

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.387/2001.

Thursday, this the 26th day of April, 2001.

CORAM:

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

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

(By Advocate Shri T.C.Govindaswamy)

Vs.

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

(By Advocate Shri K.Karthikeya Panicker)

The application having been heard on 26.4.2001, the Tribunal on the same day delivered the following:

ORDER

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

The applicant, a Section Engineer, Permanent Way/West/Palghat, Southern Railway was served with a Memo under Rule 11 of the Railway Servants (Discipline and Appeal Rules) 1968 dated 18.9.98 and on receipt of his explanation a penalty of withholding of increment for a period of 12 months was

awarded to him by the 3rd respondent by his order dated 23.2.2000/2.3.2000 (A-1). Aggrieved by that the applicant has submitted an Appeal to the Divisional Railway Manager, 2nd respondent. A copy of the Appeal Memorandum is A-6.

2. In reply to the Appeal, the applicant received a communication dated 27.7.2000 by which the applicant was informed that the Divisional Railway Manager has reviewed his case and passed the following orders:

"I agree with the penalty advice and no modification to the penalty is required.

How you may submit review petition addressed to CE/MAS, if as desired."

3. Aggrieved by this the applicant has filed this application. The impugned orders are assailed on various grounds. The appellate order is assailed on the ground that it is cryptic, non-speaking and passed without application of mind of the appellate authority. The applicant, therefore, seeks to have the impugned orders set aside.

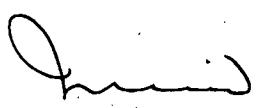
4. When the matter came up for hearing, we have heard Shri TC Govindaswamy, learned counsel for applicant and Shri K.Karthikeya Panicker for respondents. The appellate authority has a statutory duty to see whether the enquiry has been held in conformity with the rules, whether the finding is warranted

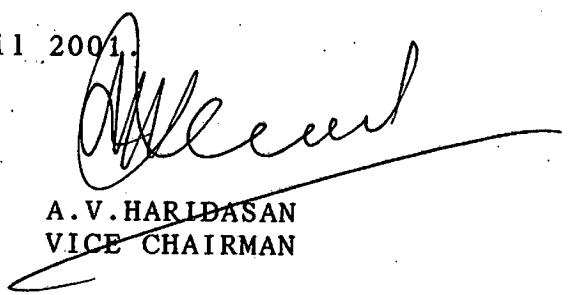
by evidence and whether the penalty is adequate or excessive. It is unfortunate that the 2nd respondent, the appellate authority, has not discharged these statutory duties and has issued a cryptic order and the appeal order signed by the appellate authority also has not been served on the applicant. Taking note of this situation the learned counsel for the respondents states that the impugned order A-2 may be set aside and the matter may be remitted to the 2nd respondent for consideration of the appeal in detail and to pass a speaking order.

5. Learned counsel of the applicant submitted that the application may be disposed of accordingly.

6. In the result, in the light of what is stated above, the impugned order A-2 is set aside and the 2nd respondent is directed to consider the appeal submitted by the applicant against the impugned order (A1), in accordance with the rules and to give 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 26th April 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

List of Annexures referred to in the order:

A-1: True copy of the Penalty Advice bearing no.J/T.5/1 B.3/154/97/of 23.2.2000/2.3.2000, issued by the 3rd respondent.

A-2: True copy of the Appellate order communicated by letter No.J/T.5/1/B3/154/97 of 27.7.2000, issued by the 3rd respondent.

A6: True copy of the appeal dated 14.4.2000, submitted by the applicant addressed to the 2nd respondent.