

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Dy. No. 2004/93
O. A. No. 400 / 1993.

DATE OF DECISION 1-3-1993

Mr R Karunakaran _____ Applicant (s)

M/s P Sivan Pillai & _____ Advocate for the Applicant (s)
TCG Swamy

Versus

UOI through General Manager, Respondent (s)
Southern Railway, Madras & 4 others

Mr PA Mohamed _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, 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

AV Haridasan, J.M.

The applicant an Ambulance Driver has in this application challenged an order dated 24.2.1993 of the third respondent imposing on him a penalty of reduction in scale of pay from Rs.950-1500 to Rs.800-1150 fixing his pay at Rs.830/- The impugned order was passed on the basis of an enquiry. The applicant has filed an appeal to the appellate authority only on 28.2.1993. Immediately after filing the appeal the applicant has filed this application seeking to quash the impugned order at Annexure-A8 on the ground that if the impugned order of penalty is given effect to, the applicant will be put to irreparable injury. It is also averred

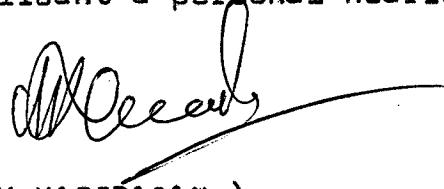
that there is no provision in the rules for the appellate authority to grant a stay of the punishment imposed on the applicant.

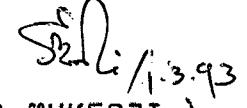
2. We have heard the learned counsel for the parties.

Shri PA Mohamed learned counsel for the respondents submitted that as the applicant has not waited for a period of six months after filing his appeal before approaching this Tribunal the application is premature and that for that reason it is liable to be rejected. The learned counsel for the applicant submits that in this case there is a peculiar circumstance in which a low paid employee would be deprived of a sizeable portion of his salary every month, if the impugned order of penalty is allowed to take effect and taking this aspect into consideration, the case has to be considered as a special case and the bar for admission may not be strictly applied to this case. We are not satisfied that the applicant has exhausted the alternative remedy provided for in the Railway Servants Discipline and Appeal Rules. The applicant has filed an appeal only on 28.2.1993. In every case where a penalty of reduction in salary is imposed the employee will naturally suffer a reduction in his emoluments till the earlier pay is restored. That is not an extra ordinary circumstances warranting a deviation from the rule. If it were a case of penalty of removal from service and if the penalty is given effect, the applicant would be deprived of his livelihood, we would have probably considered admission of the application even without exhausting the alternative remedy. Here such a

situation does not exist. Therefore, we are not convinced that it is a fit case where the application has to be admitted and disposed of on merits before the alternative remedy is exhausted. However, Shri Mohamed appearing for the respondents fairly agreed that the application can be disposed of at the admission stage directing the second respondent to dispose of the applicant's appeal within a reasonable time.

3. In view of the above submission by the learned counsel for the respondents, we dispose of the application with a direction to the second respondent to dispose of the appeal submitted by the applicant on 28.2.1993 at Annexure-A9 within a period of two months from the date of receipt of/this order after giving the applicant a personal hearing. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


SP MUKERJI / 1.3.93
(SP MUKERJI)
VICE CHAIRMAN

1-3-1993

trs