

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.571/10

*Thursday* this the 23<sup>rd</sup> day of February 2012

**C O R A M :**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**  
**HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Uthama Kurup,  
S/o.late T.P.Parameswaran Nair,  
Charge Man (Radio), Section-in-Charge,  
Yard Utility Centre, Naval Base, Kochi – 4.  
Residing at 'Rohitas', Perumthuruthy,  
Kalavoor P.O., Alappuzha.,

...Applicant

(By Advocate Mr.Johnson Gomez)

**V e r s u s**

1. The Flag Officer in Commanding in Chief,  
Head Quarters, Southern Naval Command,  
Naval Base, Kochi – 682 004.
2. The Commodore Superintendent,  
Naval Ship Repair Yard, Kochi – 682 004.
3. The Deputy Superintendent,  
Naval Ship Repair Yard, Kochi – 682 004.
4. The Senior Manager Technical,  
Naval Ship Repair Yard, Kochi – 682 004.
5. The Manager, Yard Utility Centre,  
Naval Ship Repair Yard, Kochi – 682 004.
6. Captain Sajan Abraham,  
Deputy Superintendent of the Yard,  
Naval Ship Repair Yard, Kochi – 682 004.
7. Commander R.Santhosh Kumar  
Senior Manager Technical,  
Naval Ship Repair Yard, Kochi – 682 004.
8. Lieutenant Raveendra Kumar,  
Manager Yard Utility Centre,  
Naval Ship Repair Yard, Kochi – 682 004.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC [R1-5])



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This application having been heard on 17<sup>th</sup> February 2012 this Tribunal on 23.2.2012 February 2012 delivered the following :-

**ORDER**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

To pay or not to pay is the question. The period for which pay is claimed by the applicant but refused by the respondents is eight days, from 01-06-2010 to 08-06-2010 and another spell from 09-06-2010 to 11-06-2010 and 19-06-2010. The stand of the applicant is that he attended the office and signed a register as directed in Annexure A-2, which reads that an Attendance Register was kept on Manager RP & P Office table to obtain signature of the applicant and that the Manager (QA) orders the applicant to sign the register on daily basis immediately on reaching office in the morning at 0900 hrs and evening at 1700 hrs and in case no signature is held till 0930 hrs, the individual would be marked absent with immediate effect. In view of absence of the said Manager RP & P after 31-05-2010, the usual attendance register not being available, the applicant was asked to sign in a separate register by the officer-in-charge and accordingly he had marked his presence in a separate register. And, in the consolidated statement, shop wise maintained by the Yard Utility Center where the applicant is functioning, his presence has been marked, vide Annexure A-3.

2. The applicant was issued with a show cause notice dated 08-06-2010 vide Annexure A-1 for his alleged unauthorized absence from 01-06-2010 to 08-06-2010. The applicant gave his reply, denying the allegation of absence and attempted to substantiate his stand that he was present and was signing in a separate register as per order of the



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Manager, by enclosing to the reply a statement of work performed by him.

The relevant para of explanation relating to signing in a separate register reads as under :-

*".... I would like to submit that on my internal transfer from HRD Department to QA Section, my name was removed from the general attendance register for the Technical supervisors maintained by the Admin Section and a separate register for me was introduced under the control of SM(Tech). I was following the system introduced till 11 Jun 2010, the date of receipt of the above mentioned letter. On my transfer from QA to YUC, the attendance register was holding by the Manager (YUC) and no observation on my attendance was received either from the Manager (YUC) or Admin Section till 11 Jun 2010. At this juncture, I would like to invite your kind attention that neither the ground on which my name was removed from the General Attendance Register held at Admin Section nor any observation on following the present system of attendance have been intimated to me till 11 Jun 2010. Despite the attendance register in my respect held at Manager (YHUC), another attendance register for entire staff of YUC is being maintained separately by the section."*

3. Similarly, for the other spell of absence, another show cause notice was issued on 19-06-2010 vide Annexure A-7 and for this notice, the applicant had given his explanation that as per Annexure A-3 statement, prepared by the respondents, he was present on 10<sup>th</sup> and 11<sup>th</sup>, while on 9<sup>th</sup> June, 2010 he was on compensatory off and thus, absent on that day. For 18<sup>th</sup> and 19<sup>th</sup> the applicant was on leave as is evidenced from Annexure A-8, which was also granted.

4. This explanation of absence from 01-06-2010 to 08-06-2010 was not accepted and the Deputy Superintendent, for the Commodore Superintendent, had stated vide Annexure A 6 order dated 25-06-2010, that the version of the applicant is not tenable in view of the following :-



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(a) Signing of attendance register at the time of arrival before commencement of the duty is the primary duty, the applicant had failed in his primary duty.

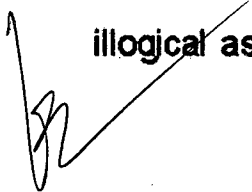
(b) No explanation had been given for non marking of daily attendance for the period in question.

(c) Department officer had confirmed that the applicant was not available for duty in the Department on the concerned dates.

5. As regards the other show cause notice, vide Annexure A-7, there has been no further communication from the respondents.

6. The challenge of the applicant is against Annexure A-6 decision to treat the period from 01-06-2010 to 08-06-2010 as dies non and Annexure A-7 show cause. Certain grounds of animosity between the respondent No.3 and the applicant has also been indicated in the application for the issue of the impugned orders. For this purpose, he had amended the application by impleading additional respondents 6 to 8 in their individual capacity.

