

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 156 of 2010

Friday, this the 30th day of September, 2011.

CORAM :

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

C.P. Venugopalan,
S/o. Krishnan Nambiar,
Teacher Grade-II,
Railway Higher Secondary School,
Palghat : 678 009,
Residing at: No. 272-A, Railway Colony,
Palghat : 678 009

.... Applicant.

(By Advocate Mr. TC Govindaswamy)

v e r s u s

1. Union of India, represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3
 2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3
 3. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
 4. The Sr. Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
 5. The Principal,
Higher Secondary School, Palghat.
 6. Shri E. Adithavarneswaran,
Principal, Railway Mixed Higher Secondary School,
Perambur, Chennai.
- Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

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This application having been heard on 22.09.2011, the Tribunal on 30.09.11 delivered the following:

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A. while working as Teacher Grade-II in the Railway Higher Secondary School, Palghat, was issued with a charge memorandum dated 02.03.09 under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968, showing the imputation of misconduct as under :

"Shri C.P. Venugopalan, while working as Teacher Gr.II/RHS/PGT on 18.02.2009, was allotted the second period (2.00 pm to 2.40 pm) and required to be present during 2.00 pm to 2.40 pm, in the VIIIth standard Malayalam medium class room, as per the Time Table. Even though he as signed the muster roll, and was available in the staff room during 2.30 hrs, he has failed to attend the class room, thereby allowing the students to shout and do anything inside the class room. Such an act of not attending the class has resulted in creating indiscipline among students in the classroom. This is an act of dereliction of duty, on the part of the employee and unbecoming of a Railway Servant, and thereby he has violated Rule 3.1(ii) and (iii) of the Railway Services Conduct Rules, 1966."

The request of the applicant for conducting an enquiry was turned down by the Disciplinary Authority vide Annexure A-12 order dated 18.03.2009. He submitted his explanation against the charge framed against him which was considered by the Disciplinary Authority. Subsequently, penalty advice dated 23.03.2009 was issued by the Disciplinary Authority reducing his basic pay from Rs. 23360/- to Rs. 22760/- with effect from 23.03.2009 for a period of 35 months without the effect of postponing his future increments. The penalty was confirmed in appeal and later in revision by the Appellate Authority and



the Revisional Authority under the orders at Annexure A-2 dated 28.04.2009 and Annexure A-3 dated 25.08.2009 respectively. Aggrieved, the applicant has filed this O.A.

2. The applicant contended that after the introduction of the VI CPC pay scale, there is no concept of a time scale of pay and there is also no concept of any particular stage in a particular time scale of pay. So far the rules have not been amended nor have any valid and lawful instruction been issued as to how a penalty of reduction by one stage can ever be imposed at all. The applicant had disputed the facts of the case and sought an enquiry which was rejected stating that the report of the Principal cannot be disbelieved. The Annexure A-2 and Annexure A-3 orders are opposed to the Rules 22 and 25 of the Railway Servants (Disciplinary & Appeal) Rules, 1968, respectively and hence, are liable to be set aside. The entire action of the respondents was pre-concluded, actuated by mala fide and ulterior motives. The penalty imposed is highly disproportionate and shocking to the conscience of a man of ordinary prudence. Therefore, the O.A. should be allowed setting aside the impugned orders at Annexures A-1, A-2 and A-3 and directing the respondents to grant all consequential benefits as if the impugned orders have not been issued.

3. The respondents contested the O.A. They submitted that the request of the applicant for conducting an enquiry was rejected after due consideration by the competent authority vide Annexure A-12 order. The applicant did not challenge the said order but submitted his explanation against the charge memorandum. Now he is estopped from challenging the



penalty order issued at Annexure A-1, the appellate order at Annexure A-2 and the revisionary order at Annexure A-3. The applicant has not brought out any incident either in his appeal at Annexure A-14 or in his revision petition at Annexure A-15 to substantiate that the imposition of penalty by Annexure A-1 was actuated by malafide and other ulterior motives. The documents requested for by the applicant were supplied to him. The only difference introduced by the VI CPC is that the time scale has been replaced by the Pay Band plus Grade Pay, which does not affect the Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968, in any manner. Therefore, the penalty imposed as per Annexure A-1 is legal and tenable. The Disciplinary Authority, the Appellate Authority and the Revisional Authority had followed the relevant rules and procedures. The penalty imposed is not too harsh and not too mild but meets the ends of justice.

