CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 375 of 2008

FRIDAY, **this the** 14TH **day of August, 2009**

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

K.R. Mohandas, aged 49 years,
S/o. late K.G.R. Panicker, Station
Master, Grade I, Southern Railway,
Ottappalam RS & PO, Permanent
Address at : Githanjali, Podhuval Junction,
Chuduralathur, Shornur. ..... **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

Versus

1. Union of India, represented by the
The General Manager, Southern Railway,
Head Quarters Office, Park Town - PO, Chennai-03.

2. The Chief Passenger Transportation Manager,
Southern Railway, Head Quarters Office,
Park Town - P.O., Chennai - 03.

3. The Divisional Railway Manager,
Southern Railway, Palghat Division, Palghat.

4. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division, Palghat.

5. The Senior Divisional Operations Manager,
Southern Railway, Palghat Division,
Palghat. ..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

The application having been heard on 04.08.2009, the Tribunal on 14-08-09 delivered the following:

ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicant has filed this OA challenging the following orders:-

(a) Order of compulsory retirement as a major penalty passed by the A.D.R.M. Palghat (Annexure A-1 dated 12-12-2005)

(b) Order dated 27th February 2006 passed by the appellate authority, i.e. C.P.T.M, Chennai reducing the penalty of compulsory retirement to one of reduction to the lowest pay in the scale of Rs 6500 -10500 for a period of three years without cumulative effect; (Annexure A-2)

(c) order dated 08th November 2006 of the Revisional authority (the General Manager, Southern Railway) upholding the order of the appellate authority (Annexure A-3)

2. Briefly narrated, the applicant was serving as Station Master I, Kuttipuram, when he was served with a charge sheet dated 11th October 2004 and the same reads as under:-

> *"The said Shri K.R. Mohandas, while working as Station Master/KTU on 19-08-2004 was careless and negligent in his duties in that he failed to advise the exchange private number with GK of LC No. 169 for 387 Passenger on 19-08-2004. Hence LC gate No. 169 at KM 611/6 found in open condition at TUA on 19-08-2004 while approaching 387 passenger.*
>
> *Thus he has violated Para 2.4 on Page 15 of SWR of KTU No. J 150 dted 14-02-1990. He has not shown devotion to duty and*

behaved in a way quite unbecoming of a Railway servant and hence violated Rule 3(1)(ii) and (iii) of Railway Services Conduct Rules 1966."

3. The list of documents included Statement of the Passenger Guard, of the Sr. Passenger Driver, of the Asst. Loco Pilot of the train and of the Sr. LR GK/TUA Gr. I.

4. The applicant had denied the charges and the enquiry authority after conducting the inquiry had rendered his report vide Annexure A08 wherein he had held as under:-

On perusal of PN book and PN exchange registers maintained by the CE and the GK on duty at the LC No. 169 at KM 611/6, it is surpise to see that PN 34 was not found in the PN book maintained in the GK to be issued to the SM/KTU for 387 passenger of 19-08-04. The next number after issueing Ev/N to PGT was 15 as per the PN book of the GK dated 19-08-04, when was rounded off by the GK since not issued for any train. (If the CE had advised the particulars of the train and exchanged PN with the GK, the GK wold have given PN 15 for 387 passenger). Hence the GK made the remark in the PN exchange register that SM/KTU not advised the particulars of the train and not exchanged PN for 387 passenger at 12.05 hrs.

Findings:** The charges framed against the CE that he failed to advise and exchange PN with GK of LC No. 169 of 387 passenger on 19-08-04. Hence LC gate No. 169 at KM 611/6 found in open condition at TUA on 19-08-04 while approaching 387 pass. Thus he has violated para 2.4 on page 15 of SWR of KTU No. J 150 dated 14-03-90. He has not shown devotion to duty and behaved in a way quite unbecoming of aRly. Servant and hence violated Rules 3.1(ii) & (iii) of RSC Rule 1966 is **PROVED.

