

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.156 OF 2005

Monday this the 12th day of March, 2007

CORAM :

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

U.Narayanan
Ex-Traffic Porter
Southern Railway, Netravathi Railway Cabin
Residing at : Thiyyakandi House
Kolathur PO, Atholi (via)
Calicut District : Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager
Southern Railway
Headquarters Office, Park Town PO
Chennai - 3
2. The Chief Operations Manager
Southern Railway
Headquarters Office, Park Town PO
Chennai - 3
3. The Senior Divisional Personnel; Officer
Southern Railway, Palghat Division
Palghat
4. The Senior Divisional Finance Manager
Southern Railway, Palghat Divisional Office
Palghat : Respondents

(By Advocate Mr. Sunil Jose)

The application having been heard on 12.03.2007, the
Tribunal on the same day delivered the following :

ORDER

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

The applicant has sought the following reliefs through

this OA :-

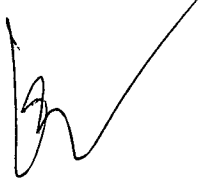


- (a) Call for the records leading to the issue of Annexures A-4, A-6 and A-8 and quash the same to the extent they reduce the pension and retirement gratuity of the applicant equal to 2/3rd pension and gratuity which the applicant would have received if he were to have retired on compensation pension.
- (b) Direct respondents to revise and grant the applicant's pension and retirement gratuity on a total qualifying service of 28 years within a time limit as may be found just and proper.
- (c) Call for the records leading to the issue of Annexure A-6 and quash the same also to the extent it calculates pension and retirement gratuity on the basis of average emoluments of Rs.3,215/-
- (d) Direct the respondents to calculate the applicant's pension on the basis of average emoluments of Rs.3,420/- and also to calculate the applicant's retirement gratuity on the emoluments i.e 3,475/- plus dearness allowance admissible as on the date of compulsory retirement, and direct further to grant the arrears consequent thereto within a time limit as may be found just and proper by this Hon'ble Tribunal.
- (e) Direct respondent to grant the applicant leave encashment as per Rules for the leave at the credit of the applicant as on the date of compulsory retirement within a time limit as may be found just and proper by this Hon'ble Tribunal.
- (f) Direct the respondents to grant the applicant interest @ 9% per annum on the arrears of pension, retirement gratuity, leave salary, and other retirement benefits consequential thereto on and from the date the same is due and till the same is paid to the applicant.

2. Of the above, by virtue of action taken by the respondents as submitted at the time of hearing, reliefs sought vide Para 8 (b) and (g) have become infructuous. In so far as 8 (b) is concerned, as the respondents have, vide Para 4 of the counsel statement dated 01.03.2007 agreed to consider the

period of service of the applicant from the initial date of temporary status till the date of compulsory retirement, save the period from 06.06.1974 to 29.06.1974 as qualifying service. The applicant's counsel submitted that he is not pressing for ground (b) but prayed for direction to be given to the respondents to reckon the qualifying service, especially the temporary status in accordance with law.

3. Briefly stated, the applicant, while working as Traffic Porter, was imposed the penalty of removal from service by order dated 12.12.2000. Appeal and revision filed by the applicant having been rejected, all these orders were challenged before the Tribunal in OA 313/02 which was disposed of by Annexure A-1 order 07.11.2003, whereby, the orders of the Appellate and Revisional Authority were set aside and the matter remitted back to the Chief Operations Manager, Southern Railway, Chennai to reconsider the appeal of the applicant in detail after affording the applicant an opportunity for a personal hearing. Accordingly, vide Annexure A-2 order dated 07.05.2004, the Appellate Authority viz., The Chief Operations Manager heard the applicant and modified the order of punishment of **"removal from service"** into one of **"compulsory retirement"**. This order was communicated to the applicant vide Annexure A-3 order dated 14.05.2004.



4. Vide Annexure A-4 impugned order dated 18.10.2004, the APO, Palghat Division, Southern Railway communicated the following to the applicant:-

" Sub:- Sanction of compulsory retirement pension and gratuity in respect of Shri U Narayanan, Rg.Porter/CAN.

