

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.343/95

Monday, this the 15th day of July, 1996.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

V Murugesan,
Ex. Lubrication Attendant(LA)
Southern Railway, Erode.
(Residing at Azahia Manavalam Post,
Manachanallcre(via),
Trichy District.

- Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India through
General Manager,
Southern Railway,
Madras-3.
2. The General Manager,
Scuthern Railway,
Madras-3.
3. The Divisional Mechanical Engineer (Loco)
Southern Railway,
Palghat Division, Palghat.
4. The Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.
5. The Chief Mechanical Engineer,
Southern Railway,
Head Quarters Office,
Madras-3. - Respondents

By Advocate Mrs Preethy for Mrs Sumathi Dandapani

The application having been heard on 15.7.96 the Tribunal
on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant challenges A-12 order by which the finding of
misconduct against him was upheld and he was compulsorily retired,
"purely on humanitarian grounds".

2. He was removed from service, on a charge of unauthorised absence, from 13.1.83 to 4.2.83, on 7.3.83, 4.4.83 and from 16.5.83 to 22.7.83. A-1 chargesheet was issued, an enquiry was held and applicant was found guilty. He appealed against the order of removal, the same was rejected. A revision was filed and the quantum of punishment was reduced to compulsory retirement. Thereafter he approached this Tribunal by O.A.1462/92. He had taken different contentions including a contention regarding want of jurisdiction in the disciplinary authority. By A-10, the Tribunal ordered:

"We quash A-9 and remand the matter to the General Manager for a fresh consideration of grievance of the applicant..If applicant wants to place his case in the form of a comprehensive appeal before the first respondent, he may file the same within two weeks..If first respondent receives supplementary appeal, first respondent shall consider the same."

First respondent, thereafter passed the impugned order A-12, finding that applicant was absent for 93 days unauthorisedly and upholding the punishment of compulsory retirement. The revisional authority found that unauthorised absence had become a way of life with applicant, ever since his 5th year of service, and that this had attracted eight minor penalties. However, the authority felt:

"Taking into consideration the overall facts of the case and on purely humanitarian grounds, I modify the penalty of removal to one of compulsory retirement so that he can have his proportionate retirement benefits".

This order is under challenge.

3. Applicant has reasserted his earlier contention regarding lack of jurisdiction. That contention was not accepted by the Tribunal

while deciding O.A.1462/92. A party who has accepted that decision, cannot go behind it, and reagitate the contention. Nor, was that issue left open. Anything prior to the appellate process is immune from challenge.

4. Learned counsel for applicant submitted that the disciplinary authority had not adduced any evidence to establish the charge of unauthorised absence, and that he had no opportunity to defend himself against the charge. This is a seemingly attractive, but actually hollow argument. The facts constituting the charge were admitted by applicant. Absence having been admitted by applicant, it was for him to establish that the absence was justified for some reason or other and thus establish his defence. Applicant states that he had applied for leave and produced an acknowledgement of a registered letter(which was not available at the time of enquiry) before the appellate authority. Obviously, the appellate authority was not prepared to act on an acknowledgement receipt, produced after such a long time. The sheet anchor of applicant's case was that he was absent as he had a heart attack - (or several heart attacks - for he was absent on several days, intermittently). Applicant who is alleged to have had a heart attack, could not even name the Doctor who treated him, leave alone produce a certificate from him.

5. It is upto to a person who sets up a defence to establish it, and if applicant had a defence he should have established it, instead of blaming the disciplinary authority for not leading evidence on a matter(absence) which was not in dispute. We find no infirmity in the impugned order. The authority below acted on unimpeachable material, in a case in which the applicant had not established his defence, and took an extremely lenient view on the quantum of punishment. He noticed that applicant was absent for 93 days on different occasions. He also noticed that on earlier

occasions also he had been absenting himself regularly. Even the quantum of punishment cannot be considered harsh. This is a case bereft of any merit, and it is certainly not a case where the discretionary jurisdiction should be exercised in favcur of applicant. We dismiss the application but without costs.

Dated, the 15th July, 1996.

PV Venkatakrishnan

PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

Chettur Sankaran Nair

CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

trs/167

List of Annexures

1. Annexure A1:- A true copy of the Memorandum of charges dt.15.11.1983 issued by the 3rd respondent.
2. Annexure A10:- A true copy of the judgement dt. 16.12.'93 in O7A.No.1462/92 of this Hon'ble Tribunal
3. Annexure A12:- A true copy of Order No.P(A) 90/J/71 dated 1.6.94 issued by the 2nd respondent.