5. The applicant had filed his representation dated 17-11-2005 in which he had stated as under:-

"17. Further, the EO in his findings in evaluation of evidences and reasons for findings under (v) has stated the following in underline "on perusal of PN book, and PN exchange register maintained by the CE and the GK on duty at LC No. 169 at KM 611/6 it is surprising to see that the PN 34 was not found in the PN book maintained by the GK to be issued to the SM/KTU for 387 pass of 19.08.04. The next number after issuing EY/BCN to Palaghat was 15 as per the PN book of the GK dated 19.08.04 which was rounded off by the GK since not issued to any train. (If the CE had advised the particulars of the train and exchanged PN with the GK, he would have given PN 15 for 387 pass). Hence the GK made the remark in the PN exchange register that SM/KTU not advised the particulars of the train and not exchanged PN for 387 pass at 1205 Hrs."

6. The disciplinary authority had imposed the penalty of compulsory retirement, vide Annexure A-1. This was challenged by the applicant by filing OA No. 871/2005 which was, however, dismissed directing the applicant to exhaust the statutory remedy. Annexure A-13 refers. Thus, the applicant filed Annexure A-14 appeal and raised the following points for consideration by the appellate authority:-

(a) Inquiry Officer failed to consider the defence Brief submitted after the inquiry was over.

(b) The I.O. has based his entire findings on the PN Book of the Gatekeeper whereas, the same was not at all a listed document. This vitiates the inquiry report.

(c) The representation preferred by the applicant on 17th November 2005, which was forwarded by the Railway Station Master on 19th November 2005 had not been considered and it was stated that no representation had been filed by the applicant.

(d) The authority competent to appoint the Station Master is the DRM while the penalty order was passed by the ADRM, who has not

been vested with the powers to pass such order.

(e) Assuming without accepting that the there is no procedural irregularity in the conducting of the proceedings, yet, the penalty is highly disproportionate, and shocking to the conscience.

7. The appellate authority had dealt with the case in the following manner:

"I have gone through the entire DAR proceedings and orders of the Disciplinary Authority. This is the case of dispute between you and the version of the Gate Keeper of Gate No. 167. Gate No. 167 is a non-interlocked gate which is supposed to be closed for Road traffic and to be opened only when the SM gives Private Number to the Gateman.

Notwithstanding the point raised by you in your appeal, I feel that the version is not corroborated by the fact that Private Number-34, which yuo claim to have received from the Gateman as a Private Number in token of T.No. 387 Passenger, is not available in the PN Book of the Gateman. The Gateman has been making entries in the PN Book and the non-availability of No. 34 in the Gateman's PN Book and its entry made in the PN Register by you are concoction. You have not preferred any defence statement despite repeated reminders. The Enquiry Officer has proved the charges based on the available evidence and Disciplinary Authority has imposed the punishment of Compulsory Retirement. However, I feel, in view of your age the punishment meted out is very harsh and in view of the potential for improvement. I reduce the punishment to reduction to lowest stage in your present grade for a period of 3 years (non-recurring) duly reinstating you."

8. The applicant filed revision petition, in which the following grounds had been raised.:-

(a) Lack of competence in imposing penalty of compulsory retirement by the ADRM as the same is against the provisions of Proviso to Art.311 of the Constitution.

(b) Aspect of Inquiry Officer having not based his conclusion on the evidences made available has not been considered by the appellate authority.

(c) Non application of mind by the appellate authority.

(d) Penalty, in any event, is grossly disproportionate to the gravity of misconduct.

9. The Revisional authority had held as under:-

"You have challenged the penalty of compulsory retirement from service imposed by the Disciplinary authority before the Central Administrative Tribunal/Ernakulam in OA No. 871/2005. The Tribunal passed a verdict on 16-12-2005 that you should submit an appeal before the competent authority and the authority should dispose of the same within two months.

