

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH  
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OA No.161/2001

Tuesday, this the 18th day of February, 2003.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN  
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

M. Ravikumar,  
S/o E.P. Madhavan,  
Electrical Fitter/Train Lighting,  
Southern Railway, Mangalore,  
residing at Railway Quarters  
No.MHD-1, Mangalore. ... Applicant

( By Advocate Mr. T.C. Govindaswamy )

Vs

1. Union of India rep. by the  
General Manager,  
Southern Railway,  
Headquarters Office,  
Chennai-3.
2. The Additional Divisional  
Railway Manager,  
Southern Railway,  
Palghat.
3. The Senior Divisional  
Electrical Engineer,  
Southern Railway,  
Palghat.
4. The Assistant Electrical Engineer,  
Southern Railway,  
Palghat. ... Respondents

( By Mrs. Rajeshwari Krishnan )

The application having been heard on 18.2.2003, the  
Tribunal on the same day delivered the following :

ORDER

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

This is the second round of litigation between the  
applicant, an Electrical Fitter/Train Lighting and the Railway  
Administration regarding penalty orders passed in Disciplinary

proceedings against the applicant. The facts of the case are briefly stated as follows :-

2. While the applicant was working as Electrical Fitter(Train Lighting) HS II, Mangalore, he was served with a memorandum of charge Annexure A1. The Articles of Charges are as follows :-

Shri M. Ravikumar, while working as ELF/TL/HS II has committed gross misconduct in that he has failed to notice the defect in the alternator suspension bogie bracket bush when he was nominated for TL maintenance duty on 10.11.1994. He has also abused his immediate supervisor and supervisor in charge of the depot when questioned about the same. Thus he has failed to maintain devotion to duty and behaved in a way quite unbecoming of a Railway Servant and violated Rule 3(1), (ii) and (iii) of Railway Services Conduct Rules, 1966."

3. The applicant denied the charge and an enquiry was held. Four witnesses were examined. The Enquiry Officer submitted the enquiry report(Annexure A4) holding the applicant guilty of the charges. The Disciplinary Authority accepting the finding of the Enquiry Officer, passed an order Annexure A6 dated 7.2.1996 finding the applicant is guilty and imposing a penalty of withholding of increment for a period of 7 years nonrecurring. Aggrieved by this, the applicant filed an appeal to the 3rd respondent and by Annexure A8 order the Appellate Authority reduced the period of withholding of increment to one year, but made it with recurring effect. Finding that in fact the penalty imposed by the Appellate Authority would be more detrimental to the applicant on account of recurring effect, the applicant filed a revision petition to the 2nd respondent. The 2nd respondent vide Annexure A10 order refused to interfere with the Appellate Authority's order. Annexure A10 order was challenged by the applicant in OA 63/98 before this Bench of the Tribunal. The Tribunal finding that the Revisional Authority did not consider the contention of the applicant in the revision petition that the modified penalty imposed by the Appellate Authority was though

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termed as reduction in effect was more detrimental than the penalty imposed by the Disciplinary Authority, set aside the Revision Authority's order Annexure A10 and remitted the matter back to the Revisional Authority for reconsideration. Pursuant to the directions contained in the order in OA 63/98, the 2nd respondent has issued impugned order Annexure A12 dated 9.11.2000 by which the Revisional Authority confirmed the penalty imposed by the Disciplinary Authority in Annexure A6 order. Aggrieved by this the applicant has filed this application seeking to set aside Annexure A6 and Annexure A12. The applicant has challenged these orders on various grounds, that the orders had been passed without holding the enquiry in a proper way, and without giving reasonable opportunity to the applicant to defend himself, that the Disciplinary Authority has not acted correctly under Rule 10 of Railway Servants(Discipline and Appeal) Rules, and that the revisionary order is without application of mind.

4. Respondents in the reply statement seek to justify the impugned orders.

5. We have heard Shri Martin, the learned counsel for the applicant and Mrs. Rajeshwari Krishnan, the learned counsel for the respondents.

6. The points that arise for consideration are (1) whether the finding of the Disciplinary authority which has been upheld by the Revisional Authority, that the applicant is guilty of the charges is justified and (2) whether the penalty ultimately imposed by the Revisionary Authority is sustainable ?

