

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 26/2006

WEDNESDAY THIS THE 11th DAY OF JULY, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER**

K.P. Janardhanan S/o K.Gopalan
Loco Pilot (Goods)
Southern Railway, Ernakulam Marshalling Yard
Permanent address: Kunjiparambath House
Peringadi, Cannannore District.
- Applicant.

By Advocate M/s TC Govindaswamy, D. Heera &
P.N. Pankajakshan Pillai & Sumy P. Baby

Vs.

- 1 Union of India represented by the
~~General~~ Manager, Southern Railway
Headquarters Office, Park Town
Chennai-03
 - 2 The Senior Divisional Mechanical Engineer
Southern Railway, Trivandrum Division
Trivandrum-14
 - 3 The Additional Divisional Railway Manager
Southern Railway, Trivandrum Division,
Trivandrum -14
 - 4 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum-14.
- ..Respondents.

By Advocate Mr. Sunil Jose, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is working as a Goods Driver in the pay scale of Rs. 5000-8000 at the Ernakulam Marshalling Yard of Trivandrum Division of Southern Railway, He is aggrieved by the penalty advice No. V/M-348/24/7/ERS dated 5.2.2003 issued by the second respondent by which he was imposed with the penalty of withholding of annual increment from Rs. 4350/- to 4430/- in the scale of Rs. 3050-4590 which was due on 1.9.2003 for a period of six months. The applicant is also aggrieved by a further order by which the penalty was revised by the second respondent withholding the annual increment from Rs. 5150/- to Rs.5300/- in the higher scale of Rs. 5000-8000 for a period of six months.

2 The brief facts of the case are as follows:- The applicant while working as Diesel Assistant was proceeded against by a major penalty charge memorandum at Annexure A-5 dated 31.7.2000 for dereliction of duty. The misconduct attributed to the applicant was that "while working as Assistant Driver of Train No. 8689 Express SRR-ERS on 24.7.2000 he refused to uncouple the train engine from the formation in spite of repeated instructions by the LI/ERS and the memorandum served by the LI/ERS in charge of crew at 2030 hours. This has resulted in detention of the train." An Enquiry Officer was appointed and the enquiry was conducted. The Enquiry Officer

submitted the report holding that the charges were proved. Against the finding in Annexure A-7 report the applicant submitted his objection by letter dated 25.8.2001 at Annexure A8. After a period of one year and six months Annexure A-1 dated 5.2.2003 was issued imposing a minor penalty of withholding of the increment for six months. During the intervening period between 25.8.2001 and 5.2.2003 the applicant was overlooked for promotion and several of his juniors were promoted as Shunter and Senior Diesel Assistants and further as Goods Drivers. The applicant submitted a detailed appeal to the third respondent Annexure A-9 dated 3.3.2003 and by order dated 29.4.2003 issued by the 4th respondent, the applicant was also promoted as Shunting Driver w.e.f. 23.8.03 on proforma basis and later as Goods Driver by order dated 2.1.2004. Meanwhile the 4th respondent issued the impugned order Annexure A-10 dated 13.11.2003 revising the applicant's penalty in the higher scale of Shunting Driver. This according to the applicant has resulted in enhancement of the penalty against which he submitted an appeal to the Railway Board for which there was no response. The applicant has submitted that in view of continued loss he has suffered vis-a-vis his juniors of one increment every year and due to the inaction on the part of the respondents he approached this Tribunal in O.A. 551/05 which was disposed of with direction to consider the representations of the applicant within two months. The respondents have now rejected the


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said representation by Annexure A-3.

