

(1971) 06 MAD CK 0027
In the Madras High Court

The General Manager, Southern Railway	APPELLANT
Vs	
N. Jeenaraj	RESPONDENT

Date of Decision : 15-06-1971

Acts Referred:

Citation : (1971) 84 LW 725 : (1971) 2 MLJ 202

Hon'ble Judges : K. Veeraswami, J

Bench : Single Bench

Judgement

K. Veeraswami, C.J.—This is an appeal from an order of Palaniswamy, J., allowing the petition filed by the respondent. On the ground that the respondent had failed to utilise the advance taken of Rs. 2,400 to buy a motor-cycle, the Deputy Chief Mechanical Engineer by an order of his dated 9th September, 1966, imposed on him the punishment of withholding for a period of six months the future increment. Against this order the respondent filed an appeal. The Chief Personnel Officer who dealt with it sent a notice to the respondent on 21st November, 1967, asking him to show cause why the punishment should not be enhanced. Finally by an order dated 28th May, 1968, the General Manager issued a notice as to why the respondent should not be removed from service. The respondent filed a petition to quash this notice. It appears that subsequently the General Manager by an order of his dated 28th May, 1969 actually removed him from service. The validity of the order of removal was challenged by the respondent and successfully too before the learned Judge on the ground that the appellate authority had no right to pass such an order six months beyond the date of the original order of punishment. There are two rules which are relevant. Rule 1731 of the Railway Establishment Code relates to appeal. The appeal should be preferred within three months from the date of the order of punishment. The appellate authority, as has been provided by this rule, has the power of setting aside, reducing, confirming or enhancing the penalty. But before the appellate authority enhances the penalty, the procedure prescribed by the rule should be followed. It is not stated that this practice has not been followed in the instant case. The other rule, Rule 1736, provides for review of orders in

disciplinary cases. It says:

The Railway Board, a General Manager and any Officer not below the rank of a Deputy Head of Department or a Divisional Superintendent specified in this behalf by the General Manager shall have the power on their/his own motion or otherwise to revise any order passed by an authority subordinate to them/him. They/he shall also have the power to reconsider an earlier order passed on an appeal by them/him or by a predecessor if on a subsequent date either fresh light is thrown upon the case or by his conduct the employee has established a case for mitigation of the penalty imposed.

Sub-rule (i) of the rule has a proviso which is to the effect that no action under this sub-rule should be initiated more than six months after the date of the order to be reviewed unless it was proposed to reduce or cancel the penalty imposed. Sub-rule (2) says that when an authority referred to in Sub-rule (1) proposes to enhance the penalty imposed on a railway servant, otherwise than as the result of an appeal preferred to him he should communicate his intention to the railway servant concerned with the reasons there for and call upon him to show cause as to why the enhanced penalty should not be imposed. Palaniswamy, J., thought that the limitation provided by the proviso to Sub-rule (1) of Rule 1736 applied also to cases falling under Rule 1731. His reasoning was that the expression "or otherwise" in the phraseology in Sub-Rule (1) of Rule 1736 "own motion or otherwise" would cover also an appeal and that this was further clear from the phraseology in Sub-rule (2) "otherwise than as the result of an appeal preferred to him.

2. With respect, we are unable to concur in this view of the learned Judge. The two rules cover different remedies and powers. While Rule 1731 relates to appeals, Rule 1736 applies to revision of orders passed by subordinate officials. Limitation is provided for preferring an appeal. Once an appeal is filed within time, there is no further limitation for disposing it of, though we should expect such a disposal within a reasonable time. When enhancement of penalty is made in the exercise of the appellate power, such exercise cannot be confused with the exercise of revision powers which is distinct and different from the former. The expression "otherwise" in Sub-rule (1) of Rule 1736 only indicates that the power under that Sub-rule can be exercised not merely suo motu by the officer concerned but also he could be moved by the person affected himself or by somebody bringing it to the notice of the officer that a mistake had been committed or there was reason why the penalty called for review. It is only where review or revision of the penalty imposed is thought of under this sub-rule that the limitation of six months will be attracted. The expression "otherwise than as the result of an appeal" in Sub-rule (2) of Rule 1736 also indicates that the power under Rule 1736 is not to be confused with the appellate power under Rule 1731. We may observe that the Legislature, while prescribing appeal, revision and review, treats the power as distinct and different and quite rightly--and provides for different periods of limitation. That practice is evident in the two

rules under consideration.

3. We are, therefore, unable to accept the interpretation placed by Palaniswamy, J., on Rule 1736. We hold that the limitation provided by the proviso to Sub-rule (1) of Rule 1736 has no application to the enhancement of punishment in the instant case.

4. The appeal is, therefore allowed. But we make no order as to costs either in the appeal or in the petition.

5. We are told that the matter has been pending too long and that the petitioner, though he has been re-entertained in service during the pendency of the appeal, should not be made to suffer any longer by prolonging the proceedings for giving him the emoluments and perquisites which he is entitled to even on removal from service. We direct that the Department may take note of this and pass orders on this behalf as expeditiously as they can.