7. Shri Martin, the learned counsel of the applicant argued that the Disciplinary Authority has not acted in accordance with Rule 10 of Railway Servants(Discipline & appeal) Rules in as much

as it did not discuss the evidence and reach its own finding. Smt. Rajeshwari Krishnan on the other hand argued that Disciplinary Authority in its orders agreed with the finding of the Inquiry Authority and therefore a detailed discussion of evidence by the Disciplinary Authority is not required. Hence the argument that the Disciplinary Authority acted contrary to the Rules has no justification, argued the counsel.

8. We have carefully gone through the Inquiry report as also depositions of the witnesses and we find that the finding that the applicant is guilty is based on cogent and convincing evidence. The applicant has admitted that he failed to detect the defect in the alternator suspension bogie bracket bush but pleads that it was on account of poor lighting. If the applicant could not check properly due to poor lighting, he should not have given a clear certificate which could have jeopardised the safety of the hundreds of travelling passengers. The applicant was provided with hand torch. If the hand torch was not working properly, he should have asked for proper lighting equipments to check the alternator suspension bogie bracket bush. Instead of that the applicant certified that it was checked and was found OK. Therefore, he failed to detect the defect. Regarding allegations that the applicant misbehaved with Shri Sini Mundadan as also Shri M.S. Rasheed, the statement of prosecution witnesses afford clear evidence for the charge of misbehaviour of the applicant towards his superiors. It was on this evidence that the Enquiry Authority held the applicant guilty. The Disciplinary Authority agreed with that finding and therefore was under no statutory obligation to again discuss in detail the evidence. Since the finding is based on cogent evidence, we find no reason to interfere with it.

*(Signature)*

9. Coming to the question whether the penalty ultimately imposed on him by the impugned order is sustainable, Shri Martin argued that in the order Annexure A8, the Appellate Authority has found that the penalty imposed for withholding of increments for 7 years is very harsh and it reduced the penalty to withholding of increment for one year(however it was also added recurring). Finding that the penalty awarded by the Appellate Authority which is seemingly a reduced one in effect would work out to be harsher and more detrimental as it would have perpetual effect on the pay and even the pension of the applicant, he submitted a revision petition. The Disciplinary Authority by Annexure A10 order confirmed the penalty of withholding of increment for one year recurring while in para 1 of the order it was stated as nonrecurring. Aggrieved by that the applicant filed OA No.63/1998 challenging the orders of the Disciplinary, Appellate and Revisional Authorities before this Bench of the Tribunal. The Tribunal by order dated 30.8.2000(Annexure A11) finding that the contention of the applicant that the penalty of withholding of increment though only for one year, being recurring is more detrimental to the applicant on account of its perpetual effect has not been considered by the Revisional Authority, set aside Annexure A10 order and directed the Revisional Authority to pass a fresh order considering all the contentions. In obedience to the above order of the Tribunal, the 2nd respondent has considered the revision petition afresh and has passed Annexure A12 order confirming the original order of penalty issued by the Disciplinary Authority of withholding of increment for a period of seven years nonrecurring. Aggrieved by that the applicant has filed this Original Application.

10. Although the orders are challenged on a number of grounds, the learned counsel pressed only two points (1) the Disciplinary Authority having not discussed the entire evidence and came to

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his own conclusion as required under Sub Rule 10 of the Railway Servants(Discipline and Appeal) Rules, 1968 and (2) the revisional order Annexure A12 is totally devoid of application of mind. The learned counsel of the applicant argued that a mere reading of Annexure A6 order would convince that the order is not in conformity with the provisions of Rule 10 because nowhere in the order a discussion of the evidence is seen. We find no substance in this argument because, the enquiry officer has in his report after discussing the evidence reached the finding that the applicant is guilty giving cogent reason for the finding. The Disciplinary authority has accepted that finding and has stated so in Annexure A6 order. Therefore it is not necessary for the Disciplinary Authority to again discuss all the evidence.