4. In the rejoinder filed by the applicant, it was submitted that the decision of the Disciplinary Authority that the report of the Principal was irrefutable and the statements of the teachers were unbelievable smacks of illegality and of biased, prejudiced and pre-conceived mind of the Disciplinary Authority.

5. In the additional reply statement, the respondents submitted that the Disciplinary Authority had considered the case of the applicant and passed a self contained speaking order in Annexure A-1 considering the points raised by him.

6. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for the



respondents and perused the material on record.

7. Since the applicant did not challenge the order at Annexure A-12 rejecting his request for conducting an enquiry and submitted his explanation against the memorandum of charges, he is estopped from raising the point of not conducting an enquiry. If the applicant was aggrieved, he should have challenged the Annexure A-12 order rejecting his request for conducting an enquiry.

8. In the penalty advice dated 23.03.2009, the Disciplinary Authority has stated as under:

"In the School in the recent past, when the bags of XI th & XII th standard students were checked, as per the directives from the educational authorities, mobile phone, match boxes, blue film CD etc. were confiscated. Similarly, there was an incident of physical fight between three students of Class VIII th and IX th. Their parents have been asked to request for TC of the students once the annual exam is over and they did it also. These incidents show that indiscipline among the students is there and the teachers who are to control them. If they abstain from the assigned classroom duties leaving the students free the indiscipline will certainly increase. Hence, such incidents should be curbed at the beginning itself. I find Shri C.P. Venugopalan, Teacher Gr. II guilty of the charges."

The above statement gives the impression that the applicant alone is responsible for the growing indiscipline among the students and the teachers and that he should be punished for the same. The entire responsibility for the growing indiscipline in the School cannot be put on the shoulders of the applicant alone. It should not appear that he is being made a scapegoat for



the indiscipline in the School on the part of others also. This aspect is not considered by the Appellate Authority or the Revisional Authority.

9. The Appellate Authority in his order dated 28.04.2009 at Annexure A-2 has stated as under:

"The undersigned has gone through the case file carefully and conclude that Sri Venugopalan has been rightly punished for the charges levelled against him. School is a sacred institution where discipline is the paramount requirement. As such teaching officials have to play a vital role in instilling discipline among the students. The case file clearly reveals lapse on the part of Shri Venugopalan in this regard. As such, I uphold the punishment imposed by the Disciplinary Authority."

The Appellate Authority has upheld the punishment imposed by the Disciplinary Authority on the applicant as the case file clearly reveals lapse on the part of the applicant in playing a vital role in instilling discipline among the students. The Appellate Authority has not considered whether the penalty of withholding of increments for 35 months is disproportionate or not to the gravity of misconduct on the part of the applicant. It is not conclusively proved that the applicant was in the staff room during the period from 2.00 pm to 2.40 pm instead of taking the class in the VIIIth standard Malayalam medium class room as per the time table. It is not proved that he failed to attend the class. When the Principal went to the VIIIth standard, the applicant was not in the class room. He did attend the class but he was late. It is not proved that he failed to attend the class during the stipulated time. A single lapse of being late by a few minutes in reaching the class room on a particular date has invited maximum punishment that can be inflicted upon



the applicant without conducting an enquiry. The pay of the applicant has been reduced by one stage for a period of 35 months for being late by a few minutes in attending the class. In our considered view, the penalty imposed is shockingly disproportionate to the gravity of misconduct on the part of the applicant. We are also unable to agree with the Revisionary Authority who held that considering the nature of the charges levelled, the punishment imposed is warranted by the evidence on record. Maintaining discipline in the School is important. But imposing shockingly disproportionate punishment for a minor misconduct is not the way to maintain discipline in the School.

10. The Appellate Authority and the Revisionary Authority should have considered the above point. Non-consideration of the above point is not in the interest of justice. If the applicant was late to attend the class for the first time it would have been sufficient if he was given a warning and if he persisted in being late, higher punishment could have been imposed on him. In the instant case, by imposing the highest minor punishment possible without conducting the enquiry, upon the applicant for being once late for attending the class by a few minutes, the respondents have not acted judiciously.

11. In the interest of justice, the Appellate Authority should consider the observations made by this Tribunal and should take a judicious decision in the matter of imposing penalty upon the applicant. Accordingly, the Revisional Authority's order dated 25.08.2009 at Annexure A-3 and the Appellate Authority's order dated 28.04.2009 at Annexure A-2 are set aside. The case is remanded to the Appellate Authority to reconsider the penalty



imposed on the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 30th September, 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVR.