

**CENTRAL ADMINISTRATIOVE TRIBUNAL
MADRAS BENCH**

OA/310/01944/2017

DATED THIS THE 22 DAY OF JULY, TWO THOUSAND NINETEEN

PRESENT

THE HON'BLE MR. T. JACOB, MEMBER (A)

J.K. Viswanathan,
No.D-19, 7th Cross,
Thillai Nagar,
Thiruchirapalli620 018.

...Applicant

Vs

1. Union of India
rep., by its Secretary,
Railway Board, Rail Bhavan,
New Delhi 110 001.

2. The Chairman,
Railway Board, Rail Bhavan,
New Delhi 110 01.

3. The Chief Personnel Officer,
Southern Railway, Chennai.

4. The General Manager,
Southern Railway,
Chennai 600 003.

..Respondents

By Advocates:

M/s Paul & Paul, for the applicant.

Mrs. Meera Gnanasekar, for the respondents,



ORDR

(Pronounced by Hon'ble Mr. T. JACOB, Member (A))

The applicant has filed this OA under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"(a) To call for the records of the 2nd respondent in order No.E90)1-99/AE-3/5/17/Pt dated 07.04.2017 and quash the same;

(b) Consequently direct the 2nd respondent to grant full pension and gratuity to the applicant and calculate and pay the arrear of pension and gratuity from 24.02.1999 with interest based on the subsequent pay revisions within a stipulated time.."

2. The brief facts of the case are that the applicant while working as Assistant Works Manager was issued with a charge sheet alleging that he had violated Rules 15(1) and (5) of Railway Services (Conduct) Rules, 1966. Based on the enquiry, penalty of dismissal from service was imposed upon the applicant, vide order dated 24.02.1999.

3. The applicant filed OA,1155/2000 challenging the order of dismissal from service wherein, this Tribunal by order dated 28-11-2001 modified the order of dismissal into that of compulsory retirement from service w.e.f. 24.02.1999. The said order of this Tribunal was confirmed by the Hon'ble High Court of Madras in WP.19751/2002 and WP.11220/2002.

4. The applicant submitted a representation for release of his retiral benefits. In response, he received a communication dated 16.02.2006 from the third respondent stating that the fourth respondent had sanctioned 2/3rd pension and

withheld the entire gratuity amount. There is no communication from the respondents regarding reduction in pension and withholding of entire gratuity.

5. The applicant submitted an appeal but the same was rejected by order dated 27.01.2009 by a non-speaking order. Challenging the said order of rejection, the applicant filed OA.1139/2009 which was, however; by order dated 07.01.2011 dismissed. Aggrieved by the above, the applicant filed WP.25943/2013 before the Hon'ble High Court of Madras which was allowed on the ground of incompetence of the authority which had passed the order and the order dated 16-02-2006 passed by the General Manager, Southern Railway confirmed in appeal by the Railway Board on 20-04-2009 was set aside and the matter was remitted to the Railway Board to consider the fixation of terminal benefits to the applicant as directed earlier in OA.1155/2000 by the Competent Authority, viz.; the *Railway Board*. When the direction of the Hon'ble High Court was not implemented by the respondents, the applicant filed Contempt Petition 2121/2016 whereupon the respondents filed reply confirming compliance of the order of the Court by issue of order dated 07.04.2017 and on that basis the Contempt Petition was closed by order dated 13.04.2017 giving liberty to the applicant to challenge the order of the Railway Board. The applicant has filed this OA challenging the order dated 07.04.2017 of the second respondent and for grant of full pension and gratuity from 24.02.1999 on the following grounds:-

- (i) The punishment was modified from termination to compulsory

retirement by considering the 32 years of service. The applicant is entitled to all the retirement benefits and it is not open to the Railway Board in 2017 to restrict the pension and withhold the entire gratuity of the applicant. Therefore, the order of the Railway Board dated 07.04.2017 is illegal, arbitrary and need to be set aside.