11. Shri Martin, the learned counsel next argued that this Tribunal had in its order in OA No.63/1998 specifically directed the Revisional Authority to consider all the grounds raised in the revision petition especially the point that the Appellate Authority which purportedly reducing the penalty has imposed a penalty which is more damaging than the penalty imposed in Annexure A6 order by the Disciplinary Authority, but the Revisional Authority has passed Annexure A12 order in a mechanical manner without any application of mind to the grounds urged. We find considerable force in this argument. The Disciplinary Authority had in its order Annexure A6 imposed on the applicant a penalty of withholding of increment for a period of 7 years nonrecurring(NR). The Appellate Authority has in its order found that the penalty imposed by the Disciplinary Authority is very high and therefore reduced the penalty to withholding of increment for one year but made it with recurring effect. This was confirmed by the Revisional Authority in its Annexure A10 order. The Tribunal in its order in OA 63/1998 setting aside Annexure A10 order directed the Revisional

Authority to consider all the grounds raised in Annexure A9 appeal and especially the ground that the penalty imposed by the Appellate Authority though apparently would appear to be a reduction really amounted to a more severe penalty. The reasoning of the Revisional Authority for imposing on the applicant the penalty of withholding of increment for 7 years as ordered by the Disciplinary Authority is contained in the last two paragraphs of the order Annexure A12 which can be extracted as follows :-

"Now as per the orders of the Hon'ble Central Administrative Tribunal when the undersigned has gone through the file of papers, de novo, it is found that the employee concerned(Shri M Ravikumar) was taken up under DAR for serious charges and all the procedures and rules were followed before the imposition of a nonrecurrent penalty. The penalty imposed is only commensurate with the gravity of the charges which, (after giving Shri Ravikumar all opportunities to defend himself during a fair/impartial enquiry in consonance with the tenets of natural justice), have been fully proved. This fact has not been disputed by the Appellate or Revising Authorities who had also seen these papers. Neither at the Appeal nor Revising stage, fresh issues have been brought into warrant any reconsideration of the penalty imposed by the Disciplinary Authority.

Therefore, in conclusion, the undersigned hereby confirms the original penalty of withholding of increment for seven years without recurring effect, as proper and correct and rules out the need for any alteration of this penalty."

12. The argument that no fresh issue has been brought out by in appellate or revisional stage is incorrect. The applicant had raised several grounds in appeal including the severity of penalty. The Appellate Authority in its order on appreciation of the grounds found that the penalty of withholding of increment for 7 years was very high and reduced the period to one year. The recurring effect of the reduced penalty according to the applicant was more harsh. Whether the reduced penalty is harsher or lighter was required to be considered by the Revisional Authority. It did not consider that. Withholding of increment even if it is for one year with recurring effect will have a perpetual adverse effect on the pay and even eventually the

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pension of the applicant while a nonrecurring withholding of increment would have only involve a monetary loss for a specific period. The Appellate Authority's finding that the penalty of withholding of increment for a period of 7 years is very harsh has not been challenged by anybody. The Revisional Authority in a revision petition filed by the applicant could not have taken a decision contrary to that. What the Revisional Authority should have decided is whether the recurring effect given to the reduced penalty by the Appellate Authority was justified. The Revisional Authority has not applied its mind to this aspect that the Revisional Authority's order Annexure A12 confirming the Annexure A6 order of penalty is unsustainable.

13. Having find that the Revisional Authority has not considered relevant aspect and had acted without application of mind to the relevant issue, we have to consider what order has to be made in the facts and circumstances of the case. Since the matter was once remitted to the Revisional Authority, and the Revisional Authority again failed to consider the relevant aspect, we are of the considered view that the interest of justice would be met if the reduced penalty of withholding of increment for a period awarded by the Appellate Authority's order Annexure A8 is altered as nonrecurring.

14. In the light of the above discussion, the application is allowed. The impugned orders Annexure A6 and A12 are set aside. The Appellate order Annexure A8 imposing on the applicant a reduced penalty of withholding of increment for one year is upheld with the modification that the withholding would not have the effect of postponing future increments or in other words would be non-recurring(NR). We direct the respondents to make

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the consequential monetary benefits of the alteration in the penalty to the applicant within two months from the date of receipt of a copy of this order. No costs.

Dated 18th February, 2003.

*[Signature]*

T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

*[Signature]*

A.V. HARIDASAN  
VICE CHAIRMAN

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