

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 4 OF 2010

Thursday, this the 25th day of August, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

M.Mariappan
Helper – II, Southern Railway
Kochuveli RS & PO
Residing at .. Railway Quarters No.130-A
Type – I, Thampanoor
Trivandrum ... Applicant

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the
General Manager
Southern Railway
Headquarters Office, Park Town PO
Chennai
2. The Senior Divisional Mechanical Engineer
Southern Railway, Trivandrum Division
Trivandrum - 14
3. The Additional Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum - 14
4. The Divisional Railway Manager
Southern Railway
Trivandrum Division
Trivandrum - 14
5. The Chief Mechanical Engineer
Southern Railway
Headquarters Office
Park Town PO
Chennai – 3 ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 25.08.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is presently working as Helper-II in the pre revised scale of ₹ 2550-3200 with basic pay of ₹ 2550 at Kochuveli Railway Station of Southern Railway, Trivandrum Division. He is aggrieved by Annexure A-1 order of penalty of removal from service issued by the 2nd respondent and modified in the appeal Annexure A-2 by reducing the punishment to reduction in rank in the scale of pay and basic pay instead of removal from service. Though a revision was filed against the order of the Appellate Authority, the Revisional Authority did not interfere in the order passed by the Appellate Authority in revision. Hence, the applicant seeks to quash Annexure A-1, A-2 & A-3.

2. The brief facts leading to the present OA be stated as follows:-

The applicant entered the service as Khalasi on 31.12.1977. Thereafter, he was promoted successive on various occasions and he became a Fitter Grade II. While working as Fitter Grade II, disciplinary action was taken against him for altercation with another employee within the office premises. An inquiry was conducted and the Inquiry Officer found him guilty of the misconduct and the Disciplinary Authority accepted the finding imposed a punishment of withholding of annual increment for a period of 12 months. Annexure A-4 is the order dated 04.05.1994 by which he was imposed penalty. He suffered the punishment and thereafter he was promoted to higher posts. Incidentally it may be mentioned that for the same misconduct there was a criminal case pending as C.C.No.323/92 in the file of Chief Judicial Magistrate, Trivandrum. the criminal court by Annexure A-5 order dated 19.07.1994 found him guilty of having prevented



PW 1 from discharging official duties in the manner alleged. Accordingly based on the aforesaid finding the applicant along with another employee were found guilty of the offence under Section 332 read with Section 34 of the IPC and convicted them thereunder. A sentence of fine of ₹ 2000/- was imposed upon the applicant and that became final. Now 14 years after the conviction in the criminal case as per Annexure A-5 and 14 years after the applicant was imposed the punishment of withdrawal of annual increment for 12 months in a separate proceeding by the employer taking disciplinary action, a fresh notice was issued to him under Rule 14 (1) of the Railway Servants (Discipline and Appeal) Rules, 1968. A show cause notice was issued to him, a copy of which is produced as Annexure A-7. The substratum of the notice is that he was convicted on 19.07.1994 on a criminal charge and the Sr.DME/TVC considers that his conduct which led to his conviction, is such as to render his further retention in public service, undesirable and provisionally came to the conclusion that the applicant is not a fit person to be retained in service in exercise of power conferred under Rule 14 (i) of the Railway Servants (Discipline and Appeal) Rules, 1968 and proposed to impose the penalty of removal / dismissal from service. He submitted his reply, a copy of which is produced as Annexure A-8. The authority however, imposed the punishment by Annexure A-1 order removing him from service as already noticed. This was modified in appeal by reducing the punishment to one reduction in rank instead of removal from service vide Annexure A-2 order in appeal.

3. The contention against Annexures A-1, A-2 and A-3 are that the orders are in violation of the provisions in Article 14, 16 and 311 of the Constitution of India. They are not based on relevant considerations nor are



they based on relevant materials. The penalty itself was imposed 14 years after the conviction of the criminal court. Therefore, it amounts to double jeopardy. At any rate, the punishment imposed is excessive.

4. In the reply statement filed by the respondents it is contended that the applicant committed serious misconduct. He assaulted one Shri E.Stanley, while he was on duty in maintenance section in the presence of Shri Ayyanarappa Pillai which conduct is in contravention of Rule 3 (1) (iii) of Railway Services Conduct Rules, 1966. It is also contended that a memo was issued to him proposing to impose major penalty and an inquiry was conducted. But based on the inquiry report, the Disciplinary Authority has imposed a penalty of withholding of annual increment for 12 months alone was imposed. Thus minor penalty though proceeded were initiated for imposing major penalty. It is also admitted in para 5 of the reply statement that it is true that for the same set of allegations the applicant was also taken up before the Chief Judicial Magistrate, Trivandrum for an offence punishable under section 332 read with section 34 of IPC. They however, stated that the disciplinary action already taken was for violation of Rule 3 (1) (iii) of Railway Services Conduct Rules and the present action as per Annexure A-7, i.e under Rule 14 (i) of the Railway Servants (Discipline and Appeal) Rules, 1968 which enables the administration to weed out the persons convicted on criminal charges. Thus, according to them, the penalty imposed earlier is under Rule 3(1) (iii) of the Railway Services Conduct Rules and the penalty now imposed is under Rule 14 (i) of the Railway Servants (Discipline and Appeal) Rules 1968.

5. We have heard Mr.TCG Swamy, the learned counsel for applicant and Mr.Thomas Mathew Nellimoottil on behalf of the respondents.

A handwritten signature in black ink, appearing to read "TCG Swamy", is written diagonally across the bottom right corner of the page.

