

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 11.10.93

O.A. 405/92

A. Krishnaswamy
ELF (P) Retd.,
Theraniparambil House,
P.O. Cheruthuruthi
Trichur District. (KERALA)

Applicant

vs.

1. Union of India through the
General Manager, Southern Railway
Head Quarters Office,
Park Town P.O., Madras-3

2. The Divisional Railway Manager
Southern Railway, Palghat

3. Sr. Divisional Electrical Engineer,
Southern Railway, Palghat

Respondents

Mr. P. Sivan Pillai

Counsel for the
applicant

Ms. M.C. Cherian

Counsel for the
respondents

CORAM

HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

&

HON'BLE MR. S. KASIPANDIAN ADMINISTRATIVE MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The peculiar circumstance that arises in this case is the difficulty of implementing the penalty, which has been ~~passed~~ passed in the year 1983, at a very late stage in the year 1989 on account of the pendency of the Original Application filed by the applicant challenging the original penalty.

2. The facts are as follows. The applicant while working as Fitter Grade-II) in the scale of Rs. 330-480, and drawing a pay of Rs. 354/- per month was penalised by Annexure A-1 order passed by the Disciplinary authority with the following penalty:

.... As such I am compelled to take drastic action in this case and impose the penalty of reducing him to a lower grade i.e. skilled grade of Rs. 260-400 on a pay of Rs. 260/- for a period of three years from

the date following the date of receipt of this notice and posting him to Erode. The above penalty will not have the effect of postponing his future increments nor will it affect his future seniority."

3. The applicant filed appeal against the penalty order. That appeal was dismissed by the appellate authority as per Annexure A-2 order.

4. The applicant filed O.P. 367/84 before the High Court against the penalty orders and obtained an interim stay of implementation of the penalty order. That case was later transferred to this Tribunal and dismissed as per Annexure A-3 judgment. Because of the dismissal of the original application the respondents were compelled to implement the penalty order passed in 1983. In order to implement the same, Annexure A-4 was passed by the third respondent. The operative portion of that order reads as follows:

"Sri A. Krishnaswamy ELF/P/HS-II/ED is now hereby informed that in accordance with the orders passed by the undersigned he is reduced to the next lower grade of ELF/P in the scale of Rs. 950-1500 at Rs. 950/- with effect from the date of this memorandum is served on him. This reduction will be upto 30.4.90, the date of his retirement due to superannuation.

The above penalty has been awarded by the undersigned and the appellate authority is DRM. Appeal, if any, is to be submitted within 45 days from the date of receipt of this advice."

5. The applicant filed appeal against the order and it was disposed of taking a lenient view in the following manner:

"There is however considerable force in the party's representation against the reduction in retirement benefits-ground 4 of his letter dated 21.3.91. The original penalty had it been given effect to in 1983 itself, would have resulted in a monetary loss of Rs. 9530.35 to the party whereas the financial implications of the penalty advice dated 21/22.8.89 are, apart from a reduction in pension of more than Rs. 100/- p.m. till lifetime of the party, reduction in DCRG and commutation of pension exceeding Rs. 9530.35 by a significant margin. While it may be argued that if the penalty advice of 1983 had been implemented then and there, the party's retirement benefits would not have been affected at all and it was only because of the delay in implementing this advice till 1989 due to proceedings in the Hon'ble Court/CAT by the party, leaving only

a few months till the party's date of retirement as the duration of imposition of the penalty, as against the three years originally proposed, that the peculiar situation of reduction in retirement benefits has arisen, it has to be realised that the Administration never intended/contemplated, while imposing the penalty in 1983, to affect the party's retirement benefits in any way. Considering that the pension is calculated on the basis of the average pay drawn for the 10 months preceding superannuation, and that DCRG is calculated on the basis of the last pay drawn, it is evident that in this particular case the financial hardship to the employee due to reduction in retirement benefits could be considerably reduced if his pay were to be restored to what it was prior to giving effect to the penalty advice dated 21/22.8.89 at the time of his retirement. The party's service record made available to me also shows that, but for the one incident, that led to the imposition of the penalty in 1983, his record is clean. I accordingly order that the penalty of reduction to the time scale of Rs. 950-1500 and fixation of pay at Rs. 950/- p.m. therein be now modified to six months (NR) from 26.8.89, instead of till 30.4.90, the date of his superannuation."

6. The learned counsel, Shri P. Sivan Pillai, appearing on behalf of the applicant submitted that Annexure A-4 order has been passed by a lower authority than the authority who passed Annexure A-2 order and it cannot be sustained. He further submitted that it is a modification of the penalty order which is not permissible under law.

7. However, the appellate authority has dealt with the matter in a lenient way and fixed the financial implication of the penalty as Rs. 9530.35 and stated that the matter would have been closed by realising that amount from the applicant, but if such a course of action is adopted, the effect of penalty and the purpose of penalising the not ^{the} delinquent employee would/have been satisfied. Hence, he reduced the penalty to reduction in pay to six months from 26.8.89 instead of 30.4.90.

7. The applicant retired on 30.4.90. Due to his retirement after the dismissal of the O.A., it became difficult for the respondents to implement the original penalty for operation for a full period of three years. But having regard to the peculiar facts and circumstance

of the case, the appellate authority has decided to implement the penalty in the new scale of Rs. 950-1500 for a period of six months.

8. The learned counsel for the applicant contended that by the implementation of the penalty in the manner as indicated by the appellate authority in Annexure A-10 order is not fair/ prejudicely affected the applicant by reducing his pension @ Rs. 100/- per month; it will have the impact of imposing another penalty in addition to the realisation of financial liability of Rs. 9530.35 from the applicant. We find some force in the contention.. But the whole difficulty was created on account of filing of a Writ Petition by the applicant before the High Court challenging the appellate order. He allowed the stay to be continued for unduly long time of more than 5 years. Under these circumstances, since the applicant himself is responsible for his own loss and liability, we are not prepared to a more lenient approach than that has been made by the appellate authority by passing Annexure A-10 order for wiping of the penal effect completely.

9. Having regard to the facts that the respondents too failed to vacate the stay at the appropriate time and implement the penalty, we are also of the opinion that the respondents have also contributed their part in the complication arosed in this case.

10. In this view of the matter, we are of opinion that the application can be disposed of by modifying the operative portion of Annexure A-10 to the effect that the penalty of reduction as per the original penalty advice can be implemented in the time scale of Rs. 950-1500 and fixation of his pay at Rs. 950/- per month for a period of three montns from 26.8.89. Accordingly, we direct the Assistant Personnel Officer to pass a fresh order on the ~~lines~~ lines as indicated above and fix the pensionary benefits accordingly. This shall be done

within a period of three months from the date of receipt of the copy of this judgment.

11. The application is disposed of on the above lines.

12. There shall be no order as to costs.

S. Karp

(S. KASIPANDIAN)
ADMINISTRATIVE MEMBER

N. Dharmadan

(N. DHARMADAN)
JUDICIAL MEMBER

11.10.93

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List of Annexures

1. Annexure A-1 : Penalty advice dated 26.11.83
2. Annexure A-3 : Judgment of this Tribunal in T.A.K 355/87
3. Annexure A-4 : Impugned order No.J/D 190/0/83/15 dated 21/22.8.89
4. Annexure A-10 : Impugned order of the Appellate authority dated 9.10.91