

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.30/2005.

Tuesday this the 4th day of October, 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.Ramachandran, S/o late N.Balakrishnan Nair,
Retired Mail Guard,
Southern Railway, Shornur Junction R.S.
Residing at: "PUNNADATH HOUSE"
Kavil, Kodakara P.O., Trichur District,
Pin Code: 680 684. Applicant

(By Advocate Shri TC Govindaswamy)

Vs.

1. Union of India represented by
the General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
CHENNAI-3.
2. The Chief Passenger Transportation Manager,
Southern Railway, Headquarters Office,
Park Town P.O., CHENNAI-3.
3. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., CHENNAI-3.
4. The Senior Divisional Operations Manager,
Southern Railway, Palghat Division, PALGHAT.
5. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division, PALGHAT.
6. The Senior Divisional Finance Manager,
Southern Railway, Palghat Divisional Office,
PALGHAT. Respondents

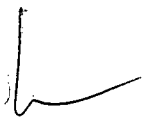
(By Advocate Shri Thomas Mathew Nellimoottil)

The application having been heard on 4.10.2005
the Tribunal on the same day delivered the following:

O R D E R (Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant, a retired Mail Guard of Southern Railway, Palghat Division,



aggrieved by an arbitrary and illegal payment of reduced pension, gratuity and other retirement benefits, has filed this O.A. seeking the following main reliefs:

- i) Call for the records leading to the issue of Annexures A5, A9 and A10 and quash the same to the extent they sanction the applicant his pension and gratuity only to the extent equal to two third pension and gratuity which would have been admissible to him if he had retired on compensation pension;
- ii) Declare that the applicant is entitled to have his pension and retirement gratuity calculated as if the applicant had retired before attaining the age of superannuation and direct the respondents to grant the same accordingly;
- iii) Declare that the applicant is entitled to have his retirement pension and gratuity calculated by adding the "pay element" of 55% of the basic pay, for the purpose of arriving at the average emoluments (for pension), and emoluments (for gratuity) and direct the respondents , accordingly;
- iv) Direct the respondents to grant and pay the arrears of pension and other retirement benefits arrived at in the light of the declarations in paras (b) and © above, with interest calculated at the rate of 12% per annum, from the dates from which such arrears fell due.

2. It is averred in the O.A. that, while in service, in February, 2000, the respondents initiated major penalty proceedings against the applicant on certain allegations of misconduct which culminated in the applicant being found guilty and being imposed with a penalty of compulsory retirement. The applicant submitted an appeal and revision before the appellate and revisional authorities respectively. While so, he received his Pension Order sanctioning only two-third of the pension and gratuity. He claims that he is entitled to normal retirement benefits and gratuity for the service rendered by him since he has been compulsorily retired from service.

3. The respondents have filed a detailed reply statement contending that, after an enquiry, the enquiry officer submitted his report with a finding that the charges against the applicant are proved. The Disciplinary authority after considering the enquiry report and representation of the applicant, imposed the penalty of compulsory retirement on the applicant which is evidenced by Annexure A-1 penalty advice. Thereafter, the applicant submitted an Appeal before the appellate authority, the Additional Divisional Railway

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Manager, Palghat, who confirmed the penalty vide order A-3. As per Rule 64 of Railway Services (Pension) Rules, 1993, a Railway Servant compulsorily retired from service as a penalty can be granted by the authority competent to impose such penalty, pension or gratuity or both at the rate not less than $2/3^{\text{rd}}$ and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement. Accordingly the Disciplinary Authority(4^{th} respondent) has sanctioned $2/3^{\text{rd}}$ of Pension and gratuity and this was communicated to the applicant vide A-5 O.M. Dated 29.3.2004. The applicant has submitted A-4 revision petition before the 2^{nd} respondent and the 2^{nd} respondent has disposed of the same and confirmed the penalty vide A6 with due application of mind. The Disciplinary Authority has imposed only the punishment of compulsory retirement which gives him all retirement benefits. Based on this observation the applicant has made a representation (A8) to the 3^{rd} respondent. On revision, the 2^{nd} respondent has upheld the punishment with the retirement benefits already sanctioned to the applicant by the Disciplinary authority. It is also contended that the Disciplinary Authority i.e. Senior Divisional Operations Manager sanctioned only $2/3^{\text{rd}}$ of pension and gratuity vide Annexure R-1 and the orders of the Senior DOM is fully in consonance with the rules/instructions on the subject, which cannot be assailed on flimsy grounds raised in the O.A.

