

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.77/98

Thursday this, the 17th day of August, 2000.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI G.RAMAKRISHNAN, MEMBER (A)

K.Gopalan,
S/o.S.Kunjan, aged 44,
Gangmate, Gang No.5,
Under the Permanent Way Inspector,
Nagercoil. Applicant

(By Advocate Mr. Renny Augustine)

vs/

1. Union of India, represented by General Manager, Southern Railway, Madras -3.
2. Senior Divisional Engineer, Southern Railway, Thiruvananthapuram Central.
3. Assistant Engineer, Southern Railway, Nagercoil.
4. K.C.Chacko, Permanent Way Inspector, Southern Railway, Nagarcoil. .. Respondents

(By Advocate Smt. Sumathi Dandapani)

The Application having been heard on 31.7.2000, the Tribunal on 17.8.2000 delivered the following:

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant a Gangman of Gang No.5 under the Permanent Way Inspector, Nagercoil, under suspension has filed this application for the following reliefs:

"i) Respondents be directed to reinstate the applicant in service with continuity of service, back wages and all other service benefits as if he had been continuing in service notwithstanding anything contained in Annexures-A1, A2, R3(3) and R3(4) originated by respondents 3 and 4 in their foulplays to justify their action, as the same are violative of principles of natural justice; or

in the alternative declare that Annexures-A1,A2, R3(3) and R3(4) are illegal, null and void ab initio not at all binding on the applicant.

ii) Such other appropriate reliefs which are fit and necessary in the circumstances of the case including orders as to the costs and compensatory costs payable by the respondents 3 and 4 to the applicant."

2. The applicant according to him was under treatment in a private hospital from 6.11.95 to 12.4.96. However a penalty of withholding of increment due on 1.11.97 for a period of one year was imposed on by the 4th respondent by order dated 1.5.96 (Annexure A1). Further the 4th respondent placed the applicant under suspension by order dated 10.9.96. The applicant was not reinstated thereafter. Alleging that he met the 4th respondent several times seeking reinstatement in service, but was not reinstated, the applicant caused a lawyer notice to be issued to the 4th respondent on 31.3.97(Annexure A3). This was returned. The applicant was thereafter served with a registered cover dated 31.5.97, according to him , containing a letter issued by the 4th respondent on 23.1.97 (Annexure A5), stating that after revocation of suspension on 24.9.96, the applicant remained unauthorisedly absent and calling upon him to report for duty within 10 days, warning him that failure to do so, will result in disciplinary action. The applicant again caused a lawyer notice to be sent dated 16.6.97 calling upon the respondents to reinstate the applicant with back wages. Finding that the applicant was not reinstated in service and paid back wages and alleging that the 4th respondent had enmity towards the applicant, that he was not competent to impose the penalty on the applicant and place

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him under suspension , the applicant has filed this application, alleging that the order dated 24.9.96(Annexure R3(3) and the memorandum of charges dated 30.4.97(Annexure R3(4)) were not served on him and were not valid. The applicant seeks those orders also to be set aside.

2. Reply statement and additional reply statement have been filed on behalf of the respondents , to which the applicant has filed rejoinder.

3. The respondents contend that the impugned order (Annexure A1) having not been challenged in appeal cannot now be challenged in this application filed beyond the period of limitation. The respondents contend that the 4th respondent was competent to award the penalty. As far as the order of suspension(Annexure A2) is concerned, the respondents contend that it was issued at the instance of the third respondent who is the competent authority, which was later regularised by the second respondent.. The respondents further contend that though the suspension of the applicant was revoked, the applicant did not care to report for duty, despite notice being issued to him calling upon him to report for duty and informing him that failure to do so would entail disciplinary action. The allegations made against the 4th respondent are refuted by affidavit filed by the 4th respondent.

4. We have heard the learned counsel of both the

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parties and have perused the pleadings and materials placed on record.

