

**Central Administrative Tribunal  
Ernakulam Bench**

OA No.19/2013

Friday, this, this the 19<sup>th</sup> day of June, 2015

**CORAM**

**HON'BLE MR.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER**

**HON'BLE MR.R.RAMANUJAM, ADMINISTRATIVE MEMBER**

J.Biju Mon, 39 years  
S/o John D  
Senior Assistant Loco Pilot  
Southern Railway, Kollam.  
Residing at "Mary Vilasam Puthen Veedu"  
Kura P.O., Chengamanadu Via  
Kollam – 691 557

Applicant

(By Advocate: Mr.T.C.Govindaswamy)

**Versus**

1. Union of India represented by the General Manager  
Southern Railway Headquarters' Office  
Park Town P.O., Chennai-3.
2. The Senior Divisional Mechanical Engineer  
Southern Railway, Thiruvananthapuram Division  
Thiruvananthapuram-14.
3. The Senior Divisional Personnel Officer  
Southern Railway, Thiruvananthapuram Division  
Thiruvananthapuram-14
4. The Divisional Railway Manager  
Southern Railway, Thiruvananthapuram Division  
Thiruvananthapuram-14

Respondents

(By Advocate : Mr.Thomas Mathew Nellimoottil)

**ORDER**

**By Hon'ble Mr.R.Ramanujam, Administrative Member**

Applicant is a Senior Assistant Loco Pilot in PB1 + GP of Rs.2400/-. He is aggrieved by the sudden and unexpected reduction in his basic pay for the month of November, 2012 onwards without assigning any reason. His basic pay of Rs.9590/- in October, 2012 had been brought down to Rs.7990/- in November, 2012. Proportionate reduction had also been made in the applicant's DA and HRA resulting in overall

reduction of Rs.3300/- per month.

2. The applicant states that he was imposed with a penalty of reduction in pay from the stage of Rs.3500/- in scale Rs.3050-4590 to Rs.3050/- for a period of 5 years with immediate effect. This order of penalty (Annexure A4) which was imposed on 27.2.2006 also stated that it would have the effect of postponing of his future increments along with loss of seniority. The applicant had submitted a statutory appeal against this order on 27.4.2006. However the respondents neither took a decision on the appeal nor gave effect to the order imposing the penalty.

3. The applicant was subsequently promoted as Senior Assistant Loco Pilot by order dated 13.8.2012.

4. On making enquiries under the Right to Information Act, the applicant came to know that the appeal he filed against the penalty was sent to the third respondent on 9.5.2006 on file NoV/T(M)/1/258/2004-05/DAR2 for further disposal of the case. The file was never received back by the second respondent. It was revealed subsequently that the file was not traceable. Applicant contends that the penalty imposed on him could not be given effect to now in the absence of the file relating to DAR proceedings. The applicant cannot be penalized for the failure on the part of the appellate authority to discharge its statutory functions. The applicant legitimately believed that his appeal had been accepted and the charges dropped especially when he had subsequently been promoted to the higher post.

5. The respondents in their reply have contended that the applicant never pursued his appeal. When he was imposed with the penalty, it was incumbent on him to pursue the matter and get an appropriate order regarding the penalty imposed on him rather than presume that his appeal had been accepted. The applicant continued to be paid as per his normal entitlement only because the penalty imposed on him had gone unnoticed. It was an inadvertent omission and not as a result of any decision given by the appellate authority.

6. Heard the learned counsel for the applicant as well as the respondents and also perused the documents presented. Learned counsel for the applicant argued that the applicant had been awarded a penalty highly disproportionate to the alleged lapse on

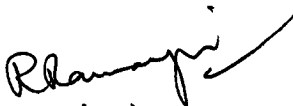
his part. In any case, the penalty was not given effect to and he was granted promotion subsequently. The respondents would now be estopped from going back several years in point of time to dig out an order which had not attained finality in view of the pending appeal. Learned counsel for the respondents fairly conceded that the relevant file had been lost and it is not possible to comment on either the gravity of the charges or the fairness of the penalty imposed on the applicant. He would, however, state that it was for the applicant to pursue his appeal and get a decision in his favour and not make a baseless presumption regarding its acceptance.


7. We have carefully considered the matter. While the respondents have been able to discover the existence of an order imposing penalty on the applicant, they are unaware of the facts and circumstances of the case as also the fact whether any decision was taken at all on the appeal. In the absence of the relevant case file, the respondents cannot be allowed to impose the penalty at this distance in time as this would amount to a retrospective denial of a statutory right of appeal to the applicant. We have, therefore, no hesitation to grant the following reliefs as sought by the applicant:

(a) The action of the respondents in imposing a reduction in the pay and allowances of the applicant is held null and void. Accordingly, the applicant's pay & allowances shall stand restored to levels and rates as paid in October, 2012.

(b) The respondents shall grant consequential benefits of arrears of pay and allowances as if the applicant continued to draw the pay of Rs.9590/- in PB1 + GP of Rs.2400.

8. OA is allowed accordingly. No order as to costs.

  
(R. Ramanujam)  
Administrative Member

  
(N.K. Balakrishnan)  
Judicial Member

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Contempt Petition No. 71 of 2013 in**  
**Original Application No. 19 of 2013**

Friday, this the 21<sup>st</sup> day of June, 2013

**CORAM:**

**Hon'ble Dr. K.B.S. Rajan, Judicial Member**  
**Hon'ble Mr. K. George Joseph, Administrative Member**

J. Biju Mon, aged 39 years,  
 S/o. John D., Senior Assistant Loco Pilot,  
 Southern Railway, Kollam,  
 Residing at "Mary Vilasam Puthen Veedu",  
 Kura PO, Chengamanadu Via, Kollam-691 557. .... **Petitioner**

**(By Advocate – Mr. T.C. Govindaswamy)**

**V e r s u s**

Shri Mohan, (age and personal details not known  
 to the petitioner), Senior Divisional Personnel Officer,  
 Southern Railway, Thiruvananthapuram Division,  
 Thiruvananthapuram-14. .... **Respondents**

**(By Advocate – Mr. Thomas Mathew Nellimoottil)**

This Contempt Petition having been heard on 21.06.2013, the Tribunal  
 on the same day delivered the following:

**O R D E R**

**By Hon'ble Dr. K.B.S. Rajan, Judicial Member-**

On 19.6.2013 an order in compliance of our interim order has been  
 passed. As such the Contempt Petition is closed.

  
**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**

  
**(DR. K.B.S. RAJAN)**  
**JUDICIAL MEMBER**

**"SA"**