3 The following reliefs are prayed for:


- (i) Call for the records leading to the issue of Annexure A1 to A4 and quash the same.
- (ii) Direct the respondents to grant all consequential benefits including arrears of pay and allowances as if Annexure A1 to A4 were not in existence at all.
- (iii) Award costs of and incidental to; this Application.
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

4 The respondents have filed a reply statement denying the averments in the Application. The applicant is issued with a chargesheet for serious disobedience of the order of the superior even in writing which has resulted in the delay in Train NO. 8689 Express causing inconvenience to hundreds of bonafide passengers and loss of revenue to the Railway and delayed other trains in the system. Therefore viewed in the larger perspective disobedience of grave nature chargesheet of major penalty was issued. The applicant attended the enquiry and only a minor penalty was imposed on the applicant. Before the proposed penalty could take effect from 1.9.2003 the applicant was promoted to the next cadre of Shunter in the scale of Rs. 4000-6000 w.e.f. 28.3.2003 by order dated 29.4.2003, the consequential penalty had to be revised imposing the same penalty in the higher grade by



Annexure A-10. Again before the penalty could be operated in the promoted grade w.e.f. 1.3.2004 the applicant was again promoted to the grade of Rs. 5000-8000 as Loco Pilot w.e.f. 19.1.2004. Hence the second revision of the penalty order has become necessary. Respondents have admitted that no doubt this caused an increase in the quantum of financial loss but the Railways are in no way responsible for the loss and the loss was due to the fact that the penalty imposed on him was only operated upon the promoted grade. This question is covered by Railway Board's order No. 2000/RG/6-13 dated 8.10.2001 Annexure R-1. It has been held by the Board that no moderation of the period of operation of penalty will be done while giving effect of withholding of increment in the promoted grade and the penalty will be for the same period as prescribed in the penalty order. It is further averred that The action of the respondents is based on Annexure R-1 which is still in existence, the allegation of malafides on the part of the respondents is not justified and that the action of the respondents is legal and as per the instructions of the Railway Board.

5 As regards the disciplinary proceedings and the ground taken by the applicant the respondents have submitted that there was no ambiguity in the charge memorandum given to the applicant. The only inaccuracy pointed out by the applicant is that, out of the three rules said to have been violated, Rule



4.34(iii) quoted in the charge memo was not in existence. This mistake occurred due to a correction in the general rules by which the said rule has been renumbered as subsidiary rule 4.32(ii) (Annexure R-2). The fact that the rule is in existence under a different number would not exonerate him from the serious charge clearly spelt out in the charge memo. The penalty was duly confirmed by the Appellate Authority, the applicant had not chosen to file a revision petition even though he was advised to do so. Therefore the impugned orders are in no way opposed to the principles of natural justice, to call for revision of the penalty order.

6 The applicant filed a rejoinder reiterating the averments in the OA and also submitted that Annexure R-1 has no application as regards Group-C and Group-D Railway employees and the same is applicable only to Group-B Railway employees and that the contention of the respondents is not based on relevant facts and that alone is sufficient to set aside the impugned order.


7 We have heard Shri T.C. Govindaswamy for the applicant and Shri Sunil Jose for the respondents.

8 The learned counsel for the applicant extensively argued that the enquiry was perverse and the finding of the Enquiry Officer cannot be sustained on the basis of the mistake in

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quoting of the rule which was admitted by the respondents and that there was no evidence before the Enquiry Officer to arrive at such a conclusion and there was no application of mind by the Appellate Authority. Regarding the implementation of the penalty as alleged in Annexure A-4, the learned counsel for the applicant has taken us through the Railway Board orders, the two rules before amendment and after amendment in order to establish that Annexure R-1 instructions on which the respondents have placed sole reliance are not applicable to the case of the applicant.


