CENTRAL ADMINISTRATIVED TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 31/2002

FRIDAY, THIS THE 17TH DAY OF SEPTEMBER, 2004.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

G. Raghavan Nair S/o late S. Gopala Pillai
Carriage & Wagon Fitter Grade-II
(Compulsorily retired), Carraiage & WAgon
Superintendent's Office, Southern RAilway
Kollam, residing at Santha Bhavanam
Pallickal House, Kottarakkara
Quilon District. Applicant

By Advocate Mr. V.R. Ramachandran Nair

Vs.

1. Union of India represented by
the General Manager
Southern Railway Madras

2. The Divisional Railway Manager
Southern Railway, Trivadrum

3. The Chief Rolling Stock Engineer
Southern Railway, Madras.

By Advocate Mr. Thomas Mathew Nellimoottil

The Application having been heard on 9.6.2004 the Tribunal delivered the following on 17.9.2004.

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicant G. Raghavan Nair, a Carriage and Wagon Fitter Grade-II, Kollam, Southern Railway, who was compulsorily retired from service w.e.f. 20.10.1993 is before us challenging the penalty order (A2) and the appellate order (A9). The applicant had approached this tribunal earlier in O.A 431 of 2001 seeking the quashing of the penalty order and in the alternative seeking disposal of his appeal against the penalty which was preferred after a lapse of around eight years from the issue of the penalty

order. This Tribunal in its order dated 23.5.2001 had allowed the alternative proposed, directing the authorities to condone the delay in preferring the appeal and to pass a reasoned order within a stipulated time. A-2 Appellate order dated 24.8.2001 is that reasoned order rejecting the appeal. A-1 penalty order as well as the A2 Appellate order are challenged by the applicant on the following grounds:

> (i)that the penalty of compulsory retirement is disproportionate to the gravity of the charge
>
> (ii) that the disciplinary authority in deciding the penalty relied on extraneous considerations not included in the charge memo
>
> (iii) that the penalty of compulsory retirement was imposed in order to by-pass the responsibility of the respondents to provide alternative employment to an employee rendered invalid in the course of duty
>
> (iv) that the authorities failed to consider many relevant aspects relating to his absence, particularly those relating to his hospitalisation
>
> (v) that the applicant was not afforded the opportunity of being heard before the imposition of penalty.

2. The learned counsel for the respondents dwelling upon the grounds of challenge argued that the penalty of compulsory retirement was imposed in the background of persistent derelictions, misbehaviour, negligence and unauthorised absence. The applicant had admitted the charges during enquiry and there was no lack of opportunity for the presentation of his defence. The red herring of accidental invalidation has been brought in by the applicant to misdirect adjudication. The fact of the matter is that the period of unauthorised absence occurred much before the accident and the two episodes are unconnected. The spells of unauthorised absence could not be adequately explained by the applicant as the medical certificates produced in

support of absence were prima facie of dubious origin. A3 and A4 were issued on 29.7.2000 and 3.8.2000 for the claimed treatment from October, 1993 to December 1994 and from 22.12.1994 to 25.1.1995 respectively. In other words, the medical certificates were issued after 5 to 7 years from the actual period of treatment. Further, if the applicant was truly indisposed or ill, he could always obtain the best available treatment through the Railway at the cost of his employer. Apparently the applicant sought to justify his absence through belated submission of unreliable certificates as an afterthought. The learned counsel thus argued that the applicant's motive was not honest. The very act of furnishing medical certificates from unverifiable sources without the details of treatment was proof that the applicant was not only unauthorisedly absent, he was also seeking to escape the rigours of the disciplinary process by foisting false certificates fraudulently on the respondents. As far as the decision to impose the penalty of compulsory retirement was concerned no extraneous factors, the learned counsel contended, influenced the disciplinary authority. The disciplinary authority in evaluating the enquiry findings relating the charge of unauthorised absence during 1991 was only comparing the past and future record to show how the applicant was beyond correction. The learned counsel for the respondents argued that the disciplinary authority in all fairness, could not have failed to take note of the circumstances in which a penalty decision was warranted. As for proportionality of punishment, the disciplinary authority took a lenient view in imposing compulsory retirement, it could have been worse.

