

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.9/99

Tuesday, this the 21st day of August, 2001.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.Ganesan,
Goods Driver,
Southern Railway,
Erode.

- Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Madras-3.
2. The Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.
3. The Senior Divisional Mechanical Engineer,
Southern Railway,
Palghat Division,
Palghat.
4. The Chief Crew Controller,
Southern Railway,
Erode Railway Station,
Erode.
5. V.Venkatachalam,
Chief Crew Controller,
Southern Railway,
Erode Railway Station,
Erode.

- Respondents

By Advocate Mr James Kurian

The application having been heard on 1.6.2001, the Tribunal on
21.8.2001 delivered the following:

2

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant is a Goods Driver in the scale of Rs.5000-8000 at Erode Railway Station of Southern Railway. He is aggrieved by A-5 order dated 18.9.98 of the third respondent whereby his representation dated 23.3.98 against refusal of the 5th respondent to assign running duty to the applicant for the period between 7.5.97 and 3.6.97 marking him 'absent' and denying him salary for the said period on account of his having allegedly deserted work on his own accord without any authority. The applicant prays for the following reliefs:

(a) Call for the records leading to the issue of Annexure A-5 and quash the same.

(b) Declare that the period of the applicant's service from 7.5.97 to 3.6.97 (both days inclusive) is liable to be treated as duty and that the applicant is entitled to the consequential benefits of salary and allowances thereof.

(c) Declare that the applicant is entitled to be granted the allowance in lieu of Kilometerage for the period from 7.5.97 to 3.6.97 and direct the respondents accordingly.

(d) Direct the respondents to pay the applicant the salary, allowances and the allowances in lieu of

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Kilometerage for the period from 7.5.97 to 3.6.97 forthwith, with 18% interest calculated from 20.6.97 (pay day) upto the date of full and final settlement of the same.

2. The factual background in a nutshell can be stated thus: The running staff of trains are expected to sign several registers depending on whether they are on duty or off duty or are ready and hence available for duty. 'Signing On' register is signed as token of their having reported for duty on train. When they break off after a spell of duty as per rules, they sign the 'Signing Off' register. Where Drivers are concerned, this is the procedure irrespective of whether they are at the headquarters or at some other stations. There is another register called 'Spare Register' which is maintained and signed for the purpose of indicating that the staff is available for duty and they are at the disposal of the authorities. There is also a general Attendance Register maintained by the concerned Depot Supervisors. The supervisors mark the staff as 'P' denoting 'present' or 'A' indicating 'absent' or 'LAP' signifying 'leave on average pay' etc. depending on their duties as reflected in the 'Signing On' and 'Off' or 'Spare Register'. According to the applicant, the Attendance Register normally is not accessible to the running staff though the instructions are to the contrary. Thus, it is not made available to the running staff for marking their attendance. The applicant being a Goods Driver, left his headquarters Erode on duty on 3.5.97 at 1645 hours without any communication as to the number of days he

9.

would be away from the Headquarters. On 4.5.97, after reaching Salem, he was booked from Salem to Jolarpet and on the next day from Jolarpet back to Salem. Thus, on 5.5.97, the applicant claims to have reached Salem at about 2050 hours and was waiting for further orders. No duty was assigned to him nor was he sent back to headquarters. On 6.5.97 at around 8.55 a.m., the applicant who noticed that his stay away from headquarters was going to exceed 72 hours which was the permitted limit under the rules, communicated the fact to the respondents and also disclosed that he was facing monetary difficulty to support himself (see A-3 communication). The said communication is claimed to have been duly received in the Control Office. Since the communication did not evoke any response, in the evening on the same day at about 1745 hours, the applicant and Assistant Driver Shri K Ramachandran sent another message to the Divisional Operations Manager as well as TLC requesting to recall them back to headquarters. He was then permitted ^{to return} to the headquarters as passenger. The applicant, after having duly signed 'On' at Salem at about 18.00 hours on 6.5.97 reached Erode at about 2030 hours. He signed the register at Erode soon thereafter. From 7.5.97 onwards, the applicant was regularly signing the 'Spare Register' indicating his availability for duty without any let or hindrance. However, in effect, he was prevented from performing any duties since no work was assigned. This continued upto 4.6.97 when without any further orders or explanation, the applicant was booked for duty on train. When he received his salary, however, he found that the period of duty from 7.5.97 to 3.6.97 was treated as absent and that the