The point in issue is as to whether after imposing a punishment for misconduct proved in a domestic inquiry conducted by way of disciplinary action, whether for the very same misconduct ended in conviction in Criminal Court could be taken as a separate misconduct under Rule 14 (1) of the Railway Servants (Discipline and Appeal) Rules and again imposing the punishment for the second time and that too after a lapse of 14 years from the date of conviction by the Criminal Court.

6. Respondents only submit their case by saying that earlier action was under Rule 3 (1) (ii) of the Railway Services Conduct Rules whereas the present action is taken under Rule 14 of the Railway Servants Discipline, Appeal Rules. The Railway Conduct Rules provide that every Government servant at all times do nothing which is unbecoming of a Government servant. The conduct of what becomes unbecoming of a Government servant in the present case is that he assaulted a superior officer in the place of work. It is also admitted that it is also for the same offence the criminal case pending in which he was convicted of imposing a punishment of ₹ 2000/-. Rule 14 of the Railway Servants Discipline and Appeal Rules, reads as follows:-

"Special procedure in certain cases notwithstanding anything contained in Rule 9 to 13:-

- (i) *where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on criminal charge ; or*
- (ii) *where the disciplinary authority*
- (iii) *Where the President*

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a



case falling under clause (i)

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

Rule 9 to 13 is under Para 4 of the Rule under caption Procedure for imposing penalty. Rule 9 is the rule for imposing major penalty. As per which no order imposing any of the penalties is specified in clauses (v) to (ix) of Sub rule (1) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner, provided in this rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, where such inquiry is held under that Act.

Rule 10 provides action on the inquiry report.

Rule 11 is the procedure for imposing minor penalties.

Rule 12 provides the manner in which the orders are to be communicated and Rule 13 provides for common proceedings in cases where two or more railway servants are concerned."

7. Coming to Rule 14, we have already seen that this is a special procedure in certain cases. Therefore the procedure as contemplated under Rule 9 to 13 is dispensed with in the cases where Rule 14 could be applied. As per Rule 14 (1) if a conduct of an employee had led to his conviction under a criminal case, Rule 9 to 13 need not be followed instead he should be given a show cause notice and on his explanation the authorities can proceed to impose appropriate punishment. It does not say as what is the punishment to be imposed. In other words, the various punishments imposable under these rules could be imposed by following procedure under Rule 14 also. Therefore, removal of service is not the only punishment contemplated under Rule 14, it only speaks of a special procedure in certain cases. That is sufficient for imposing any penalty under the Service law without conducting a separate inquiry. In other words, the inquiry as contemplated under Rule 9 to 13 can be dispensed



with since a full fledged inquiry has already taken place before the Criminal Court. Since it is settled law that a punishment imposed by the Criminal Court and a punishment imposed under the service law by itself does not mean that there is double jeopardy. Both are possible in the respective fields. But here the employee has already been inflicted with a punishment of withdrawal of increment for a period of 12 months as per Annexure A-4. He suffered the punishment. Thereafter, based on the conviction in Criminal Court again to impose a punishment for the same offence is impermissible under Rule 14. As we have already observed that Rule 14 provides for a special procedure which can be adopted only if Rule 9 to 13 procedure has not been taken. It is not over and above procedure under Rule 9 to 13 that the procedure under Rule 14 is to be invoked. It is for the employer to decide whether he should be proceeded under normal rules of procedure prescribed and Rule 9 to 13 for a misconduct committed by a employee or to wait till criminal trial is over, so as to invoke Rule 14 of the Railway Servants Discipline an Appeal Rules, 1968. As per Article 20 of the Constitution of India, for the same offence there cannot be a prosecution for more than once this principle can be extended to the situation under consideration. We are not saying that an employee cannot be imposed a punishment for a misconduct by following the Service law over and above the conviction and punishment imposed by Criminal Court. Both are separate procedure under respective fields. But in the present case, disciplinary action was already taken against the employee following Rule 9 to 13 and imposed a punishment of withholding of annual increments for a period of 12 months. He has already suffered the punishment. The respondents admit that it is for the same misconduct that a criminal case was also taken against him and it ended in conviction.

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It is also admitted that the second notice issued is also for the same misconduct which led to both conviction under criminal case and also led to the punishment as per Annexure A-4. This is impermissible under law. They having taken action under the Service Law as per Annexure A-4 merely because the criminal case happened to be decided subsequently after the imposition of punishment, they cannot again proceed to impose any punishment by invoking Rule 14 as it is now done. At any rate after 14 years to take action on the same offence is a clear violation of the principles of natural justice. The inordinate delay after the conviction by the Criminal Court for which there is no justification and the whole action after 14 years of conviction is naked violation of the principles of natural justice and is arbitrary. The Apex Court in 2005 SC (L&S) 861 held that inordinate delay in the absence of any convincing explanation would be a mental agony and suffering which shall not be permitted. In the present case, since the very misconduct alleged which led to the conviction by the criminal court as early as in 1994. If so, what is the justification for taking action after 14 years ? No explanation is offered for such inordinate delay. Hence for the aforesaid reasons as discussed above, we find that the penalty imposed as per Annexure A-1 as modified by the Appellate Order Annexure A-2 and confirmed in Annexure A-3 revision are liable to be quashed. We do so. All the monetary benefits lost by the applicant as a result of the penalty imposed by Annexure A-2 order shall stand restored to the applicant within a period of two months from the date of receipt of a copy of this order.

8. OA is allowed as above. No costs.

Dated, the 25th August, 2011.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

vs


JUSTICE P.R.RAMAN
JUDICIAL MEMBER