3. Heard. The period of unauthorised absence related to spells of time between 21.1.1991 and 8.8.1991 while the applicant was injured in accident on 20.11.1992 and underwent treatment for various ailments including coronary artery disease in March, 1992, and Bipolar Affective Disorder in 1993 and 1994. How do these spells of illness explain the unauthorised absence for the periods prior to these spells? Applicant in his appeal against the disciplinary order (A7) has taken the plea that after the accident he lost his bearing and remained constantly ill which led to his frequent absences in 1993 and 1994. The learned counsel for the applicant sought to convince us that the disciplinary authority, by citing these spells of absences as evidence of the applicant's incorrigibility, was being cruel on the one hand and was deliberately vitiating the disciplinary process on the other. Reliance on matters extraneous to the specific charge of unauthorised absence during a particular period, the learned counsel argued, was both unwarranted and perverse. This indeed is a line of argument that would demand our careful attention. We find from the Memorandum of charges that there was only one charge against the applicant:

> "That the said Shri G. Raghavan Nair, C&WF/HS.II/QLN has committed serious misconduct in that he unauthorisdely absented himself from duty on 21.1.1991 from 9.2.91 to 19.3.91, 23.2.91 & 22.3.91, 28.4.91 (AN): 15.5.91, 17.6.91 & 19.6.91 and 26.6.91 to 8.8.91 without proper sanction of leave from the competent authority and thus violated article 3(1)(ii) & (iii) of Rly, Service Conduct Rules 1966".

4. Thus it is clear that charge related to the following absences:

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21.1.91
9.2.1991 to 19.3.1991
22.3.1991 and 23.3.91
28.4.1991
15.5.1991
17.6.1991
19.6.1991
26.6.1991 to 8.8.1991

There was no charge of habitual absenteeism or any charge of gross dereliction of duty with a dishonest motive. The simple matter of the fact was that these absences were not covered by leave sanctioned. How could the enquiry authority or the disciplinary authority determine the gravity of the charge with reference to the past and future absences of the employee without any reference to these absences in the charge itself? In any case, for absences during 1990 to 1993, no charges were framed excepting for the spells in 1991 indicated above. It was indeed perverse to have brought in unrelated spells of absences which were otherwise regulated under Leave Rules, to prove that the applicant violated Rule 3(i), (ii) & (iii) of Railway Service Conduct Rules 1966. If that was indeed the case, then the charges framed were wholly inadequate for the purpose. This is what happens when the enquiry authority and the disciplinary authority both approach a disciplinary matter with a perspective not included in the charge memo. This is how a sentence is pronounced even before the trial has begun. It is unfortunate that senior officers of the Railways entrusted with far reaching disciplinary powers should be so oblivious of the minimum requirement of keeping at least a semblance of balance between the charges framed and the punishment awarded. It is not what the authorities think but what the charges speak, that is material for us.

5. Thus we find that there has been a charge of unauthorised absence for a few days and no charge of habitual absentism or willful dereliction of duty with dishonest intention. The lapse accordingly does not call for a major penalty. Either the period of unauthorised absence could have been treated as dies-non or any minor penalty could have been imposed. The penalty of compulsory retirement in a case like this is shockingly disproportionate calling for interference. Further, matter which was extraneous to the charge sheet as alleged habitual absentism, has weighed with the disciplinary authority as also the appellate authority in determining the penalty. We are convinced that the penalty imposed is perverse and unsustainable.

6. In the result the impugned order A2 is set aside to the extent of award of penalty of compulsory retirement. The appellate order A-9 is also set aside. The respondents are directed to reinstate the applicant in service forthwith on his producing fitness certificate. The period between the compulsory retirement and reinstatement should be regularised by grant of entitled leave if any and if no such leave is due by granting extra ordinary leave. Since unauthorised absence as mentioned in the charge has been established, the respondents would be at liberty to award to the applicant appropriate minor penalty prescribed in the rules and treat the period of unauthorised absence as dies non. In the circumstances of the case the applicant will

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not be entitled to any backwages. The above orders shall be complied within three months from the date of receipt of a copy of this order.

Dated the 17th day of September, 2004.

H.P.DAS
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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