Accordingly the appeal submitted by you was considered by the appellate authority, viz CPTM and he had reduced the penalty to that of reduction at the lowest stage in your present grade Rs6500 – 10500 for a period of 3 years (NR) duly reinstating you.

As no new points have been brought out in your revision petition and as the charges are grave in nature, and involved the safety of the passengers, I am of the opinion that the penalty imposed on you by the appellate authority is appropriate.

I therefore, uphold the penalty already imposed by the appellate authority on you."

10. The applicant has filed this OA challenging the above three orders, on various grounds as contained in para 5 of the OA. The OA was also accompanied by an application for condonation of delay as the application has been filed with a delay of 229 days. Reasons indicated therein were that the compulsory retirement of the applicant, followed by sudden decline in his salary due to reduction to the lower stage in the pay scale, had crippled his financial position and certain other domestic circumstances.

11. Respondents have filed their reply. In their reply to the M.A. No. 487/2008 for condonation of delay, the respondents have invited the attention of the Tribunal to the decision by the Apex Court in the case of State of Karnataka vs Laxuman (2005) 8 SCC 709, wherein it has been stated that right available to a litigant becomes unenforceable if the litigant does not approach the court within the time prescribed. As regards the merits of the case, referring to the contentions raised by the applicant in the OA, the respondents have contended that the applicant has been given all the opportunity to defend the charges. They have maintained that the ADRM is empowered to impose the penalty vide Annexure R-1 which inter alia reads as under:-

> *" in the matter of Powers to be exercised under Schedule II of the Railway Servants (Discipline & Appeal) Rules, 1968 all the departments of a Division will be placed under the only one Additional Divisional Railway Manager available in each Division. It is clarified that the Divisional Railway Manager may exercise the power in all cases related to train accidents and t in the rest of the cases, either Additional Divisional Railway Manager or Divisional Railway Manager may exercise the authority."*

12. As regards the I.O's relying upon the P.N. Book of the Gate Keeper, the respondents contended that the PN Book relied upon by the Inquiry Officer was seen by the applicant and he had, in token of having seen, also appended his signature, vide Annexure R-2. As regards non consideration of the representation against the Inquiry Report, it has been contended that, the applicant had been informed to submit the same within 10 days of receipt of the Report, vide Annexure R-3 letter dated 01-08-2005 whereas, admittedly, the applicant did not submit the representation within the

stipulated time.

13. Counsel for the applicant has first referred to the application for condonation of delay. He has submitted that the reliance placed by the respondent does not assist them as in that case, there was no provision for any application for condonation of delay. As regards the spirit in considering the application for condonation of delay, the applicant has invited the attention to the decision of the Apex Court in the case of **State of Bihar** vs **Kameshwar Prasad** **(2000) 9 SCC 94**.

14. As regards the competence of the ADRM, the counsel argued that this is a case of "accident" and as such it is only DRM who is competent to deal with the penalty. As regards the contention of the respondents that the applicant had the opportunity to have a look at the PN Book maintained by the GK, the counsel argued that Annexure R-2 is of two parts, the first part containing the GK's PN Book, while the later part is the PN Book of the Station and PN Register of the Station, maintained by the Station Master, and the signature appended is only with reference to the PN maintained by the Station. Again, as regards the representation against the inquiry report, the applicant submitted that he had been issued with a reminder on 11th November 2005, which has elongated the time limit for submission of the representation and his representation had been duly forwarded by the Station, and even as per the respondents, it is only that the same was not received in the office of the ADRM. That the applicant had submitted the same has not been denied by the respondents. As regards other legal issues,

the counsel relied upon the decision by the Apex Court in the case P. Ramchander and later judgments and contended that every authority has to deal with the grounds raised in the respective petition (appeal/Revision) and failure to do so vitiates their orders.