7. Respondents have contested the O.A. They have admitted that a separate register was maintained for signature of the applicant. But to say it was not immediately available since the Manager went on leave is illogical as the attendance register was available in the office. Again, the




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consolidated statement (Annexure A-3) was prepared by a subordinate of the applicant and hence, is not a valid document. The non availability of the applicant for duty for the said 8 days has been certified vide Annexure R-1. The applicant had been earlier warned for tampering with the register, vide Annexure R-3.

8. The applicant has filed his rejoinder, in which he has added some more documents, including a copy of the performance report for the period from 01-04-2009 to 31-03-2010. He has contended that a perusal of the said assessment order would reflect that report for the period not connected with the period under review had been written and the applicant had served under the officer who had reported above the applicant in his appraiser report only for a period less than three months. Thus, the incompetence of the officer reporting upon the applicant vitiates the entire action. In addition certain aspects of personal animosity between Respondent No.8 and the applicant has also been specified in the rejoinder and the respondents have stoutly denied the same in their additional reply.

9. Counsel for the applicant submitted that it would be evident from the records at Annexure A-3, and Annexure to A-4, would reveal the essential fact that the applicant was actually not only present but also performed his duties. Verification of the relevant records would certainly confirm the presence of the applicant on the days i.e. 01-06-2010 to 08-06-2010. The recording of certain events not pertaining to the period under review in the APAR would only show the inimical nature of the officer reporting upon against the applicant. In any event, in so far as the period from




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01-06-2010 to 08-06-2010 is concerned, the applicant was present, performed his duties and as such he is entitled to the relief claimed. Similarly, as regards 9<sup>th</sup> June, 2010, he being on compensatory off and for 18<sup>th</sup> and 19<sup>th</sup> he having been on medical leave, the issue of Annexure A-7 was also accentuated by malafide. The same too is to be quashed and set aside.

10. Counsel for the respondents submitted that the primary duty of the applicant is signing of attendance register. That is the prime evidence of a person's having attended the office. The applicant has failed to produce the evidence in this regard. Annexure A-3 is only an extract and it has been prepared <sup>by</sup> some one subordinate to the applicant and cannot be relied upon. As regards the allegation about personal animosity of one of the respondents, counsel for the respondents submitted that since the APAR was filled up some times in the second quarter of the year 2010, though the period of review ought to have been upto 31<sup>st</sup> March, 2010, inadvertently, the episode of June, 2010 also figured in but the same had been rectified at the earliest opportunity. The applicant cannot be permitted to take any mileage out of the same.

11. Arguments were heard and documents perused. The sequence of events would go to show that in Annexure A-4, the applicant has clearly reflected the manner in which he had to sign a separate attendance register. A full fledged reply had been given through Annexure A-4. It appears that the respondents have not given due weight to the same and they maintained that the primary duty of the applicant is to sign the register



which he failed to do. True, the applicant's initials might not figure in the general register maintained but when by Annexure A-2 order the applicant had to sign the register maintained and kept in the custody of another officer, and when the applicant had been so signing, perhaps, the same was not considered by the respondents. The respondents would have verified from the details given in enclosure to Annexure A-4 about the presence or absence of the applicant. In all probability, details of persons involved in the job of ammunition loading, ammunition deloading would have been kept by the respondents as they involve secret and security aspects. If these records were verified, the same would have reflected about the truthfulness or otherwise of the contention of the applicant. This was not done. The abstract of attendance register, vide Annexure A-3 is not the creation of the applicant. It was prepared by some other responsible person. Contention that the same had been prepared by an official subordinate to the applicant and hence the same cannot be relied is a far fetched one. It would be a poor reflection of the administrative efficiency of higher officers. Thus, the same has to be disregarded.

12. The applicant's contention has been consistent throughout and official records do reflect some evidence to the fact that he had been present on the dates from 01-06-2010 to 08-06-2010. Thus, to this extent the contention of the applicant has to be accepted. As regards Annexure A-7, the respondents have not so far disposed of the same by a formal order. If on the basis of Annexure A-8, the leave application for 18<sup>th</sup> and 19<sup>th</sup> June 2010 has been accepted by the respondents and the case closed, no further action is called for in this regard. However, if the same



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has not been disposed, the respondents shall consider the same and arrive at a just conclusion. The fact of compensatory off on 9<sup>th</sup> June, 2010 may also have to be duly verified and confirmed.

13. In view of the above, the Original Application is allowed to the following extent :-

(a) Annexure A-6 is quashed and set aside and it is declared that the applicant is entitled to treat the said period from 01-06-2010 to 08-06-2010 as duty and he is entitled to duty pay for the said period. Respondents shall release the pay for the said period within a period of six weeks from the date of communication of this order.

(b) As regards Annexure A-7, respondents shall consider the explanation, if offered by the applicant and take into account the leave application furnished by the applicant vide Annexure A-8 as also consider the contention of the applicant as to the compensatory off for 9<sup>th</sup> June 2010 and the extract of Attendance register vide Annexure A3, which reflects his presence on 10<sup>th</sup> June, though the authorities have stated that he was absent on that day, vide Annexure A-7 and arrive at a just conclusion.

14. Under the above circumstances, there shall be no orders as to costs.

(Dated this the 23<sup>rd</sup> day of February 2012)

  
**K.NOORJEHAN**  
**ADMINISTRATIVE MEMBER**

  
**Dr.K.B.S.RAJAN**  
**JUDICIAL MEMBER**

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