

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.220/92

Thursday, this the 4th day of November, 1993.

HON'BLE SHRI N DHARMADAN, JUDICIAL MEMBER
AND
HON'BLE SHRI S KASIPANDIAN, ADMINISTRATIVE MEMBER

R Santhosh Kumar
Diesel Assistant,
Southern Railway, Palghat. - Applicant

By Advocate Shri P Sivan Pillai

Vs.

1. Union of India through
the General Manager,
Southern Railway, Madras.
2. The Divisional Railway Manager,
Southern Railway, Palghat.
3. Senior Divisional Mechanical
Engineer, Southern Railway,
Palghat. - Respondents

By Advocate Shri MC Cherian & Shri TA Rajan

O R D E R

N DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by the penalty advise Annexure-A6 and the appellate order Annexure-A10. His contention is that the penalty advise has been issued without correctly appreciating the contentions of the applicant and that no satisfactory or convincing reasons are stated in the order. According to him, really there is an enhancement of the punishment and it has been passed without any notice or opportunity of being heard. He further submitted that the original penalty as per Annexure-A4 was passed barring the increment from Rs.1250 to Rs.1275 in the grade of Rs.950-1500 for a period of 12 months with the effect of postponing future increment. It was further withheld for a period of 24 months without the effect of postponing future increments. Annexure-A6 is a modification of Annexure-A4 order. According to the applicant, the effect of these two orders is delay and disadvantage for the applicant to get an early promotion.

even if the punishment is accepted as validly imposed on him. This aspect was dealt with by the appellate authority in the order in the following manner:

"The charged employee was awarded the penalty of withholding of increment(NR) for 12 months for another offence. Due to some administrative delay this penalty advise was not communicated to the employee in time with the result the employee had by then(1.11.88) earned his increment of Rs.25 raising his pay from Rs.1250/- to Rs.1275/- per month. Corrections had therefore to be made in the said penalty advise and the penalty advise concerning this case thus needing correction of the commencement of the date of imposition of the penalty from 1.11.88 to 1.11.89. The earlier penalty advises had the effect of withholding of increment(NR) for three years in all from 1.11.88 to 1.11.91. As the penalty could not be implemented effective from 1.11.88 due to administrative delays the same has been given effect to from 1.11.89. There is thus no enhancement nor is there any increase in monetary loss to the charged employee."

2. The learned counsel for the applicant limited his submission on one issue alone. According to him, the postponement of implementation of the penalty due to administrative delay caused injustice to the applicant for if it was implemented in time, his promotion would not have been delayed causing loss to him.

3. It is an admitted fact that there was administrative delay in the implementation of the original penalty of barring 12 months increment with effect from 1.11.1988 within the time after giving due communication to the applicant. Subsequently, when it was noticed that the penalty was not implemented in time, it was also included in Annexure-A6 order. Thus the total period of operation of the penalty becomes 36 months.

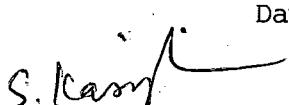
4. According to the applicant, if the penalty of barring the increment imposed against him was implemented in appropriate time, the period of operation of the penalty would have expired in 1991 and he would have got earlier promotion. It is only because of the administrative delay that the applicant's chance of getting further promotion from 1.11.1991 was delayed. He got the promotion only in 1992 and this has prejudicially affected the applicant. This aspect has not been placed by the applicant before any of the authorities for consideration. However, the disciplinary authority as well as

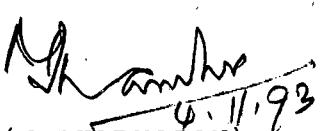
the appellate authority did not consider this question specifically. The grievance of the applicant in this behalf deserves to be examined by the competent authority particularly because it was postponed on account of administrative delay in implementing penalties in the proper time. The applicant is forced to suffer and sustain loss in addition to the penalty as per order which cannot be permitted on the facts and circumstances of this case.

5. Since the matter was not placed for consideration before the appropriate authorities, we are inclined to dispose of this O.A. with directions. While disposing of the application, we direct the applicant to file a detailed representation before the second respondent stating all his grievances arose on account of the administrative delay in implementing the penalty and the consequent loss of service benefit including the financial loss. This shall be done within a period of two weeks from the date of receipt of a copy of this judgement. If such a representation as directed above is received by the second respondent from the applicant, he shall consider and dispose of the same in accordance with law within a period of four months from the date of receipt of the representation.

6. The application is disposed of as above. No costs.

Dated, the 4th November, 1993.


(S KASIPANDIAN)
ADMINISTRATIVE MEMBER


(N DHARMADAN)
JUDICIAL MEMBER
6.11.93

trs