15. Counsel for the respondents reiterated the version of the respondents in the counter.

16. Arguments were heard and documents perused. First as to limitation. The Apex Court in the case of Kameshwar Prasad (supra) has held as under:-

> *11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition v. Katiji held that the expression "sufficient cause" employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice — that being the life-purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realized that:*
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> > *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
> >
> > *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
> >
> > *3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
> >
> > *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
> >
> > *5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

17. In addition to the above, the Apex Court in the case of ***N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123*** the Apex Court has held as under:-

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality.

18. Thus, in so far as limitation is concerned, in view of the fact that the applicant had to be without any employment for some time followed by depletion in the income and coupled with the fact of his domestic affairs,

which are in fact social responsibilities, we are of the considered opinion that the case deserves condonation of delay of 239 days. As such M.A. 487 of 2008 is allowed and delay condoned.

19. Now on merits. There were only four documents relied upon by the respondents and the same did not contain the PN Book of the Gate Keeper. And the inquiry officer has arrived at the finding, solely based on the said PN Book. Though it has been contended in the counter that the applicant had actually seen the PN Book, vide Annexure R-2, in fact, there is no signature on that part of the said Annexure which relates to the PN Book of the Gate Keeper. As such, this is a clear case where a document has been relied upon without having been exhibited by the prosecution. The finding of the Tribunal is that in utter violation of the Principles of natural justice, the Inquiry Officer arrived at his finding. For, it is trite law that a document not confronted to the delinquent cannot be relied upon for establishing the fact that the delinquent is guilty of a misconduct (**see Nicks (India) Tool vs Ram Surat, (2004) 8 SCC 222 at page 227.**) In that case an alleged receipt in token of having received full and final payment of dues on voluntary retirement was relied upon, whereas such a receipt was not shown to the workman to rebut the same.

20. As regards the competence of the Disciplinary authority, though the applicant had referred to the contention as raised in the OA, at the time of arguments, the counsel had fairly stated that he does not press that point leaving the same question open.

21. Coming to the deficiency on merit about the order of the disciplinary authority, the counsel contended that the representation ought to have been considered, which the disciplinary authority had failed. This is a serious lacuna. Though initially only ten days' time had been granted for filing of representation against the inquiry report, the fact that a reminder had been issued goes to confirm that the time given has been extended and immediately thereafter the applicant had filed his representation. The same was forwarded to the disciplinary authority but according to the respondent, the same was not received by the disciplinary authority. This cannot make the applicant suffer the penalty. We hold that the applicant cannot be faulted with for non receipt of the representation.

22. As regards the way the appellate authority and the revisional authority had dealt with the appeal and revision petition, the Apex Court has in the case of ***Ram Chander v. Union of India, (1986) 3 SCC 103*** held as under:-

> "4. The duty to give reasons is an incident of the judicial process. So, in *R.P. Bhatt* v. *Union of India (1986) 2 SCC 651* this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed:
>
> > It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (*1*) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (*2*) whether the findings of the disciplinary authority are warranted by the evidence on record; and (*3*) whether the penalty imposed is adequate; and thereafter pass

> orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same.
>
> It was held that the word consider in Rule 27(2) of the Rules implied due application of mind. The Court emphasized that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record."

A symphonic tune has been struck in the case of ***Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713.***

23. Taking into account the law on the subject as crystallized by the Apex Court in the above cases, it is clear that there is deficiency in the manner in which the proceedings were conducted, right from consideration of a document behind the back of the applicant by the inquiry authority and failure to consider the representation of the applicant against the inquiry report. As such, the impugned orders are not sustainable. They are to be quashed and set aside and we order accordingly. The matter should be remitted back to the disciplinary authority to consider the representation now available with him and the disciplinary authority (the D.R.M. Palghat) shall deal with each of the grounds contained in the representation and arrive at a just conclusion and communicate the same to the applicant within a period of four months from the date of communication of this order.

24. With the above direction, the OA is disposed of. No cost.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(K.B.S. RAJAN)
JUDICIAL MEMBER

"SA"