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pay and allowances for that period were denied to him. The applicant's repeated representations including A-1 and A-2 went unheeded to. On personal enquiries at the third respondent's office, the applicant apparently was informed that the period between 7.5.97 to 3.6.97 would not be treated as duty and that the applicant was not eligible for his remuneration for the said period. Thereafter, on an Original Application (O.A.No.1039/98) filed by the applicant before this Tribunal, praying inter-alia for a declaration that the period of his service from 7.5.97 to 3.6.97 (both days inclusive) was liable to be treated as duty and that the applicant was entitled to the consequential benefits of salary and allowances, this Tribunal by order dated 20.7.98 (A-4) directed the third respondent to consider the A-2 representation dated 23.3.98 and to give appropriate reply to the applicant after considering all the relevant information within two months from the date of receipt of that order. The impugned letter dated 18.9.98 (A-5) was issued by the third respondent in purported compliance with the Tribunal's directions in A-4 order and the applicant was informed that he could not claim salary for the period from 7.5.97 to 3.6.97, as he had deserted the work spot on his own accord without any authority. It is against the said order that this O.A. has been filed.

3. Learned counsel appearing for the applicant has contended that the impugned communication(A-5) dated 19.8.98 was arbitrary and unjust, inasmuch as it totally ignored the fact that the applicant had presented himself for duty by

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signing the relevant register. The allegation that he had deserted duty was false, since it was the authorities concerned who were responsible for not assigning duties to him inspite of his readiness therefor. This was borne out from the records, it is urged. The learned counsel would refer to the A-3 message sent by the applicant on 6.5.97 morning requesting for permission to return to Headquarters and the further message which he and his Assistant Driver sent to the Divisional Operations Manager as well as the TLC stating that they had no money to maintain themselves. Counsel would plead it was thereafter that they were permitted to sign in the 'signing on' register maintained at Salem Junction. The same night the applicant returned to Erode as passenger and the next day, i.e. 7.5.97, he signed the 'Spare Register', it is pointed out. Counsel would further state that the sheer fact that applicant had been granted mileage allowance for the journey performed between Salem and Erode as passenger would corroborate his claim that the journey was duly authorised. He was physically available for duty everyday from 7.5.97 and this is proved by the fact that he had been signing the 'Spare Register'. The entire period from 7.5.97 to 3.6.97 was to be construed as duty period, since the applicant could not be faulted for any lapse and since, on the other hand, he had shown the necessary diligence and willingness to accept duty. Marking him absent for the relevant period and denial of remuneration for the said period was an act of gross injustice, according to counsel. He would, therefore, plead for grant of arrears for the period under consideration with

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compensation by way of interest. It is further submitted by the learned counsel for the applicant that the non-assignment of duty on train led to denial of mileage allowance admissible under rules.

4. Learned counsel appearing for the respondents strongly resisted the application by stating that the applicant had deserted the work spot and that he was not available for duty while calling at Salem. As he did not produce authority under which he left the work spot at Salem, he was marked absent on 7.5.97. According to the respondents' counsel the journey performed by him from Salem to Headquarters was without any authority and he had signed the 'signing on' register, in violation of the rules. It is further stated that as a matter of fact his services were required at Salem when he on his own accord left for Erode. He signed the 'Spare register' deliberately without producing any authority to return to the headquarters. It is maintained that there is no proper explanation for his staying away from duty at the work spot at Salem and that the continued absence upto 3.6.97 was therefore treated as unauthorised absence from duty.

