

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 379
I. A. No.

1991

DATE OF DECISION 14.3.91

A. Krishnasamy Applicant (s)

Mr. P. Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through the Respondent (s)
General Manager, Southern Rly, Madras -3 and others

M. C. Cherian Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

MR. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The applicant who was an Electrical Fitter Grade-II in the Railways is aggrieved by the Annexure A-4 order dated 22.8.89. According to this order, he has been reduced to the next lower grade of Rs. 950-1500 at Rs. 950/- till 30.4.90, the date of his retirement on superannuation.

2. We heard the counsel and in the view we are taking we decide to dispose of the application with the issue of suitable direction to the respondents.

3. The learned counsel for the respondents submitted that a perusal of the Annexure A-4 order indicates that, as a matter of fact, the penalty was first imposed on 26.11.83 reducing the applicant to the lower grade of Rs. 260-400 at a pay of Rs. 260/- for a period of three years. Against this, the applicant filed an appeal which

was dismissed and thereafter, he filed O.P. 367/84 before the High Court of Kerala. This O.P. was received on transfer and registered as TAK 355/87 and this application was finally dismissed on 2.6.89. Till then the operation of the original penalty order Annexure A-1 was stayed by the High Court of Kerala and continued by the Tribunal.

4. As, by that time, further developments had taken place and the pay scale of the applicant was revised, the respondents felt it necessary to pass a fresh order as in Annexure A-4. It is stated therein that the original penalty ^{could not} be implemented till 22.2.89 because of the stay order received from the High Court. It is for this reason that the applicant has now been reduced to the lower grade of Rs. 950-1500 and his pay has been fixed at Rs. 950/- w.e.f. the date of Annexure A-4 memorandum is served on him. It is also indicated that the reduction will be upto 30.4.1990, the date of his retirement on superannuation. He was also informed that his Appellate authority will be DRM and he may file appeal to the authority. The applicant has filed before the Appellate authority Annexure A-5 letter which reads as if it would appear to be a mercy appeal.

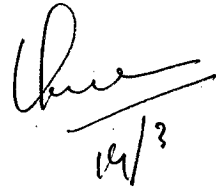
5. Annexure A-5 is still within time. Though the learned counsel for the respondents contended that in view of the earlier judgment, such an appeal does not lie, we are of the view that as the penalty order has been modified in substance by the Annexure A-4 order, a fresh appeal also lies.

6. In this view of the matter, we direct the second respondent who is the Appellate authority to treat the Annexure A-5 as an appeal filed under the statutory rules of and dispose it within a period of three months from the

date of receipt of this order, after giving an opportunity of hearing to the applicant who may also furnish additional grounds within a period of two weeks from the date of receipt of a copy of this order to supplement the mercy appeal.



(N. DHARMADAN)
JUDICIAL MEMBER


14/3

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

KMN

(13)

NVK & ND

Mr P Sivan Pillai for the applicant.
Mr MC Cherian for the respondents by Proxy.

Mr MC Cherian takes notice on behalf of the respondents. In view of the averments made in the petition, the respondents are directed to produce the records of the appeal case. *Call on 17-10-91.*

20.9.91

NVK & ~~ND~~ AVH

P. Sivanpillai
Mr. ~~Sivan~~ for applicant
Mr. TA Rajan for ~~as~~ Rlys.

It is submitted by the learned counsel for the respondent that the original order has already been complied with and this submission is accepted by the learned counsel for the applicant. Hence, this CCP is closed.

17.10.91

31

*17/10/91
mBp
FO issued
PCE - closed
17/10*