9 We have gone through the records. The applicant has produced before us the four orders Annexures A1 to A-4. Annexure A-1 to A-3 are orders pertaining to the disciplinary proceedings viz. the orders of the disciplinary and appellate authorities and Annexure A-4 pertains to the implementation of the proposed penalty in the higher scale to which the applicant was promoted during the period when the appeal against the order of the disciplinary authority was pending before the Appellate Authority. As regards the Annexures A1 to A-3 orders relating to the imposing of the penalty and its confirmation by the Appellate Authority, we do not find much substance in the grounds averred by the applicant. It is seen that though the charge sheet was issued under major penalty proceedings it was concluded finally on only a minor penalty of stoppage of increment. The charge relates to the



disobedience of the instructions of the superior authority and the only ground taken by the applicant in defence is that the rule under which he has been chargesheeted did not exist at the relevant point of time and though it was pointed out by the applicant in his representation the respondents by sheer non application of mind had not even bothered to correct the mistake. No doubt we find that the mistake has occurred. The rule had been amended and the rule 4.34(iii) was renumbered as 4.32(ii). But it cannot be said that the rule was struck off from the statute as averred by the applicant. The rule did exist under a different number and it is highly technical for the applicant to argue that due to this mistake in the chargesheet the entire chargesheet was vitiated. We reject this contention. The disobedience of superior officer's instruction on any ground in any office has to be viewed seriously. More so in an organisation like the Railways in charge of running of trains which can result in a chain reaction holding up the entire railway system. If the applicant had any genuine reason for not obeying the instructions he could have brought them to the notice of the superior officers later on. But he could not resort to dislocating the entire running of the trains resulting in retention of the train by his disobeying the orders of the superior officers. We are therefore not convinced that he has been unjustly treated and the orders at Annexures A1 to A3 are not liable to be quashed.

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10 The second question is regarding the manner of imposition of the penalty. It is true that the applicant was imposed with the penalty of withholding of annual increment due on 1.9.2003 for a period of six months. Before it could be operated w.e.f. 1.3.2004 he was further promoted w.e.f. 19.1.2004. Even though Annexure A-10 was issued imposing the penalty in the promoted grade of Rs. 4000-6000 on 13.11.2003 due to the pendency of the appeal the penalty was not operated and a further second revision became necessary by Annexure A-4 on his second promotion to a higher scale of RS. 5000-8000. As pointed out by the respondents it was not due to any malafide intention on the part of the respondents but necessitated by the two subsequent promotions earned by the applicant. No doubt there was a delay in the disposal of the appeal by the appellate authority which was finally disposed after interference by this Tribunal by a direction in the O.A. filed by the applicant. If the appeal had been disposed of expeditiously the second revision would not have perhaps become necessary. It is also true that by these two revisions the applicant has been put to financial loss. If the penalty was operated by Annexure A-1 the rate of increment was only Rs. 80/-, the effect of the penalty was only Rs. 80 X 6 -Rs. 480/- plus D.A. Whereas the effect of Annexure A-4 order by implementing the penalty in the higher scale of Rs. 5000-8000 the rate of increment being Rs. 150, the loss would be Rs. 150 X 6 plus DA -Rs. 900/-. The respondents have also admitted



that the applicant will suffer monetary loss, but they have justified their action as in accordance with R-1 instruction of the Railway Board which is regarding the procedure for withholding the increment while imposing such a penalty in a higher scale. Annexure R-1 instruction dated 8.10.2001 is reproduced below:-

To

The General Managers
All Indian Railways
Production Units, etc.
(As per the standard list)

Subject: Imposition of Penalty of withholding increments in the promotion grade.

Attention of the railways is invited to instructions contained in Board's letter NO.E(D&A)92RG 6-185 dated 12.2.93. In terms of these instructions where the penalty of withholding of increment imposed on a railway officer is to become operative from a future date, the person concerned should be promoted in his turn prospectively with reference to his position in the earlier panel of the DPC and the penalty imposed in the promotion grade for a period which would not result in greater monetary loss.

2 Board have since reviewed the above provisions and have decided in partial modification thereof that hence forth no moderation of the period of operation of the penalty will be done while giving effect to the penalty of withholding of increments in the promotional grade. The penalty will be given effect to in the promotional grade for the same period as prescribed in the penalty order. (These orders will apply to the cases where actual operation of penalty is yet to start).