5. Regarding the challenge of the applicant to the impugned order dated 1.5.96 imposing on the applicant a penalty of withholding of increment, we find that the right of the applicant to challenge this order has been barred by law of limitation. The order was passed on 1.5.96. The application has been filed only in the year 1998 after a lapse of more than one year. Further the applicant should have filed an appeal and exhausted the departmental remedy provided for. He has not done so. The statement in the application that the penalty was imposed without even serving on him a memorandum of charge, is found to be false. The 4th respondent along with his reply statement has produced Annexure R4(2), a copy of the memorandum dated 12.4.96, which bears the signature of the applicant dated 19.4.96 in token of receipt of the memorandum. Further in the office copy of the order dated 1.5.96 produced by the 4th respondent along with the reply statement as Annexure R4(3), the applicant has put his signature on 24.6.96 in acknowledgment of receipt of the order wherein it was clearly stated that he did not submit his explanation to the memorandum of charge. Learned counsel of the applicant vehemently argued that there was no justification in keeping the applicant under prolonged suspension and that the so-called revocation of suspension was not made known to the applicant at all. He also argued that the applicant has

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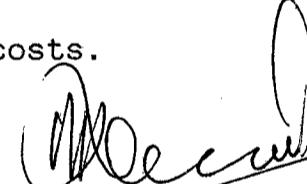
been calling upon the 4th respondent seeking reinstatement and that it was on his inaction that the lawyer notices (Annexures A3 and A6) were sent to him. In any case, the applicant himself has admitted in the application that he received Annexure A5 letter calling upon him to report for duty, stating that the suspension was revoked on 24.9.96, inspite of that the applicant did not report for duty. This very clearly shows that the applicant was not interested in reporting for duty. While he received the Annexure-A5 notice, what the applicant did was issuing a lawyer notice to respondents 3 and 4 calling upon them to reinstate him in service with full back wages threatening legal action on failure to do so. The action of the applicant in not reporting for duty and causing lawyer notices to respondents 3 and 4 without seeking departmental remedy from higher officers reveals that the applicant was more interested in litigation than having his service grievances, if any, redressed at the intervention of the departmental superiors. The impugned order Annexure-A1 was issued by the 4th respondent after serving on the applicant a memorandum of charge. If aggrieved by that order, the applicant should have filed an appeal. He failed to do so. He did not challenge the order within the period of limitation before the Tribunal. The impugned order of suspension was also not challenged by the applicant in time. The applicant did not report duty in spite of the notice calling upon him to do so(Annexure A5). The applicant has by stating that the impugned order Annexure A1 was issued without serving on him

a memorandum of charge which has been found to be false, is guilty of suppression of material facts in the application. He has not approached the Tribunal with clean hands. We find that in the conspectus of facts and circumstances of the case, judicial intervention is neither called for, nor justified. It has come out from the pleadings and materials on record that a memorandum of charge has been issued to the applicant for certain misconducts during the period of his suspension. It is upto the applicant to report for duty and if he does so, the respondents shall take him back to duty and proceed further in accordance with law.

6. In the result, the prayers of the applicant contained in paragraph 8 of the application are not granted. The applicant may report for duty in which event the respondents shall take him back and thereafter proceed further in accordance with law. The application is disposed of accordingly without any order as to costs.



(G. RAMAKRISHNAN)
MEMBER (A)



(A.V. HARIDASAN)
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure-A1 True copy of Memo dated 1.5.96 No.JE/P.way/0/NCJ.
2. Annexure A2 True copy of Memo No.PWI/NCJ/ dt. 10.9.96.
3. Annexure A3 True copy of Lawyer Notice dated 31.5.97 to the 4th respondent.
4. Annexure A5 True copy of Memo under reference No.NCJ/46/K.G. dated 23.1.97 issued by the 4th respondent, to the petitioner.
5. Annexure A6 True copy of Lawyer notice dated 15.6.97 addressed to the 3rd respondent.
6. Annexure R3(3) True copy of order No.NCJ/D.IV/KG dated 24.9.96 issued by the Sr.Assistant Engineer, Southern Railway, Nagercoil.
7. Annexure R3(4) Standard form of charge sheet vide Memorandum No.NCJ/D.IV/K/O dated 30.4.97.
8. Annexure R4(2) Photocopy of charge memo No. NCJ/46/K.G. dated 12.4.96 issued by the Junior Engineer, Southern Railway, Nagercoil to the applicant.
9. Annexure R4(3) Photocopy of penalty advice issued to the applicant vide No.NCJ/46/K.G. dated 1.5.96 by the Junior Engineer/Permanent Way, Southern Railway, Nagercoil Junction.