4. The applicant has filed a rejoinder quoting Rule 64 of Pension Rules and also the paragraph 312(1) of the Manual of Railway Pension Rules, 1950, and also the Government of India decisions below Rule 40(1) and reiterated his contention that the order that has been passed by the authorities in express terms and not with application of mind.

5. The respondents have filed an additional reply statement reiterating their contentions raised in the original reply statement and contended that, the provisions contained in Railway Services (Pension) Rules 1993 are issued by the President of India in exercise of the powers conferred on him by the proviso to Article 309 of the

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Constitution of India and these supercede all the rules and orders on the subject prevailing hitherto and the provisions of para 312 (i) of Manual of Pension Rules 1950 referred to by the applicant has no relevance in the subject case. Railway Manual of Pension Rules 1950 are only guidelines which cannot have any superseding effect.

6. I have heard Shri TC Govindaswamy, learned counsel appearing for the applicant and Shri Thomas Mathew Nellimoottil and by Mr.Varghese John, learned counsel appearing for the respondents and also given due consideration to the material placed on record and the arguments advanced by the counsel on both sides.

7. Counsel for applicant argued that, the applicant is entitled to normal retirement pension for the service rendered by him, because, he has been compulsorily retired from service. Rule 64 of the Railway Services (Pension) Rules, 1993, is not applicable as far as the compulsorily retired employees are concerned. It should have been done by an authority competent and can reduce the pension or gratuity to the extent of two third of such pension and gratuity which would have been admissible if he had retired on compensation pension, ie.by an independent proceedings and since exercise of such power is statutory in character. Since the said power is discretionary in character, the same cannot be exercised to the detriment of the Railway Servant in violation of the principles of natural justice or without any reason.

8. Respondents on the other hand persuasively argued that the impugned orders have been passed with due application of mind and in support of his claim, he has drawn my attention to Annexure R-1 proceedings.

9. I have given due consideration to the arguments advanced by the counsel. The crux of the point to be decided in this case is that, whether the authorities are justified in granting $\frac{2}{3}$ of pension in a case where the employee has been compulsorily retired. My attention has also drawn to Rule 64 of the Railway Services (Pension) Rules, 1993,



which is quoted as follows:

"64. Compulsory retirement pension.--(1) a railway servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement.

(2) Whenever, in the case of a railway servant the President passes an order (whether original, appellate or in the exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Rule 65 of the Railway Services (Pension) Rules, 1993, deals with compassionate allowance, which is also quoted below:

"65. Compassionate allowance.--(1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service, may if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension."

10. The compensation pension as defined under Rule 63 of the said Rules is also quoted below:

"63. Compensation Pension.--(1) If a railway servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him, to be at least equal to those of his own have the option--

(a) of taking compensation pension to which he may be entitled for the service had rendered, or

(b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.

11. Now, on going through the Annexure R-1 which was projected as one of the



documents by the respondents to prove that due application of mind and procedure has been applied. It is obvious that the pensionary matter has been placed by the lower authority to the higher authority to finalise the same. There was a remark by the DPO that Sr. DOM is requested to give orders regarding sanction of compassionate grant and compassionate gratuity as envisaged under Pension Rules, and the Sr. DOM has been made the following remarks: "Two-third of both pension and gratuity as due is being granted as compassionate allowance."

