from the applicant for the period in question is pending before the respondents for consideration. There are no rules to treat the period of absence as extraordinary leave.

4. In the rejoinder statement the applicant submitted that he had got permission to travel abroad as per NOC at Annexure A9.

5. In the additional reply statement the respondents submitted that the applicant had gone abroad and was employed there without obtaining permission from the department and that he had attempted to defraud the Railways by producing false evidences. Annexure A9 is a no objection certificate only to obtain passport. It does not convey that he got permission for foreign trips. There is no rule as Rule 20(2) in Railway Servants (D&A) Rules, 1968. Rule 20 has no relevance to the disposal of the revision under Rule 25(1)(v)(b).

6. MA No. 1031 of 2012 in this OA was allowed permitting the applicant to file Annexure A10 dated 5.9.2012 wherein it is stated that the penalty imposed on the revision petition of the applicant was found to be an inadmissible penalty due to technicalities and necessary action may be taken to rectify the error pointed out.

7. We have heard the learned counsel for the parties and perused the records.

8. The applicant absented himself unauthorizedly from 23.12.2004 to

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10.01.2007. The statement of the respondents that he had gone abroad and was gainfully employed is not refuted by the applicant. The no objection certificate at Annexure A9 is an NOC for obtaining a passport. It is not a permission to make a trip abroad or to take up a job abroad. There was grave dereliction of duty on the part of the applicant for which he was removed from service. However, taking a lenient view on his appeal the said penalty was reduced to a penalty of reduction in pay by two stages for a period of 36 months. The Revisional authority has passed an order on 20.6.2011 enhancing the penalty under Rule 25(l)(v)(b) of Railway Servants (D&A) Rules, 1968. The said rule along with the proviso is extracted as under:-

“25(5)(b) the revising authorities mentioned in item (v) of sub-rule (1) – after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant.

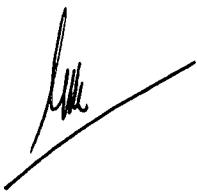
Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.”

9. It is clear that the revisional authority had issued Annexure A8 order more than six months after the date of the order of the appellate authority. There is no contention on the part of the respondents that the Additional Divisional Railway Manager is the revisional authority under the proviso reproduced above. For these reasons the revisional order is liable to be set aside. Further the vigilance authority as per Annexure A10 dated 5.9.2012 has found that the penalty imposed by the revisionary authority at Annexure A8 is

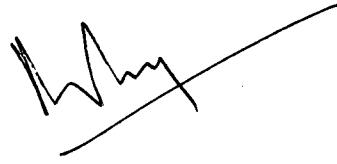


inadmissible penalty due to technicalities.

10. In the light of the above Annexure A8 order dated 20.6.2011 is quashed. However, the appellate order remains intact as there is no valid ground for interference. OA is partly allowed as above. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”