Please acknowledge receipt.

Sd/- V.Vaidehi
Joint Director Establishment (D&A) II
Railway Board.

11 These instructions have been issued for reviewing the instructions contained in the Railway Board letter No. RBE No.27/1993 dated 12.2.1993 which has been produced by the

applicant as Annexure A-15. Annexure A-15 also refers to Railway Board's earlier letter No. RBE 14/93 dated 21.1.1993 which is also reproduced here for easy reference.


RBE No. 27/93

Subject: Promotion of officers who have been imposed penalty of withholding of increments.

Attention is invited to Board's letter No.E(D&A)92 RG 6-146 dated 21.1.1993(RBE 14/93) with respect to the procedure and guidelines to be followed in the matter of promotion from Group-B to Group-A and within Group-A of Railway Officers against whom disciplinary/Court proceedings are pending. It has been laid down inter alia vide para 3.2 thereof that officers imposed with the minor penalties of censure,stoppage of passes/PTOs, recovery from pay and withholding of increments may be promoted prospectively in their turn with reference to their position in the earlier panel(s) of the DPC, but where the penalty of withholding of increment is imposed they cannot be promoted before expiry of the penalty.

On reconsideration, the Railway Board have decided that where the penalty of withholding of increment imposed on a Railway Officer is to become operative from a future date, the person concerned should be promoted in his turn prospectively with reference to his position in the earlier panel of the DPC and the penalty imposed in the promotion grade for a period which would not result in greater monetary loss.


12 From a reading of the above it would be clear that these orders prescribe the procedure and guidelines to be followed in the matter of promotion from Group -B to Group-A who cannot be promoted before the expiry of penalty. The contention of the applicant is that Annexure R-1 instructions do not pertain to promotion of Group-C and D employees and cannot be invoked in the case of the applicant. The counsel for the applicant also brought to our notice Railway Board's order No. 13 of 1993 No.E((D&A)92 RG 6-149(A) dated 21.1.93 laying down the procedure in similar case of Group-D and Group-C Railway servants. The proviso under note 1 of para 3.9 deals with the



method of imposition of penalty on promotion. The proviso is as under:

"Provided that where the penalty imposed is "withholding of increment" and it becomes operative from a future date, the person concerned should be promoted in his turn and the penalty imposed in the promotional grade for a period which would not result in greater monetary loss. If the penalty imposed is "censure" "recovery from pay" or "stoppage of passes/PTOs" he may be promoted when due."

13 In the Railway Board's orders on Establishment 1993 Vol.I which has been produced before us by the learned counsel for the applicant also contains Railway Board's order NO.E(D&A) 92 RG 6-149(B) dated 22.1.1993 (RBE No.14/93) which is referred to by Annexure R-1 by the respondents. It is therefore quite evident that these two orders are distinct and different and the procedure and guidelines prescribed are different in the case of Group A & B and category C & D employees. Since the proviso above stipulates that **"the person concerned should be promoted in his turn and the penalty imposed in the promotional grade for a period which would not result in greater monetary loss"** the respondents while imposing the penalty in the higher scale would have to moderate the period for which the increment is withheld so that it would not result in greater monetary loss to the applicant. In this view of the matter, we find that Annexure A-4 order will have to be modified in the light of this proviso to the Railway Board order No. RBE No.13/93 dated 21.1.1993.



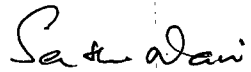
14 In the light of the above discussion, we find no grounds to interfere with Annexures A-1 to A-3. Annexure A-4 is set aside and OA is partially allowed with the direction to the respondents to issue revised orders in the light of the orders contained RBE NO.13/93 dated 21.1.1993 imposing the penalty on the applicant in such a way that it should not result in greater monetary loss than the penalty imposed in the original order at Annexure A-1.

15 The OA is partly allowed as above. No costs.

Dated 11.7.07.



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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