5. We have considered the material on record. Having due regard to the pleadings and the further arguments put forward by the learned counsel on either side, we are of the view that the impugned letter(A-5) dated 18.9.98 does not appear to be based on a fair and judicious consideration of the correct facts. If the applicant had left Salem without proper authority, it is not known as to how he could sign the

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'signing on' register at Salem prior to his proceeding to Erode as passenger. The message sent by the applicant (A-3), disclosing his monetary difficulty and the fact that he was going to complete 72 hours of stopover at Salem, does not appear to have been responded to. It would appear that one more message was sent to the Divisional Operations Manager and the TLC on the same subject and that it was only after that the applicant performed the journey from Salem to Erode as passenger. He is seen to have been allowed admissible mileage on this account. There is no evidence to suggest that the applicant did not make himself available for duty; nor is there any material to support the respondents' argument that he had abstained from duty. There is, therefore, considerable force in the applicant's submission that he was not given any duty at the appropriate time and that he and his Assistant Driver Shri K Ramachandran were allowed to proceed to the Headquarters as passengers. We do not consider the absence of written orders would render the applicant's plea untenable. It is not as if the applicant left Salem without signing the relevant register. So, we are inclined to consider that he was on duty when he left Salem towards Erode, his Headquarters, on 6.5.97 evening. At Erode also he claims to have signed the 'signing off register' and this submission has not been disproved. The fact that he had signed the 'spare register' at Erode for the rest of the period is verifiable; and the counter contention that the 'spare register' was available in the office and therefore, any indisciplined person could sign the 'Spare register' does not impress us. It can, therefore, be safely assumed that the applicant was

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available and ready to take up duty at his Headquarters. The omission or failure on the part of the respondents to assign proper duties to him was for reasons best known to them. Further, we are constrained to observe that if the official concerned behaved in a derelict manner unbecoming of a Railway servant, he should have been immediately proceeded against under the relevant conduct rules. Instead of that, at a later point of time, the respondents are seen to have meted out a punishment to the applicant by way of reduction of his salary for the relevant period, alleging that he absented himself from duty. The official was unjustifiably prevented from doing his duties, according to us.

6. On the facts and in circumstances of the case explained above, we are of the considered view that the impugned communication A-5 dated 18.9.98 is liable to be set aside and accordingly, we do so. It is declared that the period of applicant's service from 7.5.97 to 3.6.97 (both days inclusive) should be treated as duty and that the applicant is entitled to all the consequential benefits by way of pay and allowances pertaining to the said period, in accordance with the rules in force. With regard to the claim of allowance in lieu of kilometerage from 7.5.97 to 3.6.97, it is ordered that the applicant shall be treated as on duty between the period from 7.5.97 to 3.6.97 and is therefore, entitled at least to the allowance in lieu of kilometerage for the period from 7.5.97 to 3.6.97. The concerned respondents are directed to grant the amount of pay and all other allowances including the allowance in lieu of kilometerage pertaining to the period

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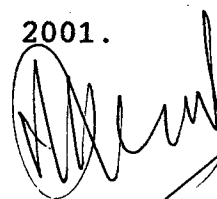
7.5.97 to 3.6.97 along with 12% interest on the entire amount from 20.6.97 till the date of actual disbursement thereof. The above direction shall be carried out within a period of three months from the date of receipt of copy of this order.

7. The O.A. is disposed of as above. No costs.

Dated, the 21st August, 2001.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of the representation dated 30.6.97 submitted by the applicant to the 4th respondent.
2. A-2: True copy of the representation dated 23.3.98 submitted by the applicant to the 3rd respondent.
3. A-3: True copy of the message dated 6.5.97 submitted by the applicant to the TLC, Palghat.
4. A-4: True copy of the judgement in O.A.1039/98 dated 20.7.98 of this Tribunal.
5. A-5: True copy of the letter No.J/P.O.A.1039/98 dated 18.9.98 issued by the 2nd respondent.