

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 262 of 2007

Friday..., this the 14th day of March, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MRS. O.P. SOSAMMA, ADMINISTRATIVE MEMBER**

K. Padmakaran,
S/o. P. Kesavan,
Station Cleaner / Southern Railway/
Punalur Railway Station & P.O.,
Residing at "SOUDHA MANDIRAM",
Maniyar P.O., Via. Punalur, Kollam District.

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai : 3
 2. The Assistant Engineer,
Southern Railway,
Sengottai Railway Station & P.O.,
Sengottai, Tamil Nadu.
 3. The Senior Divisional Engineer, South,
Southern Railway, Madurai Division,
Madurai.
 4. The Senior Divisional Personnel Officer,
Southern Railway, Madurai Division,
Madurai.
- ... Respondents.

(By Advocate Ms. P.K. Nandini)

This Original Application having been heard on 9.1.08, the Tribunal
on 14-3-08. delivered the following :

O R D E R

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant is aggrieved by the penalty of censure imposed upon him
seven years after the alleged act of misconduct took place, whereby, according
to the applicant, the impact of the innocuous censure is postponement of his



promotion for a long period. The overall effect of the same would, thus, mean double jeopardy, one by way of imposition of penalty and the other the consequence thereof. In addition, the applicant has questioned the validity of the penalty order on merit as well.

2. The brief facts of the case are as under:-

(a) The applicant was issued with a charge sheet, vide Charge Memo dated 20.08.1997 at Annexure A-1. The article of charge is, ***"the said Shri K. Padmakaran, Gangman, PUU/6 on 01-08-1997 at about 15.40 Hrs at Km. 715/7-8 between EDN-PUU has abused and physically assaulted Shri T. Thankachan, Gangman, PUU/6 on duty without any provocation in the presence of SE/P.Way/PUU, Trollymen and other Gangman."***

(b) The applicant having denied the charge, regular inquiry was conducted and the applicant had in his deposition dated 20-05-2000 before the Inquiry Authority stated as under:-

Did you accept the charges framed in the charge sheet.


Yes. I have accepted the charges.

Which made you to assault Shri T. Thankachan G.Man/PUU 6 on duty-

Since my wife had quarrel and made a exit without taking care of my children, I was completely upset and my mind was not in pieceful (sic peaceful) state with tht on the arrival at the work spot, Shri T. Thankachan has criticized the above occurrence, which provoked me to push aside.

Other witnesses had given their deposition during May 2000 or even earlier.

2. After holding the inquiry, the I.O. had rendered his findings on 02-04-2002 as under:-



"As could be seen from the above, it was clear that the complainant was not subjected to any major injury and the whole incidents especially pushing Sri. Thankachan while resulted in his falling had taken place due to some sudden provocation and Sri. Thankachan had also complained to the SE/P.Way/PUU due to his then state of mind and there was no enmity between those two as is evident from the statements of the gang Mate and SE/P.Way. Imposing any punishment on the accused on a charge that has taken place a few years back may disturb the now prevailing harmony in the gang."

3. Simultaneously, a criminal case was registered against the applicant on the same set of facts but the applicant was finally acquitted vide judgment dated 16-03-2001 at Annexure A-3.

4. As the disciplinary proceedings were still pending, the applicant made Annexure A-4 representation dated 9-10-2001 requesting the authorities to drop the proceedings in view of the above said judgment of acquittal.

5. It was only on 20-07-2004 that the disciplinary authority had passed the impugned order imposing penalty of censure to the applicant.

6. The applicant had filed Annexure A-7 appeal dated 15-08-2004. This evinced no response according to the applicant.

7. The applicant has filed this OA praying for the following :-

(i) Call for the records leading to the issue of Annexure A6 and quash the same;

(ii) Declare that the applicant is entitled to be considered for promotion as a Trackman Grade-II in scale Rs. 2650-4000 with effect from 10.10.1997, on par with his juniors and direct the respondents to consider and grant the applicant consequential benefits including the arrears of pay and allowances forthwith;



(iii) Declare that the applicant is entitled to be granted the benefit of ACP notwithstanding the fact that the applicant was medically categorized and utilized as Station Cleaner with effect from the date from which such benefits were due;

(iv) Award costs of and incidental to this application.

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

8. Respondents have contested the O.A. they had stated that after conducting the inquiry, the Inquiry Officer did not immediately submit his report. Meanwhile, the criminal case ended in acquittal of the applicant. Appeal dated 15-08-2004 stated to have been filed by the applicant was not received by the respondents.