(ii) When the Railway Board has taken a decision, to modify the punishment from dismissal to compulsory retirement based on the order passed by the Tribunal and High Court and communicated to the General Manager by letter dated 25.11.2005, there is no reason to restrict the pension of the applicant to 2/3rd and also withholding the entire gratuity and therefore, it is not open to the Railway Board now to impose the above said punishment and therefore the order of the Railway Board dated 07.04.2017 is illegal, arbitrary and need to be set aside.

(iii) When the Tribunal has modified the punishment and also declared that the applicant is entitled to all retiral benefits, Rule 64 of the Railway Service Pension Rules 1993 cannot be made applicable against the applicant. Therefore, the order of the Railway Board dated 07.04.2017 is non application of mind and not sustainable in the eye of law.

(iv) The action of the second respondent in restricting the pension to 2/3rd pension and withholding the entire gratuity is abuse of power and violation of the earlier of the Hon'ble Tribunal and High Court.

(v) When the applicant had already suffered a punishment of compulsory retirement, further reducing the pension and withholding the gratuity amounts to double jeopardy and violation of fundamental right under Art.20(2) of the Constitution of India.

(vi) The forfeiture of entire gratuity of the applicant is against Rule 7(1) of the Payment of Gratuity (Central) Rules, 1972 and therefore, the order passed by the Railway Board need to be set aside.

(vii) The applicant was not given an opportunity of hearing before passing the order of reducing the pension and forfeiture of gratuity and therefore, the same is violation of principles of natural justice as the said order is having serious civil consequences.

6. The learned counsel for the applicant has also filed written arguments more or less reiterating the averments made in the OA.

7. Per contra, the respondents in their reply statement have raised preliminary objection stating that the issue raised in the present OA had already been decided and dismissed by this Tribunal in the earlier OA.1139/2009 filed by the same applicant.

8. As regards the merit of the matter, the respondents have contended that while working as Asst. Workshop Manager at Golden Rock Workshop, a major penalty proceeding was initiated by the General Manager/Southern Railway against the applicant for causing dual employment while on sanctioned leave without prior permission of the Railway Administration and for misusing his metal pass on two occasions in violation of Rule 3(1)(i) and (iii) and for contravening Rules 15(1) and (5)_of the Railway Services (Conduct) Rules, 1966 vide charge memo dated 02.01.1998. As both the charges were proved, he was imposed with a major penalty of dismissal from service vide order dated 24.02.1999 and his services were terminated w.e.f. 04.03.1999. Being aggrieved, the applicant took recourse to the judicial remedies as explained above.

9. The respondents have relied upon the following decisions of the Hon'ble Supreme Court and the Central Administrative Tribunal to state that this Tribunal has no jurisdiction to interfere with the findings of the Inquiry officer or with the quantum of punishment unless the punishment so imposed is disproportionate to the charges proved against the applicant or that has been imposed with a malafide



intention:-

- (1) Shri Parma Nanda vs. State of Haryana & Ors., SLP (Civil) No.6998 of 1988 (1989 (2) SLR 410);
- (2) State Bank of India vs. Samarendra Kishore Endow (1994 (1) SLR 516);
- (3) UOI & Ors. vs. Upendra Singh (1994 27 A 200)

10. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

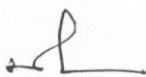
11. This is the third round of litigation before this Tribunal. The applicant had earlier filed OA.1139/2009, 1155/2000 and the present OA.1944/2017. The relief sought for in OA.1139/2009 and OA.1944/2017 are similar in nature. This Tribunal by order dated 07.01.2011 in OA.1139/2009 dismissed the OA with the following observations:-

"...The applicant is entitled to pension which includes gratuity only when he retires from service on attaining the age of superannuation but in this case, he had been retired compulsorily as measure of penalty. As such, he is governed by rule 64 of the Railway Services Pension Rules, 1993. Hence it is not open to the applicant to say that pension includes gratuity and as such, he is also entitled for gratuity. Further, Rule 64 clearly says that it is up to the competent authority to grant pension or gratuity or both with certain restriction.

12. In the instant case, the competent authority has granted 2/3rd pension and withheld the gratuity and as such, the impugned order is in accordance with Rule 64 of the Railway Services Pension Rules, 1993 and thus, there is no justification for interference of this Tribunal.

