

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.153/02

Wednesday this the 28th day of July 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

A.J.George,
S/o.J.George,
Junior Engineer/II/Permanent Way,
Southern Railway, Trivandrum.

Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by
the General Manager,
Southern Railway, Park Town PO,
Madras - 3.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum - 14.
3. The Divisional Engineer,
Southern Railway, Trivandrum Division,
Trivandrum - 14.

Respondents


(By Advocate Mrs.Sumathi Dandapani)

This application having been heard on 28th July 2004 the
Tribunal on the same day delivered the following :


O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The challenge in this application, filed under Section 19 of the Administrative Tribunals Act, 1985, is against order dated 29.6.2001 of the Senior Divisional Engineer served on the applicant on 10.8.2001 imposing on him a penalty of reduction in pay to Rs.5600/- from Rs.5750/- in scale Rs.5000-8000/- for a period of three years non recurring with effect from 1.7.2001 as also Annexure A-2 order dated 7.2.2002 of the 2nd respondent passed in exercise of powers conferred in terms of Rule 25(1) (iv) of Railways Servants (Discipline & Appeal) Rules, 1968 enhancing the penalty to that of reduction in pay by two stages.




from Rs.5750/- to Rs.5450/- in scale Rs.5000-8000/- for a period of three years (NR) with effect from 1.7.2001. The applicant was served with a Memorandum of Charge for imposing minor penalties (Annexure A-3) dated 20.4.2001. He submitted his explanation denying the allegations against him and pleading not guilty. However, he had sought an opportunity to file a detailed explanation after getting a copy of the Joint Enquiry Report. On consideration of this explanation submitted by the applicant the Senior Divisional Engineer passed the impugned order (Annexure A-1) holding the applicant guilty. The applicant submitted an appeal (Annexure A-5) to the Divisional Railway Manager, according to him, on 21.9.2001 within the time allowed after receipt of Annexure A-1 order. However, the 2nd respondent, the case being one of accident, in exercise of powers under Rule 25 (i) (iv) of Railway Servant (Discipline & Appeal) Rules 1968 served on the applicant a notice (Annexure A-6) proposing to enhance the penalty. The applicant submitted a detailed representation (Annexure A-7) again denying the allegations against him and stating how the Disciplinary Authority has wrongly found him guilty. The 2nd respondent on consideration of the representation has passed the impugned order (Annexure A-2). The applicant aggrieved by these two orders has filed this application. Annexure A-1 is assailed on the ground that the finding that the applicant was guilty is not based on material disclosed to applicant, that the action is vitiated by malafides and that there was no evidence regarding twists which is the basis of the charges. It has been inter-alia contended that since an appeal has been filed in this case the 2nd respondent had no jurisdiction to take suomoto revision.



2. The respondents contend that the action taken is perfectly within the rules and that the appeal of the applicant was not received by the Appellate Authority when the suomoto revision was undertaken and that there is no merit in this application.

3. We have carefully gone through the pleadings and materials placed on record and have heard Shri.T.C.Govindaswamy, learned counsel for the applicant and Smt.Sumathi Dandapani, learned counsel for the respondents. Shri.T.C.Govindaswamy after making submissions for quite sometime submitted that he is not pressing the contention regarding competence of the 2nd respondent to invoke powers of revision and the learned counsel argued that Annexure A-1 order was passed without due application of mind and that while disposing of the revision Revision Authority should have discussed all the aspects and given a reasoned order which has not been done.

4. Learned counsel for the respondents tried to support Annexure A-2 order by stating that the Revisional Authority has accepted the finding of the Disciplinary Authority and has enhanced the penalty for valid reasons. A mere scrutiny of the impugned order (Annexure A-2) is sufficient to show that the Revisional Authority has not adverted to the various aspects of the case projected by the applicant in his representation against Annexure A-6 proposal. Since the applicant had filed an appeal which was received before the Revisional order was issued the Revisional Authority and the Appellate Authority being one and the same the points urged by the applicant in his appeal should have been considered in fairness. The same points urged by the



applicant in his appeal has been urged by him in the reply to Annexure A-6 show cause notice also. The Revision Authority while issuing Annexure A-2 order does not appear to have considered the contentions raised by the applicant against the imposition of the penalty as also the enhancement. It will be profitable to extract the order (Annexure A-2) for demonstrating that there has been no application of mind at all.

SOUTHERN RAILWAY

Divisional Office,
Personnel Branch,
Trivandrum - 14.

No.V/P.227/Revision/2001/2/Engg. Dated : 7.2.2002.

Shri.A.J.George,
JE.II/P.Way/TVC.

Through SE/P.Way/TVC

Sub : Notice of proposal for enhancement of penalty.


Ref : 1. Your representation dated 7.11.2001.
2. Penalty advice No.V/T5/1/220/2000-01/13 dated 29.6.2001.
3. V/P.227/Revision/2001/2/Engg. dated 1.10.2001.

Revising Authority DRM has very carefully considered the representation dated 7.11.2001 submitted in response to the notice for enhancement of penalty dated 1.10.2001 in terms of Rule 25 (i) (iv) of Railways Servants D & A Rules, 1968.

As per the advice given, Shri.A.J.George met the undersigned alongwith the Defence helper.

During the course of his personal hearing on 9.1.2002, Shri.George and the Defence helper discussed with their representation dated 7.11.2001 and no additional facts were presented or brought to light. I have gone through the DAR case and the representation of Shri. A.J.George dated 7.11.2001 and pass the following orders.

The representation dated 7.11.2001 has repeatedly referred about the malafide intention and hostile discrimination. No new technical facts have been brought out in the matter. Therefore, the proposed punishment issued vide V/P.227/Revision/2001/2/Engg. dated 1.10.2001 stands confirmed.



Accordingly the penalty of reduction in pay by one stage in time scale for a period of 3 years (NR) w.e.f. 1.7.2001 imposed by Sr.DEN vide V/T 5/1/220/2000-01/13 dated 29.6.2001 is enhanced to that of reduction in pay by two stages from Rs.5750/to Rs.5450/- in scale Rs.5000-8000/- for a period of 3 years (NR) w.e.f. 1.7.2001.

Please acknowledge receipt.

Sd/-

5. We are convinced that the 2nd respondent while awarding on the applicant the penalty has not considered the plea of the applicant that he was not guilty as also that he does not deserves any penalty at all.

6. Under these circumstances we are of the considered view that the application has got to be disposed of directing the 2nd respondent to consider the plea of the applicant that he is innocent of the charges and to dispose of the matter by passing a reasoned final order. The impugned order Annexure A-2 is set aside. An order by the 2nd respondent afresh shall be passed and communicated to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated the 28th day of July 2004)


H.P.DAS
ADMINISTRATIVE MEMBER

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A.V.HARIDASAN
VICE CHAIRMAN