

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A NO. 450/2005

THURSDAY THIS THE 7th DAY OF DECEMBER, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICECHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIALMEMBER**

M.A.Karunakaran
Technical Grade -I Painter
SSE(PW)/O/TCR
Southern Railway

.. Applicant

By Advocate Mr. Ajith Prakash

Vs

1 Union of India represented by the
General Manager
Southern Railway
Chennai

2 The Senior Divisional Personnel Officer, *S. By,*
Trivandrum Division
Trivandrum

3 Assistant Divisional Engineer
Southern Railway
Trichur

4 S. Haridas
Senior Section Engineer (Permanent Way)
Southern Railway
Trichur.

.. Respondents

By Advocate Mrs. Sumathi Dandapani

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant who is a Technical Grade-I Painter working under
the Senior Section Engineer, Permanent Way Southern Railway,

Trichur, is aggrieved by the denial of permission to sign the Attendance Register and has alleged harassment by the 4th respondent by not allotting him work. According to him he is the only Grade-I Painter in the Trichur Section who was qualified in painting and drawing and he belongs to the S.C. community. In 1997 he met with an accident and was issued with a disability certificate stating that he was suffering from Epilepsy and is at risk permanently. Therefore the period of treatment undergone by him was treated as "Injured on Duty"(IOD) and he was paid accordingly. While so, the 4th respondent joined as PWI, Trichur and ever since then he has been harassing the applicant by not sending him for main work in Painting and deputing other workmen for attending to the duties allotted to the applicant. The 4th respondent had also denied him privilege passes for the years 2001, 2002 and 2003. The applicant had been also transferred on 24.8.2004 from Trichur Division to Trivandrum Division and he filed O.A. 665/2004 before the Tribunal arraying the 4th respondent by name. The 4th respondent had continued with the harassment of the applicant. On 30.4.2005 he was informed by one Watchman that he was under order of deputation to Kottayam, but no letter was served on the applicant. The applicant orally informed the Watchman that he was not prepared to go to Kottayam on deputation unless his grievance was settled. From the next day onwards the 4th respondent denied the applicant access to the Attendance Register which was kept in his custody. The applicant used to wait the whole day till the duty hour

is over. This has continued for one month and the applicant's representation addressed to the higher authorities have not been considered at all. Therefore the applicant is left with no other remedy but to approach this Tribunal. The following reliefs have been prayed for :

- (1) to call for the records relating to the above case and direct the 4th respondent to make available the attendance register to the applicant also, so as to record his daily attendance while reporting for duty.
- (2) to direct the 4th respondent to allot proper work to the applicant and assistant, considering his seniority and experience.
- (3) to issue a direction to the 1st respondent to conduct an enquiry by a senior level officer into the complaints/grievance voiced by the applicant.
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- (4) to issue a direction to disburse the salary of the applicant for the period from 2.5.2005 to 31.5.2005 after treating it as duty for all purpose
- (5) to issue a direction to the 4th respondent to conduct an inquiry based on the representation by deputing a senior leveled officer from the Railway Department.
- (6) Grant such other relief as this Hon'ble Court may deem fit and Proper in the fact and the circumstances of the case.

2 The 4th respondent has filed a reply statement in his individual capacity and an additional reply statement on behalf of the respondents 1 to 3. It has been argued that most of the reliefs have become infructuous as the 4th respondent had been transferred from Trichur by order at Annexure R-4(1) dated 20.1.2005 to Chalakudy and had reported there w.e.f. 20.6.2005. From 9.5.2005 to

20.5.2005, the 4th respondent was undergoing a refresher course at Thambaram and he was not physically present at Trichur. The 4th respondent is mainly contending in his reply statement that past records of the applicant would clearly show that the performance of the applicant was not satisfactory and that complaints were levelled against his work and conduct on several occasions and even the previous Controlling Officers had reported against the applicant pointing out about his misbehaviour. Therefore the allegation that the 4th respondent was in the habit of raising baseless complaints is not true. The respondents have also denied that the applicant is being deprived of work.