*Ref:- 1) ADRM/PGT Penalty advice of even no. dated 2.12.2000.
2) CPO/MAS letter No. P(A)94Misc/526 dated 07.05.2004 & 14.10.2004.*

The penalty of "removal from service" with effect from 25.02.2001 imposed on Shri U. Narayanan, Rg.Porter / CAN by ADRM/PGT has been modified to that "compulsory retirement" by COM/MAS. COM/MAS has sanctioned compulsory retirement pension and gratuity in favour of Shri U.Narayanan, Ex-Rg.Porter/CAN equal to two third of pension and gratuity which would have been admissible to him as if he had retired on compensation pension."

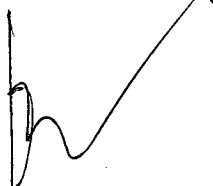
5. Annexure A-6 is the pension calculation sheet accompanying the aforesaid Annexure A-4 impugned order.

6. The applicant is aggrieved by the reduction in the quantum of pension as communicated vide Annexures A-4 and A-6 Annexure A-8 is the pension payment authority based on Annexures A-4 and A-6.

7. The grounds taken by the applicant in his OA in challenging the aforesaid orders are as under :-

(a) Annexures A-4, A-6 & A-8 orders are arbitrary, discriminatory and hence violative of the constitutional guarantees enshrine Article 14, 16 and 300 A to the extent the retirement gratuity was restricted to 2/3rd of pension and gratuity.

(b) As there is no specific mention in Annexure A-2 order in regard to reduction of pension,

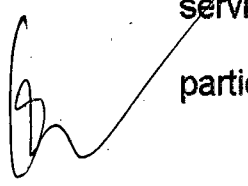


Annexure A-4 order is without authority. Further, the said Annexure A-4 order is based on irrelevant consideration.

- (c) Under the provision of Rule 64 of Railway Service (Pension) Rules 1993 pension or gratuity to the extent of 2/3rd of such pension and gratuity can be sanctioned which is in deviation from the normal retirement pension for the period of service rendered by the applicant. Since such a reduction would entail civil consequences, respondents are in thorough error when, without an opportunity, such a reduction in pension has been made.
- (d) The basis for calculation of pension viz., the average emoluments has also not been correctly worked out.
- (e) The applicant is entitled for leave encashment but the same too has been refused illegally and arbitrarily.

8. Respondents contested the OA. According to them, reduction in pension is based on Rule 64 which is applicable in the case of the applicant. As regards leave encashment they have annexed order dated 12.08.1007 of the Railway Board vide Annexure R-2.

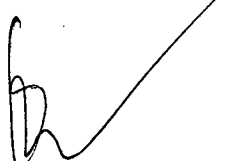
9. Applicant has filed rejoinder wherein he has quoted Para 312 of the IREM wherein it has been stipulated that a railway servant, on whom the penalty of compulsory retirement from service is imposed, will ordinarily be granted such pensionary benefits, on the date of compulsory retirement, as he would have been entitled to if he was invalidated out of service on that date. Where however, the circumstances of a particular case so warrant, the authority competent to impose the



penalty of compulsory retirement may make such reduction in the pensionary benefits, but not exceeding 1/3rd of the pensionary benefits due, as it may think appropriate. He has also incorporated the guiding principle of reduction of pensionary benefits as contained in Rule 40(1) of the CCS (Pension) Rules which is identical to Rule 64 of the Railway Service (Pension) Rules 1993. The applicant has, in his rejoinder, reiterated other contentions raised in the OA.

10. On the directions of the Tribunal, the respondents have furnished true photocopy of the file notings vide counsel statement dated 25.10.2006. By additional reply the respondents have contented that when 1993 pension rules were framed, they were so framed in exercise of the powers conferred on the President by the proviso to Article 309 of the Constitution of India and that these pension rules superseded all the rules and orders on the subject prevailing hitherto.

11. The applicant had filed additional rejoinder dated 11.11.2006 to the additional reply filed by the respondents and annexed copy of the Railway Board's letter dated 09.05.2005 issued almost after 12 years of the introduction of pension rules wherein reference has been made to Para 310 of Manual of Railway (Pension) Rules, 1950, which would go to prove that the provisions of such pension manual have not been completely superseded.