9. Counsel for the applicant submitted that there has been a delay of 417 in filing this OA and reasons for the same have been given in the M.A. He had prayed for condonation of delay in filing the OA. As regards the merit of the matter counsel for applicant submitted that there is absolutely no reason to continue the proceedings after the acquittal of the applicant by the Criminal Court. The respondents had, not only continued with the inquiry, but also delayed considerably the proceedings, and ultimately imposed penalty of censure and this imposition had grave adverse impact inasmuch as, while a number of juniors to the applicant had been promoted to the higher post during the pendency of the disciplinary proceedings, the applicant had not been promoted. Again, ACP benefit available to the applicant has also not been made available to him. The applicant has relied upon the following decisions:-

- (a) AIR 1991 SC 2010
- (b) 1998 SCC (L & S) 1044
- (c) 1999 SCC(L & S) 810
- (d) AIR 2006 SC 207

10. Counsel for the respondents highlighted about the delay in filing the OA.

Again, the counsel relied upon the following judgments to sustain the impugned order:-


- (a) AIR 1999 SC 1514
- (b) AIR 2000 SC 22

11. Arguments were heard and documents perused. In so far as parallel proceedings, in this case, the proceedings were initiated prior to the criminal proceedings and what is to be seen is whether the acquittal in criminal case should necessarily lead to dropping of the proceedings. In so far as the delay in concluding the proceedings, it is to be seen whether such a delay had prejudiced the interests of the applicant.

12. The criminal proceedings ended in acquittal. The Criminal Court acquitted the applicant on the ground that the prosecution has failed to prove the charges against the applicant. Thus, the decision thereof should have been kept in view while deciding the penalty proceedings. This has not been done. In so far as delay in conclusion of the proceedings, the following are the chronological sequence of events:-

(a) Alleged Occurrence of incident:	01-08-1997
(b) Issue of Charge Memo:	20-08-1997
(c) Documents demanded by applicant	19-09-1997
(d) Permission to inspect and take extract given	15-03-1999
(e) Date of examination of witnesses	20-05-2000
(f) Date of Inquiry Report	02-04-2002
(g) Date of preparation of penalty order	10-11-2003
(h) Date of vetting of the draft penalty order	20-07-2004

13. A perusal of the above sequence would show that between (c) and (d) there has been a delay of 18 months and between (e) and (f) the delay is over 22 months. Again, between (f) and (h), the delay is 27 months. The sum total of these delays is 67 months which have not been explained at all. During this period many a junior to the applicant had got their promotion, while the case of



the applicant could not be decided due to the pendency of the disciplinary proceedings. Ordinarily, proceedings are expected to be completed within 6 months, while in this case the total duration between (a) and (h) above is nearly 7 years! Under no stretch of imagination can the time taken be said to be reasonable. Thus, there has been inordinate delay and the delay has been unexplained.

14. It has been observed by the Apex Court in the case of *State of A.P. v. N. Radhakishan*, (1998) 4 SCC 154, as under:-

19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

15. As held in the above the delay defeated justice in this case. Had the

proceedings been completed within a reasonable time, say 1 year, resulting in the imposition of the same penalty, the applicant would have been considered for promotion from August, 1998 itself, whereas because of the unexplained delay, the applicant could not get his promotion for seven years, while many of his juniors had stolen a march over the applicant. This is a great prejudice caused to the applicant due to the fault on the part of the respondents. Non consideration or non promotion during pendency of the proceedings cannot normally held to be a double jeopardy, as such non consideration/non promotion is a consequence of penalty. However, in the instant case, non consideration or non promotion for a reasonable period (say one year) could be treated as a consequential effect, but for the rest of the period the same is not consequence of the penalty but of inordinate delay caused in finalizing the proceedings.

16. In so far as the contention of the applicant that the criminal proceedings having resulted in the acquittal and hence, the disciplinary proceedings should follow suit, the same is not acceptable for two reasons. The standard of proof in the criminal case is entirely different from the one provided for in the case of disciplinary proceedings. Secondly, the applicant had, before the inquiry authority admitted the misconduct. Hence, save for the inordinate delay involved, the proceedings cannot be held to be bad in law.

17. Thus, if the penalty is sustained but the delay is to be criticized, what should be the ultimate result. Due to the inordinate delay, the applicant had to lose his promotion for a substantial period. There is no justification in prolonging the proceedings. Interest of justice would therefore, be met, if it be held that the penalty of censure is retained but deemed to have been imposed within one year of the date of occurrence of the alleged incident i.e. by 31-07-1998. If the

department had considered the applicant for promotion to the next higher post, during the period posterior to 31-07-1998, and kept the result in sealed cover, the sealed cover so prepared after July, 1998 shall be opened and the decision thereon should be implemented. If the applicant was found fit for promotion, necessary orders should be passed. However, the fixation of pay shall be only notional. Instead, if the applicant was not found fit in that DPC, the sealed cover which would have been adopted in the subsequent DPCs should be opened and operated as stated above. In fact, the respondents have already promoted the applicant from the date junior to the applicant has been promoted, vide order dated 08-10-2007 of the Asst. Personnel Officer and the same meets the above requirement.

18. In so far as 2nd ACP is concerned, the same too shall be considered in case the applicant was not within the consideration zone for the period from 1998 onwards, but has been found eligible for financial upgradation on or after 01-10-1999 i.e. the date when ACP was introduced in the Railways.

19. In view of the fact that the applicant has a meritorious case, the delay in filing the OA is condoned and MA No.335/07 is allowed.

20. The OA is disposed of on the above terms and directions. Time calendared for implementation of this order (consideration for grant of second ACP) is three months from the date of communication of this order.

(Dated, this the 14th day of March, 2008)


(O.P. SOSAMMA)
ADMINISTRATIVE MEMBER

cvt.


(DR. K B S RAJAN)
JUDICIAL MEMBER