3 With regard to the main contention in the O/A about his not being permitted to sign the Attendance Register, it is submitted that the applicant was directed to work at Kottayam for a period of one week along with one Shri K.S.Babu. But while Shri Babu proceeded to Kottayam to carry out the work the applicant refused to accept the same. Though the letter was sent to him on 30.4.2005 he has not accepted the same but it was put on the Notice Board. He was also provided with a Pass to go to Kottayam but that was also refused by him. Thus, the applicant was not willing to carry out the work as per Annexure R-4 order, he was not permitted to sign the Muster roll from 2.5.2005 to 8.5.2005 till the 4th respondent was relieved for training. For the rest of the period the 4th respondent was unable to explain the reason for not signing the Attendance Register. In the

absence of 4th respondent the Incharge Officer informed about this matter to the Senior Section Engineer (P. Way) on 13.5.2005 (Annexure R-4 (12)) which was forwarded to the Additional Divisional Engineer, Trichur with copy endorsed to Senior Divisional Engineer, Trivandrum and further advice was sought about the action to be taken. As regards the applicant's contention that he had prevented the applicant from signing the Attendance Register from 2.5.2005, it is opposed to the true facts as the 4th respondent had rejoined at Trichur only on 22.5.2005 after training. On 15.6.05 he handed over charge to Shri P.S. Unnikrishnan. Hence he was not responsible for keeping the applicant out of service for two months from May, 2005 to 2.7.2005. He has also pointed out that the earlier O.A. 665/2004 filed by the applicant has been dismissed by the Tribunal.

4 A rejoinder has been filed by the applicant contesting the claim of the 4th respondent stating that the 4th respondent had served him with another letter asking him to report to the DMO on 28.6.2005 for further examination. This would amply prove that the 4th respondent was very much available in the office and that he was preventing the applicant from signing the Attendance Register and that he has kept the applicant illegally out of service. A memorandum of charges has been served on him on 20.6.2005 for his alleged refusal to proceed to Kottayam and the applicant has alleged that this charge memorandum is an afterthought of the 4th respondent.

5 We have heard Advocates Mr. C.S. Ajith Prakash appearing for the applicant and Smt. Sumathi Dandapani appearing for the Respondents.

6 It was contended on behalf of the applicant that he has submitted Annexures A-4 & A-6 representations against the incident of denial of permission for marking Attendance which would show that his various grievances regarding non-allotment of work and denial of privilege passes, etc. were brought to the notice of higher authorities. The applicant could not carry out the orders to proceed to Kottayam as he was covered by a stay order of the Tribunal in O.A. 665/2004 against his transfer. He has also submitted that the only relief that remains now to be considered was regarding payment of salary to him for the period from 2.5.2005 to 31.5.2005 treating it as duty for all purposes. It was contended by the learned counsel for the respondents that the O.A deserves no consideration as the applicant's prayers are on the sole ground of malafides attributed to the 4th respondent alone and that apart from the above, the applicant has not made out any case. The allegation of malafides against the 4th respondent have no basis as is evident from the detailed reply statement regarding the past record of the applicant as also his refusal to comply with the orders of the superior officer. No personal responsibility can be attributed to the 4th respondent for the period from 2.5.2005 to 31.5.2005 since the respondents himself was not

physically present being away for training during that period from 9.5.2005 to 31.5.2005. However, it was argued for the period from 2.5.05 to 8.5.05 the action of the respondent is amply justified as the applicant not carried out the order of the superior officer.

7 We have considered the pleadings in the O.A. and the arguments advanced by the learned counsel on both sides. The applicant has urged mainly the following grounds:

(a) No assignment of duty and denial of permission to sign the Attendance Register by the 4th respondent is an arbitrary exercise of power.

(b) being an officer belonging to S. C. community, his grievances should have been dealt with on priority basis by maintaining a Complaint Register. The applicant has submitted about 30 representations and that no enquiry or disciplinary action was contemplated then against the applicant for unauthorised absence

8 First of all we will deal with the allegation of harassment of the applicant by the 4th respondent. Apart from making such general allegations in the O.A. the applicant has not come forward with any specific averments or record to prove his allegations. It is settled proposition that mere allegation of malafides would not be sufficient to prove malafides. The onus lies on the person making the allegation to substantiate malafides by proper supporting materials. In the light of the statement made by the 4th respondent in the reply

statement, that the applicants conduct was far from satisfactory we reject this allegation as having no basis.