12. From the rules that has been quoted above, it is clear that compassionate allowance is a concept which is related to an employee who has been removed/dismissed from services. This is a case where a person has been compulsorily retired, which falls in a different footing. Rule 64 of the Railway Services(Pension) Rules, 1993, of course stipulates that, the competent authority can impose such penalty, pension or gratuity, or both on such employees at the rate not less than two thirds and not more than the full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement. Learned counsel for the applicant also brought to my notice the paragraph 312(1) of the Manual of Railway Pension Rules 1950 which is quoted below:

"Compulsory retirement from service :- (1) A railway servant on whom the penalty of compulsory retirement from service is imposed, should ordinarily be granted such pensionary benefits, on the date of compulsory retirement, as he would have been entitled to if he was invalidated out of service on that date. Where however, the circumstances of a particular case so warrant, the authority competent to impose the penalty of compulsory retirement may make such reduction in the pensionary benefits, but not exceeding one third of the pensionary benefits due, as it may think appropriate. The reduction may be made either in ordinary gratuity/pension or in death-cum-retirement gratuity, or both. It is, however, necessary that the competent authority should express its intention in clear and unequivocal language.

When such a railway servant subsequently dies....."

Rule 40(1) CCS Pension Rules is the corresponding rule to Rule 64 Railway Service Pension Rules 1993. Below the said Rule 40(1) the Government of India's decision on guiding principles for reduction of pensionary benefits is seen. It is noted that the

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guiding principles issued by Government of India is corresponding to para 312 (1) of Manual of Railway Pension Rules 1950. For easy reference, Government of India's decision is extracted below.

GOVERNMENT OF INDIA'S DECISION

(1) Guiding principles for reduction of pensionary benefits under Rule 40(1).- Rule 40 prescribes the limit for retirement benefits which would be admissible to an officer on whom the penalty of compulsory retirement may be imposed. This form of penalty has been introduced to provide for cases in which the continuance of a Government servant in service is considered to be undesirable but the extreme penalties of removal or dismissal, with the consequent loss of pension, is considered to be too severe. The intention is that, persons on whom the penalty of compulsory retirement is imposed should be ordinarily be granted the full compensation pension and retirement gratuity, admissible on the date of compulsory retirement. Where, however, the circumstances of a particular case so warrant, the authority competent to impose the penalty of compulsory retirement may make such reductions in the pensionary benefits, within the limits prescribed, as it may think appropriate. In the case of a person governed by the New Pension Rules, reduction may be made either in the retirement gratuity or in the pension or in both. (G.I., MF., letter No.f.7(22)-E.V/56, dated the 3rd June 1957)."

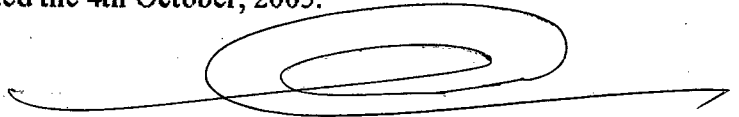
13. The above Government of India's decision categorically states that a person on whom the penalty of compulsory retirement is imposed should ordinarily be granted the full pension and retirement gratuity". A reading of these rules I am convinced that while passing such orders, the authority should apply their mind and should pass a reasoned order. On going through Annexure R-1 it can be seen that, the authorities are confused that the disciplinary proceedings and that of granting pensionary benefits are one and the same and it should be in the same proceedings and cannot be isolated. The disciplinary proceedings and grant of compassionate allowance or pensionary benefits are entirely different and therefore, the Government of India decision has mandated that, there should be due application of mind in passing orders in such cases. On going through A-5 and A-10 orders, it appears that, the authorities have not applied their mind properly while passing the said orders. It is more important that, an authority who is exercising its power while passing quasi judicial orders, should have taken due and more care in exercising such power.



14. In view of the above discussions and in the conspectus of facts and circumstances, I set aside the impugned orders A5 and A-10 and A-9 to the extent it denies the ^{Full} benefit. I make it clear that, the 3rd respondent or any other competent authority will be at liberty to reconsider the case of the applicant if they so desired, in the deemed circumstances of the case.

15. O.A. is disposed of with the above observations and setting aside A5, A9 and A-10 ^{*to the extent it denies the full benefit.} In the circumstances, no order as to costs.

Dated the 4th October, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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* corrected vide order
dated 16.1.2006 in
MA.No.36/2006(for correction in order)