

Central Administrative Tribunal  
Ernakulam Bench

Dated Thursday the twentyseventh day of April,  
One thousand, nine hundred and eighty nine.

Present

Hon'ble Shri G Sreedharan Nair, Judicial Member  
and  
Hon'ble Shri NV Krishnan, Administrative Member

DA 234/87

VK Hemachandran : Applicant

Vs

- |   |   |             |
|---|---|-------------|
| 1 Union of India rep. by<br>General Manager<br>Southern Railway, Madras-3 | } | Respondents |
| 2 Senior Divisional<br>Mechanical Engineer<br>Southern Railway, Palghat   | } |             |
| 3 Senior Divisional<br>Personnel Officer<br>Southern Railway, Palghat     | } |             |
| 4 Loco Foreman, Southern Railway,<br>Shoranur.                            | } |             |

M/s K Padmanabhan & MV Mathew : Counsel for Applicant

M/s MC Cherian, Saramma Cherian  
and TA Rajan : Counsel for Respondents

O R D E R

Shri NV Krishnan, Administrative Member

The applicant, a driver in the Railways has been removed from service as a punishment by the order dated 16/31.10.86 by Respondent No.2. This order was served on 15.11.86 and therefore, a memorandum dated 25.11.86 was issued to the effect that the penalty of removal from service has come into effect

on 15.11.86. The appeal filed by him was also dismissed by the order dated 16.12.86 by the DRM, Palghat. The applicant has challenged all these 3 orders and prayed for his reinstatement in service.

2 The facts of the case leading to this punishment are as follows:

In respect of another proceeding against him, the applicant was suspended w.e.f. 15.3.86. However, before the completion of those proceedings, the suspension order was revoked with effect from 12.4.86, but, it could not be served on the applicant as he was not available in the Headquarters. In order to serve the order of revocation of suspension on him, the applicant was called to office through Call Boys on 12.4.86, 13.4.86 and 14.4.86. As these attempts failed, the order was exhibited on the notice board. It is also alleged that he was informed about the revocation of suspension on 18.4.86 by the Head Clerk Shri KP Ashok Panicker when the applicant came to the office for some other purpose. He also informed the applicant about a further course of training which he had to attend. However, the applicant refused to receive such oral information. Though he also came to the office later to take his salary on 20th April, 86 he did not attend office regularly. Ultimately, he turned up only on 26th May, 1986.

3 The charge against him relates to the wilful absence from 12.4.86 to 25.5.86. The applicant has contended that he was laid up with jaundice and had to go to his native place for treatment. He also produced a medical certificate from a private medical practitioner.

4 Considering these circumstances, a charge memo dated 20.5.86 was served on him. After holding the inquiry, the Inquiry Officer held that the charges to be fully proved. Thereupon, the impugned order of removal from service dated 16/31.10.86 was passed by Respondent No.2. The subsequent appeal filed by him was also dismissed.

5 We have heard the learned counsel for the applicant. No serious shortcoming in the inquiry proceedings has been pointed out to us. It was only contended that neither the Disciplinary Authority nor the Appellate Authority had given any consideration to the reason given by him for his absence from the Headquarters. Even granting the fact that he had infringed various rules - such as leaving Headquarters without proper permission, not attending office despite receiving information about revocation of suspension, remaining absent from duty without proper leave or authorisation etc.- yet it cannot be said that this

was a case of wilful absence to flout and disobey the administration. He had genuine reasons to remain absent for, he was seriously ill for which he had produced <sup>a</sup> ~~the~~ medical certificate, though from a private medical practitioner. This is not disallowed even under the Railway Service Rules. Lastly, he also contended that in any case, the punishment of removal from service is, undoubtedly, harsh and totally dis-proportionate to the gravity of the charges preferred against him.

6 The learned counsel for the respondents has, on the other hand, contended, that it is not for the first time that the applicant has been punished. He produced the service book of the applicant which indicates that he has received all kinds of penalties many times in his career. It was also pointed out that for a person holding the <sup>responsible</sup> ~~reasonable~~ post of a driver in the Railways, this conduct was unbecoming and therefore, the penalty imposed was appropriate.

7 We have considered the arguments of the learned counsel and also perused the records of the case, including the service book of the applicant as well as the records of the inquiry. Taken by itself, absence from Headquarters, if it is for the purpose of medical treatment could be condoned with a minor penalty, if needed, even if prior leave was not obtained. It appears that in this case the applicant not only

absented himself, but even after getting information that his suspension had been terminated, refused to attend office thereafter, though in between he did come to the office to receive salary. It is not surprising that the disciplinary authority and appellate authority did not believe the applicant's claim that he was ill. The conduct of the applicant on these circumstances, cannot but be held <sup>to be</sup> contumacious.

8 We have gone through the records of the inquiry and find that there is no infirmity in the procedure followed to warrant any interference. In the circumstances, we have no hesitation in holding that the charges have been rightly held to be proved against the applicant. That leaves only the question of penalty to be considered.

9 Per se, the penalty certainly appears to be harsh. Perhaps, the Disciplinary and the Appellate Authorities had at the back of their minds, not merely this incident of disobedience and infraction of rules by the applicant, but also the several other incidents noted in his service book since his entry in Government service in 1962. Otherwise, this is not the kind of charge for which a government servant is normally removed from service. If before imposing this penalty, the disciplinary authority had given him a notice to show cause as to why the record of


his service in the past and the various penalties he had received should not be taken into account to impose a higher penalty, the impugned penalty could have been imposed. Since that has not been done, we find that the penalty is unduly harsh and need to be moderated. This is being done only out of compassion for the applicant who has been in service for more than 20 years.

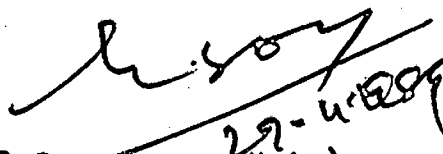
10 We, therefore, set aside the impugned orders and order that he be reinstated within <sup>fifteen days</sup> ~~7~~ from the date of receipt of this order by the Respondent No.2.

As regards penalty, we notice that his pay as on 1.1.86 has been fixed in the revised scale of Rs1640-2900 at the stage of Rs 2240 <sup>ℓ</sup> and with an increment raising his pay to Rs 2300 on 1.3.86. At the time of his removal from service his pay was Rs 2300/-. We feel that it will <sup>ℓ</sup> ~~be~~ meet the ends of justice, if his pay on reinstatement is reduced from Rs 2300 to Rs 1820/-.

The period of absence from the date of his removal from service till the date of his reinstatement will not count as service for any purpose. In so far as the unauthorized absence for which he was charge-sheeted is concerned, the Respondent No.2 is directed to grant him leave without pay for that period.

11 The application is disposed of with these directions.

  
(NV Krishnan)  
Administrative Member  
27.4.89

  
(G Sreedharan Nair)  
Judicial Member  
27.4.89