13. In the result, the OA is dismissed with no order as to costs."

12. The applicant challenged the above order before the High Court, which



had, on the basis of the fact that the penalty order passed by the G.M. was illegal inasmuch as the authority competent to issue Penalty order was the Railway Board. Thus, the Railway Board considered the matter and passed an order which is similar to the order passed by the G.M. The relief sought by the applicant is the very same as in the earlier OA. As the earlier judgment of the High Court did not deal with the merit of the matter but only on the technical issue of competence it had passed the earlier order. As such, there is no legal infirmity in the applicant's seeking the very same relief as in the previous OA. Thus the preliminary objection is answered in negative.

13. Now on merits. Admittedly the applicant while working as Assistant Workshop Manager/Diesel/Golden Rock was imposed with a major penalty disciplinary proceedings by issue of charge memo dated 02.01.1998 by the General Manager/Southern Railway for the following charges:-

(i) Shri J.K. Viswanathan, AWM/GOC engaged himself as a Manager in M/s Kirloskar Electric Company Ltd., Bangalore during the period from 01.02.1995 to 08.01.1997 thereby caused dual employment, without prior permission of the Railway Administration.

(ii) He has misused his metal pass on two occasions (i.e) on 09.11.1995 & 10.11.1995.

14. It is seen on perusal of the record that the charge No(i) was established not only by the documentary evidence but also by his own admission. As the charges were held proved, penalty ensued.

15. Now as to the relevant rule position, Rule 51 and Rule 64 of the Railway



Services Pension Rules, 1993, which are relevant to the subject matter are reproduced below:-

"51. Superannuation Pension: Superannuation Pension shall be granted to a Railway Servant who is retired on his attaining the age of compulsory retirement"

Rule 64. Compulsory Retirement Pension:-

"(1) A railway servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-third and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

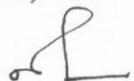
Rule 3(19) of the Railway Services (Pension) Rules, 1993 defines pension as under:-

"pension" includes gratuity except when the term pension is used in contra distinction to gratuity but does not include dearness relief.

16. The applicant's claim is that he has been afforded some pension which should be full pension and since pension includes gratuity as well, the respondents have erred in not having afforded the gratuity as a part of pension.

That pension includes gratuity as well cannot be construed to mean that both are inseparable. For, Rule 64 inter alia refers to "pension or gratuity or both" which clarifies that pension and gratuity are independent and disparate.

17. As regards claim for full pension and gratuity, the judicial mandate is to award compulsory retirement, which has been carried out by the respondents. The power to decide quantum of penalty to be imposed is vested with the Disciplinary authority and save when the quantum is shockingly disproportionate to the gravity of the misconduct, judicial intervention is justified. Here, that



intervention has been pressed into service by modifying shockingly disproportionate penalty of dismissal into one of compulsory retirement, which falls within the provisions of Rule 64 as extracted above. As per this provision, the competent authority has been vested with the power to truncate the extent of pension or gratuity or both. It is this power that has been exercised by the authority. Thus, While honouring a judicial order to soften the quantum of penalty earlier passed, the competent authority, taking into account as to the gravity of misconduct, chose it appropriate to truncate the pension to 2/3 of it and forfeit the entire gratuity. The imposition of penalty was within the discretion available to the competent authority and the Tribunal cannot interfere with the said order. There is thus, absolutely no illegality in this regard. It has been held by the Apex Court in the case of **Ramesh Chandra Sharma vs Punjab National Bank (2007) 9 SCC 15** as under:

29. Moreover, it is now a trite law that ordinarily the High Court should not interfere with the quantum of punishment imposed by the disciplinary authority. (See U.P. SRTC v. Ram Kishan Arora.)
18. In the case of State Bank of India vs. Samarendra Kishore Endow (supra) the Hon'ble Supreme Court observed as follows:-

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an inquiry consistent with the rules



and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

19. Judicial intervention, thus, is not appropriate.
20. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court referred to above, the applicant has not made out a case for interference with the impugned order passed by the respondents. The OA is liable to be dismissed and is accordingly dismissed. No order as to costs.