

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 369 of 2002

Wednesday, this the 30th day of October, 2002

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. S. Pankajakshan,
Roneo Operator (Compulsorily Retired),
Southern Railway, Trivandrum Division,
residing at Kottarathil Veedu,
Eruva PO, Kayamkulam,
Alleppey District.Applicant

[By Advocate Mr. P. Gopinath]

Versus

1. The Deputy Chief Engineer/Construction,
Southern Railway, Trivandrum Division,
Trivandrum-14

2. The Chief Engineer/Construction,
Southern Railway, Trivandrum Division,
Trivandrum-14

3. Union of India, represented by the
General Manager, Southern Railway,
Chennai.Respondents

[By Advocate Mr. P. Haridas]

The application having been heard on 30-10-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, Sri S. Pankajakshan, Roneo Operator, was proceeded against on a charge that he, by producing a false certificate of date of birth to the effect that his date of birth was 21-4-1949, while his date of birth was actually 21-4-1937, continued in service unauthorisedly and by order dated 30-4-2001 (Annexure A1) of the 1st respondent a penalty of compulsory retirement from service with immediate effect was awarded on him. The applicant has filed an appeal challenging the said order. While so, the applicant was served with

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Annexure A3 order dated 12-6-2001 issued by the 1st respondent, purported to be a Corrigendum, referring to Annexure A1 order of penalty as also to the Railway Board letter dated 7-7-1999 on which the pay and allowances drawn by the applicant from 1-5-1995 till 30-4-2001 is directed to be recovered from his settlement dues. Aggrieved by that, the applicant has filed this Original Application. It is alleged in the Original Application that the Railway Board letter dated 7-7-1999 is no application to the case of the applicant, that Annexure A3 order, which in effect award a further penalty than a penalty awarded on him by Annexure A1, is unsustainable and that in any case, as the impugned order was not preceded by any notice or opportunity to show cause, it is vitiated by non-observance of the principles of natural justice. The applicant has, therefore, sought to set aside the impugned order Annexure A3 and for a direction to the respondents to immediately release the retiral dues of the applicant including pension and other benefits, if any, recovered on the basis of the impugned order.

2. Respondents seek to justify the impugned order on the ground that in terms of the Railway Board's letter dated 7-7-1999 (Annexure RI), the period of overstyal from the date of superannuation is to be treated as irregular and the pay and allowances drawn during this period is required to be recovered.

3. We have heard the learned counsel on either side and have also perused the materials placed on record. It is well settled that an employee is entitled to pay and allowances till the date of his retirement, excepting when he is kept out of service or has not performed work or is placed under suspension. Annexure A1 is the order by which the applicant was retired from service with immediate effect. If the



intention was to retire the applicant from service compulsorily with effect from the actual date of his superannuation, i.e. 1-5-1995, in Annexure A1 order the penalty would have been one of compulsory retirement from service with effect from that date. The 1st respondent having decided to retire the applicant from service compulsorily as a measure of penalty with immediate effect from 30-4-2001 only, the continuance of the applicant till the date of his retirement cannot be treated as unauthorised for any reason, even if he had already crossed the age of his superannuation in terms of Annexure RI. Even in the impugned order, the so called Corrigendum, the 1st respondent has not altered the date of retirement of the applicant from service from 30-4-2001 to 30-4-1995. It is pertinent to note that even in the impugned order, the date of compulsory retirement of the applicant is shown as 30-4-2001. It is profitable to extract the last paragraph of the impugned order Annexure A3, which reads as follows:-

"... As per the Railway Board's letter referred to above, the pay and allowances, etc. paid to Shri Pankajakshan during the period of overstay, i.e. from 1.5.1995 to the date of compulsory retirement on 30.4.2001, should be recovered from his settlement dues. However, payment of pension is applicable from the date of his superannuation, i.e. from 1.5.1995, subject to eligibility. ..."

[emphasis supplied]

4. It reveals that by Annexure A3 order, a further penalty is imposed on the applicant, which is not permissible and which has been ordered without even issuing a notice.

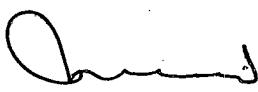
5. In the light of what is stated above, we find that the applicant is bound to succeed in this application.

6. In the result, the Original Application is allowed. The impugned order Annexure A3 is set aside. Respondents are directed to disburse the applicant the retirement benefits and

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other settlement dues to him on the basis of his compulsory retirement with effect from 30-4-2001 without any deduction on the basis of Annexure A3. The above direction shall be complied with by the respondents as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

Wednesday, this the 30th day of October, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1: True copy of the Penalty Advice No.P.227/CN/TVC/SP dated 30.4.2001 issued by the 1st respondent with copy to the applicant.
2. A-2: True copy of the Appeal along with petition to condone the delay filed by the applicant before the 2nd respondent on 25.6.2001.
3. A-3: True copy of the order No.P.227/CN/TVC/SP dated 12.6.2001 issued by the 1st respondent to the applicant.

Respondents' Annexure:

1. R-1: True copy of the Circular No.RBE 139/99 (letter No.E(NG) 97.RT-I dated 7.7.1999) issued by the Railway Board.

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