

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Q.A.No.380/2001.

Wednesday, this the 25th day of April, 2001.

CORAM:

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

C.R.Madhukumar,
Keyman, Aroor,
Under Section Engineer/
Permanent Way,
Southern Railway, Alleppey. Applicant

(By Advocate Shri TC Govindaswamy)

VS.

1. Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai-3.
2. The Senior Divisional Engineer, Southern Railway, Trivandrum Division, Trivandrum-14.
3. The Divisional Engineer/South, Southern Railway, Trivandrum Division, Trivandrum-14.

(By Advocate Shri Thomas Mathew Nellimoottil)

The application having been heard on 25.4.2001, the Tribunal on the same day delivered the following:

ORDER

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

The applicant, a Keyman working at Aroor under Section Engineer/Permanent Way, Southern Railway, Alleppey, was on completion of a departmental enquiry awarded a penalty of demotion to lower post for a period of one year by order dated

23.12.2000 issued by the 3rd respondent. Aggrieved by this the applicant filed an appeal raising various grounds. The appellate authority, the 2nd respondent disposed of the appeal by order dated 5.3.2001 affirming the penalty. It is aggrieved by that the applicant has filed this application. The impugned orders are attacked on the ground of non-observance of principles of natural justice in-as-much as the documents sought for by him were not given to the applicant for preparing a proper defence, that the finding is perverse as there was no evidence supporting the finding and that the appellate order is a cryptic and non-speaking one. The applicant seeks to have the impugned orders set aside.

2. When the application came up for hearing Shri Thomas Mathew Nellimoottil took notice on behalf of the respondents. The appellate order reads as follows:

"I have gone through the findings of the enquiry officer. The charges against the employee are proved. Hence, I uphold the penalty issued by the disciplinary authority."

It is absolutely a non-speaking and cryptic order as the grounds raised by the applicant in the Memorandum of appeal have not even been mentioned much less considered.

3. The provision of the Railway Servants (Discipline and Appeal Rules) quoted is 25(I) V and the reference is to SF 11 whereas the enquiry against the applicant was held for a major penalty proceeding under SF 5. It is alleged that there is total lack of application of mind by the appellate authority.

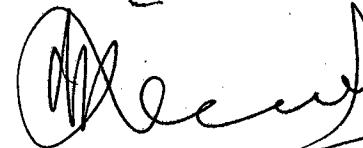
The Appellate authority is enjoined by the rules to look into whether the enquiry has been held in conformity with the rules, whether the penalty is awarded is warranted by evidence and whether the penalty imposed is adequate or unduly harsh. These statutory duties enjoined on the appellate authority have not been discharged. Under these circumstances, we are of the considered view that the proper course is to set aside the appellate order (A2) and to remit the appeal to the appellate authority for fresh disposal in accordance with law.

4. In the result, the application is disposed of at this stage setting aside A-2 order and directing the 2nd respondent to consider the appeal submitted by the applicant in accordance with the rules considering all the grounds raised therein and giving the applicant a speaking order within a period of three months from the date of receipt of a copy of this order. No costs.

Dated the 25th April 2001.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

rv

A2: True copy of appellate order bearing No.V/W 349/DAR/CRM
dated 5.3.2001 issued by the 2nd respondent.