9 On 30.6.2005 when the matter came up for hearing we directed the Senior Section Engineer (Permanent Way) Southern Railway, Trichur to make available the attendance register to the applicant to enable him to record his daily attendance and to allot proper work to him considering his experience and seniority forthwith. The respondents have complied with this order and it was confirmed by the applicant himself that he was allowed to sign the Attendance Register and he had attended to work. Hence that part of the relief has already been granted. The only relief which remains to be considered is regarding treating the period from 2.5.2005 to 31.5.2005 during which period he was kept out of job and not allowed to sign the Attendance Register and for which period he has not actually done any work. The 4th respondent has admitted that since the applicant was not willing to carry out the instructions issued by letter dated 30.4.2005 to proceed to Kottayam in connection with the Inspection of the Commissioners Railway Safety, he had not permitted him to sign the Muster Roll from 2.5.2005 to 8.5.2005. It is clear from the averments of the applicant also that he refused to accept the instruction to proceed to Kottayam and that he did not actually obey the orders of his superior. The argument advanced by the applicant is that he could not proceed to Kottayam as there was an order of stay passed by this Tribunal in O.A. 665/2004. This

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explanation is not acceptable at all since the stay granted was only not to transfer the applicant from Trichur. It is quite different from attending to the work allotted to him by the superior officer, though in another station. This does not amount to a transfer and the stay order has no relevance in the matter. Insubordination and indiscipline cannot be tolerated and the respondents have rightly issued the charge memo at Annexure A-12 asking for his explanation regarding the disobedience of orders. The applicant will do well to respond to the charge memorandum. The respondents after the receipt of the explanation will take a decision regarding regularisation of the period from 2.5.20085 to 8.5.2005 in accordance with the rules.

10 It is also stated by the 4th respondent that his successor has sent a report on 28.6.2005 (Annexure A-13) to the superior officer that the applicant had absented from that date and has not turned up for duty and sought advice in the matter and no advice has been received so far. However, the applicant has pointed out in his rejoinder that the DMO, Trichur was asked for further medical examination by letter dated 28.6.2005 in which it is accepted that he had reported for duty. This clearly shows that the applicant was not available in the office.

11 We find from the reply of the respondents that though different occasions admissions have been made therein on rebutting the contention that the applicant was not kept out of work, there is an

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implied admission that he had actually been denied permission to sign the Attendance Register and also not allowed to do work presumably as a punishment for not having obeyed the orders of the superior. While the indisciplined behaviour of the applicant in disobeying the superior's orders cannot be tolerated on any account, and the respondents are free to take any action under the rules, refusal to give access to the Attendance Register or denying the right of the applicant to discharge his duties is not a punishment prescribed under the rules and it cannot be justified under the guise of teaching a lesson to the applicant. If the action of the applicant was considered serious enough to warrant action, the proper course of action was to keep the applicant under suspension. Without resorting to the same, denying him permission to sign the Attendance Register and preventing him from to carry out the work cannot be accepted as a proper behaviour on the part of the respondents. It is therefore unjust to deny him the benefit of service for that period. Unless it is regularised, it would amount to unauthorised absence. At the same time, since the applicant has not attended to any work during the period, the principle of 'no work no pay' will also be applicable. Therefore, we are of the view that appropriate decision should be taken to treat the period from 9.5.05 to 31.5.05 as "Extra Ordinary Leave" that is admissible to the applicant under the Rules and the period shall be regularised as such. Regarding the period from 2.5.2005 to 8.5.2005 as already stated, after the disciplinary proceedings are completed, the

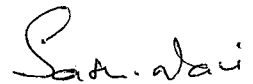
competent authority will decide the manner of treating this period as per the rules.

12 The O.A is disposed of accordingly. No costs.

Dated 7.12.2006.



DR K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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