12. Arguments were advanced by both the parties. Counsel for applicant submitted that the order of compulsory retirement as a measure of penalty does not indicate that the compulsory retirement is coupled with an order reducing the pension payable to the applicant. As such, the respondents cannot, of their own, pass an order whereby the pension is reduced by 1/3rd. He has referred to Rule 64 & 65 of the Railway Service (Pension) Rules and submitted that, in so far as the applicant's case is concerned, the order of compulsory retirement not indicating anything relating to the reduction of pension, Rule 64 cannot be invoked in a manner that it is an enabling provision for sanction of pension. As regards, leave encashment, the applicant relied upon Annexure R-2 submitted by the respondents alongwith the counter and submitted that leave encashment is admissible where the penalty of compulsory retirement is not coupled with imposition of any cut in the amount of pension. He distinguished clearly the provision of Para 2 and Para 3 of order dated 12.08.1987 (Annexure R-2) which are as under :-

" 2. It has now been decided that where a Railway Servant is compulsorily retired as a measure of penalty and in whose case the cut in pension is ordered he would not be allowed encashment of L.A.P. at the time of such compulsory retirement.

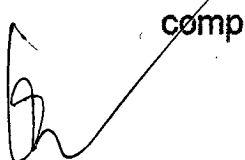
3. However, encashment of unutilised L.A.P. will be allowed to these railway Servants who are compulsorily retired as a measure of punishment under the disciplinary rules where the disciplinary authority has not imposed any cut in the amount of pension. This will be subject to such other general conditions as are laid down in respect of leave encashment."



13. The counsel for applicant submitted that the Appellate Authority has no power to reduce the pension as the order of compulsory retirement dated 07.05.2004 does not even whisper anything in regard to reduction in pension. Thus according to the applicant's counsel, there has been enhancement in the penalty by the very same authority, that too without notice which is thoroughly illegal. The applicant's counsel also relied upon a recent decision by this Tribunal in OA No. 814/04 decided on 06.07.2006 on an identical matter. It has been stated at the Bar by the counsel for the applicant that the respondents had filed the Writ Petition against the aforesaid order of this Tribunal in OA 814/04 which stands dismissed. (It has been challenged by the counsel that it may take ten days for the certified copy of the order in the Writ Petition to be made available).

14. Counsel for respondents submitted that the order of compulsory retirement is legal and so is the order dated 18.10.2004 (Annexure A-4) whereby pension was sanctioned only to the extent of 2/3rd. Consequently, according to the counsel for respondents, Annexure A-6 and A-8 also cannot be faulted with.

15. Arguments were heard and documents perused. The disciplinary authority has the power to impose any penalty and one of them is compulsory retirement. Even this order of compulsory retirement can be passed by the disciplinary



authority either without any order effecting truncation in the quantum of pension specially retirement gratuity or coupled with an order reducing pension. . In the order dated 06.07.2006, in OA 814/04, which is stated to have been upheld by the Hon'ble High Court of Kerala, Rule 64 of the Railway Servants Pension Rules 1993 has been extracted and the same is discussed in Para 8 & 9 of the said order which are reproduced below :-

" 8. As regards curtailment in pension the counsel has argued that the order of compulsory retirement dated 3.1.1996 does not give any inkling as to the intention of the Railways to visit the applicant with any reduction in pension. Referring to paragraph 312 of the Railway Pension Manual extracted above and also referring to a corresponding provision in respect of Civil Servants of other Government employees, the counsel for applicant argued that any intention to encroach upon the pensionary benefits of the applicant should be made only simultaneously in the very order of compulsory retirement. There is no rule which provides for passing a separate order, that too after seven years of passing of the order of compulsory retirement to truncate the pensionary benefits. In other words, the counsel for applicant argued that in the absence of any specific order relating to invoking of the provisions of Rule 64 of the Railway Service (Pension) Rules, 1993 in the order of compulsory retirement or any intention of the competent authority to invoke the said provision, a mere order of compulsory retirement would mean that save such retirement, there won't be any adverse effect upon the entitlement of the applicant for drawal of pinion in accordance with Rules. Thus as on 3.1.1996 and thereafter, the applicant became entitled to draw the pension and such pension is without any restriction. Once the pension has accrued, drawal or otherwise of the pension is immaterial and the authority cannot reduce the accrued pension by invoking the provisions of Rule 64 of the Railway (Pension) Rules, 1993.



9. *The counsel for the respondents has only stated that the applicant has to blame himself for the delay in drawal of pension and in so far as reduction of pension is concerned, it is based on Rule 64. The contention of the counsel for the respondents has to be rejected. For, for passing an order under Rule 64, the respondents need not have to wait till the applicant furnished the pension papers. As argued by the counsel for the applicant, any order on the basis of Rule 64 should have been issued simultaneously alongwith the order of compulsory retirement or at best immediately thereafter and in case of latter, there should have been some manifestation/indication of the competent authority in the very order of compulsory retirement of the intention to encroach upon the pension of the applicant. This not being so in the instant case, the applicant has crystalised his entitlement to full pension in accordance with law without any reduction. This entitlement of the applicant to full pension continued for full seven years. At this distance of time, i.e after seven years, the respondent Railways cannot invoke the provision of Rule 64 in respect of the applicant."*

16. We have no hesitation to endorse the aforesaid view of this Tribunal.

17. Vide Para 2 & 3 of the order dated 12.08.1987 (Annexure R-2) extracted in para 12 above two distinguished penalties are contemplated --

- (a) Compulsory retirement with an order for reduction of pension; and ;
- (b) Compulsory retirement without such an order of reduction in pension

What has been awarded to the applicant vide Annexure A-2 order dated 07.05.2004 is the latter. As such, there is no scope for reducing the quantum of pension admissible to the applicant based on his total qualifying service and last pay drawn/last ten



months average pay drawn. Any reduction in pension in pursuance of the order of compulsory retirement would amount to enhancement of the penalty and the same is not admissible under the facts and circumstances of the case. For, such an enhancement of penalty has to be by an authority superior to that which imposed penalty and the same shall be for reasons to be recorded by such authority and after giving due notice and opportunity to the affected individual. None of such procedure has been followed in this case. Thus, it is evident that the respondents have wrongly presumed that the order of compulsory retirement as a measure of penalty would automatically imply reduction in pension. Such a view cannot be permitted in law. Thus, the applicant's entitlement is to pension in full, based on qualifying service and last ten months average pay / last pay drawn, in accordance with the rules.

18. As regards leave encashment, since there can be no reduction in the quantum of pension the case of the applicant squarely falls within the purview of Para 3 of the order dated 12.08.1987 (Annexure R-2) and thus the applicant is entitled to leave encashment to the extent of unutilised portion of his earned leave.

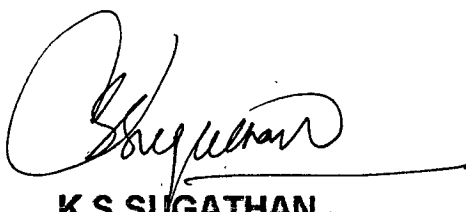
19. In view of the above, **OA succeeds.** Annexures A-4, A-6 and A-8 orders are hereby quashed and set aside. It is declared that the applicant is entitled to pension, in full, based



on qualifying service he has rendered as calculated by the respondents vide para 4 of the counsel statement dated 01.03.2007 and also on the basis of his last pay drawn / last average ten months pay drawn as the case may be . In so far as qualifying service is concerned, the respondents shall also reckon such service in accordance with law, especially the service during the period of temporary status Respondents are therefore directed to work out full pension and retirement gratuity and also work out leave encashment admissible to the applicant and pay the arrears of such pension and quantum of leave encashment within a period of three months from the date of communication of a copy of this order.

20.. Under the above circumstances, there shall be no order as to costs.

Dated, the 12th March, 2007.


K.S.SUGATHAN
ADMINISTRATIVE MEMBER


K.B.S.RAJAN
JUDICIAL MEMBER

vs